

The Foreigners Act, 1946

Act No. XXXI of 1946

[23rd November, 1946]

An Act to confer upon the ¹[Government] certain powers in respect of foreigners.

WHEREAS it is expedient to provide for the exercise by the ¹[Government] of certain powers in respect of the entry of foreigners into ¹[Bangladesh] their presence therein and their departure therefrom :

It is hereby enacted as follows :-

1. Short title and extent.— (1) This Act may be called the Foreigners Act, 1946.

(2) It extends to the whole of ¹[Bangladesh].

Case Laws

APPLICABILITY : The second clause of section 1 of the Act says that the Act is to extend to the whole of Bangladesh. These words are large enough to include all courts and persons of all denominations.

2. Definitions.— In this Act.-

- (a) "foreigner" means a person who is not a citizen of ¹[Bangladesh];
- (b) "prescribed" means prescribed by orders made under this Act;
- (c) "specified" means specified by direction of a prescribed authority.

Case Laws

Foreigner : Any person who is not a citizen of Bangladesh (by birth, by descent, by migration, by naturalisation, by registration, and by incorporation of territory) is a foreigner within the meaning of this Act.

In a case of the Calcutta High Court reported in *Dawood Ali Arif Vs. Deputy Commissioner of Police*, [AIR 1958 Cal 565; *Abdur Rahman Vs. State*, AIR 1964 Pat 384; (1964) 2 Cr LJ 327 : 1964 BLJR 322] Suiha, J., who gave judgment in the case observed as follows :

The simple fact that he went to Pakistan at a time when there was communal disturbance would by itself prove nothing. But having gone there, he applied and obtained a Pakistan Passport. In order to obtain a Pakistan Passport, it is necessary to make a declaration affirming that the applicant was a Pakistani national. Having made such an application, and

1. Substituted by Act VIII of 1973 as amended by Act LIII of 1974, S. 8, 2nd Sch.

having obtained a Pakistan passport on the strength thereof, the position was that the petitioner became a national of Pakistan, and his migration to Pakistan was complete. A passport by itself is not a conclusive proof of nationality. But it is accepted as a proof of the fact by International agreement and the comity of Nations.

When a person enters into India under a passport issued by a foreign country and under a visa obtained by him on an application submitted by him claiming that he was a national of a foreign country and that he desired to visit India for a limited period, it may be assumed that he is not a citizen of India. [AIR 1959 Bom 525 (Rel) Shri Mushtaq Husain Vs. State of U.P., 1960 Cr. LJ 1176 : AIR 1960 All 559]. A Pakistani passport and the procurement of a category "C" visa furnish *prima facie* evidence that the persons holding them and acquired Pakistani citizenship. Such persons are foreigners within the meaning of the Foreigners Act. It is however open to them under rule 30 of the Citizenship Rules to convince the Tribunal constituted under the Citizenship Act, namely Government of India, that they have not voluntarily acquired the citizenship of Pakistan [Sayed Shah Mohammad Abedabli Vs. State of Bihar, 1959 BLJR 584 : AIR 1960 Pat. 98].

Under the Pakistan Citizenship Act 1951, the Pakistan Government would not have issued a passport to a person unless they were satisfied that he was a Pakistani citizen. The issue of a Pakistani passport would be a presumptive evidence of the fact that the holder thereof owed allegiance to the Pakistani Government. The person by obtaining a Pakistani passport had declared his allegiance to the Pakistani Government and could be considered as a foreigner. [1946 AC 347 Rel. on Khalil Ahmed Vs. State of V.P., 1962 ALJ 123 : 1962 All Cr R 78 = 1962 AWR (HC) 83 = ILR (1961) 2 All 733.]

A passport itself is not a conclusive proof of nationality. But it is accepted as a proof of the fact, by international agreement and the comity of nations. Whatever be the probative value of it, a person who has deliberately applied for a passport affirming himself to be a Pakistan national cannot be heard to say that he did so under false pretences.

Where a Muslim who was an Indian national, migrated to Pakistan in 1950 on account of the communal disturbances and having gone there, applied for and obtained a Pakistan passport on making a declaration affirming that he was a Pakistan national.

Held, that he acted with deliberation in renouncing his Indian citizenship and accepting Pakistan nationality, and was precluded from saying that he had no intention of making Pakistan his abode or residence. By accepting a Pakistan passport he caused the sovereign State of Pakistan to accept him as its citizen and to request the other sovereign States of the world to extend protection and safety to him as a Pakistan citizen. After all this, the petitioner could not be heard to say that he continued to be an Indian citizen and that he never migrated to Pakistan [AIR 1955 SC 252 relied on *State Vs. Abdul Sattar Haji Ibrahim Patel*, (1963) 2 Cr. L.J. 265 = AIR 1963 Guj. 226] Where a person abandons his former domicile and acquires another is a question of fact and depends on the intention of the person concerned as shown by his conduct.

Where it was established that the petitioner had the intention of being domiciled in India, he had become an Indian citizen. Article 5, therefore, would entitle him to be called an Indian citizen. [*Sultan Ahmad Vs. D.C. Police, Calcutta*, AIR 1960 Cal 740].

The Foreigners Act, 1946, as its name and title indicates applies only to foreigners who are defined in section 2(a) of the Act as persons who are not citizens of India. It enables the Government under section 3(2) (c) *inter alia* to order deportation of a foreigner from India. The Act, however, does not provide any machinery nor does it lay down any procedure for determining whether a person is or is not a foreigner. Section 8 of the Act empowers the Central Government to determine the nationality of a foreigner where he is recognised as a national of more than one foreign country or where his nationality for any reason is uncertain.

This provision has no application to a person who alleges himself to be a citizen of India. Section 9 merely lays down the rule of evidence as to the burden of proof where the dispute is whether a particular person is or is not a foreigner. The section does not provide any machinery for the determination of this dispute and therefore this Act is of no assistance in determining such a question.

No order under the Foreigners Act can be passed against a person who admittedly, at the commencement of the Constitution was a citizen of India, unless his citizenship had been previously terminated by the Central Government under the citizenship Act and the rules thereunder [*Naseer Ahmad Vs. Chief Commissioner, Delhi*, AIR 1959 Punj-261].

Domicile-what is—Domicile is the place where a man has his home or person's regular place of abode or generally speaking, the place where he

has his permanent home. That place is properly the domicile of a person in which he has voluntarily fixed his abode, not for mere special or temporary purpose, but with a present intention of making it his permanent home.

Where it is not proved that a person has his domicile in India the fact that he has been ordinarily resident in the territory of India for not less than five years immediately preceding the commencement of the Constitution of India does not help him to claim to be a citizen of India [*In re : B. Chaudhury Vs. The State of Boopal*, (Misc. Grim. Rev. No. 119 of 1950-51 dated 18-12-1953 Para (7), *Boopal*) [AIR 1951 Bhop. 11].

3. (1) The Government may by order make provisions, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into Bangladesh or their departure therefrom on their presence or continued presence therein.

(2) In particular and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner -

(a) shall not enter Bangladesh or shall enter Bangladesh only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed;

(b) shall not depart from Bangladesh or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed;

(c) shall not remain in Bangladesh or in any prescribed area therein;

(d) shall remove himself to, and remain in, such area in Bangladesh as may be prescribed;

(e) shall comply with such conditions as may be prescribed or specified-

(i) requiring him to reside in a particular place;

(ii) imposing any restrictions on his movements;

(iii) requiring him to furnish such proof of his identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;

(iv) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens and his handwriting and signature to such authority and at such time and place as may be prescribed or specified;

(v) requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified;

(vi) prohibiting him from association with persons of a prescribed or specified description;

(vii) prohibiting him from engaging in activities of a prescribed or specified description;

(viii) prohibiting him from using or possessing prescribed or specified articles;

(ix) otherwise regulating his conduct in any such particulars as may be prescribed or specified;

(f) shall enter into a bond with or without sureties for the due observance of or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions;

(g) shall be arrested and, in the interest of the security of Bangladesh detained or confined :

Provided that a person shall not be detained for a period exceeding six months unless an Advisory Board consisting of three persons appointed by the Government, of whom two shall be persons who are or have been, or are qualified to be appointed as, Judges of the Supreme Court and the other shall be a person who is a senior officer in the service of the Republic, has, after affording him an opportunity of being heard in person, reported before the expiration of the said period of six months that there is, in its opinion, sufficient cause for such detention.

Case Laws on Sec. 2(a) & 3

The Act is operative against a foreigner, that is, against one who is not a Bangladesh citizen.

The impounding and the revocation of any passport of any citizen does not *ipso facto* mean that the person as such is a citizen of any State other than Bangladesh. It is quite clear from the various provisions of the Foreigners Act No. XXXI of 1946 particularly section 3 thereof that it is operative as against a foreigner. A foreigner has been defined in clause (a) of section 2 of the Foreigners Act meaning a person who is not a citizen of Bangladesh. [32 DLR (1980) 161].

Case Laws on Sec. 3(2)(C)

Essential condition to apply s. 3 (2) (c) is that the person concerned is a citizen of any state other than Bangladesh.

Before the provisions of section 3 of the Foreigners Act can be invoked it must be decided that the person concerned is not a citizen of Bangladesh. Further, before a person is served with any notice to quit or leave Bangladesh under clause (c) of sub-section (2) of section 3 of the Foreigners Act it must be decided also that he has acquired the citizenship of any other

State other than Bangladesh. [32 DLR (1980) 161]. A Bangladeshi citizen residing in India for 8 years cannot mean that he has become a citizen and national of India.

In the present case when the petitioner was admittedly a citizen of Pakistan by birth and when he admittedly left this country as a citizen of Pakistan in 1964 and when again admittedly he returned to Bangladesh after liberation in early 1972 and obtained Bangladesh passport from the Government in early 1973, by mere residence in India for about eight years by itself will not constitute the fact that he acquired the citizenship and nationality of India although it may mean abandonment of his domicile of origin for the time being [32 DLR (198) 161].

Provisions of S. 3(2)(c) have no application unless the person concerned has become a citizen and national of another state.

In order to invoke the provision of clause (c) of sub-section (2) of section 3 of the Foreigners Act of 1946 for the purpose of prohibiting any person to remain in Bangladesh, the person concerned not only must be adjudged or determined as such not being a national and citizen of Bangladesh, but that he has acquired a national citizenship and nationality of another State. A floating person like a Stateless on who has not otherwise specially acquired the distinct nationality and citizenship of any state other than Bangladesh cannot be externed from Bangladesh under section 3 of the Foreigners Act because it involves the thrusting of a person on another State without adjudicating and deciding whether such person actually and really belonged to that State. This is against the principle of normal international relations under International Law. [32 DLR (1980) 161]

Right of Citizenship-Discretionary with the Government [Act XXX of 1946] :

So far as the petitioner's right to obtain the citizenship of Bangladesh is concerned, it is in the discretion of the executive Government to be exercised in accordance with law.

-Facts show the petitioner's domicile of origin is within Bangladesh-He left the country during an interregnum between Nov. 1971 and August 1975. He can be a lawful citizen of Bangladesh, if he had lived in Bangladesh after December, 1971.

- Sec. 3.

Petitioner returned from Pakistan with a Pakistani passport which he surrendered to the Bangladesh Government with a prayer to admit him to

Bangladesh citizenship which not been granted he becomes a stateless subject-The Government cannot, in such a case, direct him to leave Bangladesh [33 DLR (1981) p. 113].

(3) An order made under sub-section (2) may make provision for such incidental and supplementary matters as may, in the opinion of the Government be expedient or necessary for giving effect to the provisions of this Act.

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Case Law

It is obvious that public order should be maintained in the States. Where the orders of extermment passed against the petitioners stated that the orders have been passed to prevent the petitioners from acting in any manner prejudicial to the maintenance of public order. It was held othat public order was not excluded from the purview of clause (5) of Article 19 of the Constitution of India [Bodi Alam Vs. State of Bihar, AIR 1952 Pat 376 : 1952 CrLJ 1361 : Brajnandan Sharma Vs. State of Bihar, AIR 1950 SC 211 : 1951 CrLJ 550 : Atar Ali Vs. Joint Secretary to the Government of West Bangal, AIR 1951 Cal 322 : 1951 Cr LJ 327 : 55 Cal WN 94 : Romesh Thappar Vs. State of Madras, AIR 1950 SC 124 : 51 CrLJ 1514].

Section 3(2) (g)

To prevent a person from acting in a manner prejudicial to law and order is not a ground contemplated in this section for his detention.

Constitution of Bangladesh, 1972 Article 33(5)

The petitioner having been living in Bangladesh is entitled to the protection under Article 33(5) of the Constitution and as such the detaining authority was under constitutional obligation to communicate grounds of detention as soon as may be (Mrs. Rowshan Bijaya Shawkat Ali Khan Vs. Govt. of East Pakistan, 17 DLR 1; Mohammad Hashim Vs. State, PLD 1956 Karachi, 485; People's Republic of Bangladesh Vs. Abdul Hoque, 1982 BLD (AD) 143; Asit Ranjan Sen Vs. Govt. of the Peoples Republic of Bangladesh, 32 DLR 160; Mir Abdul Qadir Vs. State of Andhra Pradesh, AIR 1967 (Andhra) 105 & Habiba Mahmud Vs. Bangladesh 45 DLR (AD) 89 ref).

1. Sub-section (4) omitted by Act LIII of 1974.

Article 38

Provisions of this Article guaranteed the right to every citizen to form Association or Union, subject to any reasonable restrictions. This right is not available to a person other than a citizen of Bangladesh but it is not a restrictive provision. Becoming head of a political party itself cannot be a ground to hold that it is necessary to prevent such a person for the sake of security of the state [Professor Golam Azam Vs. Bangladesh, represented by the Secretary, Ministry of Home Affairs, Bangladesh Secretariate, Dhaka & others, 46 DLR (1994) HC 29].

4. (1) Any foreigner (hereinafter referred to as an internee) in respect of whom there is in force any order made under clause (g) of sub-section (2) of section 3, directing that he be detained or confined, shall be detained or confined in such place and manner and subject to such conditions as to maintenance, discipline and the punishment of offences and breaches of discipline as the Government may from time to time determine.

(2) Any foreigner (hereinafter referred to as on parole) in respect of whom there is in force an order made under clause (e) of sub-section (2) of section 3 requiring him to reside at a place set apart for the residence under supervision of a number of foreigners, shall while residing therein be subject to such conditions as to maintenance, discipline and the punishment of offences and breaches of discipline as the Government may from time to time by order determine.

(3) No person shall—

(a) Knowingly assist an internee or a person on parole to escape from custody or the place set apart for his residence, or knowingly harbour an escaped internee or person on parole, or

(b) give an escaped internee or a person on parole any assistance with intent thereby to prevent, hinder or interfere with the apprehension of the internee or the person on parole.

(4) The Government may by order provide for regulating access to, and the conduct of persons in, places in Bangladesh where internees or persons on parole are detained or restricted, as the case may be, and for prohibiting or regulating the despatch or conveyance from outside such places to or for internees or persons on parole therein of such articles as may be prescribed.

5. *Change of name.*—(1) No foreigner who was in Bangladesh on the date on which this Act came into force shall, while in Bangladesh after that date, assume or use or purport to assume or use for any purpose any

name other than that by which he was ordinarily known immediately before the said date.

(2) Where, after the date on which this Act came into force, any foreigner carries on or purports to carry on (whether alone or in association with any other person) any trade or business under any name or style, other than that under which that trade or business was being carried on immediately before the said date, he shall, for the purposes of sub-section (1), be deemed to be using a name other than that by which he was ordinarily known immediately before the said date.

(3) In relation to any foreigner who, not having been in Bangladesh on the date on which this Act came into force, thereafter enters Bangladesh, sub-section (1) and (2) shall have effect as if for any reference in those sub-sections to the date on which this Act came into force there was substituted a reference to the date on which he first enters Bangladesh thereafter.

(4) For the purpose of this section-

(a) the expression "name" includes a surname, and

(b) a name shall be deemed to be changed if the spelling thereof is altered.

(5) Nothing in this section shall apply to the assumption or use—

(a) of any name in pursuance of a permission granted by the Government; or

(b) by any married woman, of her husband's name.

6. Obligations of masters of vessels, etc.—(1) The master of any vessel landing or embarking at a port in Bangladesh, passengers coming to or going from that port by sea and the pilot of any aircraft landing or embarking at any place in Bangladesh, passengers coming to or going from that place by air, shall furnish to such person and in such manner as may be prescribed a return giving the prescribed particulars with respect to any passengers or members of the crew, who are foreigners.

(2) Any District Magistrate and any Superintendent of police may, for any purpose connected with the enforcement of this Act or any order made thereunder, require the master of any such vessel or that pilot of any such aircraft to furnish such information as may be prescribed in respect of passengers or members of the crew on such vessel or aircraft, as the case may be.

(3) Any passenger on such vessel or such aircraft and any member of the crew of such vessel or aircraft shall furnish to the master of the vessel or

the pilot of the aircraft, as the case may be, any information required by him for the purpose of furnishing the return referred to in sub-section (1) or for furnishing the information required under sub-section (2).

(4) For the purpose of this section -

(a) "master of a vessel" and "pilot of any aircraft" shall include any person authorised by such master or pilot, as the case may be, to discharge on his behalf any of the duties imposed on him by this section;

(b) "passenger" means any person not being a bonafide member of the crew, travelling or seeking to travel on a vessel or aircraft.

7. *Obligation of hotel keepers and others to furnish particulars.*—(1) It shall be the duty of the keeper of any premises whether furnished or unfurnished where lodging or sleeping accommodation is provided for reward, to submit to such person and in such manner such information in respect of foreigners accommodated in such premises, as may be prescribed.

Explanation.—The information referred to in this sub-section may relate to all or any of the foreigners accommodated at such premises and may be required to be submitted periodically or at any specific time or occasion.

(2) Every person accommodated in any such premises shall furnish to the keeper thereof a statement containing such particulars as may be required by the keeper for the purpose of furnishing the information referred to in sub-section (1).

(3) The keeper of every such premises shall maintain a record of the information furnished by him under sub-section (1) and of the information obtained by him under sub-section (2) and such record shall be maintained in such manner and preserved for such period as may be prescribed, and shall at all times be open to inspection by any police officer or by a person authorised in this behalf by the District Magistrate.

8. *Determination of nationality.*—(1) When a foreigner is recognised as a national by the law or more than one foreign country or where for any reason it is uncertain what nationality if any is to be ascribed to a foreigner, that foreigner may be treated as the national of the country with which he appears to the prescribed authority to be most closely connected for the time being in interest or sympathy or if he is of uncertain nationality, of the country with which he was last so connected :

Provided that where a foreigner acquired a nationality by birth, he shall, except where the Government so directs either generally or in particular case,

be deemed to retain that nationality unless he proves to the satisfaction of the said authority that he has subsequently acquired by naturalisation or otherwise some other nationality and still recognised as entitled to protection by the Government of the country whose nationality he has so acquired.

(2) A decision as to nationality given under sub-section (1) shall be final and shall not be called in question in any Court :

Provided that the Government, either of its own motion or on an application by the foreigners concerned, may revise any such decision.

Case Laws on Section 8

By Virtue of section 8 where a foreigner is recognised as a national by the law of more than one foreign country, or where it is uncertain what nationality, if any, is to be ascribed to a foreigner, the prescribed authority has the power to decide of which country the foreigner is to be treated as the national and such decision shall be final. The section therefore applies to a person who is a foreigner and the question of which country he is the national. Hence if in the case of a person no such question has arisen and no decision was made by the prescribed authority of such question, section 8 has no application [AIR 1961 SC 1947, *State of Andhra Pradesh Vs. Abdul Quader*]

9. Burden of Proof.—If in any case not falling under section 8 any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall notwithstanding anything contained in the Evidence Act, 1872, lie upon such person.

Case Laws on Sec. 9

The question whether the respondent is a foreigner is a question of fact and whether there is a great deal of disputes on the question which require detailed examination of evidence such a question is best decided by a suit [AIR 1961 SC 1526].

In prosecution for offence under section 14, burden under section 9, is on accused to prove himself not to be foreigner [PLD 1971 SC 179].

Prosecution for offence under section 14, burden under section 9, on accused to prove himself not to be foreigner. [PLD 1971 SC 179].

When an order asking the respondent to leave India is made under section 3(2) (c) of the Act and that order is challenged, the question is whether the respondent is foreigner or an Indian citizen. Section 9 of the Act applies to the case and the onus of showing that he is not a foreigner is upon the person and not on the Government.

The question whether the respondent is a foreigner is a question of fact and whether there is a great deal of disputes on the question which require detailed examination of evidence such a question is best decided by a suit. [*Union of India Vs. Ghaus Muhammad; (AIR 1961 SC 1526)*].

The description of a foreigner's nationality in his travel documents *prima facie* shows whether he is or is not a national of a particular country [*Habibullah Haji Fazale Hussain Vs. State; AIR 1964 Guj 128*]. Therefore, from the fact that a person possesses a foreign passport, it may be presumed that he is a foreigner and it is for him to rebut such a presumption if he intends to prove the contrary.

The accused in *State Vs. Ashfaq Ahmed*, [*AIR 1961 All 115 : (1961) 1 Cr. LJ 210*] had obtained a passport from Pakistani authorities and even after he had entered India, described himself as a Pakistani national in his application for acquiring Indian citizenship. While facing a charge under the Act, he wanted to raise a question as to whether he was a foreigner or not. It was pointed out that the burden lay upon him to prove that he was not a foreigner.

In *State of Andhra Pradesh Vs. Abdul Khadr*, [*AIR 1961 SC 1467 : (1961) 2 Cr. L.J. 573*] their Lordships of the Supreme Court observed that a passport obtained by a person from the Government of Pakistan may be evidence that he was a Pakistani national. But it would not be of any use for the purposes of the Act in a case where it could at the most show that the person holding it had renounced Indian citizenship and acquired the nationality of Pakistan. It was also laid down by their Lordships that in case a question arises as to whether a person is an Indian citizen or a foreigner, the courts can decide it because this question is not one which is within the exclusive jurisdiction of the Central Government. On the other hand, the question as to whether an Indian citizen has renounced that citizenship and acquired the nationality of a foreign country cannot be decided by the courts. It is for the Central Government to decide such a question after holding an enquiry as laid down in Rule 30 of the rules framed under the Citizenship Act, 1955, and in the absence of such a decision, a person would be deemed to have discharged the burden laid on him under section 9 of the Act if he

proved that he was an Indian citizen on the date when the Constitution was promulgated. His short visit to Pakistan even would not amount to his migrating to that country.

Only section 9 of the Act is applicable to a case where an order made under the Act is challenged and the question arises as to whether the persons against whom the order was made, is a foreigner or not. The onus of proving that he is not a foreigner is upon such person [*Union of India Vs. Ghaus Mohd.*, AIR 1961 SC 1526; (1961) 2 Cr. L J 703; *Fatch Mohd. Vs. Delhi Administration*, AIR 1963 SC 1035; *Ibrahim Vs. State of Rajasthan*, AIR 1965 SC 618].

10. Power to exempt from application of Act.— The Government may by order declare that any or all of the provisions of this Act or the orders made thereunder shall not apply, or shall apply only with such modifications or subject to such conditions as may be specified, to or in relation to any individual foreigner or any class or description of foreigner.

Case Law

This section requires that the Government is empowered to declare that any or all of the provision of the Act shall not apply or shall apply only with modifications.

11. Power to give effect to orders, directions, etc.— (1) Any authority empowered by or under or in pursuance of the provisions of this Act give any direction or to exercise any provisions of this Act give any direction or to exercise any other power, may, in addition to any other action expressly provided for in this Act, take, or cause to be taken such steps and use, or cause to be use, such force as may, in its opinion, be reasonably necessary for securing compliance with such direction or for preventing or rectifying any breach thereof, or for the effective exercise of such power, as the case may be.

(2) Any police officer may take such steps and use such force as may, in his opinion, be reasonably necessary for securing compliance with any order made or direction given of this Act or for preventing or rectifying any breach of such order or direction.

(3) The power conferred by this section shall be deemed to confer upon any person acting in exercise thereof a right of access to any land or other property whatsoever.

12. Power to delegate authority.— Any authority upon which any power to make or give any direction, consent or permission or to do any

other act is conferred by this Act or by any order made thereunder may, unless express provision is made to the contrary, in writing authorise, conditionally or otherwise, any authority subordinate to it to exercise such power on its behalf, and thereupon the said subordinate authority shall, subject to such conditions as may be contained in the authorisation, be deemed to be the authority upon which such power is conferred by or under this Act.

13. Attempts, etc., to contravene the provisions of this Act, etc.—(1) Any person who attempts to contravene, or abets or attempts to abet, or does any act preparatory to, a contravention, of the provisions of this Act or of any order made or direction given thereunder, or fails to comply with any direction given in pursuance of any such order, shall be deemed to have contravened the provisions of this Act.

(2) Any person who, knowing or having reasonable cause to believe that any other person has contravened the provisions of this Act or of any order made or direction given thereunder, gives that other person any assistance with intent thereby to prevent, hinder or otherwise interfere with his arrest, trial or punishment for the said contravention shall be deemed to have abetted that contravention.

(3) The master of any vessel or the pilot of any aircraft, as the case may be by means of which any foreigners enters or leaves Bangladesh in contravention of any order made under, or direction given in pursuance of section 3 shall, unless he proves that he exercised all due diligence to prevent the said contravention, be deemed to have contravened this Act.

Case Law

It is, therefore, perfectly clear that the failure to obtain such a permit is a single act of non-compliance with the provision of law, which continue as long as the said foreigner fails to obtain such permits.

[*Amir Khan Vs. State (PLD 1963 Dacca 92; PLR 1962 Dacca 60 (DB) (Murshed J.)*)]

14. Penalties.—If any person contravenes the provisions of this Act or of any order made thereunder, or any direction given in pursuance of this Act or such order, he shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if such person has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting Court who such penalty should not be paid.

Case Laws on section 14

The offence may be a continuing one, but it is one and the same offence which is being continued for which the offender can be tried and convicted once only. [PLD 1963, Dacca 92; 13 DLR 892].

In as much as clause 7 of the Foreigners Order, 1951 does not state within what period a foreigner must obtain a permit, he cannot be convicted, if in fact he has obtained the permit as required by the said clause after a period of one month has elapsed between his entry and his obtaining such a permit. [PLR 1962 Dacca 60 (DB)]

This section punishes the contravention of the provisions of the Act, the contravention of any Order made under the Act and lastly the contravention of any direction given in pursuance of the Act or the Foreigners Order, 1948. [State Vs. Ashfaq Ahmed, 1980 ALJ 855]

The Supreme Court in *Kulathel Mammu Vs. State of Kerala*, [(1966) 3 SCR 706 = AIR 1966 SC 1614] held that in *Shanno Devi's case* [AIR 1961 SC 58] the word "migrated" had received the narrow connotation of going from one place to another with the intention of residing permanently in the latter place, but in its wider connotation it meant going from one place to another whether or not with the intention of permanent residence in the later place. The Supreme Court in that case gave the word "migrated" in Article 7 of the Constitution that wider connotation and referred to migration to Pakistan After 1st March 1947 in that case.

Where the charge was then by failing to obtain a residential permit the accused contravened the provisions of Rule 7 (2) of the Foreigners Order. It is failure to obtain the residential permit as well as his contravention of the Foreigners Act was sufficient to hold that not only he had *mens rea* but he was guilty of an offence in contravention of Rule 7(2) of the Foreigners Order, 1948, and section 7(2) of the Foreigners Act. [Delhi Administration Vs. Mohd. Iqbal, AIR 1971 SC 472 at 473]

Where at the time a person entered India he was not foreigner, any subsequent change in the law would not make him a foreigner. The effect of the amending Act of 1957 would not have the effect of making a person a foreigner if he was not so when he entered India [State Vs. Yakoob, 1960 ALJ 924; 1960 AWR 659].

A permit is different from a "visa" and whatever is laid down in Rule 7 in respect of a permit cannot be applied to a visa. In the absence of proof of the period fixed for his stay in a permit he could not be convicted under

section 14 [*Md. Hanif Khan Vs. State, 1959 AWR 690 = 1960 CrLJ 878; Manohar Ali Vs. State, AIR 1971 Ass 25*].

A person suppressing truth is not entitled to assistance under Article 226 of the Constitution. Thus a statement, which was material in certain respects in judging how far she was or was not a citizen of this country, was purposely suppressed in the affidavit filed in support of this petition. A petitioner who does not come out with the true facts before the High Court but suppresses the truth and makes a wrong statement is not entitled to its assistance under Article 226 [*Mst. Saghir Kubra Vs. State of U.P. 1959 AWR 186*].

But where the Pakistani nationals are shown leniency by the Superintendent of Police by serving a notice upon them to leave India within thirty days, even if he was not competent to serve the notice, they can still be convicted under section 14, for overstaying [*Ali Sher Vs. State, 1960 CrLJ 875; AIR 1960 All 431*].

The period during which a foreigner can stay in the country is the period mentioned in the visa. As it cannot be extended by the permit granted under para 7 of the Foreigners Order it is not necessary that the permit should be filed or the period mentioned in it should be disclosed in a prosecution under section 14 Foreigners Act. No advantage can, therefore, be taken by the accused of the fact that the permit issued to him by the Registration Officer has not been filed and it is not known as to what was the period entered in it when his visa is on the record [*State Vs. Ashfaq Ahmad, AIR 1961 All 115 = 1961 CrLJ 210; AIR 1961 All 111 Rel. on : AIR 1960 All 434 not foll.*]

The proper authority to determine the nationality is the Central Government. A person cannot be prosecuted under section 14 of the Foreigners Act before such determination by Central Government [*AIR 1962 All 383 = 1962 (2) CrLJ 166*].

The question whether a person is an Indian citizen or a foreigner, as distinct from the question whether a person having once been an Indian citizen has renounced that citizenship and acquired a foreign nationality, is not one which is within the exclusive jurisdiction of the Central Government to decide. The Court can decide it [*1962 1 MLJ (SC) 65 = 1962 1 AWR (SC) 65 = 1952 (15) CJ 100 = 1962 MLJ (Cr) 80 = AIR 1961 SC 1467 foll.*]

The State Government in order to justify its action for purpose of deportation of a person alleged to be a foreigner, must show that he is not a

citizen of India, for that, it should first obtain the determination of the Central Government on the question of his nationality. In the case where the petitioner had made an application under section 9(2) of the Citizenship Act for determination of his status as a citizen of India and the Central Government had failed to pass suitable and proper orders, the application must be deemed to be pending before it and the determination thus being pending the State Government had no power or authority to make an order directing the petitioner's deportation to Pakistan [AIR 1962 SC 1778 and AIR SC 654 foll.; *Mukhtar Ahmad Vs. State of U.P.*, 1964 All CrR 361 = 1964 All LJ 760 = 1964 AWR (HC) 509 = AIR 1965 All 191].

Prosecution under this section if vitiated where determination of citizenship by Central Government is received after launching of prosecution.—The view taken by the Allahabad High Court in *Khalil Ahmed Vs. State of U.P.* [AIR 1962 All 383] is that a person cannot be prosecuted under section 14 of the Foreigners Act without first obtaining the decision of the Central Government under section 9(2) of the Citizenship Act. One of the questions which was referred to a Division Bench in that case was : "whether the question of citizenship can be decided by the Central Government or by the law Courts?"

In answering this question the Division Bench observed :

"Our answer to question No. 1 therefore is that the question of citizenship can only be decided by the Central Government in accordance with section 9(2) of the Citizenship Act. We further hold that there being no decision of the Central Government in the present case that the applicant was not a citizen of India he could not be prosecuted and convicted under section 14 of the Foreigners Act."

Earlier in the judgment it was pointed out at page 387 :

"It was next contended that under section 9(2) read with Rule 30 of the Citizenship Rules the proper authority to determine the question as to nationality of the petitioner was the Central Government and that the applicant could not have been prosecuted without first obtaining the decision of the Central Government under section 9(2) of the Citizenship Act. In our opinion the objection raised by the applicant is sound."

It was contended on the basis of this decision that unless the decision of the Central Government is obtained, a person cannot even be prosecuted under section 14 of the Foreigners Act. The decision of the above Division Bench could not be interpreted in that manner. In that case the decision of the Central Government was not obtained at all and it was consequently held

that without such decision the applicant could not be prosecuted or convicted under section 14 of the Foreigners Act. That decision cannot be interpreted to mean that even if the decision is given after a person has been prosecuted as aforesaid, that decision can be of no avail during the hearing of that case and the prosecution must fail merely on the ground that the decision of the Central Government was given after the applicant had been prosecuted.

The purpose behind section 9 of the Citizenship Act and rule 30 of the Citizenship Rules is that it is the Central Government and the Central Government alone which can decide the citizenship of a person, who is supposed to adopt the citizenship of another country, and if such a decision is given by the State Government by the time it becomes necessary for the court to give a decision in the case, there does not appear to be any reasonable ground for disregarding such a decision and deciding the case as if no decision had been given in the case. It will of course have to be seen whether in any particular case any prejudice has been caused to an accused person on account of the late securing of the decision of the Central Government; but unless there is some question of prejudice being caused, it should not be open to courts to disregard the decision of the Central Government [*Rahmat Ullah Vs. State, AIR 1969 All 165 at 168 Affirmed (1971) 1 SCWR 738*].

Conviction under section 14.—There can be no conviction unless can be held on the evidence that a person is a foreigner that is to say, person who is not an Indian Citizen within the meaning of section 2(a) of the Foreigners Act. [*State of Andhara Province Vs. Abdul Quader (AIR 1961 SC 1467)*].

Not obtaining a permit and failure to do so constitutes one single offence and not multiple offence which are repeated every moment of his stay in the country with such permit.

The offence may be a continuing one, but it is one and the same offence which is being continued for which the offender can be tried and convicted once only. [*Amir Khan Vs. State (PLD 1963 Dacca 92; 13 DLR 892; PLR 1962 Dacca 60 (DB)*].

A court having jurisdiction to try an accused for an offence has jurisdiction to determine all facts in issue and all relevant facts. In a case under section 14 of the Foreigners Act, the question whether the accused was a foreigner was a fact in issue to be decided by the court. It was held if it is accepted that a person who is not a citizen of India is a foreigner, it is a relevant fact that the applicants were not citizens of India when they entered

India in 1955 or 1956, and so is the fact that they lost the citizenship by acquiring the citizenship of Pakistan. The court had, therefore, jurisdiction to decide the question, whether they acquired the citizenship of Pakistan unless it decided it; it could not decide whether they were foreigners and whether they were guilty. This jurisdiction of the court to decide it has not been taken away by section 9(2) of the Citizenship Act. All that is laid down by it, read with Rule 30, is that the question whether a person has acquired the citizenship of another country shall be determined by the Central Government; it does not say anything about the jurisdiction of a criminal Court to decide it. It does not repeal the provisions of the Code of Criminal Procedure and the Evidence Act conferring power upon criminal courts to decide all facts in issue and relevant facts [*Ali Hussain Vs. State, 1960 Cr. LJ. 771 : AIR 1960 All 336*]. In this case, *Abdur Rahman Vs. State of U.P.*, [*AIR 1958 All 165*] *In re Abdul Khader*, [*AIR 1959 AP 241*] and *Nasir Ahmed Vs. Chief Commissioner*, [*AIR 1959 Punj 261*] were referred to. The decision in *Nasir Ahmed Vs. Chief Commissioner* and *In re Abdul Khader* were deferred from.

But it is well established now by the decisions of the Supreme Court and various High Courts that the courts cannot decide a question as to whether, when nor how a person who was a citizen of India on January 26, 1950, acquired the citizenship of another country. It has been held also that excepting it the courts can decide all other questions

[*Akbar Alam Khan Vs. Union of India, AIR 1962 SC 70 : Ibrahim Vs. State of Rajasthan, AIR 1965 SC 618 : Samiullah Vs. State of U.P., AIR 1963 All 482 : Sultan Khan Vs. Sailesh Chandra, AIR 1963 Cal. 527; Union of India Vs. Yakub Ali Khan, AIR 1963 All 205; Ali Ahmad Vs. Electoral Registration Officer, AIR 1965 Cal 1.*]

15. Protection to persons acting under this Act.— No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

16. Application of other laws not barred.— The provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Registration of Foreigners Act, 1939, the Passport Act, 1920, and of any other enactment for the time being in force.

¹Section 17 * * *

1. Section 17 was omitted by Act VIII of 1973, as amended by Act LIII of 1974, S. 8. 2nd Sch.

Foreigners Order, 1951

[No. 10/7/48 Poll (1), 22nd October 1951 [Gazette 26th October, 1951]

In exercise of the powers conferred by section 3 of the Foreigners Act, 1946 (XXXI of 1946) and in supersession of the Foreigners Order, 1939, published in Notification No. 21/84/39 Poll, dated the 26th August, 1939 by the Home Department of the late Government of India and all notifications amending the same, the Central Government has been pleased to make the following order :-

1. Short title, commencement and extent.—(1) This order may be called Foreigner's Order, 1951.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Definition.—In this Order -

(a) "Registration Officer" means Registration Officer appointed by the Central Government under rule 3 of the Registration of Foreigners Rules, 1939 and includes an authority authorised by a Registration Officer in writing to perform the duties of Registration Officer under this Order.

(b) "Civil authority" means such authority as may be appointed by the Central Government in this behalf for such area as it thinks fit; and

(c) "Port" includes and airport.

3. Power to grant or refuse permission to enter Pakistan.—(1) No foreigner shall enter Pakistan otherwise than at a port or such place of entry on the borders of Pakistan as a Registration Officer having jurisdiction at such port or place may appoint in this behalf, or without the leave of the civil authority having jurisdiction at such port or place.

(2) Leave or enter shall be refused if the civil authority is satisfied that:-

(a) the foreigner is not in possession of a passport or visa valid for Pakistan or has not been exempted from the possession of passport or visa; or

(b) he is of unsound mind or is mentally defective;

(c) he is suffering from a loathsome or infectious disease in consequence of which, in the opinion of the medical officer of the port or the place of

entry, as the case may be, his entry is likely to prejudice the public health; or

(d) he has been sentenced in a foreign country for an extradition offence within the meaning of the Extradition Act, 1903 (XV of 1903); or

(e) his entry is prohibited under an order issued by a competent authority or under the specific orders of the Central Government.

(3) The civil authority may attach such conditions as it thinks fit to the grant of leave to enter and such conditions may be varied in such a manner or cancelled as the Central Government deems fit.

(4) (a) Notwithstanding anything contained in sub-clause (1) to (3) or in the Passport Act, 1920 (XXXIV of 1920), or in the clauses made thereunder a civil authority may, in the interests of the public safety, prohibit the entry of any foreigner into Pakistan.

(b) Whenever the civil authority issues an order under clause (a) it shall report the matter forthwith to the Central Government which may cancel or modify the order in such manner as it thinks fit.

Case Law

Where the foreigner were arrested so that they may be restored to their country.

Held, steps taken and physical force applied for securing compliance only with a legitimate order to depart from the country would be neither arrest nor detention for the purpose of Article 7 of the Constitution (Constitution of Pakistan, 1956) late. Such physical restraint as might necessarily result, merely from action taken for this purpose would be neither punitive nor preventive nor malicious nor otherwise illegal detention. [*PLD 1957 (W.P.) Karachi 939; PLR 1957 (2) W.P. Karachi, 939*]

(5) Where leave or enter is refused to a foreigner, he may be detained at some place approved by the civil authority and may if he has come by sea, be placed temporarily on shore for that purpose, and whilst he is so detained he shall be deemed to be in legal custody and not to have entered Pakistan.

4. Landing of seamen, etc.—No seaman or member of the crew of an aircraft, being a foreigner shall land in Pakistan without a special permit from the Superintendent of Police or any other police-officer not below the rank of a Sub-Inspector or Sargent:

Provided that if a member of the crew of an Air Line flight possessing a licence in the prescribed form or a valid Crew Member Certificate is allowed on a reciprocal basis entry in Pakistan without a passport or visa, he shall not require such permit for an initial stay of 72 hours, but if he stays beyond that period he shall obtain a special permit from the authorities concerned on completion of necessary formalities.

(2) No special permit shall be granted unless the owners or agents of the vessel or aircraft have undertaken either generally in respect of all members of the crews of vessels or aircraft belonging to or managed by them, or in respect of an individual case responsibility for the maintenance of such seaman or member of the crew as long as he is in Pakistan and for the expenses of his departure from Pakistan.

(3) For the purpose of this clause, "Seaman" means a person employed in, or engaged in working of a vessel.

(4) The provisions of this clause are in addition to, and not in derogation of, the provisions of rule 3.

5. Power to grant permission to depart from Pakistan.—

(1) No foreigner shall leave Pakistan otherwise than at a port of such recognised place of departure on the borders of Pakistan as a Registration Officer having jurisdiction at such a port or place may appoint in this behalf, or without the leave of the civil authority having jurisdiction at such port or place.

(2) Leave shall be refused if the civil authority is satisfied that —

(a) the foreigner has failed to comply with the formalities of departure prescribed under the Registration of Foreigners Rules, 1939; or

(b) his presence is required in Pakistan to answer a criminal charge; or

(c) his departure will prejudice the relations of the Central Government with a foreign power; or

(d) his departure has been prohibited under an order issued by a competent authority.

(3) Notwithstanding anything contained in sub-clause (2) a civil authority may by an order prohibit the departure of a foreigner where it is satisfied that such departure would be contrary to the public interest.

(4) Whenever a civil authority makes prohibitory order under sub-clause (3) it shall send a copy thereof forthwith to the Central Government which may cancel or modify the order in such manner as it thinks fit.

6. Liability of master of vessel, etc, to remove a foreigner.—(1) A civil authority may require the master of the vessel or pilot of the aircraft in which a foreigner has arrived, or the owners or agents of that vessel or aircraft, as may be appropriate in the opinion of such civil authority, to remove a foreigner who has been refused permission to enter, who has entered Pakistan, without its permission; and the master, pilot, owner or agent, as the case may be, shall comply with such requisition.

(2) The master of a vessel or the pilot of an aircraft scheduled to call at any, port outside Pakistan shall, if so required by the Central Government, receive a foreigner in respect of whom an order directing that he shall not remain in Pakistan has been made and his dependent, if any, on board the vessel or aircraft, as the case may be, and afford him then a passage to that part and proper accommodation and maintenance during the passage.

7. Restrictions on sojourn in Pakistan.—Every foreigner, not being a Commonwealth citizen other than a Citizen of India as defined in the British Nationality Act, 1948 (11, Geo. 6. Ch 56) or a tourist as defined in rule 2 of the Registration of Foreigners Rules, 1966, who enters or has entered Pakistan on the authority of a visa issued in pursuance of the Passport Act, 1920 (XXXIV of 1920.) shall obtain from the Registration Officer having jurisdiction at the place at which the said foreigner enter or has entered Pakistan a permit indicating the period during which he is authorised to remain in Pakistan and shall unless the period indicated in the permit is extended by the Central Government depart from Pakistan before the expiry of the said period and at the time of foreigners departure from Pakistan the permit shall be surrendered by him to the Registration Officer having jurisdiction at the place from which he departs. The following classes of Indian Citizens shall be exempted from the provisions of clause 7 of the Foreigners Order, 1951, namely;

(i) Persons visiting Pakistan on the authority of 'A' category visas of Pakistan.

(ii) Persons visiting Pakistan on the authority of 'D' category visas for Pakistan.

(iii) Transport workers visiting Pakistan on the authority of 'B' category visas for Pakistan.

(iv) Persons visiting Pakistan for a period not exceeding 15 days.

(v) Persons granted gratis or courtesy visas.

Case Law

Period in permit cannot be longer than period in visa.—The period during which a foreigner can stay in the country is the period mentioned in the visa. As it cannot be extended by the permit, it is not necessary that the permit should be filed or the period mentioned in it should be disclosed. No advantage can, therefore, be taken by the respondent of the fact that the permit issued to him by the Registration Officer has not been filed and it is not known as to what was the period entered in it when his visa is on the record.

Whether he had obtained a permit or not, therefore, he was bound in compliance of Para 7 of the Foreigners Order to leave the country by that date. If he did not obtain the permit he contravened the first part of Para 7. If after obtaining the permit he did not depart from the country within the period entered in the permit, which could in any case not be longer than that in the visa he contravened the second part of the paragraph. In either case, therefore, it is clear that he contravened the provisions of para 7 of that Order [*State Vs. Ashtaq Ahmed*, AIR 1961 All 115 at 119 : (1961) 1 CrLJ 210 : 1960 All Cr R 413 : 1960 All LJ 855 : 1960 All WR (HC) 621].

Duty to obtain permit.— the duty of obtaining a permit is also enjoyed by this paragraph on the foreigner. He, therefore, commits a breach of its provision not only by overstaying the limits of the permit if one is granted to him but also by omitting to obtain a permit. In either case the foreigner concerned will be liable to be convicted under section 14 read with section 3(2) (c) of the Foreigners Act, 1946 [*Kallan Khan Vs. State*, AIR 1961 All 261 at 263 : 1961 All LJ 24 : 1961 All WR (HC) 84 : 1961 All Cr. R 35 : (1961) 1 Cr. LJ 584].

Overstaying in India. Failure to obtain the residential permit as well as his contravention of the Foreigners Act by overstaying in India without obtaining residential permit suffices to hold that not only he had *mens rea* but he was guilty of the offence in contravention of Para 7(2) of the Foreigners Order, 1948 and section 7(2) of the Foreigners Act [*Delhi Administration Vs. Mohd. Iqbal*, (1971) 1 Cr. LJ 509 at 511 (SC); AIR 1971 SC 472 : 1971 UJ (SC) 91 : (1971) 2 SC Cr. R 187 : 1971 Cr. App. R (SC) 4 : reversing the decision of Punjab High Court in criminal revision No. 89-D of 1965, dated 2-8-1965 (Punj)]

The essence of the offence constituted by violation of Rule 7 in the failure to depart from India before the expiry of a certain period and not the

indication of the period in a particular document such as a permit. If the maximum period which could be indicated in a permit in accordance with law is proved, the offence is established if it is proved that there was no departure before its expiry [*Wahid Mian Vs. State*, AIR 1961 All 111 at 114 : (1961) 1 Cr.LJ 206 : 1960 All LJ 179 dissenting from *Bombay High Cour in State Vs. Mahmud Khan*, AIR 1959 Bom 359 : 61 Bom LR 164 : 1959 Cr.LJ 1053 : 1LR 1959 Bom 875].

Clause 7 requires that every foreigner upon entry into Pakistan (or having entered Pakistan) should obtain a permit to cover his person of stay in this country. The said clause further provides that the said foreigner is required to depart from the country upon the expiry of the period mentioned in the permit, if not validly extended. The clause with which we are concerned requires a foreigner to obtain a permit with necessarily means a single permit. Obtaining a permit is mandatory requirement upon his entry into Pakistan (or upon his having entered Pakistan). Such a permit is co-related to the foreigners entry and is conditioned upon such entry. The clause further provides that the permit shall state the period of his stay in Pakistan. It does not specifically and directly lay any embargo upon his stay in Pakistan, on the contrary, it clearly and specifically requires him to obtain a permit. It is, therefore, perfectly clear that failure to obtain such a permit is a single act of non-compliance with the provision of law, which continues as long as the said foreigner fails to obtain such permits. The failure, however, in one act and it does not constitute a fresh breach of requirement of law everyday. It is the same contravention of the law which is being continued, not that a fresh contravention occurs daily. Therefore a second trial for the same offence would be barred under the law. [*Amir Khan Vs. State*, PLD 1963 Dacca 92=13 DLR 892 = PLR 1962 Dacca 60 (DB)].

The Government of Pakistan is not bound to give its reason why it does not want a foreigner to stay in Pakistan beyond a certain date [*Sayeed Mohd. Vs. Registration Officer, C.I.D.*, PLD 1962 Karachi 545 (DB)].

In as much as clause 7 does not state within what period a foreigner must obtain a permit he cannot be convicted. If in fact he has obtained the permit as required by the said clause after a period of one month has elapsed between his entry and his obtaining such a permit [*Amir Khan Vs. State*, PLD 1963 Dacca 92 = 13 DLR 892 = PLR 1962 Dacca 60 (DB)].

Principal of Natural justice.—If the authority has got certain power to act under section 3(2) (c) of the Act and in the exercise of that power it acts and the exercise by implication has the effect of overriding

some other order passed under another provision, in the instant case para 7 of this Order, it cannot be said that any principles of natural justice are violated if no opportunity is given by the authority before passing the second order to the petitioner to explain his case. It is a question mainly depending upon the extent and the ambit of the power which an authority can exercise under section 3 and not a question of passing any judicial or quasi-judicial order which can be tested on the ground of violation of the principles of natural justice [*Momin Khan Vs. Superintendent of Police, AIR 1963 Assam 105 at 107*].

Quit notice—Necessity of.— There is nothing in Para 7 of the Foreigners Order, 1948 which debar the proper authority to issue a notice under section 3 of the Act. Paragraph 7 may empower the Registration Officer to extend the period of the stay of a foreigner after the expiry of his period mention in the visa but that does not take away the power of the proper authority to issue a notice under section 3 of the Foreigners Act. The power given to the Central Government under section 3 of the Act is not subject to any order passed under para 7 of the Foreigners Order, 1948 [*Momin Khan Vs. Superintendent of Police, AIR 1963 Assam 105 at 107*].

However, if the accused had not left India and had overstayed the period allowed to him by his visa, he contravenes Para 7 of the Foreigners Order irrespective of the fact whether a direction under section 3(2) of the Foreigners Act has been issued to him by a competent authority or not. It was not necessary for any authority to issue a warning or notice to the accused requiring him to leave the country on pain of being prosecuted under section 14 [*State Vs. Ashfaq Ahmad, AIR 1961 All 115 at 121*].

8. Prohibited Places.— (1) No foreigner shall, without the permission of the civil authority having jurisdiction at such place, visit or reside in any prohibited place as defined in the Official Secrets Act (XIX of 1923).

(2) Where any foreigner is at the commencement of this order residing in any prohibited place and is not permitted under sub-clause (1) to continue to reside there, he shall within such time as may be specified by the civil authority remove himself from such place.

(3) The civil authority impose on any house-holder or other person in such prohibited place the obligation to report to the police or to any naval, military or airforce authority the presence of any foreigner in his house-hold or in any premises occupied by him or under his control and the departure of

any such foreigner and such other particulars with respect to such foreigner as may be prescribed by such authority.

9. Protected areas.—(1) The Central Government or with its prior sanction, a civil authority may by order declare any area to be a protected area for the purposes of this order.

(2) On such declaration, the civil authority may, as to any protected area, by order :-

(a) prohibit any foreigner or any class of foreigners from entering or remaining in the area.

(b) impose on any foreigner or class of foreigners from entering or being in the area such conditions or restrictions as it may think fit as to -

(i) reporting to the police or any naval, military or airforce authority;

(ii) surveying or making sketches or photographs;

(iii) the use or possession of any machine, apparatus, or other article of any description;

(iv) the acquisition of land or any interests in land within the area;

(v) any other matter or thing as to which it may deem it necessary in the interests of the public safety to impose conditions or restrictions;

(c) impose on any house-holder or other person the obligation to report to the police or any naval, military or airforce authority the presence of any foreigner in his house-hold or in any premises occupied by him or under his control and the departure of any such foreigners and such other particulars with respect to any such foreigner as may be prescribed by the Order :

Provided that the civil authority may, subject to any general or specified the direction of the Central Government grant to an individual foreigner a special permit exempting him from any or all of the conditions or restrictions imposed under this sub-clause.

Case Law

The Government or, with its prior sanction, a civil authority may by order declare any area to be a protected area for the purposes of the order.

10. Restrictions on employment.—No foreigner shall without the general or special permission in writing of the civil authority, enter any premises relating to, or be employed in, or in connection with-

(1) Any undertaking for the supply to Government or to the public of light, petroleum, power or water, or -

(2) Any other undertaking which may be specified by the Central Government in this behalf.

Case Law

This clause imposes the restrictions on employment of the foreigner. It provides that no foreigner shall, without the general or special permission in writing of the civil authority, be employed in any undertaking as mentioned in this clause or any undertaking which may be specified by the Government.

11. Powers to impose restrictions on movements, etc.—

The civil authority may, by order in writing, direct that any foreigner shall comply with such condition as may be specified in the order in respect of —

- (1) his place of residence,
 - (2) his movements.
 - (3) his association with persons of a description specified in the order,
- and
- (4) his possession of such articles as may be specified in the order.

Case Laws on clause 11

Use of the provisions of the Foreigners Order in the case is a fraud on statute.

The restrictions sought to be imposed upon the movement of the petitioner under the Foreigners Order constitutes a clear fraud on the Foreigners Order in the peculiar facts and circumstances of this case, because of the legal battle that is being waged by this petitioner against the executive authority for securing his liberty since 1972. The order, therefore, amounts to an abuse of the powers given to the executive by the Legislature and hence we hold that such order could be challenged in an application under section 491 of the Cr. P.C. [27 DLR 1975 (HC) (*Bishal Deo Tewari Vs. State*)

12. Power to remove foreigners from cantonments.— The military officer for the time being in command of the forces in a cantonment may by order in writing, direct any foreigner to remove himself from the cantonment within such time as may be specified in the order.

13. Power to close clubs and restaurants.— (1) A civil authority may direct that any premises in its jurisdiction which in its opinion are used for the sale of refreshment to be consumed on the premises or as a place of public resort or entertainments, or as a club and

which are or have recently been frequented by foreigners shall be closed altogether or kept open only during such hours and for such purposes as may be permitted by the authority, if in its opinion either.—

(a) the foreigner so frequently the premises are of criminal or subversive association or otherwise undesirable; or

(b) the premises are conducted in a disorderly or improper manner prejudicial to the public order or interest and if any premises are kept open in contravention of any such direction the occupier or person having control of the premises shall be deemed to have acted in contravention of this order.

(2) Where any premises have been closed altogether or permitted to open only during such hours and for such purposes as aforesaid under this clause the occupier or person having control of the premises shall not occupy any other premises which are used for the sale of refreshments, or as a public resort or entertainment, or as a club without the consent of civil authority of the area in which the premises are situated.

(3) Any police officer if authorised by the civil authority, may, for the purposes of enforcing the provisions of this clause enter, if necessary, by force, and search or occupy any premises in respect of which an order under this clause has been made by the civil authority.

(4) Any action taken by a civil authority under sub-clause (1) to (3) above shall be reported forthwith to the Central Government which may cancel or modify such order in such manner as it deems fit.

14. Expenses of deportation.—Where an order is made in the case of any foreigner directing that he shall not remain in Pakistan or where a foreigner is refused permission to enter Pakistan or has entered Pakistan without permission the Central Government may, if it thinks fit, apply any money or property of the foreigner in payment of the whole or part of the expenses of or incidental to the voyage from Pakistan and the maintenance until departure of the foreigner and his dependents, if any.

15. Power to arrest and detain.—If, in the opinion of the civil authority, it is necessary in the interest of the security of Pakistan so to do, the civil authority may arrest any foreigner without warrant, and, subject to the provisions of section 3, sub-section (2) clause (g), sub-section (3) and sub-section (4). Section 3 of the Foreigners Act, 1946, detain him for such time, in such manner and at such place as the civil authority may consider suitable :

Provided that a report of such arrest and detention shall be forthwith forwarded to the Central Government with a statement of reasons therefore and the Central Government may cancel such order or modify the manner of such detention in such manner as it may deem fit.

Case Law

Steps taken and physical force applied for securing appliance only with a legitimate order to deport from the country would be neither arrest nor detention for the purpose of Article 7 of the Constitution (late) such physical restraint as might necessarily result, merely from action taken for this purpose would be neither punitive nor preventive nor malicious nor otherwise illegal detention [*PLD 1957 (W.P.) Karachi 939*].

15A.— A civil authority may order that a foreigner shall enter into a bond with or without sureties for the due observation of or as an alternative to the enforcement of any or all prescribed or specified restrictions and conditions.

15B.— Notwithstanding anything contained in order the Central Government or any authority authorised by them in that behalf may itself exercise all the powers and functions of a civil authority in a particular case or classes of cases.

16. Appearance in Court by persons on parole.— (1) No foreigner in respect of whom there is in force an order under clause (e) of sub-section (2) of section 3 of the Foreigners Act, 1946 (XXXI of 1946) requiring him to reside in a place set apart for the residence under supervision of a number of foreigner shall be removed from such place for the purpose of appearance in any Civil Court or unless his attendance is required for the purpose of answering charge of an offence in any Criminal Court.

(2) If any Court the attendance of such foreigner is required for the purpose of answering a charge of an offence, the provisions of Section 37, 38, 40 and 41 of the Prisoners Act, 1900 (III of 1900), shall apply as if references in the said sections, to a prison, the officer in charge of a prison and the Provincial Government where references to such place, the commandant of such place and the Central Government respectively.

(3) If in any case the evidence of such foreigner is required for the purposes of any proceeding in any Civil Court, the provisions of Sections 44, 45 and 46 of the Prisoners Act, 1900 (III of 1900) shall apply as if references in the said sections to a prison and the officer in charge of a prison were reference to such place and the commandant of such place respectively, and as if in Section 44 the words and figures "who, for any of the causes mentioned in Section 42 or Section 43, cannot be removed" in clause (a) and clauses (b) and (c) were omitted.

(4) If any case the evidence of such foreigner is required in connection with any proceeding in a Criminal Court it may be obtained by the issue of a commission in accordance with the provision of Chapter XL of the Code of Criminal Procedure, 1898 (V of 1898).

(5) The provisions of Sections 47 to 51 of the Prisoners Act, 1900 (III of 1900), shall apply as if references in the said sections to a prison, the officers in charge of a prison and the Provincial Government were references to such place, the commandant of such place, and the Central Government respectively :

Provided that unless the Central Government makes rule of the nature described in the said Section 51, the rules in force in the Province in which such place is situated shall *mutatis and mutandis* be applicable.

The Foreigners (Parolees) Order, 1965

[Pak. Gaz. Extra. 11-9-65]

S.R.O. 143(R)/65-In exercise of the powers conferred by section 3 and 12 of the Foreigners Act, 1946 (Act XXXI of 1946), the Central Government is pleased to make the following Order, namely :-

1. Short title.— This Order may be called the Foreigners (Parolees) Order, 1965.

2. Definitions.— In this Order, unless there is anything repugnant in the subject or context.-

(a) "Commandant" means the officer appointed by the Central Government to be the Commandant of a group of Parole Centres.

(b) "Parole Centre" means a place designated as such by the Central Government.

(c) "Parolee" means a foreigner in respect of whom there is in force and order made under clause (e) of sub-section (2) of section 3 of the Foreigners Act, 1946 (XXXI of 1946) requiring him to reside in a Parole Centre.

3. General restrictions on Parolees.— No parolee shall-

(a) leave the limits of the parole centre except under, and in accordance with the conditions of a pass issued in that behalf by the Commandant;

(b) visit any such place, within the limits of the parole centre as may be notified by the Commandant to be out of bounds, except under and in accordance with the conditions of a pass issued in that behalf by the Commandant;

(c) absent himself without the previous permission of the Commandant from any roll-call held by him;

(d) entertain in his service any servant who has not been approved by the Commandant or the approval in respect of whom has subsequently been withdrawn by the Commandant; or

(e) communicate with, receive any article from, or deliver any article to, any person who is not himself a parolee or a member of the staff of the parole centre except by post or with the permission of the Commandant.

4. Camp Orders.— (1) Subject to the provisions of sub-paragraphs (2), (3) and (4), the Commandant may for the purpose of regulating the conduct and safety of, and maintaining the discipline among parolees, exercise the powers of the Central Government to make orders (hereinafter

referred to as Camp Orders) under sub-clauses (ii), (v), (vi), (vii), (viii) and (ix) of clause (e) of sub-section (2) of section 3 of the Foreigners Act, 1946 (XXXI of 1946).

(2) No camp order shall be made which conflicts with any general or special order made by the Central Government.

(3) Camp orders shall be communicated to parolees in a language which they understand.

(4) A copy of every camp order made in pursuance of sub-paragraph (1) shall be furnished without delay to the Central Government to modify or rescind the order.

(5) Parolees shall comply with all camp orders addressed to them whether generally or individually.

5. Camp Offences.— Any parolee who contravenes, or fails to comply with any order made under paragraph 3 or any camp order or whose conduct is otherwise prejudicial to the maintenance of discipline among parolees shall be deemed to have committed a camp offence :

Provided that nothing in this Order affects the liability of a parolee to proceedings, in a criminal court for a contravention of the Foreigners Act, 1946 (XXXI of 1946), or for any other criminal offence.

6. Dismissal of charge of camp offences.— The Commandant upon receiving information of a charge made against a parolee under his custody of having committed a camp offence, shall dismiss the charge, if he is of opinion that it ought not to be proceeded with.

7. Summary trial of camp offence.— (1) If the Commandant does not dismiss the charge in pursuance of the paragraph 6, he may, without prejudice to any other action which may be taken against the said parolee, charge the parolee with a camp offence and proceed to hear such evidence as may be produced on behalf of, or against the parolee.

(2) A parolee who is charged with a camp offence may demand that evidence shall be taken on oath and in that event, the same oath or solemn declaration as that required to be taken of witnesses before a court established under the Code of Criminal Procedure, 1898 (Act V of 1898), shall be administered to each witness.

8. Punishments for camp offences.— If the Commandant is of opinion that the parolee is guilty of the commission of a camp offence, the Commandant may award all or any of the following summary punishments, namely—

(a) confinement to quarters for any period not exceeding fourteen days during which the offender may be required to answer his name at uncertain hours during the day;

(b) suspension of such privileges, including those of receiving newspapers, writing and receiving letters and participation in communal recreation, as the commandant may order; and

(c) forfeiture upto 50% of the subsistence allowance granted by Government for the parolee's personal expenditure.

9. Bar to appearance of pleaders in camp offence proceedings.— Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), or any other law, no pleader as defined in the said Code shall be entitled to appear or act on behalf of a parolee, who is charged before the Commandant with a camp offence.

The Foreign Marriage Act, 1903

¹ACT NO. XIV OF 1903

[23rd October, 1903]

An Act to give effect to the Foreign Marriages Order in Council, 1903.

Whereas it is expedient to give effect to the Foreign Marriages Order in Council, 1903; it is hereby enacted as follows :-

1. Short title, extent and application.— (1) This Act may be called the ²* Foreign Marriage Act, 1903.

³[(2) It extends to the whole of ⁴ [Bangladesh].

(3) It applies also to all citizens of ⁴[Bangladesh] and to all persons in the service of Government, whether citizens of ⁴[Bangladesh] or not ⁵***.

(1) Notice in writing of a marriage which it is intended to solemnise under the Foreign Marriage Act, 1892, may be given by one of the parties intending such marriage, to-

(a) a Marriage Registrar appointed under the Christian Marriage Act, 1872, where either of such parties is a person professing the Christian religion.;

(b) a District Magistrate, ⁶ * * * * *

⁷* * * * * where neither of such parties is a person professing the Christian religion :

Provided that the party giving such notice as aforesaid shall have had his usual place of abode for not less than three consecutive weeks immediately preceding the giving of notice within the local limits of the area for which the Marriage Registrar, Magistrate ^{7a}* * to whom the notice is given, is appointed.

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1. For Statement of Objects and Reasons, see Gaz. of India, 1903, Pt. V p. 466.
 2. The word "Indian" omitted by A.O., 1949, Sch.
 3. Subs. by Ord XXI of 1960, s. 3. 2nd Sch. w.e.f. 14.10.55.
 4. Subs. by Act VIII of 1973, s. 3 and 2nd Sch., as amended by Act LIII of 1974, for "Pakistan".
 5. The comma and the words, "in any Acceding State" were omitted, *ibid*.
 6. The words "Chief Presidency Magistrate" omitted by A.O. 1949, Sch.
 7. The words "or Political Agent" were omitted by Act VIII of 1973, s. 3 and 2nd Sch., as amended by Act LIII of 1974.
 - 7a. The words "or Political Agent" were omitted by Act VIII of 1973, s. 3 and 2nd Sch., as amended by Act LIII of 1974.

(2) Every notice given under this section shall state-

(a) the name, surname, age and profession or condition of each of the parties intending marriage;

(b) the residence of each of them;

(c) the time during which each of them has dwelt there; and

(d) the place in which the intended marriage is to be solemnised;

and it shall contain a declaration by the party giving the notice to the effect that he believes that there is no impediment of kindred or affinity or other lawful hindrance to the solemnisation of the said intended marriage.

(3) A copy of every notice given under this section shall be published by being affixed in some conspicuous place in the office of the officer to whom the notice is given.

(4) On the expiration of four clear days after such notice as aforesaid has been published in the manner prescribed by sub-section (3), the officer to whom the notice is given, unless he is aware of any impediment of kindred or affinity or other lawful hindrance to the solemnisation of the said intended marriage, shall, on payment of such fee (if any) as ⁸[the Government] may fix in this behalf, furnish the party by whom the notice was given, with a certificate, under his hand and seal, to the effect that the notice has been so given and published.

8. The words "the Provincial Government for each Province and the Central Government for the Citizens of Pakistan and Servants of the State in any According State", omitted by Act VIII of 1973, s. 3 and 2nd Sch., as amended by Act LIII of 1974.

The Enemy Foreigners Order, 1965

S.R.O. No. 141 (R)/65.-In exercise of the powers conferred by Section 3,4, 8 and 10 of the Foreigners Act, 1946 (XXXI of 1946), and in supersession of the Enemy Foreigners Order, 1939, the Federal Government is pleased to make the Enemy Foreigners Order, 1965.

PART I - Preliminary.

1. Short title and extent.— (1) This Order may be called the Enemy Foreigners Order, 1965.

(2) It extends to the whole of Pakistan including those Tribal Areas to which the Foreigners Act, 1946 (XXXI of 1946), for the time being applies.

2. Definitions.—In this Order, unless there is anything repugnant in the subject or context:-

(a) "Act" means the Foreigners Act, 1946 (XXXI of 1946);

(b) "Civil Authority" means the Civil Authority appointed under sub-clause (b) of clause 2 of the Foreigners Order, 1951;

(c) "enemy foreigner" means a foreigner who possesses the nationality of a state at war with Pakistan or having possessed such nationality at any time, has lost it without acquiring any other nationality;

(d) "internee" means any person arrested or liable to be arrested under paragraph 11;

(e) "interment camp" means an interment camp established under paragraph 10;

(f) "registered address" means registered address as defined in the Registration of Foreigners Rules, 1966;

(g) "Registration Officer" means a Registration Officer as defined in the Registration of Foreigners Rules, 1966, and includes such other officer as may be authorised by him to perform the functions of a Registration Officer under this Order.

Part II-General Restriction on Enemy Foreigner.

3. Registration on departure from Pakistan.— (1) No enemy foreigner shall depart from Pakistan for a destination outside Pakistan except in accordance with the conditions of a permit issued:-

(a) in relation to an enemy foreigner of the male sex who has attained the age of sixteen years, by the Federal Government;

(b) in relation to any other enemy foreigner by the civil authority having jurisdiction over the port from which the enemy foreigner leaves Pakistan.

(2) No enemy foreigner shall depart from Pakistan for a destination outside Pakistan across the external land frontiers of Pakistan.

(3) No enemy foreigner shall depart from Pakistan by sea except at the ports of Karachi or Chittagong.

4. Restriction on taking out of Pakistan gold and other property.—No enemy foreigner shall take out of Pakistan—

(1) any gold;

(2) any property other than;

(a) personal luggage or effects in such quantity as the civil authority having jurisdiction over the port or other place at which the foreigner leave Pakistan, or any other officer authorised by the Provincial Government in this behalf, may decide to be reasonable; and

(b) resources whether in coin or negotiable instrument, or both not exceeding the value of one hundred and fifty rupees, with the addition thereto of fifty rupees in respect of each child travelling with the enemy foreigner;

(3) Any such article as is mentioned in sub-paragraph (1) or in clause (a), (b), (g), (h), or (i) of sub-paragraph (2) of paragraph 9, or without the permission of the civil authority, any such article as is mentioned in clause (c) or (e) of sub-paragraph (2) of that paragraph.

5. Declaration as to property.—An enemy foreigner shall at the time of embarking from Pakistan and on being required so to do by the civil authority or other officer appointed in this behalf by the Provincial Government make declaration as to the property in his possession, and, if so required, shall produce to such authority or officer, any property or resources in excess of, or other than those permitted by paragraph 4 to be taken and such authority or officer may search any such foreigner and any luggage for the purpose of giving effect to this order.

6. Restriction on change of residence.—No enemy foreigner shall change his residence without the permission in writing previously obtained of the civil authority for the area to which he purposes to transfer his residence.

7. Reports of presence and movement.—Every enemy foreigner not under detention or confinement shall :-

(a) report his presence at his registered address once in every twenty-four hours to the Registration Officer, and

(b) if he at any time absent from his registered address for more than twenty-four hours, report once during every day of such absence to the nearest civil authority :

Provided that the Registration Officer or the civil authority as the case may be, may exempt, wholly or partially, any enemy foreigner from compliance with this paragraph.

8. Restriction on movements.—(1) No enemy foreigner shall travel in Pakistan over a distance of more than five miles from the place of his registered address except in accordance with the conditions, and the validity, or a written permit previously obtained from the civil authority.

(2) Every permit issued in pursuance of sub-paragraph (1) shall specify the foreigner's name, nationality and description, place or places which he is authorised to visit, the purpose of the journey and the date of expiry of the permit.

9. Prohibited articles.—(1) No enemy foreigner shall have in his possession or control any fire-arms or ammunition.

(2) No enemy foreigner shall, without the permission of the civil authority, have in his possession or control:-

(a) any explosive or any material capable of being used for the manufacture of any explosive;

(b) more than three gallons of inflammable liquid;

(c) any motor-car, motor-cycle, sea going craft or air-craft;

(d) any camera or other photographic apparatus;

(e) any wireless apparatus, telephones signalling apparatus, opera, theatre or field glasses, telescopes, monocular or any other instrument designed for, or capable of being used for, long distance magnification;

(f) any map drawn to a scale, larger than four miles to one inch;

(g) any nautical chart;

(h) any document intended for the use of members of any armed forces, or any such document describing or depicting any ship, aircraft, vehicle, weapon or equipment of a kind used by the Armed Forces of Pakistan, or any such list of persons in the service of Pakistan, as may be specified by an order of the Federal Government.

Part III

Interment of enemy foreigners

10. Interment Camps.— The Federal Government may for the purpose of this Order establish interment camps at such places as it thinks fit, and shall appoint a commandant of every such camp.

Case Law

Commandant means the officer appointed by the Federal Government to be the commandant of an interment camp.

11. Arrest and interment of certain enemy foreigners.— (1) The civil authority for any area may arrest, or cause to be arrested, any enemy foreigner of the male sex in that area who has completed the age of sixteen years;

Provided that nothing in this sub-paragraph shall, except by an express direction of the Federal Government, apply to any Consul-General, Consul, Vice-Consul, Consular agent or person duly appointed by a foreign government to perform diplomatic functions.

(2) Every enemy foreigner arrested under the provisions of sub-paragraph (1) shall be surrendered, as soon as may be, to the commandant of an interment camp.

Provided that if, at the time of his arrest, the enemy foreigner is suffering from any infectious disease, or is by reason of sickness unable to move, the civil authority making the arrest shall report the matter to the commandant of an interment camp and await his instruction as to the time at which, and the interment camp to which, the arrested person should be removed.

(3) Every enemy foreigner surrendered to the commandant of an interment camp in pursuance of sub-paragraph (2) shall be confined in an interment camp until otherwise directed by the Federal Government.

12. Temporary detention of internees in civil custody.— The civil authority shall, pending the surrender of an internee to the commandant of an interment camp, detain or confine in such manner and at such place as may to such authority appear suitable;

Provided that the manner of such detention or confinement shall not be more rigorous than the manner, in which an arrested person is detained or confined while in police custody under the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898).

Case Law

There is no different between "detention" by the police and "formal arrest". When a person is detained by the police, he is arrested, and it is not necessary that in order to make the arrest-legal, should further be handcuffed or put in the police or judicial lock-up [PLD 1960, Pesh. 74].

13. Personal Property of internees.—(1) An internee may take with him to an interment camp such personal property as may be allowed by the civil authority arresting him, and may, subject to the approval of that authority, dispose of the rest of his personal property in such manner as he desires.

(2) Where an internee is unable to make arrangements for the disposal of such of his personal property as he is not allowed to take with him to be the interment camp, the property shall remain in custody of the civil authority making the arrest or of such other person as may be authorised by or under any law for the time being in force to take possession of property belonging to enemy foreigners.

14. Arrest and detention of suspected enemy foreigners.—

(1) The civil authority may arrest without warrant any enemy foreigner, other than an internee whom he reasonably suspects of having acted for or acting or of being about to act, with intent to assist a state at war with Pakistan, or in a manner prejudicial to the public safety of any building or machinery.

(2) The civil authority making an arrest in pursuance of sub-paragraph (1) shall forthwith report the fact of such arrest to the Federal Government and, pending the receipt of the order of the Federal Government, shall detain or confine the arrested person in such manner and at such place as may to such authority appear suitable;

Provided that the manner of such detention or confinement shall not be more rigorous than the manner in which an arrested person is detained or confined while in police custody under the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898).

15. Procedure for the production of internees in courts.—

(1) No internee shall be removed from an interment camp for the purpose of appearing in any civil court, or, unless his attendance is required or the purpose of answering a charge of an offence, in any Criminal Court.

(2) If, in any court the attendance of an internee is required for the purpose of answering a charge of an offence the provisions of sections 37,

38, 40 and 41 of the Prisoners Act, 1900 (III of 1900), shall apply as if references in the said sections to a person, the officer in charge of a prison and the Provincial Government were references to an interment camp, the commandant of an interment camp and the Federal Government, respectively.

(3) If, in any case evidence of an internee is required for the purpose of any proceeding in any civil Court, the provisions of sections 44, 45 and 46 of the Prisoners Act, 1900 (III of 1900), shall apply as if reference in the said sections to a prison and the officer in charge of a prison were references to an interment camp and the commandant of an interment camp respectively, and as if in section 44 the words and figures "who, for any of the causes mentioned in section 42 or section 43 cannot be removed in clause (a), and clauses (b) and (c)" were omitted.

(4) If, in any case the evidence of an internee is required in connection with any proceedings in a criminal Court, it may be obtained by the issue of a commission in accordance with the provisions of Chapter XL of the Code of Criminal Procedure, 1898 (Act V of 1898).

(5) The provisions of sections 47, 48, 50 and 51 of the Prisoners Act, 1900 (III of 1900), shall apply as if references in the said sections to a person, the officer in charge of prison and the Provincial Government were references to an interment camp, the commandant of an interment camp, the Federal Government, respectively.

Provided that unless and until the Federal Government makes rules of the nature described in the said section 51, the rules in force in the province in which the interment camp is situated shall *mutatis mutandis* be applicable to internees in that interment camp.

16. Application of Registration of Foreigners Rules, 1939, and Foreigners Order, 1951, not barred.— The provision of this Order shall be in addition to, and not in derogation of the provisions of :

- (a) The Registration of Foreigners Rules, 1939, and
- (b) The foreigners Order, 1951.

The Registration of Foreigners Act, 1939

Act No. XVI of 1939

8th April, 1939

An Act to provide for the registration of foreigners in Bangladesh.

WHEREAS it is expedient to provide for the registration of foreigners entering, being present in, and departed from, Bangladesh;

It is hereby enacted as follows :-

1. (1) Short title and extent.— This Act may be called the Registration of Foreigners Act, 1939.

(2) It extends to the whole of Bangladesh.

2. In this Act.—

(a) "foreigner" means a person who is not a citizen of Bangladesh;

(b) "prescribed" means prescribed by rules made under this Act.

Case Law

The right of citizenship in India is conferred by Article 5 of the constitution and every person who, at the commencement of the constitution had his domicile in the territory of India or who or whose parents were born in India in Indian territory or who had on that date been ordinarily residing in that territory for not less than five years. According to Article 7, however, notwithstanding the fact that the above conditions were fulfilled, a person who had migrated from India to the territory of Pakistan after 1st March, 1947, and did not return to the territory of India under a permit for resettlement of permanent return could not be deemed to be an Indian citizen. The expression "migration" embraces in its scope two conceptions : (1) Going from one place to another, and (2) The intention to make the destination a place of abode or residence in future. In the context of the constitution, it has the notion of transference of allegiance from the country of departure to the country of adoption [*Badruzzaman Vs. State, 1952 Cr LJ 338 : AIR 1951 All 16 : 1951 All WR (HC) 50*].

The qualification which must be attached to the word "migrated" as used in articles 6 and 7 of the constitution of India is that the movement should have been voluntary and should not have been for a specific purpose and for a short and limited period [*Kulathil Mammu Vs. State of Kerala, AIR 1966 SC 1614 : 1966 Cr LJ 1217 : Abdul Sattar Mallick Vs. Union of India, 1970 Assam LR 209*].

3. Power to make rules.—The Government may after previous publication, by notification in the *Official Gazette*, make rules with respect to foreigners for any or all of the following purposes, that is to say—

(a) for requiring any foreigner entering, or being present in, Bangladesh to report his presence to a prescribed authority within such time and in manner and with such particulars as may be prescribed;

(b) for requiring any foreigner moving from one place to another place in Bangladesh to report, on arrival at such other place, his presence to a prescribed authority within such time and in such manner and with such particulars as may be prescribed;

(c) for requiring any foreigner who is about to leave Bangladesh to report the date of his intended departure and such other particulars as may be prescribed to such authority and within such period before departure as may be prescribed;

(d) for requiring any foreigner entering, being present in, or departing from Bangladesh to produce, on demand by a prescribed authority, such proof of his identity as may be prescribed;

(e) for requiring any person having the management of any hotel, boarding-house, sarai or any other premises of like nature to report the name of any foreigner residing therein for whatever duration, to a prescribed authority within such time and in such manner and with particulars as may be prescribed;

(f) for requiring any person having the management or control of any vessel or aircraft to furnish to a prescribed authority such information as may be prescribed regarding any foreigner entering, or intending to depart from, Bangladesh in such vessel or aircraft, and to furnish to such authority such assistance as may be necessary or prescribed for giving effect to this Act.

(g) for giving for such other incidental or supplementary matters as may appear to the Government necessary or expedient for giving effect to this Act.

4. Burden of Proof.—If any question arises with references to this Act or any rule made thereunder, whether any person is or is not a foreigner, or is or is not a foreigner of a particular class or description, the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Evidence Act, 1972, lie upon such person.

Case Law

Visa and residential permit is public document.—The Visa officer of the Government of India who issues a visa is an Officer of the Government of India and the visa issued by him would be a public document within the meaning of section 74 of the Evidence Act. Under section 74, even the record of the acts an officer of a foreign country would be a public document. Every one of the entries in the passport would be a public document under section 74 of the Evidence Act as constituting an act or the record of the acts of public officers. The residential permit is clearly a public document being an act or the record of the acts of the Registration Officer [*State Vs. Abdus Sattar*, AIR 1963 Guj 226 at PP 231, 233 : (1963) 2 Cr LJ 265 : (1963) 4 Guj LR 1073].

5. *Penalties.*—Any person who contravenes, or attempts to contravene, or fails to comply with, any provision of any rule made under this Act shall be punished, if a foreigner, with imprisonment for a term which may extend to one year or with fine which may extend to one thousand Taka or with both, or if not a foreigner, with fine which may extend to five hundred Taka.

Case Law

Plea of guilty is no bar to decision of case on merits and maintainability of appeal.—If the facts alleged by the prosecution or admitted by the accused do not amount to the offence charged or to any offence, the plea of guilty is no bar for an appeal on merits and does not stand in the way of the accused being acquitted.

Where the charge against the accused under section 5 of the Registration of Foreigners Act was that he, being a foreigner from Tibet, China entered the Indian Territory at Mogathang on or about 9th August, 1977 and failed to report his presence to the prescribed authority.

In fact, if no Registration Officer was appointed under Rule no charge under section 5 of the Registration of Foreigners Act, 1939, could be framed on the materials on record, that if a charge could not legally be framed on the materials on record, the plea of guilty to such a charge was no plea in law and was not to be acted upon and such a plea would not attract the bar under section 412 (Section 375 of 1973 Code) Cr.P.C. and would not prevent the acquittal of the accused on merits [*Sonam Tshering Vs. State of Sikkim*, 1979 Cr. LJ 1281 at PP 1288, 1289 (Sikkim); following *Pushpa Kumar Rai Vs. State*, 1978 Cr. LJ 1379 at P. 1384].

6. Power to exempt from application of Act.— The Government may, declare that any or all of the provisions of the rules made under this Act shall not apply only with such modifications or subject to such conditions as may be specified in the said order, to or in relation to any individual foreigner or any class or description of foreigner.

Provided that a copy of every such order shall be placed on the table of **** Parliament as soon as may be after its legislation.

7. Protection to persons acting under this Act.— No suit, prosecution or other legal proceedings shall lie against any person from anything which is in good faith done or intended to be done under this Act.

8. Application of other laws not barred.— The provisions of this Act shall be in additions to, and not in derogation of, the provisions of the Foreigners Act 1946 and any other law for the time being in force.

9. ** ****** [Omitted by Act LIII of 1974, Sch.]

The Registration of Foreigners Rules, 1966

1. Short title and commencement.— (1) These rules may be called the Registration of Foreigners Rules, 1966.

(2) It shall come into force at once.

2. Definitions.— In these rules there is anything repugnant in the subject or context,-

(a) "Act" means the Registration of Foreigners Act, 1939 (XVI of 1939);

(b) "Certificate of Registration" means a Certificate of Registration issued in pursuance of rule 7;

(c) "Form" means a form appended to these rules;

(d) "master of the vessel" includes the pilot of an aircraft and any person authorised by such master or pilot to discharge on his behalf any of the duties imposed upon him by these rules;

(e) "owner of the vessel" includes any person authorised by the owner to discharge on his behalf any of the duties imposed upon him by these rules;

(f) "passenger" means any person travelling or seeking to travel on board a vessel who is not a bonafide seaman;

(g) "police officer" includes, in the Quetta and Kalat Divisions, a levy officer, and "police officer not below the rank of head constable" includes a levy officer not below the rank of jamadar.

(h) "registered address" means a foreigner's intended address in Pakistan as reported under rule 6 and recorded in item 10 of his Certificate of Registration and includes the address as subsequently recorded in his Certificate of Registration under rule 12;

(i) "Registration Officer" means a Registration Officer appointed by the Central Government under rule 3 and includes an authority authorised in writing by a Registration Officer to perform the duties of the Registration Officer on his behalf;

(j) "residence" means ordinary dwelling place in Pakistan;

(k) "seaman" means a person employed on, or engaged in the working of, a vessel;

(l) "tourist" means a foreigner of any of the following categories who has no residence or occupation in Pakistan and whose stay in the country does not exceed three months, namely:-

- (i) a person visiting Pakistan for recreation or sightseeing;
 - (ii) a person travelling for domestic or health reason;
 - (iii) a person on study or lecture tour or a pilgrimage;
 - (iv) a person travelling in his individual or representative capacity to attend a meeting or function of any kind (scientific, administrative, educational, social, cultural, sports or religious) or for giving a performance;
 - (v) a person travelling for business purposes; and
 - (vi) a person arriving in the course of a sea cruise whose stay in Pakistan exceeds twenty four hours;
- (m) "vessel" includes aircraft but does not include a vessel travelling solely between ports of places in Pakistan.

3. Registration Officers.—(1) The Central Government may appoint Registration Officers for the purposes of these rules for such areas as it thinks fit.

(2) A Registration Officer may, with the approval of the Central Government, authorise in writing any authority to perform any or all of his functions under these rules.

4. Passengers on vessels to report arrival in Pakistan.— Every foreigner who arrives in Pakistan on board any vessel shall, on being required so to do by, or on behalf of, the master of the vessel, furnish in writing a true statement of the particulars specified in Form 'A'.

5. Report by foreigners of arrival in and departure from Pakistan by land.— Every foreigner who enters or leaves Pakistan by land shall, on being required so to do by the Registration Officer of the place of arrival or departure, as the case may be, furnish to him in writing a true statement of the particulars specified in Form 'A'.

6. Report by foreigner of his arrival in Pakistan.— (1) Every foreigner entering Pakistan shall, subject to sub-rule (2), present in person to the appropriate Registration Officer, prescribed by rule 7 a report in Form B (hereinafter referred to as a registration report) of his arrival in Pakistan.

(2) Every registration report shall be made in writing, in the English language and in duplicate, shall contain a true statement of the foreigner's intended address in Pakistan and of all the other particulars specified in Form 'B' and shall have affixed to it a photograph of the foreigner, which shall be

overstamped with the stamp of the Registration Officer on both parts of the report.

Provided that a pardanashin woman who is accompanied by a male companion may present the registration report through her male companion and may not affix a photograph to the report;

Provided further that in the case of a foreigner whose occupation in such as to necessitate frequent travelling and who is not likely to return within a reasonable time to the district in which he is at any time living, the office of the Registration Officer of the district in which he first registers upon his arrival in Pakistan may be given as, and shall be deemed to be, his address in Pakistan.

(3) Copies of Form B shall be supplied by the Pakistani visa issuing authority at the time of the grant of visa or by the Registration Officer in Pakistan.

7. Procedure for registration.— (1) The registration report shall be presented by a foreigner who enters Pakistan on board a vessel or by land, within thirty days of his arrival, at such time and place and to such authority as may be appointed by the Registration Officer of the port or other place of arrival;

Provided that any foreigner who enters Pakistan in the course of a continuous journey by railway shall present a registration report to the Registration Officer of the place of arrival.

(2) The Registration Officer or other authority as aforesaid to whom the Registration report is presented shall issue to the foreigner a temporary Certificate of Registration in Form C and the foreigner shall thereafter comply with the conditions set out in that Form.

(3) Every foreigner presenting a Registration report shall furnish to the Registration Officer such information as may be in his possession for the purpose of satisfying the said officer as to the accuracy of the particulars specified therein and shall, on being required so to do, sign the Registration report in the presence of the said Officer and shall thereupon be entitled to receive from the said officer a Certificate of Registration on Part 11 of Form B:

Provided that a pardanashin woman whose passport or other documents of identification do not, in the opinion of the Registration Officer, provide adequate proof of identity, shall be required to furnish to the Registration Officer, within such period of presenting her registration report as such

Officer may fix, four complete sets of her finger impressions, one of which shall be made on part II of form B. The finger impressions shall be made in the presence of the Registration Officer and each set shall be attested by him.

8. Period of validity of Certificates of Registration.— (1) If the Registration Officer is satisfied that any foreigner entering Pakistan is a *bonafide* tourist and that the period of his stay in Pakistan will not exceed thirty days he may endorse on his passport the word "tourist" and record therein the date of expiry of the validity of the said endorsement :

Provided that if the tourist, after his entry in Pakistan, decides to extend his stay in Pakistan beyond thirty days, he shall, before the expiry of the said period of thirty days, apply to any Registration Officer in Pakistan for registration and the Registration Officer may, on sufficient cause being shown by the tourist, register him in Form B, subject to the condition that in no case shall the validity of such registration be so expressed as to extend the period of the tourist's stay in Pakistan beyond three months after the date on which he entered Pakistan.

(2) If the Registration Officer is satisfied that any foreigner entering Pakistan is a *bonafied* tourist and that the period of his stay in Pakistan will be more than thirty days but less than three months, he may register him in form B and record therein the fact of the foreigner being a tourist and also the date of expiry of the validity of the Certificate of Registration :

Provided that, if the Certificate of Registration of the tourist is expressed to be valid for a period of less than three months, the period of validity of such certificate may, on sufficient cause being shown by the tourist, be extended by any Registration Officer, subject to the condition that in no case shall the validity be so extended beyond three months after the date on which the tourist entered Pakistan.

(3) Where a tourist enters Pakistan on the authority of a transit visa issued to him under the Passport Rules, 1955, the validity of the Certificate of Registration shall be co-extensive with the validity of the said transit visa.

(4) Any tourist who is in Pakistan after the date of the expiry of the validity of the endorsement on his passport, or of his Certificate of Registration, shall cease to be a tourist within the meaning of these rules.

(5) The Certificate of Registration issued in respect of any foreigner other than tourist shall be valid for so long as the foreigner does not depart from Pakistan.

9. Production of proof of identity.—(1) Every foreigner shall, within twenty four hours of demand being made of him by any Registration Officer, Magistrate or Police Officer not below the rank of head constable, produce at such place as may be specified, his passport and such other proof of his identity as may be required for any purpose connected with the enforcement of these rules :

Provided that the said Registration Officer, Magistrate or Police Officer may, on sufficient cause being shown, extend the aforesaid period of twenty four hours to such period as, in the circumstances, may be necessary for the production of the said passport or other proof of identity.

(2) Every foreigner entering Pakistan shall, on demand being made of him by the Registration Officer, deliver the passport or other proof of identity to that Officer and shall thereafter attend at such time and place as the Registration Officer may direct for the purpose of receiving back his passport.

(3) Where in pursuance of sub-rule (2) a foreigner surrenders his passport or other proof of identity, he shall entitled to receive a receipt for it from the Registration Officer.

10. Production of Certificate of Registration.— Every registered foreigner shall, within twenty four hours of demand being made of him by any Registration Officer, Magistrate or Police Officer not below the rank of head constable, produce or casue to be produced his Certificate of Registration for the inspection of such Registration Officer, Magistrate or police officer;

Provided that the Registration Officer, Magistrate or Police Officer may, in sufficient cause being shown, extended the aforesaid period of twenty-four hours to such period as, in the circumstances, may be reasonably necessary for the production of the said certificate :

Provided further that if the Registration Officer, Magistrate or Police Officer not below the rank of Sub-Inspector is of the opinion that the passport or other documents of identification produced by a pardanashin woman do not furnish adequate proof identity and if the Registration Certificate does not bear the finger impressions required by the proviso to sub-rule (3) of rule 7, the Registration Officer, Magistrate or Police Officer may require her to furnish, within such period as such Officer, Magistrate or Police Officer may fix, four complete sets of her finger impressions, one of which shall be made on the Registration Certificate. The finger impressions

shall be made in the presence of the Registration Officer, Magistrate or Police Officer and shall be attested by him :

Provided further that, if the Registration Certificate bears a set of finger impressions, the Registration Officer, Magistrate or Police Officer may in order to satisfy himself of the genuineness of the finger impressions require her to furnish a further set of finger impressions for comparison.

11. Report of temporary absence from registered address.—(1) If at any time a foreigner is absent from his registered address for seven days or more, he shall report to the Registration Officer of the district in which his registered address is situated his current address and every subsequent change of address including his return to his registered address.

(2) Every foreigner who stays or intends to stay for a period of seven days or more at any place in any district other than the district in which his registered address is situated, shall report his presence in that other district to the Registration Officer of that district within twenty-four hours of his arrival in that district.

(3) The requirements of sub-rules (1) and (2) shall be deemed to have been fulfilled if the foreigner concerned-

(i) makes a report in writing to the Registration Officer of the district where his registered address is situated seven days in advance of leaving the district mentioning his itinerary; or

(ii) reports in Form D in accordance with the provisions of rule 15 furnishing on it the requisite information about the itinerary; or

(iii) obtain a travel permit under sub-rule (1) of rule 16 from the Registration Officer of the district in which his registered address is situated;

Provided that if any change in the itinerary is made, intimation shall be sent to the Registration Officer; or

(iv) Reports arrival immediately to the Registration Officer of the district of his arrival.

(4) (a) The report prescribed by sub-rules (1) and (2) may be made by a foreigner to the Registration Officer personally or through an agent or through postal communication.

(b) A report prescribed by sub-rule (3) may be made by a foreigner to the Registration Officer personally or through an agent.

12. Report of change of registered address.—(1) Every foreigner who is about to change his registered address shall furnish to the Registration Officer of the district in which his registered address is situated

particulars of his new address and the date of the change, and the Registration Officer shall record the new address in his Certificate of Registration.

(2) A foreigner shall be deemed to have changed his registered address -

(a) if he departs from Pakistan;

(b) if he changes his residence from one place of another place in Pakistan; or

(c) if, having no residence, he leaves his registered address knowing that he is not likely thereafter to return thereto within three months of leaving it:

Provided that clause (c) of this sub-rule shall not apply in any case in which in accordance with the second proviso to sub-rule (2) of rule 6 the foreigner's registered address is the office of the Registration Officer of the district in which he first registered upon his arrival in Pakistan.

13. Reports of changes other than of address.— Without prejudice to the provisions of rules 11 and 12, every foreigner shall furnish to the Registration Officer of the district in which his registered address is situated particulars of any circumstances affecting in any manner the accuracy of the particulars recorded in his Certificate of Registration within fourteen days after the circumstances has occurred and generally shall supply to the Registration Officer all such information as may be necessary for maintaining the accuracy of that Certificate.

14. Saving for Tourists.— (1) Nothing in rules 6, 7, 11, 12 and 13 shall apply to a tourist for so long as the period of validity of the endorsement on his passport made under sub-rule (1) of rule 8 has not expired.

(2) Nothing in rules 11, 12 and 13 shall apply to any tourist other than one mentioned in sub-rule (1) for so long as the period of validity of the Certificate of Registration has not expired :

Provided that any Registration Officer may, in relation to any tourist, at any time cancel the period of validity of the endorsement on his passport or of his Certificate of Registration and thereupon the tourist shall cease to be a tourist within the meaning of these rules.

15. Report to be made to and by hotel keepers.— (1) Every keeper of hotel shall require every foreigner for whom accommodation is provided in the hotel-

(a) on arrival at the hotel to furnish his particulars necessary for the completion of Form D;

(b) to sign the register maintained by the keeper of the hotel in which the full particulars of the foreigner as entered in Form D shall have been previously copied out by the keeper of the hotel; and

(c) at the time of his departure from such hotel to record, or furnish the particulars necessary for recording in the said register, the date and time of his departure and the address to which he is proceeding.

(2) The register prescribed by sub-rule (1) shall at all times be made available for inspection on the demand of any Registration Officer, Magistrate or Police Officer not below the rank of head of constable.

(3) every foreigner for whom accommodation is provided in a hotel shall-

(i) on his arrival at such hotel-

(a) furnish the particulars necessary for the completion of Form D; and

(b) sign the register maintained by the keeper of the hotel in which the full particulars of the foreigner as entered in Form D shall have been previously copied out by the hotel keeper;

(ii) at the time of his departure from such hotel, record, or furnish the particulars necessary for recording, in the said register, the date and time of his departure and the address to which he is proceeding.

(4) Every particular which is required by this rule to be recorded in the said register or in Form D shall be recorded by the keeper of the hotel -

(a) if the foreigner understands the English language, in the English language; and

(b) otherwise, in a Pakistani language.

(5) If a foreigner does not understand the English language or a Pakistani language, it shall be the duty of the keeper of the hotel, if so requested, to explain to the foreigner the requirements of this rule.

(6) The keeper of the hotel shall sign and date the Form D duly completed by him and shall, as soon as may be, but not more than twenty-four hours after the arrival of the foreigner, transmit the Form to the Registration Officer.

(7) For the purposes of this rule-

(a) "hotel" includes any boarding-house, clubs, dakhbungalow, rest-house, sarai or other premises of like nature;

(b) "keeper of a hotel" means the person having the management of a hotel and includes any person authorised by him, and competent, to perform the duties of the keeper of the hotel under this rule;

(c) "sign" includes, in respect of a foreigner who is unable to write, the making of a thumb impression or other mark by means of which he is accustomed to attest a document.

(8) Specimen copies of Form D may be obtained, on application, from any Registration Officer.

16. Report by foreigner of his departure from Pakistan.—

(1) Every foreigner who is about to depart from Pakistan either on board a vessel or by land shall, unless, being a tourist, his case is governed by sub-rule (4), surrender his Certificate of Registration to the Registration Officer of the district in which his registered address is situated and shall receive from the Registration Officer, a permit to travel to the place from which he proposes to leave Pakistan.

(2) Every such permit shall be duly stamped, signed and dated by the Registration Officer and shall -

(i) certify the surrender of the Registration Certificate by the foreigner and his intended departure from the point where his journey in Pakistan as entered in the permit ends;

(ii) specify the route by which the foreigner will travel and the period for which the permit is valid; and

(iii) be deemed for the purposes of these rules to be Certificate of Registration for as long as its conditions as to the period and route for which it is expressed to be valid are not contravened.

(3) The permits shall be surrendered by the foreigner to the Registration Officer of the place from which he departs from Pakistan.

(4) Every tourist whose case is governed by sub-rule (2) of rule 8 shall on his departure from Pakistan surrender his Certificate of the Registration-

(a) if he departs on board any vessel, to the Registration Officer of the port or place from which the vessel leaves Pakistan or to such authority as the said Officer may appoint in this behalf; or

(b) if he departs from Pakistan by land, to the Registration Officer of the place from which he departs from Pakistan.

(5) Every foreign passenger, other than a passenger for whom a berth or seat has been engaged by or on behalf of Government, who is about to depart from Pakistan on board any vessel shall on the request of the master of such vessel furnish or caused to be furnished in writing his full particulars in Form A.

17. Obligations of masters of vessels etc.—(1) The master of any vessel arriving at or leaving any port or place in Pakistan shall—

(a) before any foreign passenger disembarks or embarks, supply to the Registration Officer of the port or place of arrival in, or departure from, Pakistan Form 'A' duly filled in by each foreigner together with a Passenger manifest in form E ;

(b) require every foreign passenger who is about to disembark in Pakistan to complete Form B and direct him to attend at such place and time as may be specified by the Registration Officer.

(c) if so requested by the Registration Officer, require any foreign passenger about to depart from Pakistan to surrender his Certificate of Registration or travel permit and deliver such Certificate or permit together with Form A and the Passenger Manifest in Form E required under sub-rule (4) to the Registration Officer;

(d) if so required by the Registration Officer, furnish on arrival at the said port or place a true statement in writing showing the name and nationality of every seaman, and at the time of departing from such port or place take such steps as the Registration Officer may specify to ascertain whether or not any such seaman as aforesaid who is a foreigner is about to depart on board such vessel; and

(e) render to the Registration Officer such assistance as he may reasonably require for carrying out the purposes of the Act and these rules.

(2) Every particular, other than the signature of a foreign passenger, which is required by this rule to be recorded in Form B shall be recorded—

(a) if the passenger is able to write in the English language, by the passenger and in the English language;

(b) if the passenger is unable to write in the English language, by the master of the vessel and in the English language or, where the master is unable to write in the English language, in a Pakistani language.

(3) If a foreign passenger does not understand the English language, it shall be the duty of the master of the vessel, if so requested, to explain or cause to be explained to the foreign passenger the requirements of this rule and Form B.

(4) The master or owner of any vessel shall—

(a) require any foreigner who intends to embark on that vessel for the purpose of leaving Pakistan to furnish in writing his full particulars in Form A;

(b) cause Form A when so completed to be delivered together with the schedule in Form E to the Registration Officer of the place of departure; and

(c) take steps to ensure that no foreigner embarks until authorised so to do by the Registration Officer.

(5) Form A shall be completed in the English language;

Provided that in any case in which there is no seaman on board a vessel who is able to write in the English language, the Form may be completed in a Pakistani language.

(6) Form A shall be supplied to the foreign passengers by the master or owner of the vessel carrying the passengers.

(7) Specimen copies of Forms A, B and E may be obtained by the master or owner of a vessel carrying passengers from any Registration Officer.

18. Duplicate Certificate of Registration.— (1) If any Certificate of Registration issued under these rules is lost, destroyed, damaged or mutilated, the foreigner to whom it was issued shall personally make to the Registration Officer of the district of his registered address, a report in writing of the circumstances in which it was so lost, destroyed, damaged or mutilated together with an application for the issue of a duplicate copy of the Certificate of Registration :

Provided that, if only the photograph of the foreigner affixed on his Registration Certificate is lost, destroyed, damaged or mutilated and the entries against all the items in the Certificate of Registration are intact, the foreigner shall together with the aforesaid report submit two copies of a photograph of himself, of passport size, with the request that the said photographs may be affixed to his Certificate of Registration.

(2) The fee for every duplicate copy of the Certificate of Registration issued under sub-rule (1) shall be five rupees; but no fee shall be charged for the affixation of the photograph under the proviso to that sub-rule.

19. Repeal and savings.— (1) The Registration of Foreigners Rules, 1939 are hereby repealed.

(2) All action taken, orders passed and directions issued under the Registration of Foreigners Rules, 1939, prior to the commencement of these rules shall be deemed to have been taken, passed and issued under these rules.

FORM A

Embarkation/Disembarkation Card

(See rules 4, 5, 16 and 17)

1. (Please print) (Mr.) }
 (Mrs.) }
 (Mis.) } (surname)
-
 (Maiden name)
-
 (Given names)
2. Date of birth.....
 (Day) (Month) (Year)
3. Place of birth.....
4. Nationality
5. Occupation
6. Home Address.....
7. (a) For arriving passengers :
 port of embarkation :

- (b) For passengers leaving :
 port of disembarkation
8. (a) For arriving passengers-Intended address/addresses
 (b) For passengers leaving - Last address
9. Purpose of visit.
10. Proposed length of stay in Pakistan
 and places to be visited (with approximate dates)
11. Passport number
12. Place and date of issue of passport.
- Signature of passenger.....
 Date.....

Items 1, 4, 8 and 10 to be completed by all Commonwealth citizens.
 items 1-12 by all others.

Instructions for the Guidance of Foreigners in Pakistan.

Note :-These instructions are based on some of the more important provisions of the Registration of Foreigners Rules, 1966, framed under the Registration of Foreigners Act, 1939, Foreigners in Pakistan are advised to study those Rules carefully as their contravention is a penal offence under the Act mentioned above.

(1) Every foreigner registered in Pakistan is required on demand by any Registration officer, Magistrate or Police Officer not below the rank of head constable to produce his Certificate of Registration and his passport or such other proof of his identity as may be required of him by such Officer, Magistrate or Police Officer.

(2) Every foreigner, other than a tourist, who is registered in Pakistan and who is about to depart from Pakistan, is required to surrender his Certificate of Registration to the Registration Officer of the district in which his registered address is situated, obtain from him a travel permit and surrender the permit to the Registration Officer of the place from which he proposes to leave Pakistan.

(3) Every foreigner who, being a tourist and registered as such in Pakistan, is about to depart from Pakistan is required to surrender his Certificate of Registration to the Registration Officer of the place from which he proposes to leave Pakistan.

(4) Every foreigner, other than a tourist who is registered in Pakistan and who leaves the district of his registration or changes his registered address is required :-

(a) if he is absent from registered address for a continuous period of seven days or more, to report to the Registration Officer of the district of his registration his current address and every subsequent change of address including his return to his registered address;

(b) if he stays or intends to stay for more than seven days in any district other than the district of his registered address, to report his arrival to the Registration Officer of that other district within twenty four hours thereof;

(ii) reports at a hotel in Form 'D' and signs the hotel register furnishing the requisite information about his itinerary; or

(c) if he proposes to change his registered address or to leave Pakistan to report to the Registration Officer of the District of his registration the particulars of his new address or the date of the proposed change or departure; and

(d) to report to the Registration Officer of the district of his registration any circumstances which in any way affects the accuracy of any of the particulars recorded in his Certificate of Registration.

5. The requirements of (a) and (b) in paragraph (4) above shall be deemed to have been fulfilled if the foreigner:-

(i) informs in writing the Registration Officer of the district of his registration seven days in advance of leaving the district mentioning his itinerary; or

Corrections to registration particulars given over-leaf		Corrections to registration particular given over-leaf	
Number of Correction item	Sign. & designation of Registration officer	Number of Correction item	Sign. & designation of Registration officer

Form B (original)

Part II

(To be retained by the Foreigner)

Certificate of Registration

(see rules 6, 7, 8 and 17)

1. Name Mr./Mrs./Miss
(in block capitals)
surname _____ Photograph of foreigner
Maiden name.....
 2. Date, place and country of birth.....
 3. Nationality (Present)(previous if any)
 4. Profession and purpose of visit and proposed length of stay in Pakistan
.....
 5. Army, Navy or Air Force held, if any.....
 6. Number, date and place of issue of passport.....
 7. Visa No. and place and date of issue.....
 8. Port of embarkation.....
Port of disembarkation.....
 9. Name or other particulars of the vessel by which arrived.....
ate of arrival.....
 10. Intended address in Pakistan.....
Last address outside Pakistan.....
Serial No. of Registration.....
(to be filled in by the Registration Officer.)
Seal and signature of _____ Signature of foreigner
Registration Officer.
- Registration transferred to:-

District	Date	Signature and Seal of Registration Officer of District in col. 1
1	2	3

Note:-No alteration should be made in this Form : Corrections should be noted and attested on the reverse.

Form B (Original)

Part 1

(To be retained by the Registration officer)

Certificate of Registration

(see rules 6, 7, 8 and 17)

1. Name Mr./Mrs./Miss
(in block capitals)
surname _____ Photograph of foreigner _____
Maiden name.....
2. Date, place and country of birth.....
3. Nationality (Present)(previous if any)
4. Profession and purpose of visit and proposed length of stay in Pakistan
.....
5. Army, Navy or Air Force held, if any.....
6. Number, date and place of issue of passport.....
7. Visa No. and place and date of issue.....
8. Port of embarkation.....
Port of disembarkation.....
9. Name or other particulars of the vessel by which arrived.....
date of arrival.....
10. Intended address in Pakistan.....
Last address outside Pakistan.....
Serial No. of Registration.....
(to be filled in by the Registration Officer.)
Seal and signature of _____ Signature of foreigner _____
Registration Officer.
Registration transferred to:-

District	Date	Signature and Seal of Registration Officer of District in col. 1
1	2	3

Note:-No alteration should be made in this Form : Corrections should be noted and attested on the reverse.

(iii) obtains a travel permit from the Registration Officer of the District of his registration and intimates changes in his itinerary, if any, to that Registration Officer; or

(iv) reports arrival immediately to the Registration Officer of the district of his arrival.

6. For attention of tourists.-All foreigners, including tourists are required on their arrival at hotels to complete, or furnish the particulars necessary for the completion of Form "D" and to sign the Register maintained by all hotel keepers. Similarly, before their departure from the hotel, they are required to record, or furnish necessary information for record, in the register, the date and time of their departure and the address to which they are proceeding.

Form C

The Registration of Foreigners Rules, 1966

(See rule 7)

Temporary Certificate of Registration

Serial No.

M..... a foreigner of
nationality holding Passport No.....issued at
.....onhaving arrived in Pakistan
on by
(mode of transport.)

is proceeding to where his residential address
will beHe has been temporarily registered
at and is directed to report to
(place of arrival)

The Registration Office at as soon as possible after his arrival at that place but within thirty days of the date of issue of this certificate, for the purpose of receiving his Certificate of Registration in Part II of Form B.

2. For a period of thirty days from the date of issue of this Certificate or until the report prescribed above has been made, whichever is less, this Form will be deemed to be a Certificate of Registration in Part II of Form B and must be produced on the demand of any Registration Officer, Magistrate or Police Officer not below the rank of head constable.

3. If for any reason the report prescribed in paragraph 1 cannot be made within thirty days as required by paragraph 2 above, the holder of this Form is directed to report in person at the office of the undersigned or of the nearest Registration Officer and to comply with such directions as to registration as may then be given.

4. The contents of this Form have been explained to the holder thereof.

Seal and signature of Registration Officer.

Place

Date

Form D

The Registration of foreigners Rules, 1966

(see rules 11 and 15)

Hotel Arrival Report

(1) Name of hotel.....

(2) Name Mr./Mrs./Miss.....

(in block capitals, surname first)

(3) (a) Nationality..... (b) Profession.....

(4) Passport No. and date and place of its issue

(5) Number, date and place of issue of Certificate of Registration

(6) Registered address in Pakistan

(7) (a) Date of arrival at hotel (b) form

(previous address)

(8) (a) Probable date of departure(b) to

(intended destination)

(9) Purpose of of visit

Date

No..... Date

Forwarded to the Registration Officer for

Signature of Keeper of Hotel.

Form E

The Registration of foreigners rules, 1966

(See rule 17)

passenger manifest

Owner or Operator

marks of nationality and Registration.....

Flight/passage No. Date

Point of embarkation Point of disembarkation.....

Place and country

Surname and Initials	For use by owner or operator only	For official use only
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The ¹[Bangladesh] (Control of Entry) Act, 1952

(Act LV of 1952)

[14th December, 1952]

An Act make better provision for controlling the entry of Indian citizens into ¹[Bangladesh].

Whereas it is expedient to make better provision for controlling the entry of Indian Citizens into ¹[Bangladesh].

It is hereby enacted as follows :—

1. Short title, extent and commencement.— (1) This Act may be called the ¹[Bangladesh] Control of Entry Act, 1952.

(2) It extends to the whole of ¹[Bangladesh].

(3) It shall come into force at once.

2. Definitions.— In this Act, unless there is anything repugnant in the subject or context,—

(a) “enter” means enter by water, land or air;

(b) “passport” means a passport or renewed by or under the authority of a person duly empowered to issue or renew it and satisfying the conditions prescribed relating to the class of passports to which it belongs;

(c) “visa” means a visa duly endorsed by any authority empowered in this behalf by or under authority of the federal Government on a passport valid and in force.

Case Law

“The modern passport is largely an identity and travel document issued to the state's own nationals” and “in the normal intercourse of state, a foreign national passport is, as a rule, accepted as *prima facie* evidence of the holder's nationality [*P. Wei's Nationality and Statelessness in International Law P. 226*]

“In essence a passport is a document which identifies the holder and provides evidence of his nationality. [*Professor Harry Street in “Freedom, the Individual and Law”, P. 271*].

“They (passports) are in the same category as any other evidence of the national status of an individual; and any rights to protection recognised in International Law flow from national status, not from the evidence by which national status is proved” [*Kenneth Diplock in “The grotius Society”, vol.*

1. Substituted by Act 40 of 2000

32 Transactions for the year 1946 under the heading "passports and protection in International Law"]

²[(d) **** ***)]

(e) "Indian Citizen" means a person is or is deemed to be a Citizen of India under the law for the time being in force in India;

(f) ¹[Bangladesh] "Citizens" means a person who is or is deemed to be a citizen of ¹[Bangladesh] under the law for the time being in force in ¹[Bangladesh];

(g) "Officer" means an officer or an employee of the ¹[Government] ² [**** ***)].

Case Law

At the commencement of Pakistan Citizenship Act, 1951 (II of 1951) every person shall be deemed to be a Citizen of Pakistan:-

(a) Who or any of whose parents or grand parents was born in the territory now included in Pakistan and who after the fourteenth day of August, 1947, has not been permanently resident in any country outside Pakistan; or

(b) Who or any of whose parents was born in India on the 31st day of march, 1937;

(c) Who is a person naturalised as a British subject in Pakistan;

(d) Who before the commencement of this Act migrated to the territories of Pakistan.

Acquisition of citizenship not dependent on the domicile certificate nor on the certificate of citizenship [14 DLR(1962) 114 (Hse Young Shich Vs. The state)].

Passport—evidentary value.—A passport is also a very strong piece of evidence, it contains a recognition by the officially authorised agencies of a state given to the nationality of a citizen of the state issuing the passport after the necessary declarations made by the holder of the passport. Its effect can only be got rid of by proving facts which nullify the passport altogether and make it no passport in the eye of law at all [AIR 1967 All 565 Mashkurul Hasan Vs. Union of India].

¹[3. Control of entry.—(1) No Indian Citizen shall enter any part of ¹[Bangladesh] unless be is in possession of a passport with a visa authorising the entry.]

(2) No ¹[Bangladesh] citizen shall, unless exempted by a general or special order made under this Act, enter from India into any part of ¹[Bangladesh], unless he is in possession of a passport, an emergency certificate, a repatriations certificate or any other travel document provided for under this Act;

Provided that if he has entered India on a permit issued under any law for the time being in force in India he shall be allowed to return to ¹[Bangladesh] before the expiry of—

(a) The period specified in the permit, or

(b) The period of three months beginning on the 14th October, 1952 whichever is the shorter.

(3) No Indian Citizens who has entered any part of ¹[Bangladesh] before the 18th October, 1952, without a passport shall, unless exempted under this Act, remain in ¹[Bangladesh] beyond the expiry of a period of three months beginning on the 14th October, 1952, or if he has enter on a permit, the period specified therein, whichever is the shorter.

(4) No person shall enter ¹[Bangladesh] except in compliance with the rule governing entry by specified routes by a checkpost through which he is to pass, and unless he has registered himself with such authorities and in such manner as may be prescribed in this behalf.

(5) After the commencement of the Act every Indian citizen shall, be governed by and shall comply with the rules made under this Act.

(6) No Indian citizen having entered any part of ¹[Bangladesh] and being in possession of a valid passport duly visaed for ¹[Bangladesh] shall remain there in after the expiry of the period of stay authorised in the visa unless it is extended or renewed by any authority to be specified in the rules made under this Act and also the cases of those Indians who had come into ¹[Bangladesh] prior to 22nd August 1955 on valid travel documents and overstayed the period mentioned in the visa.

Case Laws

Person convicted of carrying smuggled gold—No charge under Land Customs Act—Gold carried cannot be confiscated—where the accused were tried and convicted under the Act and the gold found in their possession was confiscated although there was no charge under Land Customs Act.

Held : The order for confiscation of the goods under Land Customs Act, 1924, is palpably illegal as the case was not one under that Act and

there is no provision in the Pakistan (Control of Entry) Act, 1952, for confiscation of the goods.

Persons making application for acquiring Pakistan nationality. Not saved from proceeding for offence under the Act. Neither the Pakistan Citizenship Act nor the rules framed thereunder in any way indicate that the mere submission of an application for citizenship is sufficient to exonerate any one from violation of the relevant rules under the Pakistan (Control of Entry) Act. The contention, therefore, that merely because the said respondent herein had applied for Pakistan Citizenship was sufficient to prevent him from being prosecuted under the said Act, is not tenable. [*Superintendent and Remembrancer of Legal Affairs, Government of East Pakistan Vs. Amalendu Baul, (1960) 12 DLR 55 = PLD 1960 Dacca 329*].

Foreign passport to add one more country or the countries for which passport was issued—offence—Foreign passports by adding the name of one more country to the list of countries for which the passports were originally issued was an offence under section 3(1) (d) (e) of the Passport (Offences) Act, 1952 [*PLD 1957 (W.P.) Kar. 210*].

4. Penalty.—Whoever contravenes 1[the provision of section 3 shall] be punished with imprisonment which may extend to one year or with a fine which may extend to one hundred ¹[Taka], or with both.

Case Laws

A conviction under section 4 of the Pakistan (Control of Entry) Act cannot validate an order of confiscation of serized smuggled goods under section 7(1) of the Land Customs Act. Without a charge under the latter Act [*8 DLR (1957) 447*].

Indian National—Detenus relative filling petition under section 491 Cr. P.C. praying that detenu may be set at liberty to reside with him pending repatriation to India. Resort to petition under section 401 Cr. P.C. held misconceived in circumstance of case [*PLD 1976 Lah. 1601*].

Accused charged with offences, however not made cognizable and Police having no authority to arrest accused without prior written permission of Court or without producing any proper authorisation from Central or Provincial Government interference declined in circumstances [*1981 P. Cr. LJ 1008*].

5. False information.— Any person who for the purpose of obtaining a passport or visa ²[or of claiming an exemption made any of the provisions of the Act or the rules made thereunder] makes a statement which

he knows to be untrue or does not believe to be true, or makes use of a statement which he knows to be untrue or has reason to believe to be untrue shall be punished with imprisonment which may extend to one year or with a fine which may extend to one thousand ¹[Taka] or with both.

6. Power to arrest.—(1) Any police-officer, customs-officer, or other officer empowered in this behalf by a general or special order of the Federal Government ³[* * *] or under a rule made under this Act, may arrest without a warrant any persons whom such officer reasonably suspects of having contravened ¹[the provision] of section 3.

(2) An officer making an arrest under this section shall, without unnecessary delay, take the person arrested or cause him to be taken before a competent Magistrate having jurisdiction in the place where the arrest is made, or to the officer in charge of a police-station within whose jurisdiction the arrest is made and the provisions of the Code of Criminal Procedure (v of 1898), ²[* * *] shall, so far as may be, apply in respect of such arrested person.

7. Power to remove from ¹[Bangladesh]—(1) The Federal Government may order any person who is not a citizen of ¹[Bangladesh] convicted under section 4 or section 5 to remove himself from ¹[Bangladesh] within the time specified in the order.

(2) If such person refuses or fails to remove himself within the specified time—

(a) he shall be punished with imprisonment which may extend to one year or with a fine which may extend to one thousand ¹[Taka] or with both, and

(b) he may be removed from ¹[Bangladesh] under the order of the Federal Government who may use all such means as may, in the circumstances, be necessary to effect the removal.

4 [*** * * * *]

8. Power to make rules.—(1) The Federal Government may, by notification in the *Official Gazette*, make rules to carry into effect the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, the rules may provide for—

3. The words "or of a Provincial Government or of the Government of an Acceding State" were omitted *ibid*.

4. Sub-section 3 were omitted by Act 40 of 2000.

- (a) the different types of : Visas which may be granted ;
- (b) the authorisation or appointment of persons by whom visas may be granted, varied, extended and cancelled;
- (c) the charges and fees payable for obtaining application forms and visas and the extension of visas;
- (d) the condition and restrictions which may be imposed under this Act on the holders of a passport;
- (e) the exemption which may be granted with or without conditions to any person or class of persons in respect of any provision of this Act or the rules made thereunder;
- (f) the conditions and restrictions which Indian citizens may be required to comply with;
- (g) the alternation or modification of or exemption from any condition or restriction imposed under a visa on the holder of a passport after his entry into ¹[Bangladesh];
- (h) the fixing and notification of checkpost and routes; and
- (i) he procedure for registration and reporting to the police required under the rules for certain categories of visa-holders.

(3) Rules made under this section may provide that any order issued thereunder shall be punishable with imprisonment for a term which may extend to one year, or with a fine which may extend to one thousand ¹[Taka], or with both.

9. Delegation of powers.— The Federal Government may by order direct that any power conferred on it under this Act may in such circumstances and under such conditions, if any, as may be specified in the order, be exercised by any officer or authority subordinate to it or specified by it.

10. Protection of persons acting under the Act.— No prosecution, suit or other legal proceeding shall be commenced against any person in respect of anything done or purporting to be done in exercise of the powers conferred by or under this Act, except with the sanction of the Federal Government. ⁵[*** ** **]

⁶ [II. *** ** **]

5. Omitted *ibid.*

6. Omitted *ibid.*

Registration of Foreigners (Exemption) Order, 1966

S.R.O. 187 (R)/66. In exercise of the powers conferred by section 6 of the Registration of Foreigners Act, 1939 (XVI of 1939) and in supersession of the Order No. S.R.O 656 (k) 62, dated the 15th June 1962, the Federal Government is pleased to make the following declarations:-

1. *Short title.*— This Order may be called the Registration of Foreigners (Exemption) Order, 1966.

2. The provisions of the Registration of Foreigners Rules, 1966 (hereinafter in this Order referred to as the Rule) shall not be applied to, or in relation to, any person who was not attained the age of sixteen years.

Case Law

In this Order Rules means the Registration of Foreigners Rules, 1966 made by the Central Government in exercise of the powers conferred by section 3 of the Registration of Foreigners Act, 1939 (XVI of 1939).

This clause provides that the provisions of the Registration of Foreigners Rules, 1966 shall not be applied to any person who has not attained the age of sixteen years.

3. The provisions of Rules 6, 7, 8, 10, 11, 12, 13 and 14 and the provisions other than those which relate to the signing and furnishing of name and nationality of a foreigner under rules 4, 15, 16 and 17 of the Rules shall not be applied to or in relation to—

(a) a commonwealth citizen, as defined in section 2 of the Pakistan Citizenship Act 1951 (II of 1951) not being a citizen of India, provided that at the time of his entry in Pakistan he shall give his intended address and places to be visited by him in Pakistan and at the time of his departure, his last address in Pakistan.

(b) a citizen of India or Bangladesh holding 'A', 'C', or, in the case of a transport worker, E category visa for Pakistan;

(c) a citizen of India holding 'C' category visa, to the extent they are not applicable to, or in relation to, a tourist;

(d) any foreigner in the service of the Central or Provincial Government and his wife and children;

(e) The members of the diplomatic corps holding diplomatic passports; and

(i) Their spouses and children;

(ii) Servants (if they belong to the Country of the Mission);

(f) countries holding diplomatic passports;

(g) non-diplomatic staff of Foreign Missions (if they belong to the country of the Mission) whose names are notified to the Ministry of Foreign Affairs by the Foreign Missions;

- (h) (i) Consul-General
(ii) Consul
(iii) Vice-Consul } and their spouses and children;

(j) any person of Asiatic birth who by an law for the time being in force is not required to obtain a passport or a visa for the purpose of entering Pakistan; (any foreigner to whom immunity from alien registration is granted under clause (d) of section 18 of the schedule to the United Nations (Privileges and Immunities) Act, 1948 (XX of 1948), read with section 17 of the schedule to that Act;

(k) any foreigner not specified in any of the preceding clauses who enters Pakistan solely in transit to a destination beyond Pakistan, for so long as he is authorised to travel in Pakistan, under a licence previously obtained by him from the Registration Officer of the place at which he enters Pakistan and complies with such conditions as to route and other matters as may be specified in the said licence;

(l) any foreigner invited by the Central or Provincial Government for attending any function in Pakistan or a State Guest, class I, and his encourage;

(m) a citizen of Iran or Turkey whose stay in Pakistan does not exceed three months.

Case Law

"Commonwealth Citizen" means a person who has the status of a commonwealth citizen under British Nationality Act, 1948.

4. The provisions of the Rules except those of rules 9 and 15, shall not be applied to, or in relation to, any passenger who arrives in Pakistan on any vessel in transit to a destination beyond Pakistan and who re-embarks and continues his journey ont he vessel on which he arrived in Pakistan provided that he has obtained permission from the Registration Officer to land in Pakistan.

5. The provisions of the Rules except those of rules 9, 16 and clause (d) of sub-rule (1) of rule 17 shall not be applied to, or in relation to, any seaman as defined in the Rules who is not a resident of Pakistan and does not land in Pakistan for discharge or on shore leave for so long as the vessel on which he is employed remains at a port in Pakistan.

Case Law

"Seaman" means a person employed on, or engaged in the working of a vessel.

Government of the people's Republic of Bangladesh
Ministry of Law and Parliamentary Affairs
Notification

Dhaka, the 10th July, 1976.

No. 652-Pub.-The following Ordinance made by the President of the People's Republic of Bangladesh, on the 7th July, 1976 is hereby published for general information:-

THE PUBLIC SERVANTS
(MARRIAGE WITH FOREIGN NATIONALS)

ORDINANCE, 1976

Ordinance No. LVII of 1976

AN

ORDINANCE

to provide for restriction on marriage with foreign nationals.

WHEREAS it is expedient to provide for restriction on marriage of public servants with foreign nationals and for matters connected therewith;

NOW, THEREFORE, in pursuance of the Proclamation of the 20th August, 1975, and the 8th November, 1975, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:-

1. Short title.— This Ordinance may be called the Public Servants (Marriage with Foreign Nationals) Ordinance, 1976.

2. Definitions.— In this Ordinance, unless there is anything repugnant to the subject or context.-

(a) "foreign national" means a person who is not a citizen of Bangladesh;

(b) "marriage" means matrimonial relationship entered into in accordance with any law for the time being in force or any religious rites or ceremonies, and its grammatical variations and cognate expressions shall be construed accordingly;

(c) "nationalised enterprise" means any corporation or any commercial or industrial enterprise including a bank which, or the entire or majority share in which, is owned or held by, or vested in, the Government or any local authority;

(d) "public servant" includes any person who is, for the time being, in the service of the Republic or of any local authority or nationalised enterprise; and

(e) "public servant in diplomatic service" means a person who is a member of such service or holds such office as the Government may declare to be a diplomatic service or, as the case may be, a diplomatic office for the purpose of this Ordinance.

3. Restriction on marriage with foreign nationals.— (1) A public servant in diplomatic service shall not marry or promise to marry a foreign national.

(2) A public servant other than a public servant in diplomatic service shall not marry or promise to marry a foreign national except with the permission granted under sub-section (3).

(3) The President may, on an application made in this behalf, grant a public servant other than a public servant in diplomatic service permission to marry or promise to marry a foreign national.

(4) A public servant who contravenes the provisions of sub-section (1) or sub-section (2) shall, notwithstanding anything contained in any other law or in the terms and conditions of his service, be liable to be removed from service.

4. Repeal.— This ordinance repeals and supersedes all laws, rules other instruments in force immediately before its commencement relating to marriage or promise of marriage of a public servant with a foreign national.

The Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978.

(Ordinance No. XLVI of 1978)

An Ordinance

to regulate the receipts and expenditure of foreign donations for voluntary activities.

WHEREAS it is expedient to regulate receipts and expenditure of foreign donations for voluntary activities;

NOW, THEREFORE, in pursuance of the Proclamation of the 20th August, 1975, and the 8th November, 1975, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:-

1. Short title.— This ordinance may be called the Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978.

2. Definitions.— In this Ordinance, unless there is anything repugnant in the subject or context,-

(a) "foreign donations" means a donation, contribution or grant of any kind made for any voluntary activity in Bangladesh by any foreign Government or organisation or a citizen of a foreign State and includes, except in the case of a donation made for such charity as the Government may specify any donation made for any voluntary activity in Bangladesh by a Bangladeshi citizen living or working abroad;

(b) "organisation" means a body of persons, called by whatever name, whether incorporated or not, established by persons for the purpose of undertaking or carrying on any voluntary activity in Bangladesh;

(c) "prescribed" means prescribed by rules made under this Ordinance, and

(d) "voluntary activity" means an activity undertaken or carried on by any person or organisation of his or its own free will to render agricultural, relief, missionary, educational, cultural, vocational, social welfare and developmental services and shall include any such activity as the Government may, from time to time, specify to be a voluntary activity.

3. Regulation of voluntary activity.— (1) Notwithstanding anything contained in any other law for the time being in force, no person or organisation shall save as provided in this Ordinance, undertake or carry

on any voluntary activity without prior approval of the Government nor shall any person or organisation receive or operate, except with prior permission of the Government, any foreign donation for the purpose of undertaking or carrying on any voluntary activity.

(2) A person or organisation receiving or operating any foreign donation for the purpose of undertaking or carrying on any voluntary activity shall register himself or itself with such authority and in such manner as the Government may specify.

(3) Except in such cases as the Government may, by order in writing, exempt, all persons and organisations undertaking or carrying on voluntary activities with foreign donation, in whole or in part, shall submit to such authority and by such date as the Government may, by notification in the *Official Gazette*, specify a declaration showing therein the foreign donation received by them, the source from which it has been received and the manner in which it has been utilised:

Provided that, in a case where the Government considers it necessary, it may, by order, require such declaration to be submitted at any time to be specified in the order.

(4) A person or organisation carrying on any voluntary activity immediately before the commencement of this Ordinance may continue so to carry on a voluntary activity for a period not exceeding six (6) months from such commencement unless the Government has, upon an application made in this behalf in such form and containing such particulars as the Government may direct, granted him or it a permission to continue so to undertake or carry on thereafter.

(5) Nothing in this section shall apply to an organisation established by or under any law or the authority of the Government.

4. Power of inspection.— (1) The Government may, at any time, for reason to be recorded in writing, cause an inspection to be made, by one or more of its officers, of the books of accounts and other documents of any person or organisation required to submit declaration under sub-section (3) of section 3, and, where necessary, direct all such books of accounts and other documents to be seized.

(2) Every such person or organisation shall produce books of accounts and other documents and furnish such statements and information to such officer or officers and such officer or officers may require in connection with the inspection under sub-section (1).

(3) Failure to produce any books of accounts or other documents or to furnish any information required under sub-section (2) shall be deemed to be contravention of the provision of this Ordinance.

5. Audit and accounts.—(1) Every person and organisation referred to in sub-section (1) of section 3 shall maintain his or its accounts in such manner and form as the Government may specify.

(2) The accounts of every such person or organisation shall be audited by such person or persons as the Government may direct and two copies of the accounts so audited shall be furnished to the Government within two months after the financial year to which the accounts relate.

6. Penalty for false declaration, etc.— If the Government is satisfied that any person or organisation referred to in sub-section (1) of section 3 has failed to submit a declaration under sub-section (3) of that section or wilfully submitted or caused to be submitted a declaration which he or it knows or has reason to believe to be false or has otherwise contravened any provision of this Ordinance, it may, by order, stop any voluntary activity undertaken or carried on by such person or organisation :

Provided that no order under this section shall be made without giving such person or organisation a reasonable opportunity of being heard.

7. Power to make rules.— The Government may, by notification in the *Official Gazette*, make rules to carry out the purpose of this Ordinance.

The Foreign Contributions (Regulation) Ordinance, 1982

(Ordinance No. XXXI of 1982)¹

An Ordinance

to regulate receipt of foreign contributions;

WHEREAS it is expedient to regulate receipt of foreign contributions;

NOW, THEREFORE, in pursuance of the Proclamation of the 24th March, 1982, and in exercise of all powers enabling him in that behalf, the Chief Martial Law Administrator is pleased to make and promulgate the following Ordinance:—

1. *Short title.*— This Ordinance may be called the Foreign Contributions (Regulation) Ordinance, 1982.

2. *Ordinance to override all other laws.*— The provisions of this Ordinance shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force or in any contract or agreement.

3. *Definition.*— In this Ordinance, unless there is anything repugnant in the subject or context, "foreign contribution" means any donation, grant or assistance, whether in cash or in kind, including a ticket for journey abroad, made by an Government, organisation or citizen of foreign state.

4. *Receipt of foreign contribution without permission prohibited.*— (1) No citizen of, or organisation in Bangladesh shall receive any foreign contribution without the prior permission of the Government.

(2) No Government, organisation or citizen of a foreign state shall make any donation, grant or assistance, whether in cash or in kind, including a ticket for journey abroad, to any citizen of, or organisation in Bangladesh without the prior permission of the Government.

(3) Nothing in this section shall apply to an organisation established by or under any law or the authority of the Government.

5. *Penalty, etc.*— (1) Whoever receives or makes any foreign contribution in contravention of the provisions of section 4 shall be punishable with imprisonment for term which may extend to six months, or with fine not exceeding two times the amount or value of the contribution, or with both.

(2) No court shall take cognizance of an offence under this Ordinance except on a complaint made by the Government or any officer authorised by it in this behalf.

1. Vide SRO No. 541-pub. dated 8.9.1982.

**The Foreign Private Investment
(Promotion and Protection) Act, 1980
(Act No XI of 1980)**

An Act to provide for the promotion and protection of foreign private investment in Bangladesh.

WHEREAS, it is expedient to provide for the promotion and protection of foreign private investment in Bangladesh.

It is hereby enacted as follows :-

1. Short title.— This Act may be called Foreign Private Investment (Promotion and Protection) Act, 1980.

2. Definition.— (1) In this Act, unless there is anything repugnant in the subject or context,—

(a) "foreign capital" means capital invested in Bangladesh in any industrial undertaking by a citizen of any foreign country or by a company incorporated outside Bangladesh, in the form of foreign exchange, imported machinery and equipment, or in such other form as the Government may approve for the purpose of such investment;

(b) "foreign private investment" means investment of foreign capital by a person who is not a citizen of Bangladesh or by a company incorporated outside Bangladesh, but does not include investment by a foreign Government or an agency of foreign Government;

(c) "industrial undertaking" means an industry, establishment or other undertaking engaged in the production or processing of any goods, or in the development and extraction of such mineral resources or products, or in the providing of such services, as may be specified in this behalf by the Government.

(2) Words and expressions used but not defined in this Act shall have the same meaning as in the Companies Act, 1913 (VII of 1913).

3. Foreign private investment.— (1) The Government may, for the promotion of foreign private investment, sanction established with foreign capital of any industrial undertaking—

(a) which does not exist in Bangladesh and the establishment whereof, in the opinion of the Government, is desirable; or

(b) which is not being carried on in Bangladesh on a scale adequate to the economic and social needs of the country; or

(c) which is likely to contribute to—

(i) the development of capital, technical and managerial resources of Bangladesh; or

(ii) the discovery, mobilisation or better utilisation of the natural resources; or

(iii) the strengthening of the balance of payment of Bangladesh; or

(iv) the opportunities in creating employment in Bangladesh; or

(v) the economic development of the country in other manner.

(2) Sanction of the establishment with foreign capital of an industrial undertaking under sub-section (1) may be subject to such conditions as the Government may deem fit to impose.

4. Protection and equitable treatment.— The Government shall accord fair and equitable treatment to foreign private investment which shall enjoy full protection and security in Bangladesh.

5. Terms of sanction, etc.— The terms of sanction, permission of licence granted by Government to an industrial undertaking having foreign private investment shall not be unilaterally changed so as to adversely alter the conditions under which the establishment of such undertaking was sanctioned; nor shall foreign private investment be accorded as less favourable treatment than what is accorded to similar private investment by the citizens of Bangladesh in the application of relevant rules and regulations.

6. Indemnification, etc.— In the event of losses of foreign investment owing to civil commotion, insurrection, or riot, foreign private investment shall be accorded the same treatment with regard to indemnification compensation, restitution, or other settlement as is accorded to investments by the citizens of Bangladesh.

7. Expropriation and nationalisation.— (1) Foreign private investment shall not be expropriated or nationalised or by subject to any measures having effect of expropriation or nationalisation which shall be paid expeditiously and be freely transferable.

(2) Adequate compensation for the purpose of sub-section (1) shall be an amount equivalent to the market value of investment expropriated immediately before the expropriation or nationalisation.

8. Repatriation of investment.—(1) In respect of foreign private investment, the transfer of capital and the returns from it and in the event of liquidation of industrial undertaking having such investment, or the proceeds from such liquidation is guaranteed.

(2) The guarantee under sub-section (b) shall be subject to the right which, in circumstances of exceptional financial and economic difficulties, the Government may exercise in accordance with the applicable laws and regulations in such circumstances.

9. Removal of difficulty.— If any difficulty arises in giving effect to any provision of this Act, the Government may make such order, not inconsistent with the provisions of this Act, as may appear to it to be necessary for the purpose of removing the difficulty.

The Foreign Exchange Regulation Act, 1947

(Act No. VII of 1947)

[11th March, 1947]

An Act to regulate certain payments, dealings in foreign exchange and securities and the import and export of currency and bullion.

Whereas it is expedient in the economic and financial interests of Bangladesh to provide for the regulation of certain payments, dealings in foreign exchange and securities and the import and export of currency and bullion :

It is hereby enacted as follows:-

1. Short title, extent and commencement.— (1) This Act may be called the Foreign Exchange Regulation Act, 1947.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force on such date as the Government may, by notification in the *Official Gazette*, appoint in this behalf.

2. Interpretation.— In this Act, unless there is anything repugnant in the subject or context,—

(a) "authorised dealer" means a person for the time being authorised under section 3 to deal in foreign exchange;

(b) "currency" includes all coins, currency notes, bank notes, money orders, cheques, drafts, travellers cheques, letters of credit, bills of exchange and promisory notes;

(c) "foreign currency" means any currency other than Bangladesh currency;

(d) "foreign exchange" means foreign currency and includes any instrument drawn, accepted, made or issued under clause 13 of Article 16 of the Bangladesh Bank Order, 1972, all deposits, credits and balances payable in any foreign currency, and any drafts, travellers cheques, letters of credit and bills of exchange, expressed or drawn in Bangladesh currency but payable in any foreign currency;

(e) "foreign security" means any security issued elsewhere than in Bangladesh and any security the principal of or interest on which is payable in any foreign currency or elsewhere than in Bangladesh;

(f) "gold" includes gold in the form of coin, whether legal tender or not, or in the form of bullion or ignot, whether refined or not;

(g) "Bangladesh currency" means currency which is expressed or drawn in Bangladesh taka;

(h) "Owner" in relation to any security includes any person who has power to sell up transfer the security, or who has the custody thereof or who receives, whether on his own behalf or on behalf of any other person, dividends or interest thereon, and who has any interest therein, and in a case where any security is held on any trust or dividends or interest thereon are paid into a trust fund, also includes any trustee or any person entitled to enforce the performance of the trust or to revoke or vary, with or without the consent of any other persons, the trust or any terms thereof, or to control the investment of the trust moneys;

(i) "prescribe" means prescribed by rules made under this Act;

(j) "Bangladesh Bank" means Bangladesh Bank established under clause (1) of Article 3 of the Bangladesh Bank Order, 1972;

(k) "security" means shares, stocks, bonds, debentures, debenture stock and Government securities, as defined in the Securities Act, 1920, deposit receipts in respect of deposits of securities, and units or sub-units of unit trusts, but does not include bills of exchange or promissory notes other than Government promissory notes;

(l) "silver" means silver bullion or ingot, silver sheets and plates which have undergone no process of manufacture subsequent to rolling and uncurrent silver coin which is not legal tender in Bangladesh or elsewhere;

(m) "transfer" includes, in relation to any security, transfer by way of loan or security.

Case Law

Foreign Exchange Regulation Act, 1947 of Bangladesh and Exchange Control Act of 1947 of U.K. compared—

The two Acts promulgated on the same day in the U.K. on 11.3.1947 are widely different in their import. Whereas the Bangladesh Act applies only to the citizens of Bangladesh, the U.K. Act applies to all persons irrespective of whether they are or are not British subjects [36 DLR. 316]

The definition, of foreign exchange includes deposit, credits and balances payable in any foreign currency [I.L.R.I. Cal 650].

Award passed in foreign currency not enforceable without converting the same in Bangladesh currency [22 DLR (PW) 150].

3. Authorised dealers in foreign exchange.— (1) The Bangladesh Bank may, on application made to it in this behalf, authorise any person to deal in foreign exchange.

(2) An authorisation under this section—

(i) may authorise dealings in all foreign currencies or may be restricted to authorising dealings in specified foreign currencies only;

(ii) may authorise transactions of all descriptions in foreign currencies or may be restricted to authorising specified transactions only;

(iii) may be granted to be effective for a specified period, or within specified amounts, and may in all cases be revoked for reasons appearing to it sufficient by the Bangladesh Bank.

(3) An authorised dealer shall in all his dealings, in foreign exchange comply with such general or special directions or instructions as the Bangladesh Bank may from time to time think fit to give, and, except with the previous permission of the Bangladesh Bank, an authorised dealer shall not engage in any transaction involving any foreign exchange which is not in conformity with the terms of his authorisation under this section.

(4) An authorised dealer shall, before undertaking any transaction in foreign exchange on behalf of any person, require that person to make such declarations and to give such information as will reasonably satisfy him that the transaction will not involve, and is not designed for the purpose of any contravention or evasion of the provisions of this Act or of any rules, directions or orders made thereunder, and where the said person refuses to comply with any such requirement and makes only unsatisfactory compliance therewith, the authorised dealer shall refuse to undertake the transaction and shall, if he has reason to believe that any such contravention or evasion as aforesaid is contemplated by the person, report the matter to the Bangladesh Bank.

Case Law

Section 3-Suspension of licence of money exchange—

The Principal, Bangladesh Bank has always power to take action against its agent for misdemeanour of criminal nature.

[Mustafa Zamil Ahmed Vs. Governor of Bangladesh Bank and others; 5 MLR (2000) (AD) 346.]

Section 3(2) (iii)-Petitioners licence was merely suspended as he is involved in the criminal case arising out of theft and sale of traveller's cheque. Bangladesh Bank being the principal is competent to suspend the licence of its agent petitioner for his involvement with the theft of traveller's cheque and sale of travellers cheque contrary to the provisions of

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the said Act. [*Mustafa Zamil Ahmed Vs. Governor of Bangladesh Bank & other's*; 5 BLC 437.]

The principal has always a right to take action against his agent for misdemeanour, specially when it is of criminal nature. [*Mustafa Zamil Ahmed Vs. Governor of Bangladesh Bank and others (Civil)*; 53 DLR 2001 (AD)-66].

4. Restriction on dealings in foreign exchange.— (1) Except with the previous general or special permission of the Bangladesh Bank, no person other than an authorised dealer shall in Bangladesh, and no person resident in other than an authorised dealer shall outside, buy or borrow from, or sell or lend to, or exchange with, any person not being an authorised dealer, any foreign exchange.

(2) Except with the previous general or special permission of the Bangladesh Bank, no person whether an authorised dealer or otherwise shall enter into any transaction which provides for the conversion of Bangladesh currency into foreign currency or foreign currency into Bangladesh currency at rates of exchange other than the rates for the time being authorised by the Bangladesh Bank.

Case Law

Section 4(2) and 5(1)—Contract made in contravention of these provisions is not void or contrary to section 23 of the Contract Act—

The scheme of the Foreign Exchange Regulation Act is not to forbid the making of a contract but merely to insist that the contract shall be performed in a particular manner, namely, by taking the necessary permission of the competent authority which may be regularised by *ex post facto* permission under section 21. Therefore it cannot be said that a contract done in violation of any of the provisions of Foreign Exchange Regulation Act is *ex facie void* or *void ab initio* or such a contract comes within the mischief section 23 of the Contract Act. [*Manwar Hussain Vs. Wali Mohammad* (1965) 17 DLR (SC) 369.]

(3) Where any foreign exchange is acquired by any person other than an authorised dealer for any particular purpose, or where any person has been permitted conditionally to acquire foreign exchange so acquired otherwise than for that purpose or, as the case may be, fail to comply with any condition to which the permission granted to him is subject, and where any foreign exchange so acquired cannot be so used or, as the case may be, the

conditions cannot be complied with, the said person shall without delay sell the foreign exchange to an authorised dealer.

(4) Nothing in this section shall be deemed to prevent a person from buying from any post office, in accordance with any law or rules made thereunder for the time being in force, any foreign exchange in the form of postal orders or money orders.

Case Law

The Act has no application where a contract, though made in India, is to be performed in Bangladesh [16 DLR 72].

Foreign exchange earned by disposing of property in Calcutta spent there by purchasing another property without sanction of the Bangladesh Bank, illegal, but the transfer itself is not void. [16 DLR 625].

Ss. 4(2) & 23A (6)-Evidence, application of - Accused allegedly dealing in foreign currency apprehended through bogus purchaser—Some foreign currency allegedly recovered from accused at time of raid—prize bonds worth Rs. 2,00,000 and old currency notes worth Rs. 6,167 also recovered from accused—Investigation Officer neither mentioning such recovery in FIR, nor in challan—prize bonds and Pakistani currency returned to accused only after notice from his advocate—Investigation Officer admitting Mashirs to be witnesses in other cases investigated by him—Mashirs, held, were not independent witnesses and case was not free from doubt—Accused acquitted in circumstances. [1988 Pak Cri. Law Journal, 365].

Ss. 4, 5, 9 & 23(3)-Complaint-person authorised under sub-section (3) of S. 23 of Foreign Exchange Regulation Act, 1947 could make complaint in writing only and no other person could move/file complaint or get a case registered. [PLD 1985 Pesh, 103].

Ss. 4, 5, 9 & 23 - Quashing of proceedings-Complaint-Cognizable offence—Illegal transfer of foreign exchange and purchase of house abroad—Enquiry started against accused on complaint which was not filed as contemplated in section 23(3) of Foreign Exchange Regulation Act, 1947—First Information Report registered after making enquiries—Investigation rendered defective as no orders obtained from Magistrate for starting enquiry against accused—Accused and his family having business abroad and possibility, that they might have purchased house from foreign exchange earned from their source of income, not ruled out—proceeding quashed in circumstances. [PLD 1978, Kar. 723; PLD 1985 Pesh. 103].

5. Restrictions on payments.—(1) Save as may be provided in and in accordance with any general or special exemption from the provisions of this sub-section which may be granted conditionally or unconditionally by the Bangladesh Bank, no person in, or resident in, Bangladesh shall—

(a) make any payment to or for the credit of any person resident outside Bangladesh;

(b) draw, issue or negotiate any bill of exchange or promissory note or acknowledge any debt, so that a right (whether actual or contingent) to receive a payment is created or transferred in favour of any person resident outside Bangladesh.

(c) make any payment to or for the credit of any person by order or on behalf of any person resident outside Bangladesh;

(d) place any sum to the credit of any person resident outside Bangladesh;

(e) make any payment to or for the credit of any person in consideration for or in association with—

(i) the receipt by any person of a payment or the acquisition by any person of property outside Bangladesh;

(ii) the creation or transfer in favour of any person of a right whether actual or contingent to receive a payment or acquire property outside Bangladesh;

(1) draw, issue or negotiate any bill of exchange or promissory note, transfer any security or acknowledge any debt, so that a right (whether actual or contingent) to receive a payment is created or transferred in favour of any person as consideration for or in association with any matter referred to in clause (e).

(2) Nothing in sub-section (1) shall render unlawful—

(a) the making of any payment already authorised, either with foreign exchange obtained from an authorised dealer under section 4 or with foreign exchange retained by a person in pursuance of an authorisation granted by the Bangladesh Bank;

(b) the making of any payment with foreign exchange received by way of salary or payment for services not arising from business in, or anything done while in Bangladesh.

(3) Nothing in this section shall restrict the doing by any person anything within the scope of any authorisation or exemption granted under this Act.

(4) For the purposes of this section. "security" also includes coupons or warrants representing dividends or interest and life or endowment insurance policies.

Case Law

Violation of Foreign Exchange Regulations will not render contract invalid [17 DLR (SC) 369].

Decree holder, the slaboit of a diety who is now a resident of India, cannot be allowed to withdraw his decretal amount without permission from Bangladesh Bank [25 DLR 314].

No payment can be made to a non resident living outside Bangladesh without permission of Bangladesh Bank [39 DLR, 425; 1987 BCR, 186].

Deposit by an Indian citizen under section 23 of the PDR Act on through his constituted attorney valid [17 DLR, 421].

Loan paid in Indian Currency in Calcutta with promise to pay the same in Bangladesh in Bangladesh currency contract illegal [10 DLR 381].

A foreign currency earner who spends money abroad, section is not attracted, the offence is committed if he pays the same to another [AIR 1977, Mad. 23].

6. Blocked account.—(1) Where an exemption from the provisions of section 5 is granted by the Bangladesh Bank in respect of payment of any sum to any person resident outside Bangladesh and the exemption is made subject to the condition that the payment is made to a blocked account—

(a) the payment shall be made to a blocked account in the name of that person in such manner as the Bangladesh Bank may by general or special order direct; and

(b) the crediting of that sum to that account shall, to the extent of the sum credited, be a good discharge to the person making the payment.

(2) No sum standing at the credit of a blocked account shall be drawn on except in accordance with any general or special permission which may be granted conditionally or otherwise by the Bangladesh Bank.

(3) In this section "blocked account" means an account opened as a blocked account at any office or branch in Bangladesh of a bank authorised in this behalf by the Bangladesh Bank, or an account blocked, whether before or after the commencement of this Act, by order of the Bangladesh Bank.

7. Special Accounts.—(1) Where in the opinion of the Government it is necessary or expedient to regulate payments due to persons resident in any territory, the Government may, by notification in the *Official Gazette*, direct that such payments or any class of such payments shall be made only into an account (hereinafter referred to a special account) to be maintained for the purpose by the Bangladesh Bank or an authorised dealer specially authorised by the Bangladesh Bank in this behalf.

(2) The credit of a sum to a special account shall, to the extent of the sum credited, by a good discharge to the person making the payment;

Provided that where the liability of the person making the payment is to make the payment in foreign currency, the extent of the discharge shall be ascertained by converting the amount paid into that currency at such rate of exchange as is for the time being fixed or authorised by the Bangladesh Bank.

(3) The sum standing to the credit of any special account shall from time to time be applied—

(a) where any agreement is entered into between the Government and the Government of the territory in which the aforesaid notification relates for the regulation of payments between persons resident in Bangladesh and in that territory in such manner as the Bangladesh Bank, having regard to the provisions of such agreement, may, direct, or

(b) where no such agreement is entered into, for the purpose of paying wholly or partly, and in such order of preference and at such times as the Government may direct, debts due from the persons resident in the said territory to persons resident in capital of Bangladesh or in such other territories as the Government may by order specify in this behalf.

8. Restrictions on import and export of certain currency and bullion.—(1) The Government may, by notification in the *Official Gazette*, order that, subject to such exemption, if any, as may be contained in the notification, no person shall, except with the prior or special permission of the Bangladesh Bank and on payment of the Bangladesh if any, prescribed bring or send into Bangladesh and gold or silver or any currency notes or bank notes or coin whether Bangladesh or foreign.

Explanation.—(1) The bringing or sending into any part or place in the territories of Bangladesh of any such article as aforesaid, intended to be taken out of the territories of Bangladesh without being removed from the ship or conveyance in which it is being carried, shall nonetheless be deemed

to be bringing or as the case may be sending, into the territories of Bangladesh of that article for the purposes of this section.

(2) No person shall, except with the general or special permission of the Bangladesh Bank or the written permission of the Bangladesh Bank or the written permission of a person authorised in this behalf by the Bangladesh Bank take or send out of Bangladesh and the Bangladesh any gold, jewellery or precious stones or Bangladesh currency notes, bank notes or coin or foreign exchange.

(3) The restrictions imposed by sub-sections (1) and (2) shall be deemed to have been imposed under section 16 of the Customs Act, 1969 without prejudice to the provisions of section 23 of this Act, and all the provisions of that Act shall have effect accordingly.

9. Acquisition by Government of foreign exchange.— The Government may, by notification in the *Official Gazette* order every person in or resident in Bangladesh.

(a) who owns such foreign exchange as may be specified in the notification, to offer it, or cause it to be offered for sale to the Bangladesh Bank on behalf of the Government or to such person, as the Bangladesh Bank may authorise for the purpose, at such price as the Government may fix, being a price which is in the opinion of the Government not less than the market rate of the foreign exchange when it is offered for sale;

(b) who is entitled to assign any right to receive such foreign exchange as may be specified in the notification, to transfer that right to the Bangladesh Bank on behalf of the Government on payment of such consideration therefor as the Government may fix :

Provided that the Government may by the said notification or another order exempt any persons or class of persons from the operation of such order.

Provided further that nothing in this section shall apply to any foreign exchange acquired by a person from an authorised dealer and retained by him with the permission of the Bangladesh Bank for any purpose.

Case Laws

Ss. 9, 22 & 23— Evidence, appreciation of - Foreign currency of different countries recovered from house of accused-Recovery proved by one Mashir and complaint-Evidence straight forward, natural and reliable and not shaken by cross-examination-Witnessess of having no reason to falely implicate accused-Recovery of foreign currency from house of accused, held,

was proved beyond reasonable doubt in circumstanes. [1988 Pak Cri.L.J. 2059].

Ss. 9, 22 & 23—Nature of offence—Accused found in possession of foreign currency—No evidence to show accused having failed to offer currency for sale to State Bank within three months of his coming in possession—Mere possession of Foreign currency by itself would not constitute an offence under S. 9—conviction and sentence set aside in circumstances [1988 Pak. Cr. L. J. 2959].

Ss. 9 & 23—Quashing of proceedings—Application for acquittal under S. 249-A, Cr. P.C. moved at initial state—No evidence recorded—F.I.R. making out prima facie case - Case involving disputed questions of fact - Recording of some material evidence, held, would be appropriate before question of acquittal of accused could be considered — Quashing of proceedings refused in circumstances [1988 Pak. Cr. L.J., 1703].

10. Duty of persons entitled to receive foreign exchange etc.—(1) No person who has a right to receive any foreign exchange or to receive from a person resident outside Bangladesh a payment in taka shall, except with the general or special permission of the Bangladesh Bank, do or refrain from doing any act with intent to secure—

(a) that the receipt by him of the whole or part of that foreign exchange or payment is delayed, or

(b) that the foreign exchange or payment ceases in whole or in part to be receivable by him.

(2) Where a person has failed to comply with the requirements of subsection (1) in relation to any foreign exchange or payment in taka the Bangladesh Bank may give to him such directions as appear to be expedient for the purpose of securing the receipt of the foreign exchange or payment as the case may be.

11. Power to regulate the uses, etc. of imported gold and silver.—The Government may, by notification in the *Official Gazette*, impose such conditions it thinks necessary or expedient on the use or dispose of or dealings in gold and silver prior to, or at the time of import into Bangladesh.

12. Payment for exported goods.—(1) The Government may, by notification in the *Official Gazette*, prohibit the export of any goods or class of goods specified in the notification from Bangladesh directly or indirectly to any place so specified unless a declaration supported by such evidence as

may be prescribed so specified, is furnished by the exporter to the prescribed authority that the amount representing the full export value of the goods has been, or will within the prescribed period, be paid in the prescribed manner.

(2) Where any export of goods has been made to which a notification under sub-section (1) applies no person entitled to sell, or procure the sale of, the said goods shall, except with the permission of the Bangladesh Bank, do or refrain from doing any act with intent to secure that—

(a) the sale of the goods is delayed to an extent which is unreasonable having regard to the ordinary course of trade, or

(b) payment for the goods is made otherwise than in the prescribed manner or does not represent the full amount payable by the foreign buyer in respect of the goods, subject to such deductions, if any, as may be allowed by the Bangladesh Bank, or is delayed to such extent as aforesaid;

Provided that no proceedings in respect of any contravention of this sub-section shall be instituted unless the prescribed period has expired and payment for the goods representing the full amount as aforesaid has not been made in the prescribed manner.

(3) Where in relation to any such goods the said period has expired and the goods have not been sold and payment therefore has not been made as aforesaid, the Bangladesh Bank may give to any person entitled to sell the goods or to procure the sale thereof, such directions as appear to it to be expedient for the purpose of securing the sale of the goods and payment therefor as aforesaid, and without prejudice to the generality of the foregoing provision may direct that the goods shall be assigned to the Government or to a person specified in the directions.

(4) Where any goods are assigned in accordance with sub-section (3) the Government shall pay to the person assigning them such sum in consideration of the net sum recovered by or on behalf of the Government in respect of the goods as may be determined by the Government.

(5) Where in relation to any such goods the value as stated in the invoice is less than the amount which in the opinion of the Bangladesh Bank represent the full export value of those goods, the Bangladesh Bank may issue an order requiring the person holding the shipping documents to retain possession thereof until such time as the exporter of the goods has made arrangements for the Bangladesh Bank or a person authorised by the Bangladesh Bank to receive on behalf of the exporter payment in the

prescribed manner of an amount which represents in the opinion of the Bangladesh Bank the full export value of the goods.

(6) For the purpose of ensuring compliance with the provisions of this section and any orders or directions made thereunder, the Bangladesh Bank may require any person making any export of goods to which notification under sub-section (1) applies to exhibition contracts with his foreign buyer or other evidence to show that the full amount payable by the said buyer in respect of the goods has been or will within the prescribed period be paid in the prescribed manner.

13. Regulation of export and transfer of securities.— (1) No person shall except with the general or special permission of the Bangladesh Bank—

(a) take or send any security to any place outside Bangladesh.

(b) transfer any security or create or transfer any interest in a security to or in favour of a person resident outside Bangladesh.

(c) transfer any security from a register in Bangladesh to a register outside Bangladesh or do any act which is calculated to secure or forms part of a series of acts which together are calculated to secure, the substitution for any security which is either in or registered in Bangladesh of any security which is either outside or registered outside Bangladesh.

(d) issue, whether in Bangladesh or elsewhere, any security which is registered or to be registered in Bangladesh, to a person resident outside Bangladesh.

(2) Where the holder of a security is a nominee, neither he nor any person through whose agency the exercise of all or any of the holder's rights in respect of the security is controlled shall, except with the general or special permission of the Bangladesh Bank, do any act whereby he recognises or gives effect to the substitution of another person as the person from whom he directly receives instructions unless both the persons previously instructing him and the person substituted for that person were, immediately before the substitution resident in Bangladesh;

(3) The Bangladesh Bank may, for the purpose of securing that the provisions of this section are not evaded, require that the person transferring any security and the person to whom such security is transferred shall subscribe to a declaration that the transferee is not resident outside Bangladesh;

(4) Notwithstanding anything contained in any other law, no person shall, except with the permission of the Bangladesh Bank.—

(a) enter any transfer of securities in any register or book in which securities are registered or inscribed if he has any ground for suspecting that the transfer involves any contravention of the provisions of this section, or

(b) enter in any such register or book, in respect of security, whether in connection with the issue or transfer of the security or otherwise, and address outside Bangladesh except by way of substitution for any such address in the same country or for the purpose of any transaction for which permission has been granted under this section with knowledge that it involves entry of the said address;

(5) For the purposes of this section.—

(a) "holder" in relation to a bearer security means the person having physical custody of the security; provided that where a bearer security is deposited with any person in a locked or sealed receptacle from which the person with whom it is deposited is not entitled to remove it without the authority of some other person, that other person shall be deemed to be the holder of the security;

(b) "nominee" means a holder of any security (including bearer security) or any coupon representing dividends or interest who, as respects the exercise of any rights in respect of the security or coupon, is not entitled to exercise those rights except in accordance with instructions given by some other person, and a person holding a security or coupon as a nominee shall be deemed to act as nominee for the person who is entitled to give instruction either directly or through the agency of one or more persons, as to the exercise by the holder of the security or coupon of any rights in respect thereof and is not, in so doing, himself under a duty to comply with instructions given by some other person;

(c) "security" also includes coupon or warrants representing dividends or interest and life or endowment insurance policies.

Case Laws

A foreigner resident outside Bangladesh transferring shares in a Bangladesh company to a foreigner also resident outside Bangladesh, without the previous permission of the Bangladesh Bank, will not fall within the mischief of the present section. [39 DLR 425; 1987 B.C.R. 18].

14. Custody of Securities.—(1) The Government may, by notification in the *Official Gazette*, order every person by whom or on whose behalf a security or document of title to a security specified in the order is held in Bangladesh to cause the said security or document of title to be kept in the custody of an authorised depository named in the order;

Provided that the Bangladesh Bank may by order in writing permit any such security to be withdrawn from the custody of the authorised depository subject to such conditions as may be specified in the order.

(2) No authorised depository may part with any security covered by an order under sub-section (1) without the general or special permission of the Bangladesh bank except to, or to the order of another authorised depository.

(3) Except with the general or special permission of the Bangladesh Bank, no authorised depository shall—

(a) accept or part with any security covered by an order under sub-section (1) whereby the security is transferred into the name of a person resident outside Bangladesh, or

(b) do any act whereby he recognises or gives effect to the substitution of another person as the person from whom he directly receives instructions relating to such security unless the person previously so instructing him and the person substituted for that person were immediately before the substitution resident in Bangladesh.

(4) Except with the general or special permission of the Bangladesh Bank; no person shall buy, sell or transfer any security or document of title to a security, covered by an order under sub-section (1) unless such security or document of title has been deposited in accordance with the order.

(5) Except with the general or special permission of the Bangladesh Bank, no capital moneys, interest or dividends in respect of any security covered by an order under sub-section (1) shall be paid in Bangladesh except to or to the order of the authorised depository having the custody of the security;

(6) For the purposes of this section,—

(a) "authorised depository" means a person notified by the Government to be entitled to accept the custody of securities and documents of title to securities, and

(b) "security" shall include coupons.

15. Restrictions on issue of bearer securities.— The Government may, by notification in the *Official Gazette*, order that except with the general or special permission of the Bangladesh Bank no person shall in Bangladesh issue any bearer security or coupon or so alter any document that it becomes a bearer security or coupon.

16. Acquisition by Government of foreign securities.— (1) Subject to any exemptions that may be contained in the notification, the Government may, if it is of opinion that it is expedient so to do for the purpose of strengthening its foreign exchange position by notification in the *Official Gazette*,—

(a) order the transfer to itself any foreign securities specified in the notification at a price so specified, being a price which is, in the opinion of the Government not less than the market value of the securities on the date of the notification, or

(b) direct the owner of any foreign securities specified, in the notification to sell or procure the sale of the securities and thereafter to offer or cause to be offered the net foreign exchange proceeds of the sale to the Bangladesh Bank on behalf of the Government or to such person in the Bangladesh Bank, may authorise for the purpose, at such price as the Government may fix, being a price which is in the opinion of the Government not less than the market rate of the foreign exchange when it is offered for sale.

(2) On the issue of a notification under clause (a) of sub-section (1)—

(a) the securities to which the notification relates shall forthwith vest in the Government free from any mortgage, pledge or charge, and the Government may deal with them in such manner as it thinks fit;

(b) the owner of any of the securities to which the notifications relates and any person who is responsible for keeping any registers or books in which any of those securities are registered or inscribed, or who is otherwise concerned with the registration or inscription of any of those securities, shall do all such things as are necessary or as the Government or the Bangladesh Bank may order to be done, for the purpose of securing that—

(i) the securities and any documents of title relating thereto are delivered to the Government and, in the case of registered or inscribed securities, that the securities are registered or inscribed in the name of the Government or of such nominee of the Government as it may specify, and

(ii) any dividends or interest on those securities becoming payable on or after the date of the issue of the notification are paid to the Government or its nominee as aforesaid and where in the case of any security payable to bearer which is delivered in pursuance of the said notification, any coupons representing any such dividends or interest are not delivered with the security, such reduction in the price payable therefor shall be made as the Government thinks fit;

Provided that where the price specified in the 'notification in relation to any security is ex-dividend or ex-interest, this sub-clause shall not apply to that dividend or interest or to any coupon representing it.

(3) A certificate signed by any person authorised in this behalf by the Government that any specified securities are securities transferred to the Government under this section shall be treated by all persons concerned as conclusive evidence that the securities have been so transferred.

17. Restriction on settlement.— (1) No person resident in Bangladesh shall, except with the general or special permission of the Bangladesh Bank, settle any property, otherwise than by will, upon any trust under which a person who at the time of the settlement is resident outside Bangladesh, elsewhere than in territories notified in this behalf by the Bangladesh Bank, will have an interest in the property, or exercise other than by will, any power for payment in favour of a person who at the time of the exercise of the power is resident outside Bangladesh elsewhere than in such notified territories.

(2) A settlement or power as aforesaid shall not be invalid except in so far as it confers any right or benefit on any person who at the time of the settlement or the exercise of the power is resident outside Bangladesh, elsewhere than in territories notified by the Bangladesh Bank.

18. Certain provisions as to companies.— (1) Except with the general or special permission of the Bangladesh Bank, no person resident in Bangladesh shall do any act whereby a company, which is controlled by persons resident in Bangladesh ceases to be so controlled.

(2) Except with the general or special permission of the Bangladesh Bank, no person resident in Bangladesh shall lend any money or security to any company, not being a banking company, which is by any means controlled, whether directly or indirectly, by persons resident outside Bangladesh elsewhere than in the territories notified in this behalf by the Bangladesh Bank.

In this sub-section, "company" includes a firm, branch or office of a company or firm.

¹[18A. *Restriction on agents.*—(1) Notwithstanding anything contained in any other law for the time being in force, no person shall, except with the general or special permission of the Bangladesh Bank, act or accept an appointment to act as an agent in the trading or commercial transactions, or as a technical or management adviser or any other employee, in Bangladesh (whether or not a citizen of Bangladesh) or a person resident in Bangladesh (but not a citizen of Bangladesh) not incorporated under any law in force in Bangladesh.

(2) A person acting or holding an appointment to act as an agent or as an adviser or any other employee in Bangladesh of a person or company referred to in sub-section (1) immediately before the commencement of the Foreign Exchange Regulation (Amendment) Ordinance, 1976 (Ord. No. LXXVI of 1976), may continue to so act for a period not exceeding six months from such commencement unless the Bangladesh Bank has, upon an application made in this behalf in such form and containing such particulars as the Bangladesh Bank may direct, granted him permission to continue to so act thereafter.

Explanation.—For the purpose of this section the term "person" shall include a firm or a business organisation or concern whether incorporated or not.]

¹[18B. *Restriction on foreign companies.*—(1) Notwithstanding anything contained in any other law for the time being in force, no person resident outside Bangladesh whether or not a citizen of Bangladesh nor a person who is not a citizen of, but resident in, Bangladesh nor a company (other than a banking company) not incorporated under any law in force in Bangladesh shall, except with general or special permission of the Bangladesh Bank, continue or establish in Bangladesh a branch, office or any other place of business for carrying on any activity of a trading, commercial or industrial nature.

(2) Any such person or company carrying on any activity of the nature referred to in sub-section (1) immediately before the commencement of the Foreign Exchange Regulation (Amendment) Ordinance, 1976 (Ord. No. LXXVI of 1976), may, except in the case of a person or company carrying

on any activity of the nature referred to in sub-section (1) or having a branch, office or other place of business for carrying on such activity in pursuance of any permission or licence granted by the Government, continue to so carry on such activity for a period not exceeding six months from such commencement unless the Bangladesh Bank has, upon an application made in this behalf, granted him permission to continue to so carry on such activity thereafter.

(3) Where no application under sub-section (2) has been made by any such person or company the Bangladesh Bank may, by order, direct such person or company to discontinue such activity or to close down such branch, office or place of business, as the case may be, on the expiry of such period as may be specified in the direction.]

19. Power to call for information.—(1) The Government or the Bangladesh Bank may, at any time by notification in the *Official Gazette*, direct owners, subject to such exceptions, if any, as may be specified in the notification, of such foreign exchange or foreign securities as may be so specified, to make a return thereof to the Bangladesh Bank within such period, and giving such particulars, as may be so specified.

(2) The Government may by order in writing require any person to furnish it or any person specified in the order with any information book or other document in his possession, being information, book or document which the Government considers it necessary or expedient to obtain and examine for the purposes of this Act and may, at any time, by notification in the *Official Gazette*, direct that the power to make such order shall for such period as may be specified in the direction, be exercised by the Bangladesh Bank.

(3) On a representation in writing made by a person authorised in this behalf by the Government or the Bangladesh Bank and supported by a statement on oath of such person that he has reason to believe that a contravention of any of the provisions of this Act has been or is being or is about to be committed in any place or that evidence of the contravention is to be found in such place, a District Magistrate, a Sub-Divisional Magistrate or a Magistrate of the first class, may, by warrant, authorise any police officer not below the rank of Sub-Inspector—

- (a) to enter and search any place in the manner specified in the warrant; and
- (b) seize any books or other documents found in or on such place.

Explanation.—In this sub-section "Place" includes a house, building, tent, vehicle, vessel or aircraft.

(3A) A police officer authorised under sub-section (3) may search any person who is found in or whom he has reasonable ground to believe to have recently left or to be about to enter such place and to seize any article found in the possession of or upon such person and believed by the police officer so authorised to be evidence of the commission of any offence under this Act.

(3B) A police officer authorised under sub-section (3) shall conduct any search under that sub-section or under sub-section (3A) in accordance with the provisions relating to search in the Code of Criminal Procedure, 1898.

(4) The provisions of sub-sections (1), (2) and (3) of section 54 of the Income Tax Act, 1922, shall apply in relation to information obtained under sub-section (2) of this section as they apply to the particulars referred to in that section and for the purpose of such application—

(a) the said sub-section (3) shall be construed as if in clause (a) thereof there was included reference to a prosecution for an offence under section 23 of this Act; and

(b) persons to whom any information is required to be furnished under an order made under sub-section (2) of this section shall be deemed to be public servants within the meaning of that section.

¹[19A. *Power of inspection.*— (1) The Government or the Bangladesh Bank may, at any time cause an inspection to be made by one or more of its officers of the books of accounts and other documents of any person firm or business organisation or concern required to submit to the Bangladesh Bank any return, statement or information under this Act and where necessary, direct all such books of accounts and other documents to be seized.

(2) Every such person firm business organisation and concern shall produce books of accounts and other documents and furnish such statements and information to such officer or officers in connection with the inspection under sub-section (1).

(3) Failure to produce any books of accounts or other document or to furnish any statement or information required under sub-section (2) shall be deemed to be contravention of the provisions of this Act].

20. Supplemental provisions.— (1) For the purposes of this Act and of any rules directions or orders made thereunder—

(a) until the Bangladesh Bank by general or special order directs any person who has at any time after the commencement of this Act been resident in Bangladesh shall be treated as still being resident in Bangladesh and if such direction is given in relation to any such person the Bangladesh Bank may by the same or a subsequent direction declare the territory in which he shall be treated as being resident;

(b) In the case of any person to whom clause (a) does not apply the Bangladesh Bank may by general or special order declare the territory in which he shall be treated as being resident;

(c) in the case of any person resident in Bangladesh who leaves Bangladesh, the Bangladesh Bank may give a direction to any bank that until the direction is revoked any sum from time to time standing to the credit of that person and any security held on his behalf at any office or branch of that bank in Bangladesh specified in the direction shall not be dealt with except with the permission of the Bangladesh Bank;

(d) any transactions with a branch of any business, whether carried on by a body corporate or otherwise shall be treated in all respects as if the branch were a body corporate resident where the branch is situated;

(e) the making of any book entry or other statement recording a debit against a branch of any business in favour of the head office or any other branch of that business shall be treated as the acknowledgment of a debt whereby a right is created in favour of a person resident where the head office or other branch is situated.

(2) Nothing in this Act relating to the payment of any price or sum by the Government shall be construed as requiring the Government to pay that price or sum otherwise than in Bangladesh currency or otherwise than in Bangladesh.

(3) The Bangladesh Bank may give directions in regard to the making of payments and the doing of other acts by bankers, authorised dealers, travel agents or stock brokers and other persons who are authorised by the Bangladesh Bank to do anything in pursuance of this Act in the course of their business, as appear to it to be necessary or expedient for the purpose of securing compliance with the provisions of this Act and any rules, orders or directions made thereunder.

21. Contracts in evasion of this Act.—(1) No person shall enter into any contract or agreement which would directly or indirectly evade or avoid in any way the operation of any provision of this Act or of any rule, direction or order made thereunder.

(2) Any provision of, or having effect under, this Act that a thing shall not be done without the permission of the Government or the Bangladesh Bank, shall not render invalid any agreement by any person to do that thing, if it is a term of the agreement that thing shall not be done unless permission is granted by the Government or the Bangladesh Bank, as the case may be; and it shall be an implied term of every contract governed by the law of any part of the Bangladesh that anything agreed to be done by any term of that contract which is prohibited to be done by or under any of the provisions of this Act except with the permission of the Government or the Bangladesh Bank, shall not be done unless such permission is granted.

(3) Neither the provisions of this Act nor any term (whether expressed or implied) contained in any contract that anything for which the permission of the Government or the Bangladesh Bank is required by the said provisions shall not be done without that permission, shall prevent legal proceedings being brought in Bangladesh to recover any sum which, apart from the said provisions and any such term would be due, whether as a debt, damages or otherwise, but—

(a) the said provisions shall apply to sums required to be paid by any judgment or order of any Court as they apply in relation to other sums; and

(b) no steps shall be taken for the purpose of enforcing any judgment or order for the payment of any sum to which the said provisions apply except as respects so much thereof as the Government or the Bangladesh Bank, as the case may be, may permit to be paid; and

(c) for the purpose of considering whether or not to grant such permission, the Government or the Bangladesh Bank, as the case may be, may require the person entitled to the benefit of the judgment or order and the debtor under the judgment or order, to produce such documents and to give such information as may be specified in the requirement.

(4) Notwithstanding anything in the Negotiable Instrument Act, 1881, neither the provisions of this Act or of any rule, direction or order made thereunder, or any condition, whether express or to be implied having regard to those provisions, that any payment shall not be made without permission under this Act shall be deemed to prevent any instrument being a bill of exchange or promissory note.

Case Law

Defendent No. 1 was living in Malaya and plaintiff in India. The profits sold in Pakistan and the plaintiff was paid in the foreign currency, held transfer was not hit by the provisions of section 21 of the Act. [17 DLR 418].

Mortgage and mortgager both Bangladeshis, no question of foreign exchange arose. [20 DLR 266].

Contract requiring Bangladesh Bank's permission, nothing will validate the same without such permission [13 DLR, 419].

22. False statements.— No person shall, when complying with any order or direction under section 19 or when making any application or declaration to any authority or person for any purpose under this Act, give any information or make any statement which he knows or has reasonable cause to believe to be false or not true, in any material particular.

22A. Grant of immunity in certain cases.— (1) The Government may, if it is of the opinion being (the reason for such opinion being recorded in writing) that with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, the contravention of any of the provisions of this Act or of any rule, direction or order made or give thereunder it is necessary or expedient so to do, grant such person immunity from prosecution under this Act or any other law for the time being in force, and may also grant such person immunity from imposition of any penalty under this Act, subject to the condition closure of the whole circumstances relating to such contravention.

(2) An immunity granted to, and accepted by the person concerned under sub-section (1) shall, to the extent to which the immunity extends, render him immune from prosecution for any offence or, as the case may be, from imposition of any penalty under this Act to which the immunity relates.

(3) If the Government is satisfied that any person to whom immunity under sub-section (1) was granted has not complied with any of the conditions subject to which the immunity was granted or is wilfully concealing anything or giving false evidence, it may record a finding to that effect and thereupon the immunity so granted shall be deemed to have been withdrawn and such person may be tried for the offence to which the immunity relates and shall be also liable to such penalty as he would have been liable to but for the grant of immunity under this section.

23. Penalty and procedure.— (1) Whoever contravenes, attempts to contravene or abets the contravention of any of the provisions of this

Act or of any rule, direction or order made thereunder shall be punishable with imprisonment for a term which may extend to two years or with fine or with both, and any Court trying any such contravention may, if it thinks fit and in addition to any sentence which it may impose for such goods or other property in respect of which the contravention has taken place shall be confiscated.

(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, any offence punishable under this section shall be cognizable for such period as the Government may from time to time, by notification in the *Official Gazette*, declare;

(2) No Court shall take cognizance of any offence punishable under this section and not declared by the Government under the preceding sub-section to be cognizable for the time being or of an offence punishable under section 54 of the Income-tax Act, 1922, as applied by section 19 of this Act, except upon complaint in writing made by a person authorised in this behalf by the Government or the Bangladesh Bank :

Provided that where any such offence is the contravention of any of the provisions of this Act or any rule, direction or order made thereunder which prohibits the doing of an act without permission and is not declared by the Government under the preceding sub-section to be cognizable for the time being, no such complaint shall be made unless the person accused of the offence has been given an opportunity of showing that he had such permission.

(3) If the person committing an offence punishable under this section is a company or other body corporate, every director, manager, secretary, or other officer thereof shall, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent its commission, be deemed to be guilty of such offence.

Case Law

For conviction under section 23, non-repatriation must be wilful. The licence holder, and not his Attorney, is responsible for the offence [21 DLR, 592; 26 DLR, 377; 15 DLR, 83; 21 DLR, 444]. Mortgagor and mortgagee both are Bangladeshis, the question of foreign exchange does not arise [20 DLR 266].

Section 23—Failure of the exporter to repatriate sale proceeds in time—Whether constitutes offence punishable—

Unless there is a case of malafide on the part of the exporter, mere failure to repatriate the sale proceeds in time does not make him punishable under section 23 read with section 10 and 12 of the Foreign Exchange Regulation Act. [*M.A. Ahad Vs. The State (1969) 25 DLR 377.*]

23A. Tribunal its power etc.— (1) Every Sessions Judge shall, for the areas within the territorial limits of his jurisdiction be tribunal for trial of an offence punishable under section 23;

(2) A Tribunal may transfer any case for trial to an Additional Sessions Judge within its jurisdiction who shall, for trying a case so transferred, be deemed to be a Tribunal constituted for the purpose.

(3) A Tribunal shall have all the powers of a Magistrate of the first class in relation to criminal trials, and shall follow as nearly as may be the procedure provided in the Code of Criminal Procedure, 1898, (Act V of 1898) for trials before such Magistrate, and shall also have powers as provided in the said Code in respect of the following matters, namely :

- (a) directing the arrest of the accused;
- (b) issuing search warrants;
- (c) ordering the police to investigate any offence and report;
- (d) authorising detention of a person during police investigation;
- (e) ordering the release of the accused on bail.

(4) All proceedings before a Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Penal Code, and for the purpose of section 196 thereof, and the provisions relating to the execution of orders and sentences in the Code of Criminal Procedure, 1898 shall so far as may be apply to orders and sentences passed by a Tribunal.

(5) As regards sentences of fine, the powers of a tribunal shall be as extensive as those of a court of sessions.

(6) The Bangladesh Bank or any other person aggrieved by a judgement of a Tribunal may within three months from the date of judgement, appeal to the High Court Division.

(7) Save as provided in the preceding sub-section, all judgement and orders passed by a Tribunal shall be final.

24. Burden of proof in certain cases.— Where any person is prosecuted for contravening any provision of this Act or of any rule, direction or order made thereunder which prohibits him from doing an act without permission the burden of proving that he had the requisite permission shall be on him.

25. Power to Government to give direction.— For the purposes of this Act the Government may from time to time give to the Bangladesh Bank such general or special directions as it thinks fit, and the Bangladesh Bank shall, in the exercise of its functions under this Act, comply with any such directions.

26. Bar of legal proceedings.— No suit, prosecution or other legal proceedings shall lie against any person for anything in good faith done or intended to be done under this Act or any rule, direction or order made thereunder.

27. Power to make rules.— (1) The Government may by notification in the *Official Gazette*, make rules for carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may—

(a) prescribe forms and the circumstances of their use for the purposes of this Act;

(b) prescribe the procedure to be followed by authorised dealers and by persons applying for permission to do anything for the doing of which permission is necessary under this Act;

(c) provide for any matter which is to be or may be prescribed under this Act.

Case Law

Section 27 and Rule 3(2)— Jurisdiction of State Bank—

Conferment of power under rule 3(2) framed under section 27 of the Foreign Exchange Regulation Act, to the State Bank to fix the date within which to bring back the sale proceeds of the exported goods into Pakistan is not a delegation of legislative power and as such the State Bank acted illegally in fixing the period of repatriation of the sale proceeds. [*Kalipada Saha Vs. The State (1959) 11 DLR (SC) 239*].

The Foreign Exchange Rules, 1952

[No. 3(2) 5E/F-52, Pakistan Gazette dated 18-7-1952]

In exercise of the powers conferred by section 27 of the Foreign Exchange Regulation Act, the Government is pleased to make the following Rules :

1. Short title and commencement.— (1) This Rules may be called the Foreign Exchange Rules, 1952.

(2) They shall come into force at once.

2. Interpretation.—In these rules unless there is anything repugnant in the subject or context :-

(a) "The Act" means the Foreign Exchange Regulation Act.

3. In the case of goods or class of goods specified in the notification issued under section 12(1) of the Act;

(1) the authority to whom the declaration has to be submitted by the exporter shall be collector of customs or such other person as the Bangladesh Bank may from time to time by notification in the *Official Gazette* specify for the purpose.

(2) The period within which the amount representing the full export value of goods will have to be paid, shall be the period specified from time to time by Bangladesh Bank for the purpose generally or otherwise by notification in the *Official Gazette* with reference to any country or countries.

(3) The manner in which the amount representing the full exports value of the goods will have to be paid, shall be the manner specified from time to time by the Bangladesh Bank for this purpose generally or otherwise by notification in the *Official Gazette* with reference to any country or countries.

(4) All powers vested in the Bangladesh Bank under Act shall be exercised and all functions entrusted to the Bangladesh Bank under the Act shall be performed in the name of the bank by such officers of the Bangladesh Bank as may be notified from time to time by the Bangladesh Bank in the *Official Gazette* with reference to such officers names and designations.

(5) Any order, direction, communication issued by the Bangladesh Bank in exercise of the powers vested under the Act shall be deemed to have been

properly issued, communicated to or served on the person or persons concerned:—

(i) If it is sent to the address known to the Bangladesh Bank of such persons by registered post with acknowledgement due; or

(ii) If it is published in any two prominent daily newspapers, circulating in the area in which such persons reside or carry business; or

(iii) If it is personally tendered to such person or persons for acceptance, whether accepted or refused and an endorsement or statement of the tendering employee of the Bank as to the acceptance refusal shall be sufficient proof of such acceptance or refusal.

(6) * **

(7) ***

(8) ****

* Rules 6, 7 and 8 omitted by notification No. 1(24)Ef/57 dated 28-11-1957 (Pak Gazette extra, dt. 28-11-1957)

The Foreign Exchange Regulation (Amendment) Act, 1957

(Act No. XL of 1957)

[10th September, 1957]

An Act further to amend the Foreign Exchange Regulation Act, 1957.

Whereas certain amendments were made in the Foreign Exchange Regulation Act, 1957, by the Foreign Exchange Regulation (Amendment) Ordinance, 1955, subsequently repealed and re-enacted as the Foreign Exchange Regulation (Amendment) Act, 1956;

And whereas the Supreme Court in Criminal Appeals Nos. 11, 12, 13 and 14 of 1956, has held that the Amending Act, which enables the Central Government or the State Bank to divest the ordinary courts of the jurisdiction to try offences under the special law in accordance with the provisions of the Code of Criminal procedure, 1898, and to effectuate the jurisdiction of the Special Tribunals or Adjudication Officers offends against Article 5 of the Constitution, and is, for that reason, void;

AND WHEREAS it is expedient further to amend the Foreign Exchange Regulation Act, 1947, in the manner and for the purposes hereinafter appearing;

It is hereby enacted as follows:—

1. Short title and commencement.—(1) This Act may be called the Foreign Exchange Regulation (Amendment) Act, 1957.

(2) It shall come into force at once.

¹[2-7. *** ** **]

8. Transfer of cases.—(1) All the cases triable by a Tribunal under section 23 of the said Act as amended by this Act and pending in any court immediately before the commencement of this Act, shall, on such commencement, stand transferred to the Tribunal having jurisdiction over such cases.

(2) In respect of cases transferred to a Tribunal under sub-section (1), such Tribunal shall not, by reason of such transfer, be found to recall or rehear any witness who has given evidence in the case before the transfer and may act on the evidence already accorded by or produced before the court which tried the case before the transfer.

9. *Indemnity*.—No suit, prosecution or other legal proceeding shall lie in any court against any Government servant or any other person for or on account or in respect of anything done in good faith, action taken, notification or direction issued, investigation or arrest made, property seized or confiscated, loss or injury suffered, legal proceeding instituted, or penalty or punishment imposed, enforced or continued, in pursuance or in virtue of the provisions of the Foreign Exchange Regulation (Amendment) Act, 1956.

²[10. **** ** ****]

The Foreign Relations Act, 1932

(Act No. XII of 1932)

[8th April, 1932]

An Act to provide against the publication of statements likely to prejudice the maintenance of friendly relations between ¹[the Government of] ²[Bangladesh] and the Governments of certain foreign States.

WHEREAS it is expedient to provide against the publication of statements likely to prejudice the maintenance of friendly nations between ¹[the Government of] ²[Bangladesh] and the Governments of certain foreign States;

It is hereby enacted as follows :—

1. Short title and extent.—(1) This Act may be called the Foreign Relations Act, 1932.

(2) It extends to the whole of ²[Bangladesh].

2. Power of Government to prosecute in certain cases of defamation.—Where an offence falling under Chapter XXI of the ³[Penal Code] is committed against a Ruler of a State outside not adjoining ²[Bangladesh], or against the consort or son or principal Minister of such Ruler, the ⁴[Government] may make, authorise any person to make, a complaint in writing of such offence, and, notwithstanding anything contained in section 198 of the Code of Criminal Procedure, 1898, any Court competent in other respects to take cognizance of such offence may take cognizance thereof on such complaint.

⁵[*****]

3. Power to forfeit certain publications or to detain them in the course of transmission through post.—The provisions of sections 99A to 99G of the Code of Criminal Procedure, 1898, and of sections 27B to 27D of the Post Office Act, 1898, shall apply in the case of any book, newspaper or other document containing matter which is defamatory of a Ruler of a State outside but adjoining ²[Bangladesh] or of

-
1. Subs. by A.O. 1949, for "His Majesty's Government".
 2. Subs. by Act VIII of 1973, s. 3 & 2nd Sch., as amended by Act LIII 1974, for "Pakistan".
 3. Subs. by Act VIII of 1993, as amended by Act, LIII of 1974, for "Pakistan Penal Code".
 4. Subs. *ibid*, for "Central Government" of the Code of Criminal Procedure, 1898, any Court competent in other respects to take cognizance of such offence may take cognizance thereof on such complaint.
 5. Explanation to section 2 was omitted by A. O., 1937.

the consort or son or principal Minister of such Ruler and tends to prejudice the maintenance of friendly relations between the Government of ²[Bangladesh] and the Government of such State, in like manner as they apply in the case of a book, newspaper or document containing seditious matter within the meaning of those sections :

6[*****]

4. Proof of status of persons defamed.— Where, in any trial of an offence upon a complaint under section 2, or in any proceeding before the ⁷[High Court Division] arising out of section 3, there is a question whether any person is a Ruler of any State, or is the consort or son or principal Minister of such Ruler, a certificate under the hand of a Secretary to the ⁸[Government] that such person is such Ruler, consort, son or principal Minister shall be conclusive proof of that fact.

6. Proviso to section 3 was omitted by Act VII of 1973 as amended by Act LIII & 1974.

7. Subs. bid for "a High Court".

8. Subs. bid for "Central Government".

The Companies (Foreign Interests) Act, 1918

(Act No. XX of 1918)

[26th September, 1918]

An Act to take power to prohibit the alteration, except with the sanction of the ¹[Government], of articles of association which restrict foreign interests in certain companies, and to provide for other purposes connected therewith,

WHEREAS it is expedient to take power to prohibit the alteration, except with the sanction of the ¹[Government], of articles of association which restrict foreign interests in certain companies, and to provide for other purposes connected therewith;

It is hereby enacted as follows:—

1. Short title.— This Act may be called the ²[Companies] (Foreign Interests) Act, 1918.

2. Definitions.— (1) In this Act—

³[(a) the expression "commonwealth citizen" has the same meaning as in section 1 of the British Nationality Act, 1948, but shall include any association incorporated in any part of the Commonwealth, including ⁴[Bangladesh];

(b) the expression "restrictive provision" means any provision in the articles of association of a company which, in the opinion of the ¹[Government], is designed to restrict or limit or has the effect or restricting or limiting the share or shares or interest which may be held, or the rights, powers or authority which may be conferred upon or exercised by or on behalf of persons other than ⁵[Commonwealth citizens] in the company, or in respect of the control, management or direction of the affairs thereof.

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1. Subs. by Act VIII of 1973 as amended by Act LIII of 1974 (w.e.f. the 26th March, 1971), for "Central Government".
 2. The word "Indian" rep. by the Federal Laws (Revision and Declaration) Act, 1951 (Act XXVI of 1951), s. 3 and II Sch.
 3. Subs. by A.O. 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956), for the original clause (a) as amended by A. O., 1937 and Act XXVI of 1951, s. 4 and 3rd Sch.
 4. Subs. by Act VIII of 1973 as amended by Act LIII of 1974 (w.e.f. the 26th March, 1971) for "Pakistan".
 5. Subs. by A. O., 1961, Art. 2 and Sch. for "British Subjects" (with effect from the 23rd March, 1956).

(2) All words and expressions used in this Act and defined in the Companies Act, 1913, shall be deemed to have the meanings respectively attributed to them by that Act.

3. *Application of Act.*— This Act shall apply to such companies as the ¹[Government] may, by notification in the ⁶[Official Gazette], declare to be companies with restrictive provisions, and any such notification shall specify the restrictive provisions.

4. *Alterations in restrictive provisions and winding up.*— So long as a notification issued under section 3 is in force in respect of any company, notwithstanding anything to the contrary in any other Act—

(1) no alteration of the articles of association of the company affecting either directly or indirectly any restrictive provision shall be of any effect until it has received the consent in writing of the ¹[Government];

(2) a resolution for the voluntary winding up of the company shall be of no effect unless the ¹[Government] authorities or ratifies it by a written consent;

(3) any Court which has jurisdiction to wind up the company may in its discretion refuse to make a winding up order. In the exercise of its discretion, the Court shall be guided by the consideration whether the winding up is *bona fide* with a view to the discontinuance of the undertaking or is with a view to continuing the undertaking freed either wholly or in part from any restrictive provision;

(4) the ¹[Government] in giving consent, or the Court in making a winding up order, as the case may be, may impose such terms or conditions for giving effect to the purposes of this Act as ⁷[it] thinks fit.

6. Subs. by A. O., 1937 for "Gazette of India".

7. Subs. *ibid* for "he or it".

The Christian Marriage Act, 1872

(Act No. XV of 1872)

[18th July, 1872]

An Act to consolidate and amend the law relating to the solemnization ** of the marriages of Christians.

Whereas it is expedient to consolidate and amend the law relating to the solemnization of the marriages of persons professing the Christian religion; it is hereby enacted as follows:—

Preliminary

1. *Short title.*—This Act may be called the Christian Marriage Act, 1872.

Extent.—It extends to the whole of [Bangladesh] and, so far only as regards Christian citizens of Bangladesh].

2. [Enactments repealed.] Rep. by the Repealing Act, 1938.

3. *Interpretation clause.*—In this Act, unless there is something repugnant in the subject or context,—

"Church of England" and "Anglican" mean and apply to the Church of England as by law established;

"Church of Rome" and "Roman Catholic" mean and apply to the Church which regards the Pope of Rome as its spiritual head;

"Church" includes any chapel or other building generally used for public Christian worship;

"minor" means a person who has not completed the age of twenty-one years and who is not a widower or a widow;

* * * *

the expression "Christians" means persons professing the Christian religion;

and the expression, "Native Christians" includes the Christian descendants of inhabitants of Indo-Bangla-Pakistan sub-continent converted to Christianity, as well as such converts;

["Registrar General of Births, Deaths and Marriages" means a Registrar General of Births, Deaths and Marriages appointed under the Births, Deaths and Marriages Registration Act, 1886 (Act VI of 1886).

PART I

The persons by whom marriages may be solemnized

4. Marriages to be solemnized according to Act.— Every marriage between persons, one or both of whom is or are a Christian or Christians, shall be solemnized in accordance with the provisions of the next following section; and any such marriage solemnized otherwise than in accordance with such provisions shall be void.

5. Persons by whom marriages may solemnized:— Marriages may be solemnized in Bangladesh :—

(1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which he is a Minister.

(2) by any clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of Scotland;

(3) by any Minister of Religion licensed under this Act to solemnized marriages;

(4) by, or in the presence of, a Marriage Registrar appointed under this Act;

(5) by any person licensed under this Act to grant certificates of marriage between native Christians.

6. Grant and revocation of licenses to solemnize marriage.— The Government, may, by notification in the *Official Gazette*, grant licenses to Ministers of Religion to solemnize marriages within such territories and States, respectively, and may, by a like notification, revoke such licenses.

7. Marriage Registrars.— The Government may appoint one or more Christians, either by name or as holding any office for the time being, to be the Marriage Registrar or Marriage Registrars for any district subject to its administration.

Where there are more Marriage Registrars than one in any district, the Government shall appoint one of them to be the Senior Marriage Registrar.

When there is only one Marriage Registrar in a district, and such Registrar is absent from such district, or ill, or when his office is temporarily vacant, the Magistrate of the district shall act as, and be,

Marriage Registrar thereof during such absence, illness or temporary vacancy.

¹ [* * *]

9. Licensing of persons to grant certificates of marriage between Native Christians.— The Government may grant a licence to any Christian, either by name or as holding any office for the time being, authorising him to grant certificate of marriage between Native Christians. .

Any such license may be revoked by the authority by which it was granted, and every such grant or revocation shall be notified in the *Official Gazette*.

PART II

Time and Place At which Marriages may be solemnized

10. Time for solemnizing marriage.— Every marriage under this Act shall be solemnized between the hours of six in the morning and seven in the evening :

Provided that nothing in this section shall apply to—

(1) a Clergyman of the Church of England solemnizing a marriage under a special license permitting him to do so at any hour other than between six in the morning and seven in the evening, under the hand and seal of the Anglican Bishop of the Diocese or his Commissary, or

(2) a Clergyman of the Church of Rome solemnizing a marriage between the hours of seven in the evening and six in the morning, when he has received a general or special license in that behalf from the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is so solemnized, or from such person as the same Bishop has authorized to grant such license, or

(3) a Clergyman of the Church of Scotland solemnizing a marriage according to the rules, rites, ceremonies and customs of the Church of Scotland.

11. Place of solemnizing marriage.— No Clergyman of the Church of England shall solemnize a marriage in any place other than a Church where worship is generally held according to the forms of the Church of England,

unless there is such Church within five miles distance by the shortest road from such place, or

1. Section 8 omitted by Act VIII of 1973, 2nd Sch. w.e.f. 26-3-1971.

unless he has received a special license authorising him to do so under the hand and seal of the Anglican Bishop of the Diocese or his Commissary.

For such special license, the Registrar of the Diocese may charge such additional fee as the said Bishop from time to time authorizes.

PART III

Marriages Solemnized by Ministers of Religion Licensed Under This Act.

12. Notice of intended marriage.— Whenever a marriage is intended to be solemnized by a Minister of Religion licensed to solemnize marriages under this Act—

one of the persons intending marriage shall give notice in writing, according to the form contained in the first schedule hereto annexed, or to the like effect, to the Minister of Religion whom he or she desires to solemnize the marriage, and shall state therein—

(a) the name and surname, and the profession or condition, of each of the persons intending marriage,

(b) the dwelling place of each of them,

(c) the time during which each has dwelt there, and

(d) the church or private dwelling in which the marriage is to be solemnized;

Provided that, if either of such persons has dwelt in the place mentioned in the notice during more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

13. Publication of such notice.— If the persons intending marriage desire it to be solemnized in a particular church, and if the Minister of Religion to whom such notice has been delivered be entitled to officiate therein, he shall cause the notice to be affixed in some conspicuous part of such church.

But if he is not entitled to officiate as a Minister in such church, he shall, at his option, either return the notice to the person who delivered it to him, or deliver it to some other Minister entitled to officiate therein who shall thereupon cause the notice to be affixed as aforesaid.

14. Notice of intended marriage in private dwelling.— If it be intended that the marriage shall be solemnized in a private dwelling, the Minister of Religion, on receiving the notice prescribed in section 12, shall

forward it to the Marriage Registrar of the District, who shall affix the same to some conspicuous place in his own office.

15. Sending copy of notice to marriage Registrar when one party is a minor.— When one of the persons intending marriage is a minor, every Minister receiving such notice shall, unless within twenty-four hours after its receipt he returns the same under the provisions of section 13, send by the post or otherwise a copy of such notice to the Marriage Registrar of the district, or, if there be more than one Registrar of such district, to the Senior Marriage Registrar.

16. Procedure on receipt of notice.— The Marriage Registrar or Senior Marriage Registrar, as the case may be, on receiving any such notice, shall affix it to some conspicuous place in his own office, and the latter shall further cause a copy of the said notice to be sent to each of the other Marriage Registrars in the same district who shall likewise publish the same in the manner above directed.

17. Issue of certificate of notice given and declaration made.— Any Minister of Religion consenting or intending to solemnize any such marriage as aforesaid, shall, on being required so to do by or on behalf of the person by whom the notice was given, and upon one of the persons intending marriage making the declaration hereinafter required, issue under his hand a certificate of such notice having been given and of such declaration having been made :

Provided—

(1) that no such certificate shall be issued until the expiration of four days after the date of the receipt of the notice by such Minister;

(2) that no lawful impediment be shown to his satisfaction why such certificate should not issue; and

(3) that the issue of such certificate has not been forbidden, in manner hereinafter mentioned, by any person authorised in that behalf.

18. Declaration before issue of certificate.— The certificate mentioned in section 17 shall not be issued until one of the persons intending marriage has appeared personally before the Minister and made a solemn declaration—

(a) that he or she believes that there is not any impediment of kindred or affinity or other lawful hindrans to the said marriage,

and, when either or both of the parties is or are a minor or minors,

(b) that the consent or consents required by law has or have been obtained thereto, or that there is no person resident in Bangladesh having authority to give such consent, as the case may be.

19. Consent of father, or guardian, or mother.— The father, if living, of any minor, or, if the father be dead, the guardian of the person of such minor, and, in case there be no such guardian, then the mother of such minor, may give consent to the minor's marriage;

and such consent is hereby required for the same marriage, unless no person authorised to give such consent be resident in Bangladesh.

20. Power to prohibit by notice issue of certificate.— Every person whose consent to a marriage is required under section 19 is hereby authorised to prohibit the issue of the certificate by any Minister, at any time before the issue of the same, by notice in writing to such Minister, subscribed by the person so authorised with his or her name and place of abode and position with respect to either of the persons intending marriage, by reason of which he or she is so authorised as aforesaid.

21. Procedure on receipt of notice.— If any such notice be received by such Minister, he shall not issue his certificate and shall not solemnize the said marriage until he has examined into the matter of the said prohibition, and is satisfied that the person prohibiting the marriage has no lawful authority for such prohibition;

or until the said notice is withdrawn by the person who gave it.

22. Issue of certificate in case of minority.— When either of the persons intending marriage is a minor, and the Minister is not satisfied that the consent of the person whose consent to such marriage is required by section 19 has been obtained, such Minister shall not issue such certificate until the expiration of fourteen days after the receipt by him of the notice of marriage.

23. Issue of certificates to native Christians.— When any Native Christian about to be married takes a notice of Marriage to a Minister of Religion or applies for a certificate from such Minister under section 17, such Minister shall, before issuing the certificate, ascertain whether such Native Christian is cognizant of the purport and effect of the said notice or certificate, as the case may be, and, if not, shall translate or caused to be translated the notice or certificate to such Native Christian into some language which he understands.

24. Form of certificate.— The certificate to be issued by such Minister shall be in the form contained in the second schedule hereto annexed, or to the like effect.

25. Solemnization of marriage.— After the issue of the certificate by the Minister, marriage may be solemnized between the persons therein described according to such form or ceremony as the Minister thinks fit to adopt;

Provided that the marriage be solemnized in the presence of at least two witnesses besides the Minister.

26. Certificate void if marriage not solemnized within two months.— Whenever a marriage is not solemnized within two months after the date of the certificate issued by such Minister as aforesaid, such certificate and all proceedings (if any) thereon shall be void, and

no person shall proceed to solemnize the said marriage until new notice has been given and a certificate thereof issued in manner aforesaid.

PART IV

Registration of Marriages solemnized by Ministers of Religion

27. Marriages when to be registered.— All marriages hereafter solemnized in Bangladesh between persons one or both of whom professes or profess the Christian religion, except marriages solemnized under Part V or Part VI of this Act shall be registered in manner hereinafter prescribed.

28. Registration of marriages solemnized by Clergyman of Church of England.— Every Clergyman of the Church of England shall keep a register of marriages and shall register therein, according to the tabular form set forth in the third schedule hereto annexed, every marriage which he solemnizes under this Act.

29. Quarterly returns to Archdeaconry.— Every Clergyman of the Church of England shall send four times in every year returns in duplicate, authenticated by his signature, of the entries in the register of marriages solemnized at any place where he has any spiritual charge, to the Registrar of the Archdeaconry to which he is subject, or within the limits of which such place is situate. Such quarterly returns shall contain all the entries of marriages contained in the said register from the first day of January to the thirty-first day of March, from the first day of April to the thirtieth day of June, from the first day of July to the thirtieth day of September, and from the first day of October to the thirty-first day of December, of each year

respectively, and shall be sent by such Clergyman within two weeks from the expiration of each of the quarters above specified.

The said Registrar upon receiving the said returns shall send one copy thereof to the Registrar General of Births, Deaths and Marriages.

30. Registration and returns of marriages solemnized by clergymen of Church of Rome.— Every marriage solemnized by a Clergyman of the Church of Rome shall be registered by the person and according to the form directed in that behalf by the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is solemnized,

and such person shall forward quarterly to the Registrar General of Births, Deaths and Marriages returns of the entries of all marriages registered by him during the three months next preceding.

31. Registration and returns of marriages solemnized by Clergymen of Church of Scotland.— Every Clergyman of the Church of Scotland shall keep a register of marriages,

and shall register therein, according to the tabular form set forth in the third schedule hereto annexed, every marriage which he solemnizes under this Act,

and shall forward quarterly to the Registrar General of Births, Deaths and Marriages, through the Senior Chaplain of the Church of Scotland, returns, similar to those prescribed in section 29, of all such marriages.

32. Certain marriages to be registered in duplicate.— Every marriage solemnized by any person who has received episcopal ordination, but who is not a Clergyman of the Church of England, or of the Church of Rome, or by any Minister of Religion licensed under this Act to solemnize marriages, shall, immediately after the solemnization thereof, be registered in duplicate by the person solemnizing the same; (that is to say) in a marriage-registrar-book to be kept by him for that purpose, according to the form contained in the fourth schedule hereto annexed, and also in a certificate attached to the marriage-register-book as a counterfoil.

33. Entries of such marriages to be signed and attested.— The entry of such marriage in both the certificate and marriage-register-book shall be signed by the person solemnizing the marriage, and also by the persons married, and shall be attested by two credible witnesses, other than the person solemnizing the marriage present at its solemnization.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register-book.

34. Certificate to be forwarded to Marriage Registrar, copied and sent to Registrar General.— The person solemnizing the marriage shall forthwith separate the certificate from the marriage-register-book and send it, within one month from the time of the solemnization, to the Marriage Register of the district in which the marriage was solemnized, or, if there be more Marriage Registers than one, to the Senior Marriage Registrar,

who shall cause such certificate to be copied into a book to be kept by him for that purpose,

and shall send all the certificates which he has received during the month, with such number and signature or initials added thereto as are hereinafter required, to the Registrar General of Births, Deaths and Marriages.

35. Copies of certificates to be entered and numbered.— Such copies shall be entered in order from the beginning to the end of the said book, and shall bear both the number of the certificate as copied, and also a number to be entered by the Marriage Registrar, indicating the number of the entry of the said copy in the said book, according to the order in which he receives each certificate.

36. Registrar to add number of entry to certificate, and send to Registrar General.— The Marriage Registrar shall also add such last-mentioned number of the entry of the copy in the book to the certificate, with his signature or initials, and shall, at the end of every month, send the same to the Registrar General of Births, Deaths and Marriages.

37. Registration of marriages between Native Christians by persons referred to in clauses (1), (2) and (3) of section 5.— When any marriage between native Christians is solemnized by any such person, Clergyman or Minister of Religion as is referred to in clause (1), clause (2) or clause (3) of section 5, the person solemnizing the same shall, instead of proceeding in the maner provided by sections 28 to 36, both inclusive, register the marriage in a separate register-book, and shall keep it safely until it is filled, or, if he leave the district in which he solemnized the marriage before the said book is filled, shall make over the same to the person succeeding to his duties in the said district.

Whoever has the control of the book at the time when it is filled, shall send it to the Marriage Registrar of the district, or, if there be more Marriage

Registrars than one, to the Senior Marriage Registrar, who shall send it to the Registrar General of Births, Deaths and Marriages, to be kept by him with the records of his office.

PART V

Marriages solemnized by, or in the presence of, a marriage registrar

38. Notice of intended marriage before Marriage Registrar.— When a marriage is intended to be solemnized by, or in the presence of, a Marriage Registrar, one of the parties to such marriage shall give notice in writing, in the form contained in the first schedule hereto annexed, or to the like effect, to any Marriage Registrar of the District within which the parties have dwelt;

or, if the parties dwell in different districts, shall give the like notice to a Marriage Registrar of each district; and

shall state therein the name and surname, and the profession or condition, of each of the parties intending marriage, the dwelling-place of each of them, the time during which each has dwelt therein, and the place at which the marriage is to be solemnized;

Provided that, if either party has dwelt in the place stated in the notice for more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

39. Publication of notice.— Every Marriage Registrar shall, on receiving any such notice, cause a copy thereof to be affixed in some conspicuous place in his office.

When one of the parties intending marriage is a minor every Marriage Registrar shall, within twenty-four hours after the receipt by him of the notice of such marriage, send, by post or otherwise, a copy of such notice to each of the other Marriage Registrars (if any) in the same district, who shall likewise affix the copy in some conspicuous place in his own office.

40. Notice to be filed and copy entered in Marriage Notice Book.— The Marriage Registrar shall file all such notices and keep them with the records of his office;

and shall also forthwith enter a true copy of all such notices in a book to be furnished to him for that purpose by the Government and to be called the "Marriage Notice Book";

and the Marriage Notice Book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

41. Certificate of notice given and oath made.— If the party by whom the notice was given requests the Marriage Registrar to issue the certificate next hereinafter mentioned, and if one of the parties intending marriage has made oath as hereinafter required, the Marriage Registrar shall issue under his hand a certificate of such notice having been given and of such oath having been made.

Provided—

that no lawful impediment be shown to his satisfaction why such certificate should not issue;

that the issue of such certificate has not been forbidden, in manner hereinafter mentioned, by any person authorized in that behalf by this Act;

that four days after the receipt of the notice have expired; and further,

that where, by such oath, it appears that one of the parties intending marriage is a minor, fourteen days after the entry of such notice have expired.

42. Oath before issue of certificate.— The certificate mentioned in section 41 shall not be issued by any Marriage Registrar, until one of the parties intending marriage appears personally before such Marriage Registrar, and makes oath—

(a) that he or she believes that there is not any impediment of kindred or affinity, or other lawful hindrance, to the said marriage, and

(b) that both the parties have, or (where they have dwelt in the districts of different Marriage Registrars that the party making such oath has, had their, his or her usual place of abode within the district of such Marriage Registrar,

and, where either or each of the parties is a minor,—

(c) that the consent or consents to such marriage required by law has or have been obtained thereto, or that there is no person resident in Bangladesh authorised to give such consent, as the case may be.

43. [Petition to High Court to order certificate in less than fourteen days.] Omitted by A. O., 1949, Schedule.

44. Consent of father or guardian. Protest against issue of certificate.— The provisions of section 19 apply to every marriage under this part, either of the parties to which is a minor;

and any person whose consent to such marriage would be required thereunder may enter a protest against the issue of the Marriage Registrar's

certificate by writing, at any time before the issue of such certificate, the word "forbidden" opposite to the entry of the notice of such intended marriage in the Marriage Notice Book, and by subscribing thereto his or her name and place of abode, and his or her position with respect to either of the parties, by reason of which he or she is so authorised.

When such protest has been entered, no certificate shall issue until the Marriage Registrar has examined into the matter of the protest, and is satisfied that it ought not to obstruct the issue of the certificate for the said marriage, or until the protest is withdrawn by the person who entered it.

45. *Petition where person whose consent is necessary is insane, or unjustly withholds consent.*— If any person whose consent is necessary to any marriage under this Part is of unsound mind,

or if any such person (other than the father) without just cause withholds his consent to the marriage,

the parties intending marriage may apply by petition, to the District Judge:

And the said District Judge may examine the allegations of the petition in a summary way :

And, if upon examination such marriage appears proper, such District Judge shall declare the marriage to be a proper marriage.

Such declaration shall be as effectual as if the person whose consent was needed had consented to the marriage :

and, if he has forbidden the issue of the Marriage Registrar's certificate, such certificate shall be issued and the like proceedings may be had under this Part in relation to the marriage as if the issue of such certificate had not been forbidden.

46. *Petition where Marriage Registrar refuses certificate.*— Whenever a Marriage Registrar refuses to issue a certificate under this Part, either of the parties intending marriage may apply by petition to the District Judge.

The said District Judge may examine the allegations of the petition in a summary way, and shall decide thereon.

The decision of such District Judge shall be final, and the Marriage Registrar to whom the application for the issue of a certificate was originally made shall proceed in accordance therewith.

1 [*** **]

48. *Petition when registrar doubts authority of person forbidding. Procedure on petition.*— Whenever a Marriage Registrar, acting under the Provisions of section 44, is not satisfied that the person forbidding the issue of the certificate is authorised by law so to do, the said Marriage Registrar shall apply by petition, to the District Judge.

The said petition shall state all the circumstances of the case, and pray for the order and direction of the Court concerning the same,

and the said District Judge shall examine into the allegations of the petition and the circumstances of the case;

and if, upon such examination, it appears, that the person forbidding the issue of such certificate is not authorised by law so to do, District Judge shall declare that the person forbidding the issue of such certificate is not authorised as aforesaid,

and thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage as if the issue had not been forbidden.

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49. *Liability for frivolous protest against issue of certificate.*— Every person entering a protest with the Marriage Registrar, under this part against the issue of any certificate, on grounds which such Marriage Registrar, under section 44 or the District Judge, under section 45 or 46, declares to be frivolous and such as ought not to obstruct the issue of the certificate, shall be liable for the costs of all proceedings in relation thereto and for damages, to be recovered by suit by the person against whose marriage such protest was entered.

50. *Form of certificate.*— The certificate to be issued by the Marriage Registrar under the provisions of section 41 shall be in the form contained in the second schedule to this Act annexed or to the like effect, and the Government shall furnish to every Marriage Registrar, a sufficient number of form of certificate.

51. *Solemnization of marriage after issue of certificate.*— After the issue of the certificate of the 'Marriage Registrar'

Or, where notice is required to be given under this Act, to the Marriage Registrars for different district, after the issue of the certificates of the Marriage Registrars for such districts,

2. Paragraph 6th, 7th and 8th of section 48 were Omitted by Act VIII of 1973, 2nd Sch. w.e.f 26-3-1971.

marriage may, if there be no lawful impediment to the marriage of the parties described in such certificate or certificates, be solemnized between them, according to such form and ceremony as they think fit to adopt.

But every such marriage shall be solemnized in the presence of some Marriage Registrar (to whom shall be delivered such certificate or certificates as aforesaid), and of two or more credible witnesses besides the Marriage Registrar.

And in some part of the ceremony each of the parties shall declare as follows, or to the like effect:—

"I do solemnly declare that I know not of any lawful impediment why I, A. B., may not be joined in matrimony to C.D."

And each of the parties shall say to the other as follows or to the like effect:—"I call upon these persons here present to witness that I, A.B., do take the C.D., to be my lawful wedded wife or husband."

52. When marriage not had within two months after notice, new notice required.— Whenever a marriage is not solemnized within two months after the copy of the notice has been entered by the Marriage Registrar, as required by section 40, the notice and the certificate, if any, issued thereupon, and all other proceedings thereupon, shall be void;

and no person shall proceed to solemnize the marriage, nor shall any Marriage Registrar enter the same, until new notice has been given, and entry made, and certificate thereof given, at the time and in the manner aforesaid.

53. Marriage Registrar may ask for particulars to be registered.— A Marriage Registrar before whom any marriage is solemnized under this Part may ask of the persons to be married the several particulars required to be registered touching such marriage.

54. Registration of marriage solemnized under Part V.— After the solemnization of any marriage under this Part, the Marriage Registrar present at such solemnization shall forthwith register the marriage in duplicate; that is to say, in a marriage-register-book, according to the form of the fourth schedule hereto annexed, and also in a certificate attached to the marriage-register-book as a counterfoil.

The entry of such marriage in both the certificate and the marriage-register-book shall be signed by the person by or before whom the marriage has been solemnized, if there be any such person, and by the Marriage Registrar present at such marriage, whether or not it is solemnized by him,

and also by the parties married, and attested by two credible witnesses other than the Marriage Registrar and person solemnizing the marriage.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register-book.

55. Certificates to be sent monthly to Registrar General.— The Marriage Registrar shall forthwith separate the certificate from the marriage-register-book and send it, at the end of every month, to the Registrar General of Births, Deaths and Marriages.

The Marriage Registrar shall keep safely the said register book until it is filled and shall then send it to the Registrar General of Births, Deaths and Marriages, to be kept by him with the records of his office.

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57. Registrars to ascertain that notice and certificate are understood by Native Christians.— When any Native Christian about to be married gives a notice of marriage, or applies for a certificate from a Marriage Registrar, such Marriage Registrar shall ascertain whether the said Native Christian understands the English language, and if he does not the Marriage Registrar shall translate, or cause to be translated, such notice or certificate, or both of them as the case may be, to such Native Christian into a language which he understands;

or the Marriage Registrar shall otherwise ascertain whether the Native Christian is cognizant of the purport and effect of the said notice and certificate.

58. Native Christians to be made to understand declarations.— When any Native Christian is married under the provisions of this Part the person solemnizing the marriage shall ascertain whether such Native Christian understands the English language, and, if he does not, the person solemnizing the marriage shall, at the time of the solemnization, translate, or cause to be translated, to such Native Christian, into a language which he understands, the declarations made at such marriage in accordance with provisions of this Act.

59. Registration of marriages between Native Christians.— The registration of marriages between Native Christians under this Part shall be made in conformity with the rules laid down in section 37 (so far as they are applicable) and not otherwise.

PART VI

Marriage of Native Christians

60. On what conditions marriages of Native Christians may be certified.— Every marriage between Native Christians applying for a certificate shall, without the preliminary notice required under Part III, be certified under this Part, if the following conditions be fulfilled, and not otherwise :—

(1) the age of the man intending to be married shall exceed sixteen years, and the age of the woman intending to be married shall exceed thirteen years;

(2) neither of the persons intending to be married shall have a wife or husband still living;

(3) in the presence of a person licensed under section 9, and of at least two credible witnesses other than such person, each of the parties shall say to the other—

"I call upon these persons here present to witness that I, A.B., in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, C.D., to be my lawful wedded wife or husband" or words to the like effect :

Provided that no marriage shall be certified under this Part when either of the parties intending to be married has not completed his or her eighteenth year, unless such consent as is mentioned in section 19 has been given to the intended marriage, or unless it appears that there is no person living authorised to give such consent.

61. Grant of certificate.— When, in respect to any marriage solemnized under this Part, the conditions prescribed in section 60 have been fulfilled, the person licensed as aforesaid, in whose presence the said declaration has been made, shall, on the application of either of the parties to such marriage, and on the payment of a fee of four annas, grant a certificate of the marriage.

The certificate shall be signed by such licensed person, and shall be received in any suit touching the validity of such marriage as conclusive proof of its having been performed.

62. Keeping of register book and deposit of extracts therefrom with Registrar General.— (1) Every person licensed under section 9 shall keep in English, or in the Bangla language and in such form as the Government, by which he was licensed may from time to time prescribe a register-book of all marriages solemnized under this Part in his

presence, and shall deposit in the office of the Registrar General of Births, Deaths and Marriages for the territories under the administration of the said Government in such form and at such intervals as that Government may prescribe, true and duly authenticated extracts from his register-book of all entries made therein since the last of those intervals.

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63. Searches in register-book and copies of entries.—

Every person licensed under this Act to grant certificates of marriage, and keeping a marriage-register-book under section 62, shall, at all reasonable times, allow search to be made in such book, and shall, on payment of the proper fee, give a copy certified under his hand, of an entry therein.

64. Books in which marriages of Native Christians under Part I or part III are registered.— The provisions of sections 62 and 63, as to the form of the register-book, depositing extracts therefrom, allowing searches thereof, and giving copies of the entries therein, shall, *mutatis mutandis*, apply to the books kept under section 37.

65. Part VI not to apply to Roman Catholics. Saving of certain marriages.— This Part of this Act, except so much of sections 62 and 63 as are referred to in section 64, shall not apply to marriages between Roman Catholics. But nothing herein contained shall invalidate any marriage celebrated between Roman Catholics under the provisions of Part V of Act No. XXV of 1864, previous to the twenty-third day of February, 1865.

66. False oath, declaration, notice or certificate for procuring marriage.— Whoever, for the purpose of procuring a marriage or license of marriage, intentionally,—

(a) where an oath or declaration is required by this Act, or by any rule or custom of a Church according to the rites and ceremonies of which a marriage is intended to be solemnized, such Church being the Church of England or of Scotland or of Rome, makes a false oath or declaration, or,

(b) where notice or certificate is required by this Act, signs a false notice or certificate,

shall be deemed to have committed the offence punishable under section 193 of the 2 [Penal Code with imprisonment of either description for a term which may extend to three years and, at the discretion of the Court, with fine.]

67. Forbidding, by false personation, issue of certificate by Marriage Registrar.— Whoever forbids the issue, by a Marriage Registrar, of a certificate, by falsely representing himself to be a person whose consent to the marriage is required by law, knowing or believing such representation to be false, or not having reason to believe it to be true, shall be deemed guilty of the offence described in section 205 of the Penal Code.

68. Solemnizing marriage without due authority.— Whoever, not being authorized by section 5 of this Act to solemnize marriages, solemnises or professes to solemnize in the absence of a Marriage Registrar of the district in which the ceremony takes place, a marriage between persons one of both of whom is or are a Christian or Christians, shall be punished with imprisonment which may extend to ten years, or (in lieu of a sentence of imprisonment for seven years or upwards) with transportation for a term of not less than seven years, and not exceeding ten years.

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and shall also be liable to fine.

69. Solemnizing marriage out of proper time or without witnesses.— Whoever knowingly and wilfully solemnizes a marriage between persons one or both of whom is or are a Christian or Christians, at any time other than between the hours of six in the morning and seven in the evening, or in the absence of at least two credible witnesses other than the person solemnizing the marriage, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

This section does not apply to marriages solemnized under special licenses granted by the Anglican Bishop of the Diocese or by his Commissary, not to marriages performed between the hours of seven in the evening and six in the morning by a Clergyman of the Church of Rome, when he has received the general or special license in that behalf mentioned in section 10.

Nor does this section apply to marriages solemnized by a Clergyman of the Church of Scotland according to the rules, rites, ceremonies and customs of the Church of Scotland.

70. Solemnizing without notice or within fourteen days after notice, marriage with minor.— Any minister of Religion

licensed to solemnize marriages under this Act, who, without a notice in writing, or, when one of the parties to the marriage is a minor, and the required consent of the parents or guardians to such marriage has not been obtained, within fourteen days after the receipt by him of notice of such marriage, knowingly and wilfully solemnizes a marriage under Part III, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

71. Issuing certificate, or marrying without publication of notice; marrying after expiry of notice; solemnizing marriage with minor within fourteen days without authority of Court, or without ending copy of notice; issuing certificate against authorised prohibition.— A marriage Registrar under this Act, who commits any of the following offences:—

- (1) knowingly and wilfully issues any certificate for marriage, or solemnizes any marriage, without publishing the notice of such marriage as directed by this Act;
- (2) after the expiration of two months after the copy of the notice has been entered as required by section 40 in respect of any marriage, solemnizes such marriage;
- (3) solemnizes, without any order of a competent Court authorising him to do so, any marriage, when one of the parties is a minor, before the expiration of fourteen days after the receipt of the notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Senior Marriage Registrar of the district if there be more Marriage Registrars of the district than one, and if he himself be not the Senior Marriage Registrar;
- (4) issues any certificate the issue of which has been prohibited, as in this Act provided, by any person authorised to prohibit the issue thereof,

shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

72. *Issuing certificates after expiry of notice, or in case of minor, within fourteen days after notice, or against authorised prohibition.*— Any Marriage Registrar knowingly and wilfully issuing any certificate for marriage after the expiration of two months after the notice has been entered by him as aforesaid,

or knowingly and wilfully issuing, without the order of a competent Court authorizing him so to do, any certificate for marriage, where one of

the parties intending marriage is a minor, before the expiration of fourteen days after the entry of such notice, or any certificate the issue of which has been forbidden as aforesaid by any person authorised in this behalf, shall be deemed to have committed an offence under section 166 of the Penal Code. [XLV of 1860].

73. Persons authorised to solemnize marriage (other than Clergy of Churches of England, Scotland or Rome)— Whoever, being authorised under this Act to solemnize a marriage,

and not being a Clergyman of the Church of England, solemnizing a marriage after due publication of banns, or under a license from the Anglican Bishop of the Diocese or a Surrogate duly authorised in that behalf,

or, not being a Clergyman of the Church of Scotland, solemnizing a marriage according to the rules, rites, ceremonies and customs of that church,

or not being a Clergyman of the Church of Scotland, solemnizing a marriage according to the rules, rites, ceremonies and customs of that church,

or, not being a Clergyman of the Church of Rome, solemnizing a marriage according to the rites, rules, ceremonies and customs of that church,

knowingly and wilfully issues any certificate for marriage under this Act, or solemnizes and marriage between such persons as aforesaid, without publishing, or causing to be affixed, the notice of such marriage as directed in part III of this Act, or after the expiration of two months after the certificate has been issued by him;

or knowingly and wilfully issues any certificate for marriage or solemnizes a marriage between such persons when one of the persons intending marriage is a minor, before the expiration of fourteen days after the receipt of notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Marriage Registrar, or, if there be more marriage Registrars than one; to the Senior Marriage Registrar of the district;

or knowingly and wilfully issues any certificate the issue of which has been forbidden, under this Act, by any person authorised to forbid the issue;

or knowingly and wilfully solemnizes any marriage forbidden by any person authorised to forbid the same;

shall be punished with imprisonment for a term which may extend to four years, and shall also be liable to fine.

74. Unlicensed person granting certificate pretending to be licensed.— Whoever, not being licensed to grant a certificate of marriage under Part VI of this Act, grants such certificate intending thereby to make it appear that he is so licensed, shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

Whoever, being licensed to grant certificates of marriage under Part VI of this Act, without just cause refuses, or wilfully neglects or omits, to perform any of the duties imposed upon him by that Part shall be punished with fine which may extend to one hundred taka.

75. Destroying or falsifying register books.— Whoever, by himself or another, wilfully destroys or injures any register-book or the counterfoil certificates thereof, or any part thereof, or any authenticated extract therefrom,

or falsely makes or counterfeits any part of such register book or counterfoil certificates,

or, wilfully inserts any false entry in any such register-book or counterfoil certificate or authenticated extract,

shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

76. Limitation of prosecutions under Act.— The Prosecution for every offence punishable under this Act shall be commenced within two years after the offence is committed.

PART VIII Miscellaneous

77. What matters need not be proved in respect of marriage in accordance with Act.— Whenever any marriage has been solemnized in accordance with the provisions of sections 4 and 5, it shall not be void merely on account of any irregularity in respect of any of the following matters, namely:—

- (1) any statement made in regard to the dwelling of the persons married, or to the consent of any person whose consent to such marriage is required by law ;
- (2) the notice of the marriage :
- (3) the certificate or translation thereof :
- (4) the time and place at which the marriage has been solemnized;
- (5) the registration of the marriage.

78. Correction of errors.— Every person charged with the duty of registering any marriage, who discovers any error in the form or substance of any such entry, may, within one month next after the discovery of such error, in the presence of the persons married, or, in case of their death or absence, in the presence of two other credible witnesses, correct the error, by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry, and add thereto the date of such correction, and such person shall make the like marginal entry in the certificate thereof.

And every entry made under this section shall be attested by the witnesses in whose presence it was made.

And in case such certificate has been already sent to the Registrar General of Births, Deaths and Marriages, such person shall make and send in like manner a separate certificate of the original erroneous entry, and of the marginal correction therein made.

79. Searches and copies of entries.— Every person solemnizing a marriage under this Act, and hereby required to register the same,

and every Marriage Registrar or Registrar General of Births, Deaths and Marriages having the custody for the time being of any register of marriages, or of any certificate, or duplicate or copies of certificate, under this Act,

shall, on payment of the proper fees, at all reasonable times allow searches to be made in such register, or for such certificate or duplicate, or copies, and give a copy under his hand of any entry in the same.

80. Certified copy of entry in marriage register etc. to be evidence.— Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any marriage register or certificate, or duplicate, required to be kept or delivered under this Act, of an entry of a marriage in such register, or of any such certificate or duplicate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further proof of such Register or certificate, or duplicate, or of any entry therein, respectively, or of such copy.

81. Certificates of certain marriages for Government.— The Registrar General of Births, Deaths, and Marriages.

6[**** **** ****]

6. The words "and officers appointed under section 56" were omitted by Act VIII of 1973 2nd Sch, w.e.f. 26-3-1971.

shall, at the end of every quarter in each year, select, from the certificates of marriages forwarded to ⁷[him], during such quarter, the certificates of the marriages of which the Government may desire that evidence shall be transmitted to England, and shall send the same certificates, signed by ⁷[him] to the Government.

82. Government prescribe fees.— Fees shall be chargeable under this Act for receiving and publishing notices of marriages;

issuing certificates for marriage by Marriage Registrars, and registering marriages by the same;

entering protests against, or prohibitions of, the issue of certificates for marriage by the said Registrars;

searching register-books or certificates, or duplicates of copies thereof;

giving copies of entries in the same under sections 63 and 79.

The Government shall fix the amount of such fees respectively,

and may from time to time vary or remit them either generally or in special cases, as to it may seem fit.

83. Power to make rules.— The Government may make rules in regard to the disposal of the fees mentioned in section 82, the supply of register-books, and the preparation and submission of returns of marriages solemnized under this Act.

8[*** ** **]

85. Power to declare who shall be District Judge.— The Government may, by notification in the *Official Gazette*, declare who shall, in any place to which this Act applies, be deemed to be the District Judge.

9[*** ** **]

87. Saving of consular marriages.— Nothing in this Act applies to any marriage performed by any Minister, Consul or consular agent between subjects of the State which he represents and according to the laws of such State.

88. Non-validation of marriages within prohibited degrees.— Nothing in this Act shall be deemed to validate any marriage which the personal law applicable to either of the parties forbids him or her to enter into.

7. Subs. for the words "them respectively" by Act VIII of 1973.

8. Section 84 was omitted by Act VIII of 1973, Second Schedule (with effect from 26th March, 1971).

9. Subs. by A. O. 1937, for "the G.G. in C."

SCHEDULE I

(See Sections 12 and 38)

NOTICE OF MARRIAGE

To a Minister [or Register] of

I hereby give you notice that a marriage is intended to be had, within there calendar months from the date hereof, between me and the other party therein named and described (that is to say):-

Name	Condition	Rank or Profession	Age.	Dwel- ling place	Length of resi- dence.	Church, Chapel or place of worship in which the marriage is to be solemnized.	District in which the other party resides, when the par- ties dwell in Different dis- tricts.
<i>James Smith.</i>	<i>Widower.</i>	<i>Carpenter.</i>	<i>Of full age.</i>	<i>16, Clive Street.</i>	<i>23 days.</i>	<i>Free Church of Scotland Church, Calcutta.</i>	
<i>Martha Green</i>	<i>Spinster.</i>	<i>....</i>	<i>Minor.</i>	<i>20, Hastings Street.</i>	<i>More than a month.</i>		

Witness my hand, this

day of

Seventy-two.

(Signed) JAMES SMITH

[The italics in this schedule are to be filled up, as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.]

SCHEDULE II

(See sections 24 and 50.)

CERTIFICATE OF RECEIPT OF NOTICE

I,
do hereby certify that, on the _____ day of _____, notice was duly entered in my Marriage Notice Book of the marriage intended between the parties therein named and described, delivered under the hand of _____ one of the parties (that is to say) :-

Name	Condition	Rank or Profession	Age.	Dwell-ing place	Length of residence.	Church, Chapel or place of worship in which the marriage is to be solemnized.	District in which the other party resides, when the parties dwell in Different districts.
<i>James Smith.</i>	<i>Widower,</i>	<i>Carpenter.</i>	<i>Of full age.</i>	<i>16, Clive Street.</i>	<i>23 days.</i>	<i>Free Church of Scotland Church, Calcutta.</i>	
<i>Martha Green</i>	<i>Spinster.</i>	<i>....</i>	<i>Minor.</i>	<i>20, Hastings Street.</i>	<i>More than a month.</i>		

and that the declaration, [or oath required by section 17 XV of or 41 of the Christian Marriage Act, 1872 has been duly 1872 made by the side (James Smith).

Date of notice entered

Date of certificate given

}

The issue of this certificate has not been prohibited by any person authorised to forbid the issue thereof.

Witness my hand, this

day of
(Signed)

seventy-two.

This certificate will be void, unless the marriage is solemnized on or before the day of

[The italics in the schedule are to be filled up, as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.]

¹ Ins. by the Repealing and Amending Act, 1903 (1 of 1903), 3.

(Schedule III.-Form of Register of Marriages.)

SCHEDULE III

(See sections 28 and 31¹)

FORM OF REGISTER OF MARRIAGES

Quarterly RETURNS

Of

MARRIAGES

for

The Archdeaconry of 2* * *

I, _____, Registrar of the Archdeaconry of 2* * * do hereby certify that the annexed are correct copies of the originals and Official Quarterly Returns of Marriage within the Archdeaconry of 2* * * as made and transmitted to me for the quarter commencing the _____ day of _____ ending the day of _____ in the year of Our lord

[Signature of Registrar]

Registrar of the Archdeaconry of 2 * * * MAR-

RIAGES solemnized at 2 * * *

Year.	When Married		Names of Parties		Age.	Condition.	Rank or Profession.	Residence at the time of marriage	Father's name and surname.	By banns or license.	Signatures of the parties.	Signatures of two of more witnesses present.	Signature of the person solemnizing the marriage.
	Month.	Day.	Christian.	Surname.									

¹ Subs, by the Second Schedule of the Amending Act, 1891 (XII of 1891), for the original reference.

² Names of certain cities (Indian) omitted by the Federal Law (Revision and Declaration) Act, 1951 (XXVI of 1951), s. 3 and II sch.

SCHEDULE IV
(See Sections 32 and 54)
MARRIAGE REGISTER BOOK

Number	When Married.			Names of Parties.		Age.	Condition.	Rank or Professions.	Residence at the time of marriage.	Father's name and surname.
				Christian name.	Surname.					
	Day.	Month.	Year.							
1				James Martha	White Durcan	26 Years 17 years	Widower Spinster	Carpenter	Agra Agra	William White Jahn Durcan

(Schedule IV. — Marriage Register Book.)

Married in the
This Marriage was solemnized between us { James White,
Martha Dunchan, } in the presence of us { Jhon Smith.
Jhon Green. }

CERTIFICATE OF MARRIAGE

Number	When Married.			Names of Parties.		Age.	Condition.	Rank or Professions.	Residence at the time of marriage.	Father's name and surname.
				Christian name.	Surname.					
	Day.	Month.	Year.							
1				<i>James Martha</i>	<i>White Durcan</i>	<i>26 Years 17 years</i>	<i>Widower Spinster</i>	<i>Carpenter</i>	<i>Agra Agra</i>	<i>William White Jahn Durcan</i>

(Schedule IV. — Marriage Register Book.)

Married in the
 This Marriage was solemnized between us { James White,
 Martha Dunchan, } in the presence of us { Jhon Smith.
 Jhon Green. }