

REPORT ON THE PROPOSED LAW OF CITIZENSHIP OF BANGLADESH, 2005

Introduction

After the emergence of Bangladesh as a sovereign and independent country, a Presidential Order was passed on 15.12.72 entitled “the Bangladesh Citizenship (Temporary Provisions) Order, 1972” (P.O. No.149 of 1972), hereinafter referred to as P.O No. 149 of 1972, governing citizenship of Bangladesh for the time being. This law is a very small one containing only five Articles and it appears to have been enacted with a view to making some temporary provisions governing citizenship of Bangladesh to meet the immediate needs of a changed circumstance that arose out of the creation of an independent sovereign state. The Pakistan Citizenship Act, 1951 (Act No. 11 of 1951), hereinafter referred to as the said Act, continued to remain in force under the Laws Continuance and Enforcement Order, 1971 (since repealed).

P.O. No. 149 of 1972 was amended twice, first by the Bangladesh Citizenship (Temporary Provisions) (Amendment) Ordinance, 1973 (Ordinance No. X of 1973) and next by the Bangladesh Citizenship (Temporary Provisions) (Amendment) Ordinance, 1978 (Ordinance No. VII of 1978).

In exercise of powers conferred by Article 5 of P.O. No. 149 of 1972, the Government framed the Bangladesh Citizenship (Temporary Provisions) Rules, 1978 by Notification No. 2144/78 dated 27.7.78, published in the Bangladesh Gazette Extra on 27.7.78. These rules were amended by Notification No. SRO 2134/81 published in the Bangladesh Gazette Extra on 12.7.81 (34 DLR Statutes 21) and were further amended by Notification No. SRO 164-L/85, published in the Bangladesh Gazette Extra on 9.4.85 (37 DLR Statutes 247).

The fact remains, however, that the said Act was not repealed by P.O. No. 149 of 1972, as amended up to date. It remained an “existing law” by virtue of Laws Continuance and Enforcement Order, 1971, read with the Bangladesh (Adaptation of Existing Bangladesh Laws) Order, 1972 (P.O. No. 48 of 1972). When, however, the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973) was passed on 20.6.73, the said Act was neither repealed in Schedule A, nor amended in Schedule B, nor declared to be no part of the laws of Bangladesh and removed from the Statute Book in Schedule C. Act No. VIII of 1973 was amended by the Bangladesh Laws (Revision and Declaration) (Amendment) Act, 1974 (Act No. LIII of 1974) on 25.7.74. No mention of the said Act finds place in the amended Schedules A, B or C. The status of the said Act, in relation to its application in Bangladesh, remains dubious.

In the leading judgment on citizenship in the case of Bangladesh Vs. Professor Golam Azam (46 DLR (AD) 192), the Appellate Division has pronounced that

“during the British period, the collective British legislation known as the British Nationality and Status of Aliens Act, 1914 to 1943, determined the citizenship of British citizens as well as the sub-continental inhabitants who were known as “British subjects”. The concept of “British subjects” was a concept of common law. The Appellate Division further pronounced: “ when this common law doctrine became unworkable, the UK Parliament enacted the British Nationality Act, 1948, following a general agreement between the U.K. Government and Commonwealth countries including India and Pakistan. Thereafter separate laws of citizenship were passed by the different Commonwealth countries including India and Pakistan on similar lines”.

The Appellate Division further says, “ During the period from 1948 to 1951, Pakistani citizens were only potentially so. They enjoyed Commonwealth Citizenship which was synonymous with British subjects without citizenship. The Commonwealth Citizenship was to continue under section I of the British Nationality Act, 1948 until Pakistan enacted its own citizenship laws.”

When Pakistan enacted its citizenship law in 1951, provisions were made for 7 different classes of citizens, namely, (1) a person who shall be deemed to be a citizen of Pakistan, i.e. who will be citizens by a legal fiction (2) citizen by birth (3) citizen by descent (4) citizen by migration (5) citizen by naturalization (6) citizen by registration and (7) citizen by incorporation of territory. P.O. No. 149 of 1972, as amended up to date, takes care of only the above-mentioned class (1) of citizen and of acceptance of dual citizenship (not permitted by section 14 of the said Act.) On all other provisions governing citizenship, P.O. No. 149 of 1972 does not contain anything further. Our law of citizenship is still governed by Temporary Provisions and is an incomplete law.

34 years unto independence it is high time that a full-fledged and consolidated law of citizenship be enacted to cover all classes of citizens and to meet all manners of situations presently perceived in relation to them, keeping in view the vested rights of citizens already accrued under P.O. No. 149 of 1972 and also omitting as unnecessary owing to passage of time and change of circumstances some of the obsolete provisions of P.O. No. 149 of 1972.

For the purpose of recommending for enactment of a single comprehensive law for the citizenship of Bangladesh we have studied the Indian Constitution, the Indian Citizenship Act, 1955 (Act No. 57 of 1955), the Sri Lankan Citizenship Act, 1955 Pakistan Citizenship Act, 1951 (Act No. II of 1951), Article 152 of the Constitution of Bangladesh and our P.O. No. 149 of 1972, as amended up to date, and the Rules framed there under.

RECOMMENDATION

In view of the discussions above, we recommend that a new, consolidated and comprehensive single law relating to citizenship of Bangladesh be passed.

For convenience and ready reference we are enclosing herewith a Draft Bill as annexure 'A'.

(Dr. M. Enamul Hoque)
Member
Law Commission

(Justice. Md. Sirajul Islam)
Member
Law Commission

Justice Mustafa Kamal
Chairman
Law Commission

**A proposed Bill
For
Enactment of a New Law relating to
Bangladesh Citizenship**

Bill No----- 2005

Preamble

Whereas it is expedient and necessary to consolidate the laws relating to citizenship of Bangladesh and to make a comprehensive new law providing for the acquisition, termination and renunciation of Bangladesh citizenship;

Now, therefore, it is hereby enacted as follows:

**Chapter 1
Preliminary**

1. Short title and commencement.-

- (1) This Act may be called the Bangladesh Citizenship Act, 2005.
- (2) It shall come into force at once.

2. Definitions.- (1) In this Act, unless the context otherwise requires,-

- (a) "Alien" means a person who is not a citizen of Bangladesh, including one who was not qualified for being a citizen by or under any law in force from 15.12.72.
- (b) "Citizen" means a person who is a citizen of Bangladesh according to the law relating to citizenship;
- (c) "Undivided India" means India as defined in the Government of India Act, 1935 as originally enacted;
- (d) "Minor" means notwithstanding anything in the Majority Act, 1875, any person who has not attained the age of eighteen years;
- (e) "Prescribed" means prescribed by rules made under this Act;
- (f) "Person" does not include any company or association or body of individuals whether incorporated or not;
- (g) "Commonwealth citizen" means a person who has the status of a Commonwealth citizen under the British Nationality Act, 1981.

(2) For the purpose of this Act, a person shall be deemed to be of full age if he is not a minor, and of full capacity if he is not of unsound mind.

Chapter-II

Acquisition of Citizenship

3. Commencement of Citizenship (1) Notwithstanding anything contained in any other law, every person who, on or before the 25th day of March, 1971,-

- (a) was born in the territory now comprised in Bangladesh, or
- (b) either of whose parents was born in the territory now comprised in Bangladesh, or
- (c) was permanent resident of the territory now comprised in Bangladesh on or before the 25th day of March, 1971 and continued to be so resident till 15.12.72 and/or thereafter, shall be deemed to be a citizen of Bangladesh.

(2) A person having his residence in the United Kingdom shall be deemed to continue to be permanent resident in Bangladesh within the meaning of clause (c) of sub-section (1) of this section.

4. Citizenship by birth.- (1) Except as provided in sub-section (2) every person born in Bangladesh after the 25th day of March, 1971, shall be a citizen of Bangladesh by birth.

(2) A person shall not be such a citizen by virtue of sub-section (1) of this section if at the time of his birth,-

- (a) his either parent possesses such immunity from suits and legal process as is accorded to an envoy of an external sovereign power accredited in Bangladesh and is not a citizen of Bangladesh; or
- (b) his either parent is a resident alien living in Bangladesh for the time being.

5. Citizenship by descent.- (1) A person born in a country outside Bangladesh on or after the 25th day of March, 1971, shall be a citizen of Bangladesh by descent if his either parent is a citizen of Bangladesh at the time of his birth.

6. Dual Citizenship: (1) Except as provided in sub-section (2), if a citizen of Bangladesh acquires a citizenship of any country other than a country that the Government of Bangladesh do not recognize, shall retain his citizenship of Bangladesh.

(2) A person shall not be entitled to the benefit of sub-section (1) of this section if he is a citizen of Bangladesh by registration or naturalization.

7. Citizenship by Registration.- (1) The Government may, upon an application made to it in this behalf, register as a citizen of Bangladesh any person who, or whose either parent, or whose grandparent of either parent, was born in any place of undivided India and who is ordinarily resident in Bangladesh and has been so resident at least for five years immediately before making an application for registration and has obtained a certificate of domicile.

Provided that the Government may, for good reason being shown, exempt any person seeking registration of Bangladesh citizenship from obtaining a certificate of domicile.

(2) The Government may grant citizenship of Bangladesh to any person who is a citizen of any state of Europe or North America or of any other state which the Government may, by notification in the official Gazette, specify in this behalf.

8. Citizenship by Naturalization. - The Government may, upon an application made to it in the prescribed manner by any person of full age and capacity who has been granted a certificate of naturalization under the Naturalization Act, 1926, register that person as a citizen of Bangladesh by naturalization.

Provided that the Government may register any person as a citizen of Bangladesh by exempting him from the condition of his obtaining the certificate of naturalization as aforesaid.

Provided further that, if in the opinion of the Government the applicant is a person who has rendered distinguished service to the cause of science, philosophy, art, literature, world peace or human progress generally, it may waive the pre-condition of his obtaining a certificate of naturalization in registering that person as a citizen of Bangladesh.

9. Citizenship by registration and naturalization to begin on the date of registration.- Any person registered as a citizen of Bangladesh by registration or naturalization shall be such a citizen from the date of his registration.

10. Register.- There shall be kept and maintained in the prescribed form, a register of persons who are granted citizenship by registration and naturalization.

11. Certificate of Registration.- The Government shall issue, in the prescribed form, a certificate of registration to every person who is registered as a citizen of Bangladesh under section 7 or 8.

12. Citizenship by Incorporation of territory.- If any territory becomes a part of Bangladesh, the Government may, by order notified in the official gazette, specify the persons who shall be citizens of Bangladesh by reason of their connection with that territory, and those persons shall be citizens of Bangladesh as from the date to be specified in the order.

13. Certificate of citizenship in case of doubt.- (1) Where a person with respect to whose citizenship a doubt exists, whether on a question of law or of fact, makes an application in that behalf to the Government, the Government may grant him a certificate that on and from the date specified in the certificate he is a citizen of Bangladesh; and a certificate so granted under this section shall, unless it is proved to have been obtained by fraud, false representation or concealment of any material fact, be conclusive evidence of the fact that that person was a citizen of Bangladesh on and from the date mentioned in the certificate.

14. Citizens of Bangladesh to have the status of commonwealth citizens.- Every person who is a citizen of Bangladesh under this Act shall have the status of a commonwealth citizen.

Chapter-III Loss of Citizenship

15. Renunciation of citizenship.- (1) If any citizen of Bangladesh of full age and of sound mind makes a declaration of renunciation of his Bangladesh citizenship in the prescribed manner, that declaration as made shall be registered by the Government, and upon such registration, that person shall cease to be a citizen of Bangladesh.

Provided that if any such declaration is made during any war in which Bangladesh may be engaged, registration thereof shall be withheld until the Government otherwise directs.

(2) Where a male person ceases to be a citizen of Bangladesh under sub-section (1), every minor child of that person shall thereupon cease to be a citizen of Bangladesh.

Provided that any such child may, within one year after attaining full age, make a declaration to the Government that he wishes to resume his Bangladesh citizenship and shall thereupon again become a citizen of Bangladesh.

(3) For the purposes of this section, any woman, who is or has been married, shall be deemed to be of full age.

16. Deprivation of citizenship.- (1) A citizen of Bangladesh who is such a citizen by naturalization or by registration only shall cease to be a citizen of Bangladesh, if he is deprived of that citizenship by an order of the Government under the next following sub-sections.

(2) Subject to the provisions of this section, the Government may, by order, deprive a naturalized or registered citizen of his citizenship, if it is satisfied that he obtained his certificate of domicile or certificate of naturalization under the Naturalization Act, 1926 by means of fraud, false representation or concealment of any material fact, or if his certificate of naturalization is revoked.

(3) Subject to the provisions of this section the Government may, by order in writing, deprive any person who is a citizen of Bangladesh by naturalization or registration of his citizenship of Bangladesh if it is satisfied that the citizen-

- (a) has shown himself by any act or speech or conduct to be disloyal or disaffected to the Constitution of Bangladesh; or
- (b) has, during a war in which Bangladesh is or has been engaged, unlawfully traded or communicated with the enemy or been engaged in or associated with any business that was to his knowledge carried on in such a manner as to assist an enemy in that war; or
- (c) has within five years after his registration or naturalization, been sentenced in any country to imprisonment for a term of not less than two years.

(4) Before making an order under this section, the Government shall give the person against whom it is proposed to make the order, notice in writing informing him of the ground on which it is proposed to make the order and calling upon him to show cause why it should not be made.

(5) If the order is proposed to be made against a person on any of the grounds specified in sub-section (2) and (3) of this section and the person applies in the prescribed manner for an inquiry, the Government shall and in any other case it may, refer the case to a committee of inquiry consisting of a chairman, being a person who has for at least ten years held a judicial office, and two other members appointed by the Government in this behalf.

(6) The committee of inquiry shall, on such reference, hold the inquiry in such manner as may be prescribed and submit its report to the Government and the Government then shall ordinarily be guided by such report in making an order under this section.

17. Residence outside Bangladesh for five years.- A person who is a citizen by registration or naturalization shall cease to be a citizen of Bangladesh if that person resides outside Bangladesh for five consecutive years or more, exclusive of any period during which that person-

- (a) is employed abroad as an officer in the service of the Republic; or
- (b) is abroad as a representative of the Government of Bangladesh; or
- (c) being the spouse or minor child of a citizen of Bangladesh who is abroad in any of the capacities specified in paragraphs (a) and (b) of this section, resides abroad with that citizen; or
- (d) resides abroad on a holiday or for reasons of health; or
- (e) is a student at an educational institution abroad; or
- (f) resides abroad with a spouse who is deemed to be a citizen of Bangladesh or a citizen of Bangladesh by birth; or

(g) is abroad for any prescribed purpose.

Chapter-IV Miscellaneous

18. Interpretation.- For the purposes of this Act a person born in a ship or aircraft, registered in Bangladesh or hired by or belonging to any Bangladeshi or company or statutory corporation in Bangladesh, and whose either parent is a citizen of Bangladesh, shall be deemed to have been born in Bangladesh.

19. Delegation of powers.- The Government may, by order notified in the official gazette, direct that any power which is conferred on it by any of the provisions of this Act except that of section 16 and section 21 shall, in such circumstances, and under such conditions; if any, as may be specified in the direction, be exercised or discharged by such authority or officer as may be specified.

20. Offences.- Any person who, for the purpose of procuring or preventing the doing of anything under this Act, makes any statement or furnishes any information which is false in any material particular and which he knows or has reasonable cause to believe it to be false, shall be guilty of an offence punishable under section 177 of the Penal Code.

21. Power to make rules.- (1) The Government may, by notification in the official gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the rules so made by the Government may provide for giving effect to the provisions of this Act.

22. Repeals.- (1) Bangladesh Citizenship (Temporary Provisions) Order, 1972 (P.O. No. 149 of 1972) and the Pakistan Citizenship Act, 1951 (Act No II of 1951) in its application to Bangladesh are hereby repealed.

The end