

**THE LAW OF CITIZENSHIP  
AND  
PASSPORT OF BANGLADESH**  
(And also other related foreign laws).

*By*

*I.M.M. Mohsin*

Former Senior Assistant Secretary, Govt. of Bangladesh

**NEW WARSI BOOK CORPORATION**

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***Preface***  
**to the revised edition.**

In 1990 I wrote the book on the Citizenship and Passport of Bangladesh incorporating the amendments and the case-laws in that period.

After that a decade has elapsed. In the meantime some amendments made and some case-laws reported. In the light of these this edition has been extensively revised.

Any further suggestion for improvement in this regard will be highly welcomed.

Dhaka  
March 10, 2002.

I. M.M. Mohsin.

## **PREFACE**

This book is intended to supply a long standing need for the proper guidance of the existing laws regarding Citizenship, Passport and other related statutes of Bangladesh felt by many a readers from the different quarters of the country.

The special features of this work lies incorporating the up-to-date amendments so far made in the laws and cited up-to-date case-laws on the subject.

I am highly confident that this book will surely be useful to the demand of the readers for whom it is meant.

Any suggestion for improvement will be welcomed.

Dhaka

September 15, 1990

I.M.M. Mohsin.

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার  
আইন ও বিচার মন্ত্রণালয়  
বিচার শাখা - ৫

নং ১০৮১ বি-৫/৩ এম-৯/৮৯

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প্রেরক : চৌধুরী মুনীর উদ্দীন মাহফুজ,  
সহকারী সচিব (প্রশাসন)

প্রাপক : জনাব আই. এম. এম. মহসীন  
লাইব্রেরিয়ান  
আইন ও বিচার মন্ত্রণালয়, বাংলাদেশ সচিবালয়, ঢাকা।

বিষয় : "THE LAW OF CITIZENSHIP AND PASSPORT OF  
BANGLADESH" শিরোনামে পুস্তক প্রকাশের অনুমতি প্রসঙ্গে।

উপরোক্ত বিষয়ে নিম্নস্বাক্ষরকারী আদিষ্ট হইয়া জানাইতেছেন যে, আপনার ৫/৯/৯০ ইং  
তারিখের আবেদনের প্রেক্ষিতে সরকার সদয় হইয়া "THE LAW OF  
CITIZENSHIP AND PASSPORT OF BANGLADESH" শিরোনামে আপনার  
রচিত পুস্তকটি ছাপাইয়া প্রকাশের জন্য অনুমোদন প্রদান করিয়াছেন।

পাভুলিপিটি এতদসঙ্গে ফেরত দেওয়া হইল।

(চৌধুরী মুনীর উদ্দীন মাহফুজ)  
সহকারী সচিব (প্রশাসন)

## Guidance for Readers

As the specific adaptation of the following existing laws have not yet been made, the Adaptation of Existing Bangladesh Laws Order, 1972 (President Order No. 48 of 1972) should be read to determine the existing provisions of the laws :-

1. The Pakistan Citizenship Act, 1951
2. Pakistan Citizenship Rules, 1952
3. Passport Rules, 1955
4. Passport (Offences) Act, 1952
5. Foreigners Order, 1951
6. Foreigners (Parolees) Order, 1965
7. Enemy Foreigners Order, 1965
8. Registration of Foreigners Rules, 1966 etc.

The Bangladesh (Adaptation of existing laws) order, 1972  
Presidents order No. 48 of 1972.

Whereas the laws continuance and Enforcement Order provides that all laws which were in force on the 25th day of March, 1971, in the territories now comprised in the People's Republic of Bangladesh shall continue to be in force in Bangladesh subject to such consequential changes as may be necessary;

Now, therefore, in pursuance of Proclamation of Independence of Bangladesh read with the Provisional Constitution of Bangladesh Order, 1972 and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following order :

1. (1) This may be called the Bangladesh (Adaptation of Existing Laws) Order, 1972.

(2) It shall come into force at once and shall be deemed to have taken effect on the 26th day of March, 1971.

2. In this order, "existing law" means any Act, Ordinance, Regulation, Rule, Order or bye-law which immediately before the 26th day of March, 1971, had the force of law in whole or any part of the territories now comprised in the People's Republic of Bangladesh.

3. As from the 26th day of March, 1971, all "existing laws" shall, until repealed or altered or amended by competent Legislature or other competent

authority, in their application to Bangladesh, be subject to the Adaptation directed in this Order.

4. Where an existing law, other than the Income-Tax Act, 1922, the Excess Profits Tax Act, 1940, the Business Profits Tax Act, 1947, the Estate Duty Act, 1950, the State Tax Act, 1951, the Gift Tax Act, 1963 and the Wealth Tax Act, 1963, contains any provision extending the law to the whole of Pakistan or to whole of East Pakistan, that provision shall be so construed as to refer to the whole of the People's Republic of Bangladesh.

5. References in any existing law, other than the Income Tax Act, 1922, the Excess Profits Act, 1940, the Business Profits Tax Act, 1947, the Estate Duty Act, 1950, the Sales Tax Act, 1951, the Gift Tax Act, 1963 and the Wealth Tax Act, 1963, to 'Pakistan' or 'East Pakistan' shall, except where the reference occurs in a title <sup>a</sup>[\*\*] or any citation or description or an Act, Ordinance or Regulation and except where context otherwise requires, be replaced by references to Bangladesh.

6. References in any existing to 'Pakistan', 'Bengal', 'East Bengal' or 'East Pakistan' in a title <sup>b</sup>[\*\*] or any citation or description in any Act, Ordinance or regulation shall, except where the context otherwise require shall be omitted.

<sup>bb</sup>7. (i) Unless the context otherwise requires.

(a) any reference in any law for the time being in force, to the High Court, the High Court of Dacca or the High Court of Bangladesh, exercising original, appellate, revisional or other jurisdiction, shall, as from the 16th day of December, 1972, be construed as reference to the High Court Division of the Supreme Court of Bangladesh established under The Constitution.

(b) any reference in any existing law to the Supreme Court exercising original, appellate or revisional or other jurisdiction shall, as from the 16th day of December, 1972, be construed as reference to the Appellate Division of the Supreme Court of Bangladesh established under this Constitution.

(2) Except as otherwise provided in sub-clause (a) and (b) of clause 1 and where the context so requires, any reference in any law for the time being in force to the Supreme Court or to the High Court of Dacca or the High Court of Bangladesh shall, as from the 16th day of December, 1972,

---

a. The words in square brackets "or preamble" were omitted by P.O. No. 150 of 1972.

b. The words within square brackets "or preamble" were omitted by P.O. 150 of 1972.

bb. Subs. *ibid.*



shall be construed as reference to the Supreme Court of Bangladesh established under the Constitution.

(3) Any reference in any law to an Advocate entitled to practise before the High Court, shall, as from the 16th day of December, 1972, be construed as an Advocate entitled to practise before the Appellate Division and the High Court Division of the Supreme Court of Bangladesh established under the Constitution.

8. Any reference in any existing law to "the Central Government", "the Government of Pakistan", "the Provincial Government" or "the Government of East Pakistan" shall be construed as a reference to the Government of the People's Republic of Bangladesh.

9. Any reference in any existing law to the President of Pakistan, the President, the governor of East Pakistan or the governor shall, except where the context otherwise requires, be replaced by reference to Government of the People's Republic of Bangladesh.

10. Any Court, Tribunal or authority required or empowered to enforce an existing law shall, notwithstanding that this order makes no provision or insufficient provision for adaptation of the law for the purpose of rendering it consistent with the proclamation of Independence or the Provisional Constitution of Bangladesh Order, 1972, construe the law with such adaptations as are necessary for the said purpose;

Provided that if any question arises regarding the adaptation with which such laws should be construed for the said purpose, the question shall be referred to the Government of the People's Republic of Bangladesh and the decision of the Government on any such matter shall be final.

<sup>c</sup>[11. (1) Any reference in any existing law to the "Advocate General" shall be construed as a reference to the "Attorney General".

(2) Any reference in any existing law to "Government Pleader" shall be construed as referring to an "Advocate", or where appropriate, "the Deputy Attorney General (Civil)", appointed by the Government].

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**The Bangladesh Citizenship (Temporary Provisions)  
Order, 1972 (P.O. No. 149 of 1972)  
[15th December, 1972]**

**WHEREAS** it is expedient to make temporary provisions regarding citizenship of Bangladesh;

**NOW, THEREFORE**, in pursuance of the Proclamation of Independence of Bangladesh, read with the Provisional Constitution of Bangladesh Order, 1972, and in exercise of all powers enabling him in that behalf, the President is pleased to make the following Order :-

1. (1) This order may be called the Bangladesh Citizenship (Temporary Provisions) Order, 1972.

(2) It shall come into force at once and shall be deemed to have taken effect on the 26th day of March, 1971.

<sup>1</sup>[IA. In this Order, unless there is anything repugnant in the subject or context, "prescribed" means prescribed by rules made under this order.]

✓ 2. Notwithstanding anything contained in any other law, on the commencement of this Order, every person shall be deemed to be a citizen of Bangladesh.

(i) Who or whose father or grandfather was born in the territories now comprised in Bangladesh and who was a permanent resident of such territories on the 25th day of March, 1971, and continues to be so resident; or

✓ (ii) Who was a permanent resident of the territories now comprised in Bangladesh on the 25th day of March, 1971, and continues to be so resident and is not otherwise disqualified for being a citizen by or under any law for the time being in force :

Provided that if any person is a permanent resident of the territories now comprised in Bangladesh or his dependent is, in the course of his employment or for the pursuit of his studies, residing in a country which was at war with, or engaged in military operations against Bangladesh and is being prevented from returning to Bangladesh, such person, or his dependents, shall be deemed to continue to be resident in Bangladesh.

## Case Law

*A. Citizenship.*—Bangladeshi by birth temporarily residing in a country at war or engaged in military operations against Bangladesh and prevented by circumstances from returning to Bangladesh—Citizenship of Bangladesh not lost. [1982 BLD(AD) ; 143].

*B. 'Permanent resident' defined.*—Article 2 makes it clear that any person who or whose father or grand-father was born in the territories of Bangladesh and who was permanent resident of such territory on the 25th March, 1971 continues to be a citizen of Bangladesh. [27 DLR (1975) 623].

*C. Citizenship, right of-not lost by mere filing of an application to go to a different country.*—Question is whether the petitioner had abandoned his citizenship of Bangladesh by any positive act or has otherwise disqualified him so as to be deprived of his citizenship. The order by which he has been deprived of his right of citizenship does not refer to any positive act, but merely refers to his filing an application to the International Committee of Red Cross with a view to go over to Pakistan. The mere fact that the petitioner filed an application for going over to Pakistan cannot take away his citizenship. The Bangladesh Citizenship Order, P.O. 149 of 1972, has enumerated different situation in which a person shall be deemed to be a citizen of Bangladesh, but it has not discriminated among its citizens of this country. So the petitioner is on the same footing as any other citizen. His citizenship, therefore, clings to him. He could voluntarily renounce it or he could be deprived of it if he had incurred any disqualification. Though the petitioner filed an application to the International Committee of Red Cross to go over to Pakistan he did not even pursue it. He filed an affidavit affirming his allegiance to Bangladesh in 1972. The petitioner having not acquired the citizenship of any other country, his citizenship of Bangladesh which he acquired long before can not evaporate and he continues to be a citizen of this country. [34 DLR (1982) 29]

Right of citizenship—Domicile certificate by the then Government of East Pakistan in favour of the petitioner would go to show that he was recognised as a national of Bangladesh and was permitted to live in Bangladesh permanently. The petitioner's living in Bangladesh clearly responds to the requirement of Article 2 (ii) and he is deemed to be a citizen of Bangladesh. Mere filing of an application by him for repatriation cannot take away this right of citizenship (Mukhtar Ahmed Vs. Govt. of Bangladesh & others 34 DLR 29 relied) [Abdul Khaleque Vs. The Court of Settlement & others; 44 DLR (1992) HC 273].

The proviso to this Article uses the expression "permanent resident" to denote those who had domicile of origin in Bangladesh and then uses the expression "residence" to denote the temporary resident or habitual resident in Pakistan and prevented from returning. The expression "prevented" would mean and include both actual physical prevention and also mental prevention arising out of fear of life or personal safety or other difficult circumstances which would prevent from returning to Bangladesh.

Article 2(i), 2(ii) and the proviso thus, covers all, whether physically present or not, but Bangladeshi by birth or permanently and domiciled and also persons of Bangladeshi origin who are in temporary residence in Pakistan for service or studies and otherwise and prevented from returning to Bangladesh. Temporary residence in Pakistan would thus, come under the proviso to Article 2 and in the tripartite agreement between Bangladesh Pakistan and India it was further extended to all "stranded" Bangladeshis in Pakistan as a Government policy : *Per Anwarul Hoque Choudhury J delivering the final Judgement. [Professor Golam Azam Vs. Govt. of Bangladesh and others, 45 DLR (1993) 423].*

### **Domicile**

**Domicile is not the same thing as residence. Residence implies a purely physical fact, the fact of just being present and living in a particular place, but domicile is not only residence—it is residence coupled with intention to live indefinitely in the place.**

No person can be without a domicile or a permanent home and since the object of determining a person's domicile is to connect him with some system or rule of law. It is obvious that for the purpose of any giving inquiry, a person cannot have more than one domicile. If a person has two homes in different countries, he in the absence of a contrary intention is domiciled in that country in which he has his principal home. In our citizenship laws as referable to Citizenship Order, 1972 the legislature without using the word domicile has used the expression "permanent residence" which more or less bears the same meaning as meant by the expression domicile of origin which means permanent home. One conduct of the petitioner seems to be clear. Even in a moment of crisis when he was without the citizenship of Bangladesh and almost a stateless person he did not go to Pakistan or opt for Pakistan which he could do, as many other

disqualified persons did. This conduct and this intention to be identified as a Bangladeshi is relevant for the purpose of distinguishing mere residence from domicile of origin : *Per Anwarul Hoque Choudhury J delivering the final judgment.*

If any person wishes to claim citizenship he must prove that he had a permanent home or domicile of origin in Bangladesh and that he had permanently so domiciled in the territory once called East Pakistan on 25th day of March, 1971 and he continues to be so resident of that territory thereafter on and from 26th March, 1971. If these are found then he would be citizen of Bangladesh on the commencement day of the Order.

The scheme of the whole legislation as it stood originally and as it stood when the impugned disqualification order was passed, was to grant citizenship to all on the basis of permanent residence in Bangladesh as on 25th March, 1971 and on the commencing day on 26th March, 1971 and it was extended under Article 2 (ii) to persons not born in the territory now Bangladesh but found to be permanent resident on 25th March, 1971 and also to persons who were resident in Pakistan on the commencing day of this order and thereafter "stranded" and "prevented" from returning : *Per Anwarul Hoque Choudhury J delivering the final Judgement.*

*Per Badrul Islam Chowdhury J differing with Ismail Uddin Sarker J :* I am also constrained to say that I am unable to agree with the contention of the learned Attorney-General to the effect that in view of the Notification issued on 18th April, 1973, Annexure-B, disqualifying the petitioner along with others from being deemed to be citizens of Bangladesh it shall be deemed to have taken effect on and from 26th day of March, 1971. The learned Attorney-General has laid much stress on the fact that the petitioner on arriving Bangladesh got himself registered as a foreigner and argued that this clearly indicated that he did not treat himself as a citizen of Bangladesh. It may be pointed out that anybody entering into a country with a passport not issued by that country is required to be registered as a foreigner and this is a matter of course only. This in no way could be termed as renunciation of Bangladesh Citizenship. A person can not be deprived of the citizenship of his country of birth unless he himself renounces it by taking up citizenship of another country in contravention of the law of his country of origin [*Professor Golam Azam Vs. Govt. of Bangladesh & others, 45 DLR (1993) 423*].

### Citizen

**Citizen** means a person who is a member of an independent political community having rights and obligations under the Constitution and law of the country : *Per M H Rahman J.*

#### P. O. 149 of 1972

##### Art. 2

A person who is deemed to be a citizen of Bangladesh under Article 2 is not required to take any oath of allegiance unless he is elected or appointed to any office mentioned in the Third Schedule of the Constitution : *Per M H Rahman J.*

*Per Mustafa Kamal J.* (agreeing) : For purposes of being a "deemed citizen" of Bangladesh under Article 2, no person is required to express an allegiance to Bangladesh either by law or by the rules. He becomes a "deemed citizen" of Bangladesh by operation of law.

### Article-2

**The legal fiction as to continuance of residence in Bangladesh as provided in proviso to Article 2 must be limited to the purpose for which it is created and should be strictly construed and should not be extended in the name of beneficial construction beyond its context.**

Where the proviso to Article 2 is attracted a citizen will not be required to explain further his case for staying abroad. That provision of law will not, however, preclude a citizen from explaining his staying abroad on other good reasons. For example, from December, 1971 to September, 1973, due to shapping of all communications between Bangladesh and Pakistan and because of non-recognition of Bangladesh by Pakistan, hundreds of Bengali citizens were stranded in Pakistan : *Per M H Rahman J. [Bangladesh Vs. Professor Golam Azam & others; 46 DLR (1994) (AD) 192].*

Citizenship—Respondent has got a Bangladesh passport which is *prima facie* evidence of his citizenship of the country. He has not acquired citizenship of any other country—his citizenship of Bangladesh cannot in such circumstances just evaporate. *Mukhter Ahmed Vs. Govt. of Bangladesh, 34 DLR (29) [Abdul Quddus Vs. Govt. of Bangladesh 44 DLR (1992) HC 484.*

## 20 The Law of Citizenship and Passport of Bangladesh

1[2A. A person to whom Article 2 would have ordinarily applied but for his residence in the United Kingdom shall be deemed to continue to be permanent resident in Bangladesh within the meaning of that Article :

Provided that the Government may notify, in the *Official Gazette*, any person or categories of persons to whom this Article shall not apply.

2[2B. (1) Notwithstanding anything contained in Article 2 or in any other law for the time being in force, a person shall not, except as provided in clause (2), qualify himself to be a citizen of Bangladesh if he—

(i) owes, affirms or acknowledges, expressly or by conduct, allegiance to a foreign state, or

(ii) is notified under the proviso to Article 2A :

Provided that a citizen of Bangladesh shall not, merely by reason of being a citizen or acquiring citizenship of a state specified in or under clause (2), cease to be a citizen of Bangladesh.

3(2) The Government may grant citizenship of Bangladesh to any person who is a citizen of any state of Europe or North America or of any other state which the Government may, by notification in the official Gazette, specify in this behalf.]

### Evidence Act, 1908 Section-101

*Provision of P.O. 149 of 1972—citizenship*—suit for declaration that the plaintiff appellant is a citizen of Bangladesh—the trial court dismissed the suit under conception that the onus was upon the plaintiff according to the provision of P.O. 149 of 1975 to prove that he was a permanent resident of this country in order to entitle him to get a declaration that he was a citizen of Bangladesh and it further held that the plaintiff should have proved that on 25.3.1972 he was in this country, and the trial court observed that the plaintiff left this country before the liberation war and came back after liberation—Held : The right of citizenship acquired by birth cannot be lost or destroyed unless it is proved that he has given up it and acquired the citizenship of any other country. Which is very much lacking in this case and the defendant No. 4 now respondent could not prove that the appellant lost his citizenship of Bangladesh which he had acquired by birth. So the Courts below, illegally shifted onus to prove upon the plaintiff appellant, as to his Bangladeshi citizenship which he held and

1. Art. 2A was inserted by Act No. V of 1973, S. 2.

2. Art. 2B was substituted by Ord. No. VII of 1978, S. 2 for Article 2B.



acquired by birth. [Para-19] [*Annada Prasad Das Vs. Dy. Commissioner & Ors.*; 9 BLT 2001 (HCD)-456].

Whether for absence of the plaintiff-appellant from Bangladesh for certain years, his citizenship will cease or he will retain his citizenship legally because he is by birth a citizen of Bangladesh and his parents were also permanent residents of Bangladesh.

**HELD :** The citizenship by birth is a complete legal right and a vested constitutional right which cannot be taken away or denied or lost to a particular citizen for his temporary absence from Bangladesh or for his residence in any other country for a considerable number of years unless and until it is found that the particular citizen of Bangladesh abandons or renounces his citizenship of Bangladesh and acquired citizenship of another country. Para-20 [*Annada Prasad Das Vs. Dy. Commissioner & Ors.*; 9 BLT 2001 (HCD)-456].

#### Case Law

The Citizenship Order of 1972 as it originally stood did not make "conduct" such as treason, sedition, waging war against Government defined in the Penal Code a disqualification for citizenship. This appears to be a clear and deliberate omission made by the legislature in the Citizenship Order at the time it was first promulgated on the 15th December, 1972 with retrospective effect from the 26th March, 1971.

If Golam Azam is charged for abetting murder, rape or arson in collaboration with Pakistan Army or charged for sedition or for treason or for waging war against the Bangladesh Government, he will answer those but for this citizenship matter those would be irrelevant and being irrelevant I would make no comment further on those allegations keeping in mind that this citizenship case centered round Article 2 only and no further, justice is to be done in accordance with law and any attempt to be wiser than the law is by good law forbidden : *Per Anwarul Hoque Choudhury J. delivering the final Judgement.*

Relying upon the word "conduct" the learned Attorney-General tried to argue pointing out to certain subsequent events as anti-state activities of the petitioner dis-entitling him to be deemed to be a citizen of Bangladesh. But the events and the alleged conduct of the petitioner referred to by the learned Attorney-General may be taken into consideration if any case is made out under Article 2B of the said Presidential Order. Mr. A. R. Yusuf has pointed out, and in my opinion rightly, that Article 2A and 2B were inserted in P.O.

149 of 1972 subsequent to the making of the impugned notification. It may be mentioned that although Article 2A and Article 2B were first inserted in P.O. 149 of 1972 by Ordinance No. X of 1973 on 23-5-73 and subsequently by Act V of 1973 dated 25-6-73 and although by section 1(2) of Act V of 1973 the newly inserted Article 2A and 2B were given retrospective effect from 26-3-71 the fact remains that the impugned notification was made before the passing of the amending Act or Ordinance. As such I am of the view that Article. 2B is not applicable in the present case as the impugned notification was made prior to the insertion of Article 2B in the P.O. 149 of 1972 : *Per Mohammad Ismail Uddin Sarker J.*

### **Natural Justice**

*Natural justice is nothing but a procedural justice; being procedural it cannot be said it is not vested. In none of those situations where Natural Justice clause is invoked there existed any legal right for such an asking but the matter involves what the Court often calls a 'legitimate expectation of procedural justice'. When that is not specifically ousted by the law itself, the Court would read into the law such a clause.*

No matter what the legitimate expectations are, it would not absolve the public authority from affording a hearing. Natural Justice in procedure thus, means "fair play in action." This duty to act fairly by following the procedure of natural justice even in administrative proceeding or orders is an integral part of the law itself and it need not be super added. In the instant case therefore the question would be whether in view of the assertion of the petitioner that he would come within the qualifying clause as in Article 2 fairly and squarely a reasonable expectation of being heard would exist in him and that would create a right and if the authority chooses not to hear him before his right has been negated by an *ex parte* order, could the authority be allowed to say that they acted legally, rightly and fairly. The answer is in the negative and this will thus make the proceeding leading to the notification dated 18-4-73 *coram non iudice* and without jurisdiction : *Per Anwarul Hoque Chowdhury J. delivering the final Judgement.*

*Per Mohammad Ismail Uddin Sarker J :* In the case of the petitioner although there is no dispute that he has born in the territory now comprised in Bangladesh and he was a permanent resident of Bangladesh on the 25th March, 1971; there was doubt as to whether he continued to be permanent

resident of Bangladesh on the 25 March, 1971; there was doubt as to whether he continued to be permanent resident of Bangladesh. Admittedly on the date when the impugned notification was issued, that is on the 18th April, 1973, the petitioner was not residing in Bangladesh from the 16th December, 1971, nor he could be deemed to be permanent resident of Bangladesh under the proviso to Article 2 of P.O. 149 of 1972. By the impugned notification the Government in exercise of its power under Article 3 declared that the petitioner along with 38 others were not to be deemed to be citizen of Bangladesh. As the petitioner has no vested right there is no question of service of any prior notice to him.

*Per Badrul Islam Chowdhury J* : Whatever may be the language of Article 3 of P.O. 149 of 1972 there is no doubt about the fact that an order passed under this Article declaring a person not qualified to be deemed to be a citizen of Bangladesh in actual effect interferes with his political status which entails some fundamental rights enumerated in the Constitution which are available to a citizen only. Therefore, it is not worthy to say that by the impugned order no right vested in the petitioner was taken away. Next comes the question whether it was practicable to serve a show cause notice upon the petitioner at the relevant time was not available in Bangladesh and it was not physically possible to serve any notice upon him in persons. But our laws provide different modes of service, such as service at the last known residence of the person concerned or by publication in official gazette or in some newspapers and these are treated to be valid and legal service of notice [*Professor Golam Azam Vs. Govt. of Bangladesh & others* 45; DLR (1993) 423].

***There cannot be any validation of the impugned notification by implication but by law itself, more so of a past and closed transaction.***

The contention of the Attorney-General that Article 2B (i) (ii) would act as a validation of the impugned notification to correct its error has no basis, as there cannot be any validation by implication but by law itself and more so of a past and closed transaction. Moreover, this added Article 2B (i) (ii) would not also be available to the Government to remove a doubt whether a person is qualified to be a citizen of Bangladesh under Article 2 of the Order, as on the day the notification was issued and made effective on 18-4-73 the amendment made on 19-5-73 was not even born or added to Art. 2 : *Per Anwarul Hoque Choudhury J delivering the final Judgement. [Professor Golam Azam Vs. Govt. of Bangladesh & other; 45 DLR (1993) 423].*

**Article 2B**

This law initially did not provide for acquisition of dual citizenship by a citizen of Bangladesh until Article 2B was incorporated by way of amendment to the P. O. 149 of 1972 on 11.2.1978. But the Constitution of the People's Republic of Bangladesh was adopted by the Constituent Assembly on 4th November, 1972 and came into force on the 16th December 1972 with the disqualification clause under reference as it is. No necessity of constitutional amendment in respect of Article 66 (2) (c) of the Constitution was ever felt in keeping with the spirit of Article 2B of the PO 149 of 1972, [*Md. Abdul Halim Vs. Md. Abul Hasan Chowdhury Kaiser & Others; 21 BLD 2001-(HCD)-391*].

**Article 2 & 2B(1)**

**Even a diehard pro-Pakistani, born in this country, is entitled to be a citizen of Bangladesh if he fulfils the requirements under Article 2 and is not disqualified under clause (i) of Article 2B : Per MH Rahman J.**

*Per ATM Afzal J (Agreeing)* : Citizenship, learned Attorney-General himself submitted, is governed by the respective law of each country. Therefore, it is not a matter for clinging to. Rather citizenship clings to a person unless lost otherwise by or under any law. Indeed the Government's clear case is that it had never treated the respondent as a citizen of Bangladesh and disqualified him from being a citizen of Bangladesh for his anti-liberation activities. This shows how utterly the Government failed to comprehend its powers under Article 3. It has already been noticed that Article 3 does not give the Government a power to disqualify a person from being a citizen. If the Government never treated the respondent as a citizen of Bangladesh, it means that it never had any doubt about his citizenship even though he was a citizen under the law and in that case there was no question of giving any decision under Article 3.

*Per Mustafa Kamal J (Agreeing)* : If a person fulfilling the first condition of clause (i) of Article 2 fulfils the second condition as well by being a permanent resident in the territories now comprised in Bangladesh on the 25th day of March, 1971 and if upon the passing of the midnight of the 25th day of March, 1971, he is found to be permanent resident of such territories then he also fulfils the third condition of clause (i) of Article 2. If that interpretation is correct, then what is all this appeal about? Professor Golam Azam was admittedly in the territory now comprised in Bangladesh

on the 26th March, 1971. So how can there be a doubt about his citizenship? It is not a power in the hands of the Government to 'cancel' a person's citizenship or to make a 'declaration' of any sort or to 'disqualify' any person from his citizenship or to 'review' one's citizenship under Article 2. In Article 2, citizenship is conferred on a body of persons by the legislature itself by a legal fiction. It is an act of the legislature, not of the executive. The occasion to exercise power under Article 3 arises only when a 'doubt' arises as to whether a person fulfils all or any of the conditions of "deeming citizenship" under Article 2.

*Per Latifur Rahman J (agreeing)* : In the present case the onus of proving that the respondent has lost his citizenship from the country of his permanent residence is on the appellant who seeks to deprive the respondent of his rights as a citizen and for discharging the onus the appellant could not place any objective material before us other than mentioning about the conduct and mental attitude of the respondent. The test of citizenship so far it relates to the order as it originally stood is to be determined by objective tests and not by conduct and subjective satisfactions. In the order, the concept of citizenship is that of permanent residence (domicile) and it does not evaporate with the passing of time and it clings to a person wherever he may go. I may unhesitatingly say that in Article 2 of the Order "permanent residence" is made one of the basic conditions for treating a person to be deemed to be a citizen of Bangladesh. The appellant has totally failed to show that the respondent has voluntarily renounced his original citizenship or is guilty of some conduct as not being qualified to be 'deemed citizen of Bangladesh' under the Order.

### **Articel 2B & 3**

**The question of allegiance is important in considering disqualification under Article 2B. In this case allegiance as such is irrelevant as the impugned notification is made under Article 3 : Per M H Rahman J.**

*Per Mustafa Kamal J (agreeing)* : While Article 2 prescribes for initial citizenship, clause (i) of Article 2B prescribes a disqualification for becoming a citizen of Bangladesh. Article 2 conferred citizenship on a body of persons by a legal fiction, not by the Government or any other executive authority, but by the legislature.

### Domicile

**The domicile of origin is not a matter of choice or free will. It is received or communicated to a person at his birth by operation of law.**

The domicile of origin is not lost by mere abandonment nor is it extinguished by mere removal *animo non revertendi*. Overwhelming evidence is required to rebut the presumption in favour of its continuance. The onus of proving that a domicile had been chosen in substitution for the domicile of origin would lie upon those who assert that the domicile of origin had been lost : *Per M H Rahman J.*

*Per Latifur Rahman J (agreeing)* : Even though a person leaves the country of his origin with intention of never returning to it, his domicile of origin in that country is never lost, until he has actually settled in another country with the intention of making that country his permanent home. In other words, the domicile of origin is not lost by mere temporary abandonment. Domicile of origin acquired subsists until it is replaced by a fresh domicile of choice.

### Judicial Notice

**The Court cannot take judicial notice of a controversial fact.**

The assertions made in the writ petition were not controverted by the Government nor the respondent was put to strict proof as to his averments. Now for the first time in appeal, the appellant wants that this Court should take judicial notice of the impossibility of the plane journey on 3 December 1971 when the war had already begun. The respondent's assertions were not denied by the Government after getting the full opportunity to do so. The Court cannot now take judicial notice of a controversial fact whether Karachi Airport was at all operational on 3 December 1971 or not for a take-off : *Per M H Rahman J.*

### Court's Decision

**A Court's anxiety in decision making must be limited to the question of facts and law and the interest of justice in the circumstances of a particular case.**

Diverse consequences may follow from a decision. A Court may not have the prescience to foresee the imponderabilities of the future. While acting under the law a Court's anxiety in decision-making must be limited

to the questions of facts and law and the interest of justice in the circumstances of a particular case. It should not brook any doubt while making a decision. And it should not also have any conceit that its in the perfect decision : *Per M H Rahman J.*

### Laches

If the respondent has to explain his laches which it has not, the appellant too has a duty to explain its own contributory laches. I am therefore unable to take a unilateral view of the laches of the respondent and ignore the unexplained laches of the Government itself : *Per Mustafa Kamal J.*

In case of doubt as to whether a person is qualified to be deemed to be a citizen of Bangladesh under Article 2 of this Order, the question shall be decided by the Government, which decision shall be final.

### Case Law

#### *Laws involved :*

(a) Bangladesh Abandoned Property (Control, Management and Disposal) Order, 1972 (P.O. No. 16 of 1972, Articles 1 (ii) (a), 2(s) (i) and 3;

(b) Bangladesh Citizenship (Temporary Provisions). Order, 1972 (P.O. No. 149 of 1972), sections 2, 2A, 2B (2) and 3;

(c) Bangladesh Citizenship (Temporary Provisions) (Amendment) Act, 1973 (V of 1973);

(d) Ordinance No. VII of 1978.

#### *Contention of the appellant Government is as follows :*

The main contention of the appellant, the Government, is that the respondent cannot be deemed to be a citizen of Bangladesh within the meaning of the provisions of Articles 2 and 2A of the President's Order No. 149 of 1972. As such "it falls within the definition of abandoned property under Article 2 (i) of P.O. No. 16 of 1972.

— Citizenship is distinct from nationality. Citizenship is solely a creature of domestic law. It refers to right which a State sees fit to confer upon certain individuals who are also its nationals. Citizens are those persons who have full political rights as distinguished from nationals who may not enjoy full political rights and are still domiciled in that country.

—"Residence" or "permanent residence" both expressions have been used in P.O. No. 149 of 1972. In Article 2(ii) it is the permanent resident

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that was contemplated in contradistinction to persons whose residence was in U.K.

— Respondent severed all connections on 28.2.1972 for possessing a Pakistani Passport.

According to the authoritative pronouncement of the Supreme Court (Appellate Division) made in the cases reported in 28 DLR (AD) 120, (Government of Bangladesh Vs. M/S. A.T.J. Industries) and 30 DLR (SC) 101, (M/S. Speedbird Navigation Co. and others), the date of formation of opinion is 28.2.1972 for declaring a person's property as abandoned property. On this date the respondent surrendered his Pakistani Passport to the British Home Office for obtaining British Passport which he had received on 14.4.1972.

Thus he severed all connections whatever he had for possessing a passport issued by Government of Pakistan.

*P. O. No. 149 of 1972, Articles 2B and 3.*

Dual nationality is provided for in clause 2 of Article 2B.

Article 2B has provided "a citizen of Bangladesh shall not merely by reason of being a citizen or acquiring citizenship of a State specified in or under clause (2) cease to be a citizen of Bangladesh".

Clause (2) runs as follows :

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

In other words it has provided for dual nationality. It is recognised for private international law by many countries.

This aspect of the case should not detain us for the disposal of this appeal because if there is any doubt as to a person whether he is qualified to be deemed to be a citizen of Bangladesh the question shall be decided by the Government, which decision shall be final (vide Article 3).

### **P.O. No. 16 of 1972**

#### **Article 2**

Relying on two authoritative decisions made in 28 DLR (AD) 120 and 30 DLR (SC) 101, it can be said that the facts of the case do not attract the provisions of P.O. 16 of 1972.



The High Court Division while entertaining the contentions of the respective parties came to the conclusion that the respondent is a British Bangladeshi citizen. To my mind this aspect of the case calls for no decision, inasmuch as, the moot question was whether the house in question was abandoned property. The learned Judges themselves have found that a non-national possessed property in this country and that has not been challenged by the Government. Hence the question was to the nature of the property of the respondent, namely, whether it was abandoned property or not. Since the entire gamut of P.O. No. 16 of 1972 had been examined throughly and X-Rayed by two authoritative decisions of this Court the least that can be said is that P.O. 16 is not attracted to the facts of this case. There is no hesitation in saying that the property cannot be termed as an abandoned property.

Leave was given for meeting the argument on the basis of P.O. 149 of 1972. In other words if the provision of P.O. 16 do not apply whether the provisions of P.O. 149 of 1972 are attracted to make the respondent first a non-national, inasmuch as, he was not a permanent resident of Bangladesh and then his residence in U.K. was taken as permanent residence. This approach is erroneous because in P.O. 149 both the concept had been kept in view by the legislature *e.g.* permanent residence and residence.

### **Words and Phrases**

"Permanent resident" "Habitual resident" and "Ordinary resident".

The courts have given divergent views on cases as to the meaning 'permanent resident' 'Habitual resident', and 'Ordinary resident'. Professor Cheshire says, "this is due to the overscrupulous manner in which the Courts attempt to discover a man's exact intention." (Private International Law P. 172 (9th ed.).

Private International law had not fixed any definite criteria to look at the permanent residence and ordinary residence of a person.

Respondent's habitual residence is in U.K. while his parmanent residence is in Dhaka as facts emerged in this case testfy to this.

As we have seen that the respondent is the son of a person who retired as Judge of the Dhaka High Court and died in 1982 and his mother still living and residing at Dhaka and he himself rented a flat apart from his own house which is in dispute now. He is a qualified Chartered Accountant eking out a living in U.K. and it is by his own earning he obtained a plot from DIT and built his house and rented it to a Foreign Mission. He himself

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visits Dhaka occasionally which is his permanent residence. His ordinary residence or for that manner his habitual residence as understood in Europe is in U.K. If this habitual residence in U.K. then his permanent residence is bound to be Dhaka, Bangladesh. Again if his ordinary residence is taken as U.K. then again it is in Bangladesh which is to be taken as permanent residence because he owns a house and rent a flat and his mother lives here and his father is buried here. It is not by naked assertion but by deeds and acts that a domicile is established (Mc Mullen Vs. Wardsworth (1889) 14 App. Case 631 (636)).

#### P.O. No. 16 of 1972

##### Art. 2

The law of abandoned property contains the clause on exclusion and inclusion. For taking away any property it must be shown that it has come within the mischief of law clearly.

The law of abandoned property is a stringent law no doubt, but as has been noticed in 28 DLR and 30 DLR (AD) the definition contains the clause on exclusion and inclusion. One thing is very well settled that no person shall be deprived of his life and property unless it comes within the clear provision of law itself. He cannot be deprived of his property by fallacious approach nor by provisions of enactment which merely by sidewind points a finger to such property. To be taken away of any property it must be shown that his property has come within the mischief of law clearly.

*P.O. No. 16 of 1972-Article 2.*—Interpretation of words used in a statute—Court is not concerned with the presumed intention of the legislature—its task is to get at the intention as expressed in the Statute—For the present case Article 2 (1) is to be understood in the light of 1 (ii) (a).

Acts in *pari materia* - P.O. 149 of 1972.

Article 1, 2 (ii) & 3 ; P.O. No. 16 of 1972. Article 2—Interpretation of the provisions of one Statute by referring to the provisions of another statute—Fallacious reasoning attempts to find a conclusion which needs to be established as a premise first to lead to a conclusion that since he cannot be deemed to be a citizen of Bangladesh his property must be abandoned property—as if the conclusion follows necessarily—Rules of syllogism stated.

A fallacious reasoning known in Latin *post hoc, propter hoc* dominates the argument in this case from the appellant.

It has been noticed that non-citizen can own property and that has not been disputed. The line of argument is illogical because the line of reasoning is somewhat like this : after this, therefore, because of this—a fallacious reasoning known in Latin *post hoc, ergo propter hoc*. For example— A died after his visit to Quetta. Therefore his visit to Quetta was the cause of his death. This is obviously fallacious.

**Dissenting view expressed by M.H. Rahman. J. (Minority view)**

The ownership of a house or of a flat and payment of taxes and dues on such properties through relevant are not conclusive evidence for holding that the owner is a permanent resident in Bangladesh.

The Respondent's assertions through a constituted attorney made the summary proceeding under Article 102 of the Constitution are no substitute for the standard of proof usually required for ascertaining a fact like permanent residence on a particular date for determination of the question of citizenship.

***P.O. 149 of 1972-Article 2 and 3.***

When there is no satisfactory evidence as to the respondent's permanent residence in this country on 25.3.1971 and there is no averment that he relinquished his Pakistani Citizenship and the respondent's refusal to give satisfactory answer to the appellant's queries, it only deepened the appellant's doubt that he was on 25.3.1972 and from that time on till 6.4.1972 a resident of the U.K. as a Pakistani Citizen— Article 3 of P.O. No. 149 of 1972 provides that in case of doubt as to whether a person is qualified to be a citizen of Bangladesh under Article 2 of the said Order, the question shall be decided by the Government, which decision shall be final.— Appeal allowed. [40 DLR (1988) AD 116]

**Sections 2 & 3**

**Mere doubt created at the will of a Government officer about a person's citizenship cannot place any burden of proof on the shoulder of the person concerned.**

As the Government through the Ministry of works doubted the citizenship of the petitioners it ought to have removed the doubt itself through the Ministry of Home Affairs. Government is singular in number and acts through several ministries and agencies. Omission of the Ministry of Home Affairs to remove the said doubt raised by the Ministry of Works means that there was no such doubt at all about the citizenship of the

petitioners [*Nazir (Md) alias Nazir Mia & others Vs. Bangladesh, represented by the Secretary, Ministry of Works, Government of the People's Republic of Bangladesh, Bangladesh Secretariat, Dhaka, and others 46 DLR (1994) HC 658*].

### **Case Law**

*Finality of decision—In modern legislation finality clause is very common. This finality clause would only mean the order which is legal is only final and when there is no appeal.*

It is true that Article 3 of the Citizenship Order 1972 in case of doubt makes the decision of the Government final. It is argued that as the decision in this matter would be regarded to be final this Court would not reopen the said finality arrived at by the Government in issuing the notification. In modern legislation this sort of finality clause is every common but this finality clause would only mean that the order which is legal is only final and that there is no appeal. If there is an error or if the decision had been arrived at not in accordance with law then in spite of the finality clause it would be a nullity. In fact the finality clause in matters like this will not automatically render the decision final because an order which is a nullity is no decision in the eye of law at all for it to be final. There must be a final decision which is good in law : *Per Anwarul Hoque Chowdhury J delivering the final judgement.*

### **Constitution of Bangladesh, 1972 Article 102**

*Delay—For an aggrieved person to come before the Court under the writ jurisdiction no statutory limitation is provided for as in a suit. The jurisdiction under Article 102 of the Constitution is a jurisdiction in law and also in equity. The Court thus, entertain a petition if the delay is explained to the satisfaction of the Court and it would be explained and examined in the light of the attending facts and circumstances of each case : Per Anwarul Hoque Chowdhury J delivering the final judgement.*

If the Government has turned down one representation, making of another representation on similar line would not enable the petitioner to explain the delay. In the case before us the petitioner took no step since the rejection of his prayer for restoration of citizenship since 1977. After long 15 years the petitioner woke up when steps were taken under the Foreigners

Act; as such he is not entitled to invoke the extra-ordinary jurisdiction of this Court. After coming over here the petitioner registered himself as foreigner and he extended his visa two times and in the meantime he applied for citizenship and the matter is still pending. It is only when the petitioner was taken into detention under the Foreigners Act that he came to this Court. Although the petitioner tried to explain the delay saying that he was under the impression that he was a citizen of Bangladesh but that cannot be regarded as an excuse for delay in moving the Court in Writ Jurisdiction, because the petitioner knows very well that he was no longer a citizen of Bangladesh at least since the publication of the impugned notification Annexure—B which he came to learn in April, 1973 and his prayer for restoration of citizenship having been rejected by the Government as far back as in 1977 : *Per Mohammad Ismail Uddin Sarker J.*

Facts and circumstances including the inclusion of his name as voter, Minister's statements in Parliament and top political leaders meeting the petitioner and discussing matters of national importance with him, were sufficient to make the petitioner believe that his petition for restoration of his citizenship was not only under active consideration but under favourable consideration of the Government. Therefore, his right to stay in Bangladesh and to exercise the right of franchise, an exclusive right of citizens only, was not threatened till the notice dated 23-3-92 asking him to show cause why he should not be deported from Bangladesh being a foreigner. Immediately on receipt of this notice the petitioner gave his reply and he being taken into detention moved this Court under Article 102 of the Constitution. It should be kept in mind that the Supreme Court has always deprecated the tendency to rush to Court before exhausting available administrative remedies. Under the facts and circumstances of this case I am of the opinion that the present writ petition does not suffer from inordinate delay and that the delay that has occurred has been satisfactorily explained : *Per Badrul Islam Chowdhury J.*

### **Precedent.**

*—Applicability of precedent—Law enunciated by the superior courts are to be applied in subsequent cases if there are some similarities between them.*

It is not expected that two cases will agree in their facts and circumstances in all details. There must be some differences in the facts and circumstances between one case and another. Keeping this in view, the law

enunciated by superior Courts are to be applied in subsequent cases if there are some similarities between them and if such application is not against good reasonings and common sense : *Per Badrul Islam Chowdhury J.*

### Article 3

Ultra-vires, question of — This Article is closely connected and dependant on Article 2 of the Order and Article 2 lays down the guide-line which is required for a person in order to be qualified as a citizen. Therefore, Article 3 of the Order is not ultra-vires to Arts. 27 and 31 of the Constitution : *Per Badrul Islam Chowdhury J.*

**Cases cited and discussed :** *Bishal Deo Tewari Vs. State* reported in 27 DLR 622; *Hamidul Huq Chowdhury and others Vs. Bangladesh* 33 DLR 381; *Mukhtar Ahmed Vs. Government of Bangladesh and others* 34 DLR 29; *Abdul Hoque Vs. Government of Bangladesh* 33 DLR 113; *People's Republic of Bangladesh Vs. Abdul Hoque* 1982 BLD (AD) 143; *Mirza Shahab Ispahani Vs. The Government of Bangladesh* 40 DLR 87; 40 DLR (AD) 117. *State Trading Corporation of India Vs. The Commercial Tax Officer* AIR 1963 (SC) 1811; *Advocate General, Governemnt of East Pakistan, Dhaka Vs. Benoy Bhusan Majumdar and others* 25 DLR (SC) 9; *Modi Food Products Ltd. Vs. The Commissioner of Sales Tax* AIR 1956 (All) 35; *ML Bagga Vs. C Murhar Rao* AIR 1956 (Hyderabad) 35; *Sayedur Rahman Vs. The Chief Election Commission*, 17 DLR (SC) 23; *Sarder and others Vs. The State*, AIR 1961 (Cal) 181; *Calicut-Wynad Motor Service (Private) Ltd. Vs. The State of Kerala and others*, AIR 1959 (Kerala) 347; *India Sugar and Refineries Ltd. Vs. State of Mysore and others*, AIR 1960 (Mysore) 326; *Shah Abdur Rahman Vs. The Collector and Deputy Commissioner, Bahawal Nagar and Ors.* 16 DLR (SC) 470; *Saiyyid Abdul Ala Maudoodi and others Vs. The Government of West Pakistan and others*, PLD 1964 (SC) 673 and 17 DLR (SC) 209; *Shah Abdur Rahman*, 16 DLR (SC) 470; *Steamer Agent Association Vs. Bangladesh*, 31 DLR (AD) 272; *Shah Abdur Rahman* 17 DLR (SC) 470; *M/s. Hajee Mohammad Ali & Sons Vs. Burmah Eastern Ltd.* 38 DLR (AD) 41; *Commissioner of Income-Tax, East Pakistan Vs. Fazlur Rahman* 16 DLR (SC) 410; *Chief Commissioner, Karachi and another Vs. Mrs. Dina Sohrab Kattrak* 11 DLR (SC) 113; *University of Dhaka Vs. Zakir Ahmed* 16 DLR (SC) 722; *Ridge Vs. Baldwin* 1963 (2) All England Reports 66; *M/s. Farid Sons Limited Vs. Government of Pakistan* 13 DLR (SC) 233 and *the Province of East Pakistan Vs. Nur Ahmed* 16 DLR (SC) 375; *Dr. Nurul Islam Vs. Bangladesh* 1981 BLD (AD) 140; *Budhan Chowdhury & others Vs. State of*

*Bihar AIR 1955 (SC) 191; Matajog Dobey Vs. HC Dhari AIR 1956 (SC) 44; Shri Ram Krishna Dalmia and others Vs. Shri Justice SR Tendoolkar and others AIR 1958 (SC) 538; East West Steamship Vs. Pakistan PLD 1958 (SC) 41; Waris Miah Vs. The State PLD 1957 (SC) 157; Province of East Pakistan Vs. Sirajul Huq Patwari 19 DLR (SC) 281; Ch. Tika Ranji and others Vs. The State of Uttar Pradesh and others AIR 1956 (SC) 67; Standard Vacuum Oil Co. Vs. The Trustees of the Port of Chittagong 13 DLR 804; Akhtanuddin Khan Vs. Province of East Pakistan 15 DLR 1; M/s Panna Lal Binji Vs. Union of India AIR 1957 (SC) 397; Rabindra Nath Vs. Union of India AIR 1970 (SC) 470; Durga Prasad Vs. Chief Controller of Imports and Exports AIR 1970 (SC) 769; Tilak Chand Moti Chand Vs. HB Munshi AIR 1970 (SC) 878; M/s. D. Cawasji and Co. Vs. State of Mysore AIR 1975 (SC) 813; Abdul Qayum Vs. The Secretary, Ministry of Home Affairs, 44 DLR 340; Government of East Pakistan Vs. Nur Mohammad PLD 1964 (SC) 451; Abdur Rahman Advocate Vs. The Collector and Deputy Commissioner, Bhawalnagar PLD 1964 (SC) 461; Bangladesh Steamer Agencies Association Vs. Bangladesh 31 DLR (AD) 271, 13 DLR 804, 15 DLR 10, AIR 1957 (SC) 397, AIR 1970 (SC) 117 and AIR 1975 (SC) 13; Shaftiqur Rahman Vs. Local Certificate Officer, Dhaka 29 DLR (SC) 232; Tilak Chand's case 1969 SCR (India) 824 [Professor Golam Azam Vs. Govt. of Bangladesh & others 45 DLR (1993) 423].*

### Article 3

Article 3 does not either specifically or by implication exclude the principle of "hear the other side" : *Per M H Rahman J.*

*Per Mustafa Kamal J (Agreeing)* : The proceedings under Article 3 start with a doubt and until the doubt is resolved against the respondent, he enjoys the benefit of doubt. The Government cannot pre-judge the issue and deny him a show cause notice.

*Per Latifur Rahman J (Agreeing)* : Reading Article 3 of the Order it is apparent that conferred of citizenship on a person by Article 2 of the Order is never absolute. It is always conditional and thus liable to be defeated if the conditions mentioned in Article 2 are not fulfilled. The provisions of the Order and the Act supplement each other and have to be read together to disqualify or deprive a citizen of Bangladesh either under Article 3 and 2B of the Order or under section 16 of the Act as the case may be. The provisions of the Act and the Order are to be read together to get a complete picture of the law of Citizenship in Bangladesh.

### General Clauses Act (X of 1897) Section 5(3)

Commencement of an Act and its coming into effect are not the same thing. Sub-section (3) of section 5 of the General Clauses Act, 1897 clearly indicates that there is a distinction between an Act coming into effect and the commencement of the Act : *Per M H Rahman J.*

### Constitution of Bangladesh, 1972 Article 102

The remedy of judicial review under Article 102 of the Constitution is not governed by any law of limitation. This is an extraordinary remedy and should be sought with all possible expedition : *Per M H Rahman J.*

### Natural Justice

Where a doubt arises in respect of a person's status, conduct or intention that person must be the first person to be heard and given the opportunity to dispel the doubt : *Per M H Rahman J.*

*Per Mustafa Kamal J (Agreeing)* : The decision that the Government has to take under Article 3 determines his legal relationship involves rights and corresponding duties upon both. This doubt-resolving power of the Government may involve determination of both facts and law and it cannot be said that this is a purely executive decision and can be given by a mere *ipse dixit* of the executive. Though not a judicial decision it is certainly a quasi-judicial decision of a far-reaching legal consequence and therefore it is impossible to whittle down the importance of the principle of natural justice in such a case.

### Passport

**A passport is considered as *prima facie* evidence of citizenship or nationality of its holder.**

A passport is not regarded as conclusive evidence of the citizenship or the nationality of its holder. This is because practice of issuing passport to non-citizens is widely prevalent amongst nations. Article 15 of the Bangladesh Passport Order, 1973 (President's Order 9 of 1973) provides that the Government may issue a passport or travel document to a person who is not a citizen of Bangladesh : *Per M H Rahman J.*

*Per Mustafa Kamal J (Agreeing)* : In the case under our consideration the act of a foreign Government, namely, the Government of Pakistan, in



issuing a Pakistani passport to the respondent and the Form which the respondent filled up while applying for passport will not determine the voluntariness of the acquisition of passport or even his Pakistani citizenship after the emergence of Bangladesh. In our country there is no rule of Evidence either in the citizenship and passport laws or in the said Rules that the acquisition of a foreign passport is a conclusive evidence of the acquisition of citizenship of that country. The decided cases in our jurisdiction resolved each case on its own facts, but never laying down any proposition of law that acquisition of a foreign passport is a conclusive evidence of acquisition of citizenship of that country.

*Per Latifur Rahman J (Agreeing)* : The possession of a passport does not necessarily imply that he is a citizen of that country, but it may only mean that he is a national of that country. Under the Bangladesh Passport Order, 1973 (President's Order 9 of 1973), Passport is primarily a travel document of a citizen of Bangladesh and other persons for the purpose of departure from Bangladesh [*Bangladesh Vs. Professor Golam Azam & others*, 46 DLR (1994) (AD) 192].

4. The Government may, upon an application made to it in this behalf in the manner prescribed, grant citizenship to any person.

<sup>1</sup>[4A. The Government may, upon an application made to it in this behalf in the manner prescribed, grant right of permanent residence to any person on such conditions as may be prescribed.]

5. The Government may make rules for carrying out the purposes of this Order.

## **The Bangladesh Citizenship (Temporary Provisions) Rules, 1978**

**1. Short title.**— These rules may be called the Bangladesh Citizenship (Temporary Provisions) Rules, 1978.

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

(a) "Article" means an Article of the Order;

(b) "Form" means a Form annexed to these rules; and

(c) "Order" means the Bangladesh Citizenship (Temporary Provisions) Order, 1972 (P.O. No. 149 of 1972).

**3. Application for Citizenship under Article 2B.**— (1) Any person seeking Citizenship of Bangladesh under clause (2) of Article 2B shall apply to the Government in Form A, in duplicate, and in the manner hereinafter provided, namely.—

(a) if the applicant is a person temporarily residing in Bangladesh, the application shall be submitted direct to the Government, and if the application is a person residing outside Bangladesh, the application shall be submitted to the Government through the Bangladesh Mission or Consulate in that country or where there is no Bangladesh Mission or Consulate in that country, to a Bangladesh Mission or Consulate in the country nearest to the country;

(b) every application shall be accompanied by an affidavit affirming the truth of the statements made before a Magistrate of the First Class or a Notary Public and four copies of passport size photograph of the applicant duly attested by a Class 1 Gazetted Officer or a Magistrate of the First Class or a Notary Public.

(2) The Government or a Mission or Consulate to which an application has been submitted under sub-rule (1) may call for such further information as may be deemed necessary including the following :-

(a) the place and date of birth of the applicant in the territory, now comprised in Bangladesh;

(b) when he left the territory and with what travel documents;

(c) when he acquired his present Citizenship;

(d) his knowledge of Bengali language;

(e) his special qualifications, if any;

(f) his income and its source; and whether he is regularly sending remittance to Bangladesh or not;

(g) particulars of his properties in Bangladesh, if any;

(h) particulars of the members of his family residing in Bangladesh, if any; and

(i) any disabilities to which citizens of Bangladesh are subject in the country of the applicant.

**4. Application for Citizenship under Article 4.**— (1) Any person seeking Citizenship of Bangladesh under Article 4 shall apply in Form B in duplicate, and in the same manner as provided in clause (a) and (b) of sub-rule (1) of rule 3 :

Provided that an application under this rule may not be entertained unless the applicant has, by an affidavit, renounced his status as a citizen of another country and has abandoned his domicile of origin \*[:].

\*[Provided further that an application shall be considered for grant of Citizenship—

(a) If the applicant is a foreign woman and married to a Bangladeshi and has resided in Bangladesh ordinarily for a period of 2 years; or

(b) If the applicant does not fall within clause (a) has resided in Bangladesh ordinarily for a period of 5 years.]

(2) The Government or a Mission or Consulate to which an application has been submitted under sub-rule (1) may call for such further information as may be deemed necessary including the following :

(a) the national status of the applicant;

(b) his knowledge of Bengali language;

(c) his special qualifications, if any;

(d) his income and its source; and

(e) any disabilities to which citizens of Bangladesh are subject in the country of the applicant.

(3) In case the applicant under sub-rule (1) is a foreign national and wife of a citizen of Bangladesh, the application shall be accompanied by the following additional documents, namely:-

(i) documentary evidence to the effect that her husband is a citizen of Bangladesh;

\* Substituted and added by SRO. 164-L/85. dated 8.4.1985.

(ii) her marriage certificate;

(iii) if her husband is a person in the service of the People's Republic of Bangladesh or of any local authority or nationalised enterprise in Bangladesh, a 'No Objection Certificate' from his employer to his marriage with a foreign national.

<sup>1</sup> [4A. *Application for Citizenship by a foreign investor*:— Any person or businessman of Hongkong and other countries being interested for investment in Bangladesh except those diplomatically unrecognized may apply for the Citizenship of Bangladesh under Article 4 in Form II in quadruplicate and in the same manner as provided in clause (a) and (b) of sub-rule (1) of rule 3;

Provided that an application under this rule shall not be considered unless the applicant invests U.S. \$ 5,00,000 five lac) or an equivalent amount in an industrial or commercial project of Bangladesh or he transfer one million U.S. dollar or an equivalent amount to any of the recognized financial institutions of Bangladesh which shall be non-repatriable.

*Explanation*-For the purpose of acquiring Citizenship of Bangladesh under this rule, it will not be necessary for the applicant to renounce the Citizenship of the county of his own domicile but if the applicant withdraws any of the amount mentioned in the proviso, for investments elsewhere outside Bangladesh he shall automatically lose his Citizenship of Bangladesh.

**4B. Application for right of permanent residence.**— Any person seeking right of permanent residence in Bangladesh under rule 4A, shall make an application in form "1" in quadruplicate in the same manner as provided in clause (a) and (b) of sub-rule (1) of rule 3 :

Provided that no person shall be granted the right of permanent residence in Bangladesh unless he invests seventy five thousand U.S. dollar or an equivalent amount in an industrial or commercial project of Bangladesh, which shall be non-repatriable.

**4C. Right to property vested in Government, etc.**— No person who has acquired Citizenship of Bangladesh under rule 4A or right of permanent residence in Bangladesh under rule 4B, shall be entitled to claim any such property which he might have acquired before the 16th day of December, 1971 and which have already been vested in, or taken over by the Government under any law, made after the aforesaid date].

1. Rule 4A, 4B and 4C inserted by S.R.O. No. 354-L dated 18-11-1991.

5. *Forwarding of application by Mission etc.*— On receipt of application under rules <sup>2</sup>[3, 4, 4A and 4B] a Mission or <sup>3</sup>[Sub-rule (2) of rule 4, rule 4A and 4B, as the case may be] a Consulate shall, together with the informations as may be called for under sub-rule (2) of rule 3 or, as the case may be, sub-rule (2) of rule 4, forward the application for consideration of the Government. While forwarding the application the Mission or Consulate may make such observations about the character and antecedents of the applicant as it may consider necessary.

6. *Verification of Character and antecedents.*— With regard to applications submitted to Government direct and also with regard to applications submitted under <sup>4</sup>[rule 3, 4, 4A and 4B] the Government may take such steps as may be necessary to satisfy itself as to the character and antecedents of the applicant before it finally disposes of the application.

7. *Grant of Citizenship.*— The Government may, after being satisfied about the correctness of the statements and information furnished by the applicant as required under these rules and also after being satisfied that the applicant is not disqualified for being a citizen of Bangladesh <sup>5</sup> [or getting right of permanent residence in Bangladesh] by or under any law for the time being in force, grant Citizenship of Bangladesh <sup>6</sup>[or right of permanent residence in Bangladesh] to the applicant and issue a certificate of Citizenship in Form C or, as the case may be, <sup>7</sup>[in Form D or in Form J or in Form K as the case may be.]

8. *Appeal.*— Any person aggrieved by an order made under the Bangladesh Citizenship (Temporary Provisions) Order, 1972 may, within a period of 30 days from the date of receipt of order prefer an appeal to Government. Before making an order on such an appeal, the appellant shall be given an opportunity of being heard.

### Case Law

The respondent's request for restoration of his Citizenship having not been acceded to earlier, a further appeal under the Rule would have been an idle formality in view of the Government's indecision for long 14 years in

2. Inserted by SRQ, No. 354-L dt. 18.11.1991

3. Substituted by SRO, No. 354-L dated 18-11-1991

4. Substituted by SRO, 354-L dt. 18-11-1991

5. Inserted by SRO, No 354-L dt. 18-11-1991

6. Inserted by SRO, No. 354-L dt. 18-11-1991

7. Substituted for the words "in Form D" by SRO, No. 354-L dt. 18-11-1991.

taking a decision in the matter : Per Mustafa Kamal J. [*Bangladesh Vs. Professor Golam Azam & others* 46 DLR (1994) (AD) 192].

**9. Cancellation of Citizenship.**— The Government, if it has reasons to believe that an applicant for Citizenship has knowingly furnished any false information or suppressed any material fact or abetted the commission of any such offence with a view to obtaining a certificate of Citizenship or without lawful authority alters or causes to alter the entries made therein, may, at any time, after making such enquiry as it deems fit and giving the person affected an opportunity of being heard, cancel his citizenship granted under rule 7 and punish him with imprisonment for a term which may extend to three months or with fine which may extend to Taka two thousand or with both.

**10. Duplicate copy of Citizenship Certificate.**— (1) A person to whom a certificate of Citizenship has been granted may, if his certificate is lost, damaged or burnt, or if he wishes to get his certificate of Citizenship replaced by a certificate of Citizenship with changed name or other particulars, apply in Form E. in duplicate, to the Government.

(2) Every such application duly attested by a Magistrate of the First Class or a Notary Public shall be accompanied by four copies or passport size photographs of the applicant duly attested by a Class I Gazetted Officer or a Magistrate of the First Class or a Notary Public.

(3) The Government may pass such orders on the application as it deems fit.

<sup>8</sup>[**10A. Application for confirmation of Citizenship.**— (1) Any person seeking confirmation of Citizenship of Bangladesh shall apply to the Government in Form F, in duplicate, and in the manner as provided in sub-rule (1) of rule 3.

(2) No application shall be considered unless—

(a) it is attested by a Class I Gazetted Officer or a Notary Public or by the First Secretary or an officer of equal status of the Bangladesh Diplomatic Mission concerned; and

(b) the affidavit accompanying the application contains a declaration of allegiance of the applicant to Bangladesh.

(3) The Government or the Mission or Consulate to which an application has been submitted under this rule may call for such further

information or documents as are not available in, or, as the case may be, submitted with, the application.

(4) On receipt of the application direct or through the Mission or Consulate to which it was submitted, the Government shall take decision after necessary enquiries under Article 3 as to whether the applicant is deemed to be a citizen within the scope of Article 2 and if the applicant is found to be a such citizen, he shall be issued a certificate of confirmation or Citizenship in Form "G".

**11. Fee for Citizenship application.**— (1) An application for Citizenship under rules 3 and 4<sup>9</sup> [or for] shall be accompanied with a fee of Taka one hundred only or of foreign currency of equal value.

(2) An application for duplicate Citizenship certificate under rule 10 shall be accompanied with a fee of Taka fifty only or of foreign currency of equal value.

<sup>10</sup>[**11A. Fee for application for Citizenship or for right of permanent residence.**— An application for Citizenship under rule 4A or for right of permanent residence under rule 4B shall be accompanied only with a fee of Taka 1,000 (one thousand) or of Taka 500 (five hundred) respectively or of foreign currency of equal value.]

**12. Immunity.**—No suit, prosecution or other legal proceedings shall lie against the Government or any officer or authority for anything done in good faith or intended to be done under the Order.

### FORM A

[See rule 3(1)]

Application for granting Citizenship of Bangladesh to a person who is a citizen of any State specified in, or notified under, clause (2) of Article 2B of the Bangladesh Citizenship (Temporary Provisions) Order, 1972 (P.O. No. 149 of 1972).

1. Name of the applicant (in block letters).....
2. Father's Name : .....
3. Address in full : .....
- (a) in country of residence;
- (b) in Bangladesh.
4. Husband's/Wife's name and nationality
5. Place and date of birth.

9. Inserted. by SRO, No. 213-L dt. 12-6-81

10. Inserted by SRO, No. 354-L dt. 18-11-1991

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6. Date of leaving Bangladesh territory with document, if any.
7. Date of acquisition of present Citizenship.
8. Particulars of properties in Bangladesh, if any.
9. Names and particulars of relations in Bangladesh.
10. Educational or special qualifications, if any.
11. Knowledge of Bengali language.
12. Income and its source.
13. Present occupation and Trade.
14. Reasons for seeking Citizenship of Bangladesh.
15. Names and ages of wife/husband and children.
16. Disqualification to which Bangladeshis are subject to in the country to which the applicant now belongs.
17. List of documents attached.

**FORM B**

**[See rule 4(1)]**

Application for granting Citizenship of Bangladesh under Article 4 of the Bangladesh Citizenship (Temporary Provisions) Order, 1972 (P.O. No. 149 of 1972).

1. Name of the applicant (in block letters) .....
2. Father's Name : .....
3. Address in full : .....  
(a) in country of residence;  
(b) in Bangladesh.
4. Husband's name and nationality, if applicable.
5. Nationality or nationalities of the applicant.
6. Place and date of birth.
7. Date of first arrival in Bangladesh.
8. Educational or special qualifications, if any.
9. Income and its source.
10. Trade or occupation.
11. Reasons for seeking Citizenship of Bangladesh.
12. Names and ages of wife/husband and children.
13. Properties woned in Bangladesh.
14. Knowledge of language.
15. Disqualification to which Bangladeshis are subject to in the country to which the applicant now belongs.
16. Number and date of issue of the certificate of any other nationality or nationalities.



17. List of documents attached.

I do solemnly affirm that the above statement is true to the best of my knowledge and belief.

Attestation :	Signature :
Designation :	Place :
Place and date :	Date :

N.B. - Attestation should invariably be made by a Magistrate of the First Class or a Notary Public.

18. Recommendations of the concerned Mission or Consulate.

I do solemnly affirm that the above statement is true to the best of my knowledge and belief.

Attestation :	Signature:
Designation :	Place :
Place and date :	Date:

N.B. - Attestation should invariably be made by a Magistrate of the First Class or a Notary Public.

### FORM C

#### [See Rule 7]

Certificate of Citizenship of Bangladesh under clause (2) of Article 2B of the Bangladesh Citizenship (Temporary Provisions) Order, 1972 (P.O. No. 149 of 1972).

Whereas ..... whose particulars set out below, has applied for granting Citizenship, and has satisfied the Government for the grant of a certificate of Citizenship ;

NOW, THEREFORE, in exercise of the powers conferred by clause (2) of Article 2B of the Bangladesh Citizenship (Temporary Provisions) Order, 1972 (P.O. No. 149 of 1972) and the rules made thereunder, the Government hereby grant to the said .....Citizenship of Bangladesh and declare that subject to the provisions of the said Order, he/she shall be deemed to be citizen of Bangladesh and declare that subject to the provisions of the said Order, he/she shall be deemed to be citizen of Bangladesh and shall be entitled to all the rights, privileges and capacities to which a citizen of Bangladesh is entitled and shall also be subject to all the obligations, duties and liabilities of a citizen of Bangladesh under any or all the laws of Bangladesh provided that the granting of Citizenship will not disturb his/her Citizenship of the country to which he/she now belongs ;

IN WITNESS WHEREOF I have hereto subscribed my name this  
..... day of ..... 19 .....

Signed .....

Joint Secretary to the Government of  
the People's Republic of Bangladesh,  
Ministry of Home Affairs.

### Particulars relating to the applicant

1. Full name .....
2. Father's name .....
3. Address in foreign country.....
4. Address in Bangladesh.....
5. Married, single, widow or widower.....
6. Name of wife/husband.....
7. Names of children and their ages .....
8. Trade/occupation.....
9. Marks of identification.....
10. Date of birth.....

Date of issue.

Signature.

Joint Secretary to the Government of  
the People's Republic of Bangladesh,  
Ministry of Home Affairs.

### FORM D

[See rule 7]

Certificate of Citizenship of Bangladesh under Article 4 of the Bangladesh Citizenship (Temporary Provisions) Order, 1972 (P.O. No. 149 of 1972).

WHEREAS ..... whose particulars set out below, has applied for granting certificate of Citizenship, and has satisfied the Government for the grant of a certificate of Citizenship;

NOW, THEREFORE, in exercise of the powers conferred by Article 4 of the Bangladesh Citizenship (Temporary Provisions) Order, 1972 (P.O.

No. 149 of 1972) and the rules made thereunder, the Government hereby grant to the said ..... Citizenship of Bangladesh and declare that subject to the provisions of the said Order, he/she shall be deemed to be a citizen of Bangladesh and shall be entitled to all the rights, privileges and capacities to which a citizen of Bangladesh is entitled and shall also be subject to all the obligations, duties and liabilities of a citizen of Bangladesh under any or all the laws of Bangladesh.

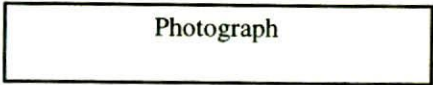
IN WITNESS WHEREOF I have hereto subscribed my name this ..... day of ..... 19 .....

Signed .....

Joint Secretary to the Government of  
the People's Republic of Bangladesh,  
Ministry of Home Affairs.

### **PARTICULARS RELATING TO THE APPLICANT**

1. Full name .....
2. Father's name .....
3. Address in Bangladesh .....
4. Married, single, widow or widower .....
5. Name of wife or husband .....
6. Names of children and their ages .....
7. Trade / occupation.....
8. Marks of identification .....
9. Date of birth .....
- Date of issue .....



Signature.....

Joint Secretary to the Government of  
the People's Republic of Bangladesh,  
Ministry of Home Affairs.

**FORM E**

[See rule 10(1)]

Application for copy of Citizenship certificate or its replacement with changed particulars.

1. Full name and address of applicant .....  
(Block letters)
2. Father's name .....
3. Number and date of issue of the certificate of Citizenship previously granted .....
4. Authority by whom the certificate was issued .....
5. Reasons for asking for a duplicate certificate or for replacement with .....
6. Change of particulars desired in the certificate .....

Particulars in the certificate previously issued	Particulars to be included in the new certificate
---	--

- |         |         |
|---------|---------|
| 1. .... | 1. .... |
| 2. .... | 2. .... |
| 3. .... | 3. .... |
| 4. .... | 4. .... |

Documentary proof of change of name or other particulars required to be made in the new certificate .....

I do solemnly affirm that the above statement is true to the best of my knowledge and belief.

Signature .....

Place .....

Date .....

Attestation :

Designation :

Place and date :

**FORM - F**

[See rule 10A(1)]

Application Form for confirmation of Bangladesh Citizenship under the Bangladesh Citizenship (Temporary provisions) Order, 1972.

1. Name of the applicant (in capital letters )
2. Address in full
3. Father's name and address-
  - (a) Name (a)
  - (b) Address (b)
4. Mother's name
5. Wife/husband's name and address -
  - (a) Name (a) ..
  - (b) Address (b) ..
6. Husband's father's name
7. Place and date of birth :
 

Place	P.S
Dist	Country
Date	
8. Reasons for seeking confirmation of Citizenship certificate
9. Present occupation or trade
10. Income and its source
11. Extent of knowledge in Bengali :
  - (a) Speak
  - (b) Read
  - (c) Write
12. Date of first arrival in this territory (with documentary evidence, viz, Domicile/Citizenship/Emergency Certificate/refugee card, Photocopies to be sent)
13. Names and particulars of relations in Bangladesh (with ages)
  - (a) Wife/husband .....
  - (b) Children .....
  - (c) Brothers.....
  - (d) Sisters.....
14. List of properties which have been declared as abandoned, if any.....
15. List of properties not declared as abandoned, if any ....
16. Address in Bangladesh on 25/3/1971 .....

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17. Address in Bangladesh after 16/2/1971 .....
18. Whether he/she is residing in Bangladesh continuously since 25/3/1974...
19. Whether he/she opted for Pakistan ...
20. Whether any of his/her relations has opted for Pakistan (names and particulars to be mentioned) .....
21. Whether he/she travelled to any foreign country after liberation. If so, the number and date of issue of the travel document to be furnished .....
22. List of documents to be attached
  - (1) Photocopy of birth/.....  
Domicile/Citizenship/Emergency Certificate, refugee card, if any.
  - (2) Two copies of photos  
(one to be attested) .....
  - (3) Photocopy of affidavit showing declaration of alligence to this Government after liberation of the country. ....
  - (4) Non-option Certificate, if any.

I do solemnly affirm that the above statement is true to the best of my knowledge and belief.

Attestation:

Signature ..

Designation ...

Place ...

Place and date ...

Date ...

No.

Citz/IN- /19

*N.B.*-Attestation may be made by any class I Gazetted Officer of the Government of the People's Republic of Bangladesh, or a Notary Public or by the First Secretary or persons of equal status of the Bangladesh Diplomatic Mission or Consulate through which the application may be submitted. [Subs. by SRO No. 213-L dt. 12-6-1981].

**FORM G**

[See rule 10(4)]

Certificate of confirmation of Citizenship of Bangladesh under the Bangladesh Citizenship (Temporary provisions) Order, 1972 (P.O. No. 149 of 1972.

Whereas .....

Whose particulars are set out below, has applied for confirmation of Citizenship of Bangladesh and has satisfied the Government for such confirmation;

Now, therefore, in exercise of the powers conferred by Article 3 of the Bangladesh Citizenship (Temporary provisions) Order, 1972 (P.O. No. 149 of 1972), the Government is pleased to convey its decision that the said ..... is a citizen of Bangladesh within the meaning of Article 2 of the aforesaid Order and shall be entitled to all the rights, privileges and capacities to which citizen of Bangladesh is entitled and shall also be subject to the obligations, duties and liabilities of a citizen of Bangladesh under any or all the laws of Bangladesh.

In witness whereof I have hereto subscribed my name this day of ..... 19 .....

Signed .....

Joint Secretary to the Government of  
the People's Republic of Bangladesh,  
Ministry of Home Affairs.

**PARTICULARS RELATING TO THE APPLICANT .....**

1. Full name .....
2. Father's name .....
3. Address in Bangladesh .....
4. Married, single, widow or widower .....
5. Name of wife or husband .....
6. Names of children and their ages .....
7. Trade or occupation.....
8. Marks of indentification .....
9. Date of birth .....

Signature .....

Joint Secretary to the Government of the People's  
Republic of Bangladesh, Ministry of Home Affairs.

Date of issue .....

**The Pakistan Citizenship Act, 1951**  
**Act No. II of 1951**  
**[13th April, 1951]**

An Act to provide for Pakistan Citizenship.

Whereas it is expedient to make provision for Citizenship of Pakistan;

It is hereby enacted as follows :-

**1. Short title and commencement.**—(1) This Act may be called the Pakistan Citizenship Act, 1951.

(2) It shall come into force at once.

**2. Definitions.**— In this Act-

"Alien" means a person who is not a citizen of Pakistan or a Commonwealth citizen;

"Indo-Pakistan sub-continent" means India as defined in the Government of India Act, 1935, as originally enacted ;

"Minor" means, notwithstanding anything in the Majority Act, 1875, any person who has not completed the age of twenty-one years;

"Prescribed" means prescribed by rules made under this Act;

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

"British protected person" means a person who has the status of a British protected person for the purposes of the British Nationality Act, 1948.

**3. Citizenship at the date of commencement of this Act.**— At the commencement of this Act every person shall be deemed to be a citizen of Pakistan.

- (a) Who or any of whose parents or grandparents 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 or grandparents was born in the territories included in India on the thirty first day of March, 1937, and who, except in the case of a person who was in the service of Pakistan or of any Government or Administration in Pakistan at the commencement of this Act has or had his domicile within the meaning of Part II of the Succession Act, 1925, as in force at the



commencement of this Act, in Pakistan or in the territories now included in Pakistan; or

- (c) Who is a person naturalised as a British subject in Pakistan; and who, if before the date of the commencement of this Act he has acquired the Citizenship of any foreign State, has before that date renounced the same by depositing a declaration in writing to that effect with an authority appointed or empowered to receive it;

or

- (d) Who before the commencement of this Act migrated to the territories now included in Pakistan from any territory in the Indo-Pakistan sub-continent outside those territories with the intention of residing permanently in those territories.

### Case Law

#### Section 3(d)

Migration-Word "migration" has the notion of change of allegiance from the country of departure to the country of arrival-It envisages two conceptions : (a) going away from the territory of another and (b) the intention to abandon the domicile of the country of departure and to acquire the domicile of the country of arrival for permanently residing there. [25 *DLR (SC) (1973) 9.* ]

Acquisition of Citizenship not dependent on the domicile certificate nor on the certificate of Citizenship. It not necessary that in order to acquire Citizenship of Pakistan a person is not only to obtain a domicile certificate but is to get himself registered as a citizen of Pakistan and also to obtain a certificate of citizen. [14 *DLR (1962) 114*].

**4. Citizenship by birth.**— Every person born in Pakistan after the commencement of this Act shall be a citizen of Pakistan by birth—

Provided that a person shall not be such a citizen by virtue of this section if at the time of his birth.

(a) his father possesses such immunity from suit and legal process as is accorded to an envoy of an external sovereign power accredited in Pakistan and is not a citizen of Pakistan; or

(b) his father is an enemy alien and the birth occurs in a place then under occupation by the enemy.

**5. Citizenship by descent.**— Subject to the provisions of section 3 a person born after the commencement of this Act, shall be a citizen of

Pakistan by descent if his father is a citizen of Pakistan at the time of his birth :

Provided that if the father of such person is a citizen of Pakistan by descent only, that person shall not be a citizen of Pakistan by virtue of this section unless.—

(a) that person's birth having occurred in a country outside Pakistan the birth is registered at a Pakistan Consulate or Mission in that country, or where there is no Pakistan Consulate or Mission in that country at the prescribed Consulate or Mission or at a Pakistan Consulate or Mission in the country nearest to that country; or

(b) that person's father is, at the time of the birth, in the service of any Government in Pakistan.

### **Case Law**

**Animus in selecting permanent home.**— There is no positive rule laid down with respect to the evidence necessary to prove the *animus* of a man in the manner of selecting his permanent home. Each case has to be decided on its own facts. The bent of the person's mind, his ambition, aspirations, prejudices sentiments, conduct, habits, religion, his financial and other expectations, all have to be taken into account for determining his *animus* because they normally supply the key to his intention. No one fact is of constant value; every case is to be considered in its own peculiar circumstances and what is conclusive in one case may be of practically no importance to another. It is therefore almost impossible to formulate a precise rule specifying the value or importance to be attached to any particular piece of evidence. [*Mangal Sen Vs. Shanno Devi, AIR 1955 Punj 175*].

**6. Citizenship by migration.**— (1) The Central Government may, upon his obtaining a certificate of domicile under this Act, register as a citizen of Pakistan by migration any person who after the commencement of this Act and before the first day of January 1952 has migrated to the territories now included in Pakistan from any territory in the Indo-Pakistan sub-continent outside those territories, with the intention of residing permanently in those territories:

Provided that the Central Government may, by general or special order, exempt any person or class of persons from obtaining a certificate of domicile required under this sub-section.

(2) Registration granted under the preceding sub-section shall include, besides the person himself, his wife, if any, unless his marriage with her has been dissolved, and any minor child of his dependent whether wholly or partially upon him.

**7. Persons migrating from the territories of Pakistan.**— Notwithstanding anything in sections 3, 4 and 6, a person who has after the first day of March, 1947, migrated from the territories now included Pakistan to the territories now included in India has returned to the territories now included in Pakistan under a permit for resettlement or permanent return issued by or under the authority of any law for the time being in force.

### Case Law

Section 7 of the Pakistan Citizenship Act does not provide circumstances under which an admitted citizen of Pakistan can lose his Pakistan Citizenship. [25 DLR (SC) 1973] 9]

**-read with Foreigners Act, 1946, Sec. 9**

**Loss of Citizenship—Burden of Proof**

The accused persons, who were admittedly citizens of Pakistan, is alleged to have lost their Pakistan Citizenship by going to India on the basis of a migration certificate. On question of burden of proof it was held :

Their Pakistan Citizenship being admitted, it is for the prosecution to prove that they lost the same after their entry into territory. [25 DLR (SC) (1973) 9]

Loss of Citizenship—Citizens of Pakistan do not lose their Pakistan Citizenship by their entry into India and temporary stay in that country on the basis of a migration certificate.

The accused persons, after obtaining a migration certificate from the Deputy High Commissioner for India in Pakistan went to India in November, 1964 when abnormal situation was prevailing in some areas in East Pakistan. But the accused persons, evidence shows only after about  $1\frac{1}{2}$  months again came back to their village home in Pakistan and started living there. When in 1967 they were charged under section 14 of the Foreigners Act for staying in Pakistan without any valid document, question arose if by their entry into India and temporary stay in that country on the basis of the aforesaid migration certificate they had ceased to be citizens of Pakistan by operation of section 7 of Pakistan Citizenship Act.

Held : In the facts of this case as stated above, the respondents, who were admittedly the citizens of Pakistan before their departure for India, did not lose their Pakistan Citizenship by their entry into India and their temporary stay in that country in the then abnormal situation obtaining in some areas in East Pakistan. [25 DLR (SC) (1973) 9]

**8. Rights of Citizenship of certain persons residence abroad.**—The Central Government may, upon application made to it in this behalf, register as a citizen of Pakistan any person who, or whose father or whose father's father, was born in the Indo-Pakistan sub-continent and who is ordinarily resident in a country outside Pakistan at the commencement of this Act, if he has, unless exempted by the Central Government in this behalf, obtained a certificate of domicile :

Provided that a certificate of domicile shall not be required in the case of any such person who is out of Pakistan under the protection of a Pakistan passport, or in the case of any such person whose father or whose father's father is at the commencement of this Act residing in Pakistan or becomes, before the aforesaid application is made, a citizen of Pakistan.

**9. Citizenship by naturalisation.**—The Central Government may, upon an application made to it in that behalf by any person who has been granted a certificate of naturalisation under the Naturalisation Act, 1926, register that person as a citizen of Pakistan by naturalisation :

Provided that the Central Government may register any person as a citizen of Pakistan without his having obtained a certificate of naturalisation as aforesaid.

**10. Married Women.**—(1) Any woman who by reason of her marriage to a British subject before the first day of January, 1949, has acquired the status of a British subject shall, if her husband becomes a citizen of Pakistan, be a citizen of Pakistan.

(2) Subject to the provisions of sub-section (1) and sub-section (4) a woman who has been married to a citizen of Pakistan or to a person who but for his death would have been a citizen of Pakistan under sections 3, 4 or 5 shall be entitled, on making application therefor to the Central Government in the prescribed manner, and, if she is an alien, on obtaining a certificate of domicile and taking the oath of allegiance in the form set out in the Schedule to this Act, to be registered as a citizen of Pakistan whether or not she has completed twenty-one years of her age and is of full capacity.

(3) Subject as aforesaid, a woman who has been married to a person who, but for his death, could have been a citizen of Pakistan under the

provisions of sub-section (1) of section 6 (whether he migrated as provided in that sub-section or is deemed under the proviso to section 7 to have so migrated) shall be entitled as provided the certificate and taking the oath therein mentioned.

(4) A person who has ceased to be a citizen of Pakistan under section 14 or who has been deprived of Citizenship of Pakistan under this Act shall not be entitled to be registered as a citizen thereof under this section but may be so registered with the previous consent of the Central Government.

**11. Registration of minors.**— (1) The Central Government may, upon application to it in this behalf made in the prescribed manner by a parent or guardian of a minor child of a citizen of Pakistan, register the child as a citizen of Pakistan.

(2) The Central Government may, in such circumstances as it thinks fit, register any minor as a citizen of Pakistan.

**12. Citizenship by registration to begin on date of registration.**— Any person registered as a citizen of Pakistan shall be such a citizen from the date of his registration.

**13. Citizenship by incorporation of territory.**— If any territory becomes a part of Pakistan the Governor-General may, by order, specify the persons who shall be citizens of Pakistan by reason of their connection with that territory; and those persons shall be citizens of Pakistan from such date and upon such condition, if any, as may be specified in the order.

**14. Dual Citizenship or nationality not permitted.**— (1) Subject to the provisions of this section if any person is a citizen of Pakistan under the provisions of this Act and is at the same time a citizen or national of any other country, he shall, unless [The words "within one year of the commencement of this Act or within six months of attaining twenty-one years of his age, whichever is later" omitted by Act V of 1952, Sec. 7] he makes a declaration according to the laws of that other country renouncing his status as citizen or national thereof, cease to be a citizen of Pakistan.

(1A) Nothing in this sub-section (1) applies to a person who has not attained twenty-one years of his age.

(2) Nothing in sub-section (1) shall apply to any person who is a subject of an Acceding State so far as concerns his being a subject of that State.

### Case Law

Dual Citizenship whether contemplated by Act or Rules.—Neither the Citizenship Act nor the Rules framed thereunder contemplate dual Citizenship. Dual Citizenship is not possible under our law except to the limited extent as contemplated by the proviso to section 9(1) of the Citizenship Act. [*K. L. Modi Vs. Union of India*, AIR 1970 Delhi 76 at P. 81].

**15. Persons becoming citizens to have the status of Commonwealth citizens.**—Every person becoming a citizen of Pakistan under this Act shall have the status of a Commonwealth citizen.

**16. Deprivation of Citizenship.**—(1) A citizen of Pakistan shall cease to be a citizen of Pakistan if he is deprived of that Citizenship by an order under the next following sub-sections.

(2) Subject to the provisions of this section the Central Government may by order deprive any such citizen of his Citizenship if it is satisfied that he obtained his certificate of domicile or certificate of naturalisation under the Naturalisation Act, 1926 by means of fraud, false representation or the concealment of any material fact, or if his certificate of naturalisation is revoked.

(3) Subject to the provisions of this section the Central Government may by order deprive any person who is a citizen of Pakistan by naturalisation of his Citizenship of Pakistan if it is satisfied that citizen-

(a) has shown himself by any act or speech to be disloyal or disaffected to the Constitution of Pakistan; or

(b) has, during a war in which Pakistan is or has been engaged, unlawfully traded or communicated with the enemy or engaged in or associated with any business that was to his knowledge carried on in such a manner as to assist the enemy in that war; or

(c) has within five years of being naturalised been sentenced in any country to imprisonment for a term of not less than twelve months.

(4) The Central Government may on an application being made or on its own motion by order deprive any citizen of Pakistan of his Citizenship if it is satisfied that he has been ordinarily resident in a country outside Pakistan for a continuous period of seven years beginning not earlier than the commencement of this Act and during that period has neither-

(i) been at any time in the service of any Government in Pakistan or of an international organisation of which Pakistan has, at any time during that period been a member, or

(ii) registered annually in the prescribed manner at a Pakistan Consulate or Mission or in a country where there is no Pakistan Consulate or Mission at the prescribed Consulate or Mission or at a Pakistan Consulate or Mission in a country nearest to the country of his residence his intention to retain Pakistan Citizenship.

(5) The Central Government shall not make an order depriving a person of Citizenship under this section unless it is satisfied that it is in the public interest that person should not continue to be a citizen of Pakistan.

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

(7) If it is proposed to make the order on any of the grounds specified in sub-section (2) and (3) of this section and the person against whom it is proposed to make the order applies in the prescribed manner for an inquiry, the Central Government shall, and in any other case may, refer the case to a committee of inquiry consisting of a chairman, being a person possessing judicial experience, appointed by the Central Government and of such other members appointed by the Central Government as it thinks proper.

### Case Law

Article 19 of the Constitution (India) guarantees seven fundamental rights which may be styled as the seven freedom viz. (i) freedom of speech and expression, (2) freedom of assembly, (3) freedom of association, (4) freedom of movement, (5) freedom of residence and settlement, (6) freedom of property, and (7) freedom of profession, occupation, trade or business. The scope of the guarantee has however been defined by limitations contained in the Article itself. The expression 'matter which undermines the security of or tends to overthrow the State' in clause (2) of the Article implies that acts undermining the security of the State with or without violence or both. It seems that the phrase 'security of the State' refers to acts less serious than the overthrow of the state. And the phrase 'overthrow the State' means to overthrow the established Government by force or *unlawful means*. It may include such acts as waging war against the State, adhering to the enemies of the State or giving them aid and comfort, resisting the execution of law in the shape of the armed rebellion or otherwise. This offence is also included in sections 121-123 of the Indian Penal Code. These sections, however, provide penalties *i.e.* imprisonment or five or both that

shall be imposed upon a person, if he does such an offence. Similarly sections 128-138 of the Indian Penal Code deal with the offences of abetment of mutiny, aiding escape of prisoners of State or of war and offences under the Official Secret Act. Interference with the legitimate performance of the Government for the raising of the forces or the conduct of war etc. comes within the ambit of these sections. But under the provision of the Constitution the person shall continue to be a citizen of India irrespective of the fact whether he has been loyal to the country or not or in other words whether he has committed any offence under the Indian Penal Code. The framers of the Indian Citizenship Act have therefore rightly provided in section 10 that if a person who is a citizen of India as indicated in sub-section (1) has, during any war in which India may be engaged, unlawfully traded or communicated with enemy or been engaged in, or associated with, any business that was to his knowledge carried on in such manner as to assist an enemy in that war, may not only be ordered to suffer punishment as provided in Sections 121-123 of the Indian Penal Code, but also be deprived of his Indian Citizenship. [*Jalla Begum Vs. Ghulam Zohra*, AIR 1959 J & K 32].

The passport issued to a person by the Pakistani authorities is presumptive proof of that person's nationality because under the Pakistani Citizenship Act, a Pakistani passport can only be issued to a citizen of Pakistan [*State of U.P. Vs. Jafar Ali*, AIR 1963 All 18; (1963) 1 Cr.LJ 28(2) : 1963 All WR (HC) 93 : 1963 All Cr. R 82].

A person obtaining a Pakistani passport declares his allegiance to Pakistan Government and as such he can be considered as a foreigner [*Khalil Ahmad Vs. State of U.P.*, 1962 All LJ 123 : AIR 1962 All 383 : 1962 All Cr. R 78 : 1962 All WR (HC) 83 : ILR (1961) 2 All 738].

#### **Determination of acquisition of foreign Citizenship, by Central Government— Justiciability—**

It is now well settled by the catena of decisions given by the Supreme Court and the authority to decide whether a person has acquired Citizenship of another country is the Central Government as envisaged under sub-section (2) of section 9 of the Indian Citizenship Act, 1955, read with Rule 30 of the Rules made thereunder, the earliest case being the *State of Andhra Pradesh Vs. Abdul Khader* [AIR 1961 SC 1467 : (1961) 2 Cr. LJ 573] and *State of Madhya Pradesh Vs. Peer Mohammad* [AIR 1963 SC 645]. Therefore, this question is beyond the jurisdiction and power of the courts if there was, in fact, good material before the Central Government to determine this question and their order showed that they had applied their mind to the



crucial issue, and taken all relevant facts into consideration before determining the question of voluntary acquisition of foreign Citizenship [*Mir Abdul Qadir Vs. State of Andhra Pradesh*, AIR 1967 AP 105 : 1967 Cr LJ 423 : (1966)1 Andh. WR 127 : *Aizaz Hussain Vs. State of U.P.*, 1968 ALJ 73 : *Isaque Mia Vs. Union of India*, (1985) 2 Gau LR 367]. The Court cannot decide the question even cases where there is clinching evidence to that conclusion : for instance, a conclusive presumption, under rule 30 (3) from the fact of obtaining of passport from the Government of another country [*Mir Abdul Qadir Vs. State of Andhra Pradesh*, AIR 1967 Andh. Pra. 105; 1967 CrLJ 423].

Section 16 read with Pakistan Citizenship Rules, 1952 rule 26—Deprivation of Citizenship—Effect of —Held : Loss of Citizenship being serious matter, Citizenship once acquired or recognised under Act not to be summarily, arbitrarily and whimsically withdrawn by Deputy Commissioner—Held further : Withdrawal or cancellation of Citizenship Certificate to amount to denial of civic rights of individual and Central Government not to be competent to cancel such certificate issued except as provided under law [*PLJ 1983 Quetta 1* ; *PLD 1983 Quetta 20*].

Section 16 read with Pakistan Citizenship Rules, 1952, rule 26—Deprivation of Citizenship—possible only under two circumstances, firstly, when Citizenship certificate proved to satisfaction of Federal Government as having been acquired through fraud or misrepresentation; secondly when such person convicted for an offence under section 177, Penal Code, 1860 or being prosecuted under rule 26 of Pakistan Citizenship Rules, 1952, Act II of 1951, held, does not provide for cases where Citizenship once acquired or recognised under Act could be summarily, arbitrarily and whimsically withdrawn by a Deputy Commissioner. [*PLD 1983 Quetta 20*; *PLJ 1983 Quetta 1*].

**17. Certificate of Domicile.**—The Central Government may upon an application being made to it in the prescribed manner containing the prescribed particulars grant a certificate of domicile to any person in respect of whom it is satisfied that he has ordinarily resided in Pakistan for a period of no less than one year immediately before the making of the application, and has acquired a domicile therein.

### Case Law

Person never wishing to return to domicile of origin and selecting domicile of choice for no other purpose than that of trade, settling there permanently and also acquiring huge property thereat—

*Held* : Such person to be said to have abandoned domicile of origin for domicile of choice [PLJ 1986 SC (AJ&K) 1].

Domicile certificate provides strong presumptive proof of permanent place of residence [PLJ 1978 Quetta 72 (DB); PLD 1978 Quetta 17].

Word "domicile" being fiction of Private International Law residence of person not necessary to be same as his "domicile". Held further, "domicile" being idea of law, when used in statute same not to be given ordinary dictionary meaning [PLJ 1983 AJ & K 12].

Domicile certificate provides strong presumptive proof of permanent place of residence [PLJ 1978 Quetta 74 (DB); PLD 1978 Quetta 17].

Citizenship acquisition of — Person citizen of Pakistan by birth or migration before commencement of Act (13-4-1951)—Entitled to certificate of Citizenship as of right if application made on prescribed form—person residing in Pakistan for a period of one year—federal Government can, in its discretion, grant a certificate of domicile to such person under section 17—section 17, held, does not deal with cases of persons acquiring Citizenship by birth, descent, or migration before 13-4-1951.

Section 17 is not to contemplate cases of all persons claiming Citizenship under Act and applicant in every case not to be required to give declaration of his one year's residence on prescribed form [PLD 1983 Quetta 20; PLJ 1983 Quetta 1].

Word "domicile" and permanent residence being not synonymous, and their dictionary meanings being quite different, domicile and permanent residence to be two different and separate concepts especially when considered against context of scheme of Act and Rules under which domicile certificate be granted [PLJ 1985 AJ&K 1].

Domicile of person to be determined by taking into account intention of person manifested by his conduct to show whether mental attitude to settle down at particular place permanently adopted by such person [PLJ 1986 SC (AJ&K) 1].

**18. Delegation of powers.**— The Central Government may by order notified in the Official Gazette, direct that any power conferred upon it or duty imposed not it by this Act shall, in such circumstances, and under such conditions, if any, as may be specified in the direction, be exercised or discharged by such authority or officer as may be specified.

**19. Cases of doubt as to Citizenship.**— (1) Where a person with respect to whose Citizenship a doubt exists, whether on a question of

law or fact, makes application in that behalf to the Central Government, the Central Government may grant him a certificate that at the date of the certificate he is a citizen of Pakistan.

(2) The certificate, unless it is proved to have been obtained by fraud, false representation or concealment of any material fact, shall be conclusive evidence of the fact recorded in it.

**20. Acquisition of Pakistan Citizenship by citizens of Commonwealth countries.**—The Central Government may upon such terms and conditions as it may by general or special order specify register a Commonwealth citizen or a British protected person as a citizen of Pakistan.

**21. Penalties.**—Any person who in order to obtain or prevent the doing of anything under the Act makes any statement or furnishes any information which is false in any material particular and which he knows or has reasonable cause to believe to be false, or does not believe to be true, shall be deemed to have committed an offence punishable under section 177 of the Pakistan Penal Code.

**22. Interpretation.**—(1) For the purposes of the Act a person born abroad a registered ship or aircraft, or abroad an unregistered ship or aircraft of the Government of any country shall be deemed to have been born in the place in which the ship or aircraft was registered or as the case may be in that country.

(2) Any reference in this Act to the status or description of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father be construed as a reference to the status or description of the father at the time of the father's death; and where that death occurred before, and the birth occurs after the commencement of this Act, the status or description applicable to him at the time of his death.

**23. Rule.**—(i) The Central Government, may frame rules for carrying into effect the provisions of this Act.

(2) No rule framed under this Act shall have effect unless published in the official Gazette.

### Schedule

(Form of oath or affirmation)

(See section 10)

"I (name) of (address) do hereby swear (or affirm) that I will faithful and bear true allegiance to the Constitution of Pakistan."

## The Pakistan Citizenship Rules, 1952

No. 11/42/51-Poll (i). 6th February 1952 (Gazette. 6th February 1952).-In exercise of the powers conferred by section 23 of the Pakistan Citizenship Act, 1951 (II of 1951), the Central Government is pleased to frame the following rules:-

**1. Short title.**— (1) These rules shall be called the Pakistan Citizenship Rules, 1952.

(2) They shall come into force at once.

**2. Definitions.**— In these rules :-

"Act" means the Pakistan Citizenship Act, 1951.

"Provincial Government" includes the Chief Commissioner of Baluchistan, the Administrator of Karachi and the Governments of acceding States.

"British Mission or Consulates" mean such British Mission or Consulates as are exercising functions on behalf of Pakistan.

**3. Citizenship at the date of commencement of the Act.**—

Any person claiming citizenship of Pakistan at the commencement of this Act may be granted a certificate by the Provincial Government in the manner hereinafter prescribed :-

(a) Any person claiming citizenship under clause (a) of section 3 of the Act shall apply in form A in duplicate to a Magistrate of the first class.

This application shall be supported by a certificate of birth of the applicant or any of his parents or grand-parents, as the case may be, issued by-

(i) a village officer or an officer in charge of a Police Station.

(ii) a Municipal or Town Committee or Corporation, or

(iii) a Registrar of Births and Deaths appointed under the Births Deaths and Marriage Registration Act, 1886.

(b) The Magistrate shall in attestation of the truth of the statement in the application, administer an oath or affirmation to the applicant and shall examine the evidence, oral or documentary, adduced by the applicant in support of his claim. He may, if he thinks it necessary, summon and examine any witnesses likely to know the facts of the application and may call for any records relevant to it.

(c) If the Magistrate is satisfied that the applicant is entitled to citizenship under clause (a) of section 3 of the Act, he shall recommend to the Provincial Government that a certificate of citizenship in Form A1 be granted.

(d) The Provincial Government shall pass such orders on the recommendation as it deems fit.

4. (1) Any person claiming citizenship under clause (b) of section 3 of the Act shall apply in Form 'A' in duplicate to a Magistrate of the First Class. Each form shall be accompanied by a certificate of birth as provided in clause (a) of rule 3 and by a certificate of domicile under rule 23.

(2) The Magistrate shall in attestation of the truth of the statement in the application, administer an oath or affirmation to the applicant.

(3) He shall examine any witness produced by the applicant and may summon any other witnesses likely to know the facts of the application and may call for any records relevant to it.

(4) If the Magistrate is satisfied that the applicant is entitled to citizenship under clause (b) of section 3 of the Act, he shall recommend to the Provincial Government that a certificate of Citizenship in Form A1 be granted.

(5) The Provincial Government shall pass such orders on the recommendation as it deems fit.

5. (1) Any person claiming citizenship under clause (c) of section 3 shall apply in form 'A' in triplicate to the Provincial Government.

(2) Each form shall be attested by a Magistrate and shall be accompanied by an attested copy of the certificate of naturalisation.

(3) The Provincial Government may, after making such enquiry as it deems fit and after examining the evidence required by rule 19, recommend to the Central Government that a certificate of citizenship in Form A1 be granted.

(4) The Central Government shall pass such orders on the recommendation as it deems fit.

6. (1) Any person being on the 13th April 1951 ordinarily resident in a country outside Pakistan, who claims citizenship under the proviso to section 3 of the Act shall apply in form A in triplicate to the Central Government.

(2) Each form shall be accompanied by—

(a) an affidavit of the truth of the statements made therein;

(b) a declaration attested by a Magistrate that the applicant is not a citizen of the country outside Pakistan where he is ordinarily resident; and

(c) a certificate attested by a Magistrate, of his own birth or that of his parents or grand-parents in the territory now included in Pakistan.

(3) The Central Government may require the Provincial Government of the area where the applicant or his parent or grand-parent through whom he claim citizenship was born, to enquire into the application and the Provincial Government shall take action as if the application were an application presented to it under rule 5 of these rules.

(4) If on the report of the Provincial Government and such other information as is available to it, the Central Government is satisfied that the applicant is not a national or citizen of such country outside Pakistan as aforesaid and that he or any of his parents or grand-parents was born in the territory now included in Pakistan, it may issue a certificate of citizenship in Form A1.

(5) No application under this rule shall be entertained except in the manner specially provided in rule 7, if the applicant is ordinarily resident in India.

7. (1) Any person being at the commencement of the Act ordinarily resident in territories now included in India, but claiming citizenship of Pakistan under the proviso to section 3 of the Act shall apply in Form A in triplicate to the Central Government, explaining the circumstances of his ordinary residence in India.

(2) The Central Government may require such evidence as it thinks fit to prove that the residence was for purposes of bonafide business or employment and did not constitute migration or domicile or the acquisition or domicile.

(3) The Central Government shall, after due inquiry, pass such orders on the application as it deems fit.

**8. Citizenship by birth.**— (1) Any person claiming citizenship under section 4 of the Act shall apply in Form 'B' in duplicate to a Magistrate of the First Class of the District where he was born.

(2) Each form shall be accompanied by—

(a) a certificate of birth issued by a village officer or an officer in charge of a police station or a Municipal or Town Committee or Corporation, or a

Registrar of Births and Deaths appointed under the Births, Deaths and Marriages Registration Act, 1886.

(b) If the applicant is below the age of 21 years, a statement by his parent or guardian recorded on oath.

(3) If the Magistrate, after making such inquiry as may be necessary, is satisfied that the facts stated in the application are correct, he shall recommend to the Provincial Government that a certificate in Form R1 be granted.

(4) The Provincial Government shall pass such orders on the recommendation as it deems fit.

**9. Citizenship by descent.**—(1) Any person claiming citizenship by descent under section 5 of the Act shall apply in Form B to the Provincial Government of the area in which he has his domicile of origin as defined in part II of the Succession Act, 1925.

(2) Such application shall be in triplicate and each form shall be accompanied by—

- (a) a certificate of citizenship of Pakistan granted to his father, and
- (b) evidence establishing his relationship with his father;

Provided that where the certificate of citizenship indicates that the father is a citizen of Pakistan by descent only, then one of the following additional documents shall also be produced—

(i) Either a certificate of registration of birth at a Pakistan Mission or Consulate in the country where the applicant was born, or there is no Pakistan Mission or Consulate in that country, at a Pakistan Mission or Consulate in the country nearest to the country.

(ii) Or a certificate documentary proof that the applicant's father was in the service of a Government in Pakistan at the time of the applicant's birth in that other country.

(3) The Provincial Government after making such enquiries as it deems fit may pass orders in regard to such applications, except where additional documents are required under the proviso to sub-rule (2) in which case it shall forward the papers to the Central Government.

(4) The Central Government shall pass such orders on the application as it deems fit.

**10. Citizenship by migration.**—(1) Any person claiming citizenship under section 6 of the Act shall apply in form B in duplicate to the Provincial Government.

(2) Such application shall be accompanied by—

(a) an affidavit of the truth of the statements made therein.

(b) a certificate of domicile under rule 23, and

(c) any other evidence which proves that the applicant intended to reside permanently in Pakistan, and that he has migrated to Pakistan before the 13th April, 1951.

(3) The Provincial Government, after such inquiries as it may consider necessary, shall pass such orders on the application as it deems fit.

(4) Where the applicant, for reasons to be recorded in writing, claims exception from obtaining a certificate of domicile, he shall request the Provincial Government to forward the application to the Central Government.

(5) The Provincial Government shall, on a request made under the foregoing sub-rule, forward the application to the Central Government together with its own recommendation.

(6) The Central Government shall pass such orders on the recommendation as it deems fit.

(7) Any order passed by the Provincial Government or Central Government under this rule shall apply to the wife of the applicant and any minor child of his dependent wholly or partially upon him, provided, that the claim for citizenship for them is included initially in the application and satisfactory evidence of the applicant's marriage to the wife, and of the minor being dependent on him, is adduced to the satisfaction of Government.

**11. Person migrating from the territories of Pakistan.**—(1) Any person claiming Citizenship under the proviso to section 7 of the Act shall apply in Form C in triplicate to the Central Government.

(2) Each form shall be accompanied by—

(a) an attested copy of the permit for resettlement or permanent return;

(b) an affidavit of the truth of the statements made in the application.

(3) The Central Government, after such inquiries as it may consider necessary, shall pass such orders on the application.

(3) The Central Government, after such inquiries as it may consider necessary, shall pass such orders on the application as it deems fit.

**12. Citizenship of certain persons resident abroad.**—(1) any person claiming citizenship under section 8 of the Act shall apply in



triplicate in Form D for registration as a citizen in the manner hereinafter provided, namely:-

(a) If he is resident in a country outside Pakistan, he shall make an application to the Pakistan Mission or Consulate in that country, to a Pakistan Mission or Consulate in the country nearest to that country, or to the nearest British Mission or Consulate.

(b) Every application under this rule shall be accompanied—

(i) by a certificate of domicile issued by a District Magistrate in Pakistan, unless the applicant is exempted by the proviso to section 8 of the Act, or

(ii) where he has been unable to obtain a certificate, by a statement on oath explaining why he claims exemption from producing it.

(2) (a) The Mission or Consulate may demand such evidence of the truth of the statements made in the application as it thinks necessary. Such evidence shall ordinarily include certificates of his birth or that of his father or father's father, and information in regard to his educational and other qualifications and his economic condition;

(b) the Mission or Consulate shall forward the application with its recommendation to the Central Government which shall pass such orders on it as it deems fit;

(c) if the applicant is resident in Pakistan at the time of making the application, he shall apply direct to the Central Government;

(d) the Central Government shall pass such orders on this application as it deems fit.

**13. Citizenship by naturalisation.**—(1) Any person claiming citizenship under section 9 of the Act shall apply in Form 'E' in triplicate to the Central Government.

(2) Each form shall be accompanied by—

(a) an affidavit of the truth of the statements made therein;

(b) a certificate of naturalisation under the Naturalisation Act, 1926;

(c) a certificate that the applicant has taken the oath of allegiance to the Constitution of Pakistan within the period prescribed by section 6 of the Naturalisation Act, 1926.

(3) The Central Government, after making such inquiries as it considers necessary, may grant a certificate of registration in Form R1 or reject the application.

(4) Where an exemption from producing certificate of naturalisation is sought, the applicant shall in a statement recorded on oath, specify the reasons for which he seeks the exemption.

(5) The Central Government shall pass such orders on the application as it deems fit.

**14. Married women.**— (1) Any woman who by reason of her marriage to a Commonwealth citizen has acquired the status of a Commonwealth citizen before the first day of January, 1949, shall, if she wishes to be registered as a citizen of Pakistan, apply in Form 'F' to the Central Government for registration.

(2) Such application shall be in triplicate and each form shall be accompanied by-

- (a) her marriage certificate; and
- (b) her husband's certificate of citizenship.

(3) The Central Government shall, after such inquiry as it considers necessary, pass such orders on the application as it deems fit.

(4) If the husband is dead at the time the application is made, a statement of facts, recorded on oath, which would prove that he had been alive he would have been entitled to Pakistan citizenship under sections 3, 4 or 5 of the Act shall accompany the application.

(5) If the applicant is an alien, the application shall further be accompanied by a certificate-

- (a) of domicile issued under rule 23 of these rules, and
- (b) that she has taken the oath of allegiance set out in the Schedule to the Act.

(6) If the applicant's husband but for his death would have been a citizen of Pakistan under the provisions of sub-section (1) of section 6 of the Act (whether he migrated as provided in that sub-section or is deemed under the proviso to section 7 to have so migrated), the application shall be accompanied by a certificate issued by the Provincial Government that the husband would have been entitled to a certificate under Rule 10 or Rule 11 of these rules.

(7) The Central Government shall, after such inquiries as it considers necessary, pass such orders on the application as it deems fit.

**15.** Any woman who claims citizenship under sub-section (2) of section 10 of the Act shall apply in Form 'F' in triplicate to the Central Government in the following manner namely-

(a) If her husband is alive, each form shall be accompanied by the following documents:-

(i) a certificate of Pakistan citizenship granted to her husband;  
(ii) a marriage certificate or any other evidence establishing the applicant's marriage.

(b) If her husband is dead at the time of application, the application shall be accompanied by the certificate or other evidence mentioned in sub-clause (ii) of clause (a), and by the certificate mentioned in sub-clause (i) of that clause or by a statement of facts recorded on oath showing that had he been alive he would be entitled to citizenship of Pakistan under section 3, 4 or 5 of the Act.

(c) If the applicant is an alien, the application shall further be accompanied by a certificate-

(i) of domicile issued under Rule 23 of these rules, and  
(ii) that she has taken the oath of allegiance set out in the Schedule to the Act.

(d) If the applicant's husband but for his death would have been a citizen of Pakistan under the provisions of sub-section (1) of section 6 of the Act (whether he migrated as provided in that sub-section or is deemed under the provisions to section 7 to have so migrated), the application shall be accompanied by a certificate issued by the Provincial Government that the husband would have been entitled to a certificate under rule 10 or 11 of these rules.

(e) The Central Government shall, after such enquiries as it considers necessary, pass such orders on the application as it deems fit.

**16.** (1) Any woman claiming citizenship through marriage in accordance with rule 14 or rule 15 after she has been deprived of it under the Act, shall submit with her application a statement on oath giving the reasons justifying the restoration of her citizenship.

(2) The Central Government shall, after such enquiries considers necessary, pass such orders on the application as it deems fit.

**17. Registration of Minors.**— (1) Any person claiming citizenship for a minor shall apply in Form M in duplicate.

(2) The form shall be submitted to the authority to whom the parent or guardian would be required to apply under these rules if he were claiming citizenship for himself.

(3) The application shall be accompanied by—

(a) an affidavit of the child's relationship with the applicant, and his age; and  
(b) a certificate of citizenship, if any, of the parent or guardian.

(4) The Central Government may, on an application submitted to it in the manner aforesaid or of its own motion, register any minor as a citizen of Pakistan.

**18. Citizenship by incorporation of territory.**— The Central Government may by notification in the official Gazette and on such terms and conditions as may be specified in such notification, apply all or any of these rules to persons who, by reason of their connection with any territory which may be incorporated in Pakistan, are entitled to be citizen of Pakistan.

**19. Renunciation of dual citizenship of nationality.**— Any person who, under section 14 of the Act, makes a declaration of renunciation of his status as a citizen or national of another country, shall produce a satisfactory evidence that he has made such a declaration;

Provided that nothing in this rule shall apply where the other nationality is Commonwealth citizenship except as provided for under section 7 of the Act.

**20. Acquisition of Pakistan Citizenship by Commonwealth citizens.**— (1) Any Commonwealth citizen may apply in form R in duplicate for the citizenship of Pakistan.

(2) The application shall be submitted to the Pakistan Mission or Consulate in that country or where there is no Pakistan Mission or Consulate in that country to a Pakistan Mission or Consulate in the country nearest to that country or to the nearest British Mission or Consulate. But if the applicant is at the time of the application resident in Pakistan, he shall apply to the Central Government.

(3) The application shall be accompanied by an affidavit of the truth of the statements made therein.

(4) The Mission or Consulate or the Government of Pakistan may ask for such information in regard to-

- (a) the national status of the applicant in his country;
- (b) his knowledge of languages;
- (c) his special qualifications if any;
- (d) his income and its source; and
- (e) any disabilities to which citizens of Pakistan are subject in the country of the applicant.

(5) The Central Government may pass such orders on the application as it deems fit.

**21. Registration of birth in countries abroad.**— The birth of a child of a citizen of Pakistan occurring in a country outside Pakistan shall be registered at a Mission or Consulate in the manner following:—

(a) Any parent or guardian shall, of the child within six months of the birth, report in writing in form S the fact of the birth to the Pakistan Mission or Consulate in that country, or where there is no such Mission or Consulate in that country, to a Pakistan Mission or Consulate in the country nearest to that country. Such report shall, among other things, indicate the full name, parentage and addresses of the parents of the child, his date and place of birth and whether the parents, or if they are dead, the guardian is a servant of any Government in Pakistan or of an international organisation of which Pakistan has at any time during that period been a member.

(b) The Mission or Consulate may call for any other information before the registration of the child.

(c) Copies of the registration certificates issued by the Mission or Consulate shall be furnished to the applicant, and to the Government of Pakistan.

**22. Annual Registration of Pakistan Citizens abroad.**— Every citizen of Pakistan resident abroad shall register himself annually at a Pakistan Mission or Consulate or in a country where there is no Pakistan Mission or Consulate, at the Pakistan Mission or Consulate in a country nearest to that country in the manner following:—

(a) He shall register himself by forwarding to the Mission or Consulate a statement indicating his intention to retain citizenship of Pakistan. This statement shall, among other things indicate his full name and parentage, his address in Pakistan and in the country of his residence, details of the passport or other travel documents carried by him and details of the members of his family.

(b) This statement shall be forwarded in duplicate in the first quarter of every year following the year of his arrival in the country of residence.

(c) The Mission or Consulate shall acknowledge receipt of the form; and such acknowledgment shall be evidence of his having been formally registered.

**23. Certificate of domicile.**— The Central Government, the Provincial Government or any District Magistrate authorised by the Provincial Government in this behalf may on application made to it in this behalf issue a certificate of domicile in Form 'P1' in the manner following:—

(a) An application for a certificate of domicile shall be made in Form 'P' in duplicate. It shall be accompanied by an affidavit affirming the truth of the statements made in it and affirming further that the applicant had not migrated to India after the first day of March, 1947 or that, having so migrated, had returned to Pakistan under a permit for resettlement or permanent return issued by an officer authorised by the Government of Pakistan.

(b) Any authority to whom an application is presented may demand such evidence as it may consider for satisfying itself that the facts stated in the application are correct and that the applicant has been continually resident of Pakistan for a period not less than one year and intends to live permanently in Pakistan.

(c) The authority shall pass such orders on the application as it deems fit.

**24. Certificate of Citizenship in doubtful cases.**— (1) The Central Government may on application made to it in that behalf grant a certificate of citizenship in form Q1 to any person with respect to whose citizenship a doubt exists, whether on a question of law or of fact.

(2) An application in this behalf shall be made in form Q in triplicate and shall be supported by an affidavit of the truth of the statements made therein.

(3) The Certificate of citizenship granted in Form Q1 shall be withdrawn as soon as possible and not later than the issue of a certificate of citizenship under any of these rules. It shall be granted for one year in the first instance but may be extended from time to time unless withdrawn as herein provided.

**25. Deprivation of citizenship.**— (1) The Central Government may on a report from the Provincial Government or on its own motion issue a notice to any person who being a citizen of Pakistan by naturalisation-

(a) has shown himself by any act or speech to be disloyal or disaffected to the Constitution of Pakistan.

(b) has during a war in which Pakistan is or has been engaged, unlawfully traded or communicated with the enemy or engaged in or associated with any business that was to his knowledge carried on in such a manner as to assist the enemy in that war, or

(c) has within five years of being naturalised been sentenced in any country to imprisonment for a term of not less than twelve months, to

show cause why an order depriving him of the citizenship of Pakistan should not be passed against him.

(2) Such notice shall contain information of the grounds on which it is proposed to make the order depriving him of citizenship.

(3) (a) Any person served with a notice in accordance with the two foregoing sub-rules may, within sixty days of the service of such notice apply to the Central Government for the appointment of a committee of enquiry.

(b) Such an application shall among other things be accompanied by an affidavit that the allegations made against him are untrue, and by a bond for such sum not exceeding Rs. 5,000 as the Central Government may demand to be forfeited to Government should the committee of enquiry find the application false and frivolous or given with a view to causing delay.

(c) On receiving the application, Government shall appoint a committee as prescribed in sub-section (7) of section 16 of the Act.

(4) The Central Government may of its own motion or on the application of any person appoint a committee of enquiry in the manner aforesaid for enquiring into an application submitted to it under sub-section (4) of section 16 of the Act or to enquire into the fact of the continued residence outside Pakistan of any citizen of Pakistan for a period of seven years.

(5) An application under sub-section (4) of section 16 of the Act shall be accompanied by an affidavit stating the grounds on which the application was made, and if the applicant is residing in a foreign country the application may be submitted to the Pakistan Mission or Consulate in that country and where there is no Mission or Consulate in that country to a Pakistan Mission or Consulate in the country nearest to that country or to the nearest British Mission or Consulate.

(6) The Central Government shall pass such orders on the report of the Committee of enquiry or, if a committee is not appointed, on the application itself as it deems fit.

**26. Penalty for obtaining citizenship by representation.—**

(1) Any Magistrate of the first class, a Provincial Government or the Central Government, on receiving information that a person has obtained certificate of citizenship, certificate of a registration as a citizen of Pakistan, certificate of domicile or certificate of naturalisation, by fraud, false representation or the concealment of any material fact, or that his certificate

or naturalisation has been revoked, may authorise or require a competent Magistrate to authorise a police officer under section 155 of the Code of Criminal Procedure, 1898, to investigate the truth of the information.

(2) If on the result of the investigation it appears that the said person has made a statement or furnished information which comes within the mischief of section 21 of the Act, the Central or Provincial Government may direct that the said person be prosecuted under section 177 of the Pakistan Penal Code or under any other law for the time being in force.

(3) A conviction by the Court shall render null and void any certificate mentioned in sub-rule (1).

**27. Fees.**— Application under these rules shall be accompanied by a bank draft, challan, or a revenue stamp of the denomination indicated in the schedule to these rules.

**28. Photographs.**— Any person to whom a certificate of citizenship or of registration as a citizen of Pakistan is issued may be required to furnish four photographs except in the case of a *pardanashin woman*.

**29. Miscellaneous.**— All things done by a Magistrate, District Magistrate or Provincial Government under these rules shall be deemed to be done by or on behalf of the Central Government.

**30.** Notwithstanding anything contained in rule 29 above, the Central Government may at any time entertain any application, appeal, review or revision application and may cancel, suspend, invalidate, extend or revise any certificate issued under these rules or pass any other orders it may deem necessary or fit.



# The Naturalisation Act, 1926

<sup>1</sup>Act No. VII of 1926

[26th February, 1926]

An Act to consolidate and amend the law relating to the naturalisation in <sup>2</sup>[Bangladesh] of aliens resident therein.

WHEREAS it is expedient to consolidate and amend the law relating to the naturalisation in <sup>2</sup>[Bangladesh] of aliens resident therein;

It is hereby enacted as follows:-

**1. Short title, extent and commencement.**— (1) This Act may be called the <sup>3</sup>Naturalisation Act, 1926.

<sup>4</sup>[(2) It extends to the whole of <sup>2</sup>[Bangladesh].]

(3) It shall come into force on such date<sup>5</sup> as the <sup>6</sup>[Government] may, by notification in the <sup>7</sup>[official Gazette] appoint.

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

8\* \* \* \* \*

(b) "Certificate of naturalisation" means a certificate of naturalisation granted under this Act ; and

<sup>9</sup>[(c) "minor" means, notwithstanding anything in the Majority Act, 1875, (IX of 1875) and person who has not completed his age of twenty-one years.]

**3. Grant of certificate of naturalisation.**— (1) The <sup>10</sup>[Government] may grant a certificate or naturalisation to any person who makes an application in this behalf and satisfies the <sup>10</sup>[Government]-

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1. For Statement of Objects and Reasons, see Gaz, of India, 1925. Pt. V. p. 173 : and for Report of Select Committee, see *ibid.*, kl1926. Pt. V. Page 21.
  2. Subs. by Act VIII of 1973, 2nd Sch., as amended by Act LIII of 1974, for "Pakistan".
  3. The word "Indian" omitted by A. O., 1949.
  4. Subs. by Act XIII of 1951, s. 3, for the original sub-section (2). as amend By A. O., 1949.
  5. The 1st July, 11926.
  6. Subs. by Act VIII of 1973 as amended by Act LIII of 1974, for "Central government".
  7. Subs. by A. O., 1937, for "Gazette of India".
  8. Clause (a) was omitted by Act LXI of 1952, s.2.
  9. Subs. by Act XXIII of 1950, for the original clause. (c).
  10. Subs. by Act VIII of 1973, as amended by Act LIII of 1974.

(a) that he is not a minor;

<sup>11</sup> [(b) that he is neither a citizen of <sup>12</sup> [Bangladesh] nor a subject of any State of which a citizen of <sup>12</sup> [Bangladesh] is prevented by or under any law from becoming a subject by naturalisation;]

<sup>13</sup> [(c) that he has resided in <sup>12</sup> [Bangladesh] throughout the period of twelve months immediately preceding the date of application, and has, during the seven years immediately preceding the said period of twelve months, resided in <sup>12</sup> [Bangladesh] for a period amounting in the aggregate to not less than four years;]

(d) that he is of good character;

(e) that he has an adequate knowledge of <sup>14</sup> [Bengali]; and

(f) that he intends, if the application is granted.

to reside in <sup>15</sup> [Bangladesh] or to enter or continue in the service of the <sup>16</sup> [Republic] in <sup>15</sup> [Bangladesh] :

Provided that nothing in clause (c) or (f) shall apply in the case of a woman who has a <sup>17</sup> [citizen of <sup>18</sup> [Bangladesh]] previously to her marriage to a person not a <sup>17</sup> [citizen of <sup>18</sup> [Bangladesh]] and whose husband has died or whose marriage has been dissolved.

<sup>19</sup> \*                      \*

**4. Contents and form of application.**— (1) Every application for a certificate of naturalisation shall be in writing and shall state, to the best of the knowledge and belief of the applicant.—

(a) his age;

(b) his place of birth;

(c) his place of residence;

(d) his profession, trade or occupation;

11. Subs. by Act LXI of 1952.

12. Subs. by Act VIII of 1973, as amended by Act LIII of 1974.

13. The original clause (c) as amended by A.O., 1937 and A.O., 1949, has successively been subs. by Act XXIII of 1951 and Act XLIV of 1957, to read as above.

14. Subs. by Act VIII of 1973, as amended by Act LIII of 1974, for the words "a language which has been declared by the Central Government, by notification in the official Gazette, to be one of the principal vernaculars of Pakistan."

15. Subs. by Act VIII of 1973 as amended by Act LIII of 1974, for "Pakistan".

16. Subs. *ibid.*, for "State".

17. Subs. by Act LXI of 1952, for "British Subject".

18. Subs. by Act VIII of 1973, as amended by Act LIII of 1974, for "Pakistan".

19. Sub-section (2) of s. 3 was omitted, *ibid.*

(e) full particulars regarding his qualification in respect of the matters referred to in clauses (a) to (f) of sub-section (1) of section 3;

(f) Whether he has at any time previously applied for the grant of a certificate of naturalisation under <sup>20</sup> \*this Act <sup>21</sup> \* \*

(g) Whether any such application has been rejected;

(h) Whether any such certificate has been granted to him; and

(i) Whether any such certificate granted to him has been revoked <sup>22</sup>[or whether he has been deprived of his citizenship under the <sup>23</sup>\* Citizenship Act, 1951 <sup>24</sup> . \* \*]

(2) Every such application shall be signed by the applicant and shall be accompanied by an affidavit sworn by him verifying that the statements contained therein are true to the best of his knowledge and belief.

(3) The <sup>25</sup>[Government] shall satisfy itself as to the truth of the statements contained in the application, and for this purpose may cause to be made such further inquiry, if any, and may require such further evidence, if any, either by affidavit or otherwise as it thinks necessary.

**5. Grant of certificate.**—(1) If the <sup>25</sup>[Government] is satisfied that the applicant is qualified under section 3 for the grant of a certificate of naturalisation and is otherwise a fit person for the grant of such certificate, it may grant a certificate reciting the qualifications of the applicant for such grant and conferring upon him all the rights, privileges and capacities of naturalisation under this Act, except such rights, privileges or capacities, if any, as may specifically be withheld by the certificate.

(2) Any such certificate may, if the applicant so requests, include the name of any minor child of the applicant, not being by birth <sup>26</sup>[a citizen of <sup>27</sup>[Bangladesh]] who was born before the date of the certificate and is for the time being resident in <sup>27</sup>[Bangladesh] and under the control of the applicant;

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20. The words "The British Nationality and Status of Aliens Act, 1914, or the Indian Naturalisation Act, 1852, or" were omitted, *ibid*.

21. The words "or the British Nationality Act, 1948" which were added by act XXIII of 1951 have been omitted by Act LXI of 1952.

22. Added by Act XXIII of 1951.

23. The word "Pakistan" was omitted by Act VIII of 1973 as amended by Act LIII of 1974.

24. The words "or British Nationality Act, 1948" omitted by Act LXI of 1952.

25. Subs. by Act VIII of 1973 as amended by Act LIII of 1974, for "Central Government".

26. Subs. by Act LXI of 1952 for "a British subject".

27. Subs. by Act VIII of 1973, as amended by Act LIII of 1974 for "Pakistan".

and shall grant to any child so included all the rights, privileges and capacities of naturalisation under this Act, except such rights, privileges or capacities, if any, as may be specifically be withheld by the certificate.

(3) The grant of a certificate of naturalisation shall be in the absolute discretion of the <sup>28</sup>[Government], and no appeal shall lie from any such grant any particular right, privileges or capacity.

**6. Oath of allegiance.**— Every person to whom a certificate of naturalisation has been granted shall, within thirty days from the date of the grant thereof take and subscribe the following oath, namely :-

"I A. B., of do hereby swear (or affirm) that I will be faithfull and bear true allegiance to <sup>29</sup>[the Constitution of the People's Republic of Bangladesh] :

Provided that the <sup>28</sup>[Government] may extend the time allowed under this section in any case in which it is satisfied that failure to take and subscribe the oath within that time was due to sufficient cause.

<sup>30</sup>[7. *Effect of grant of certificate and taking of oath.*— (1) No certificate of naturalisation shall have effect until the person to whom it is granted has taken and subscribed the oath prescribed by section 6, but upon the taking and subscribing of such oath such person, and any child of any such person who has been included in the certificate under sub-section (2) of section 5, shall be deemed to be citizens of <sup>27</sup>[Bangladesh] and be entitled to all the rights, privileges and capacities of a citizen of <sup>31</sup>[Bangladesh] born within <sup>31</sup>[Bangladesh], except such rights, privileges or capacities, if any, as may have been withheld from them respectively by the certificate, and shall within <sup>31</sup>[Bangladesh] be subject to all the obligations, duties and liabilities of a citizen of <sup>31</sup>[Bangladesh]; and the wife of any such person to whom a certificate of naturalisation is granted <sup>32</sup>\* \* \* \* shall, if not already a citizen of <sup>31</sup>[Bangladesh], in like manner be so deemed and be so entitled and so subject, if within one year, or such longer period as the <sup>33</sup>[Government] may in special circumstances allow, from the date of

28. Subs. *ibid.* for "Central Government".

29. Subs. by Act VIII of 1973 as amended by Act LIII of 1974, for "the Constitution of Pakistan".

30. Subs. by Act LXI of 1952, for the existing sec. 7.

31. Subs. by Act VIII of 1973 as amended by Act LIII of 1974. for "Pakistan".

32. The words "after the commencement of the Indian Naturalisation (Amdt.) Act, 1935" were omitted by Act VIII of 1973 as amended by Act LIII of 1974.

33. Subs. *ibid.*, for "Central Government".

taking and subscribing of such oath by her husband, she makes to the <sup>33</sup>[Government] a declaration that she desires to be deemed to be a citizen of <sup>31</sup>[Bangladesh], and if she is an alien as defined in the <sup>34</sup>[Citizenship Act, 1951, (II of 1951)] obtains a certificate of domicile under that Act and takes and subscribe the oath prescribed by section 6 of this Act.

(2) When the person to whom a certificate of naturalisation has been granted has taken and subscribed the oath prescribed by section 6, any wife thereafter married by, and any child thereafter born to, such person shall, if she or he is not a citizen of <sup>31</sup>[Bangladesh] and if such person aforesaid at the date of the marriage or birth, as the case may be, retains any rights, privileges or capacities of a citizen of <sup>31</sup>[Bangladesh] under this Act, be entitled, subject, in the case of a wife, to her making to the <sup>35</sup>[Government] a declaration as provided in sub-section (1) and, if necessary, upon obtaining the certificate of domicile and making and subscribing the oath as further provided in that sub-section, to the same rights, privileges and capacities, and be subject to the same obligations, duties and liabilities, to which such person aforesaid was at the date entitled and subject.]

**8. Revocation of certificate.**—(1) <sup>36</sup>[Where the <sup>35</sup>[Government] is satisfied that a certificate of naturalization granted under this Act <sup>37</sup>[\* \* \*] was obtained by false representation or fraud or by concealment of material circumstances, or that the person to whom the certificate has been granted has shown himself by act or speech to be disaffected or disloyal to <sup>38</sup>[Bangladesh].

(2) Without prejudice to the foregoing provisions, the <sup>35</sup>[Government] shall, by order in writing, revoke such a certificate of naturalisation as aforesaid in any case in which it is satisfied that the person to whom the certificate was granted-

(a) has, during any war in which <sup>38</sup>[Bangladesh] is engaged unlawfully traded or communicated with the enemy, or with a subject of an enemy state, or been engaged in, or associated with, any business which is to his knowledge carried on in such a manner as to assist the enemy in such war; or

34. Subs. *ibid.*, for "Pakistan Citizenship Act, 1951".

35. Subs. by Act VIII of 1973 as amended by Act LIII of 1974 for "Central Government".

36. Subs. by A. O., 1937.

37. Semi-colon, commas, words and figures "or The Indian Naturalisation Act, 1852" were omitted by Act LIII of 1974.

38. Subs. by Act VIII of 1973 as amended by Act LIII of 1974, for "Pakistan".

(b) has, within five years of the date of the grant of the certificate, been sentenced by any Court in <sup>39</sup>[Bangladesh] <sup>40</sup>\* \* \* to transportation or to penal servitude, or to imprisonment for a term of not less than twelve months, or to pay a fine of not less than one thousand <sup>41</sup>[Taka]; or

(c) was not of good character at the date of the grant of the certificate; or

<sup>42</sup>[(d) has since the grant of the certificate been, for a period of not less than seven years ordinarily resident out of <sup>39</sup>[Bangladesh] otherwise than as a representative of a citizen of <sup>39</sup>[Bangladesh], or of a <sup>39</sup>[Bangladesh] firm or company or a <sup>39</sup>[Bangladesh] institution, or in the service of <sup>43</sup>[The Republic] or in the armed forces of <sup>39</sup>[Bangladesh], and has not maintained substantial connection with <sup>39</sup>[Bangladesh] ; or]

(e) remains, according to the law of a State at war with <sup>46</sup>[Bangladesh], a subject of that state; and that the continuance of the certificate is not conducive to the public good.

<sup>44</sup>\* \* \*

(4) The <sup>45</sup>[Government] may, if it thinks fit, before making an order under this section, refer the case for such inquiry as is hereinafter specified, and, in any case to which sub-section (1) or clause (a), clause (c) or clause (e) of sub-section (2) applies, the <sup>46</sup>[Government] shall, by notice given to, or sent by post to the last known address of, the holder of the certificate, give him an opportunity of claiming that the case be referred for such inquiry, and, if the holder so claims in accordance with the notice, the <sup>46</sup>[Government] shall refer the case for inquiry accordingly.

(5) An inquiry under this section shall be held by such person or persons and in such manner as the <sup>46</sup>[Government] may direct in each case.

(6) Where a certificate is revoked under this section, the revocation shall have effect from such date as may be directed by the <sup>46</sup>[Government], and thereupon the certificate shall be given up and cancelled; and any person who, without reasonable cause the burden of proving which shall lie upon

39. Subs. by Act VIII of 1973 as amended by Act LIII of 1974 for "Pakistan".

40. The words "or in His Majesty's dominions" were omitted, *ibid.*

41. Subs. by Act VIII of 1973 as amended by Act LIII of 1974 for "Rupees".

42. Subs. by Act LXI of 1952, for the original clause (d).

43. Subs. *ibid.* for "a Government in Pakistan".

44. Sub-section (3) omitted by A. O., 1937.

45. Subs. by Act VIII of 1973 as amended by Act LIII of 1974 for "Central Government".

46. Subs. by Act VIII of 1973 as amended by Act LIII of 1974. for "Central Government".

him, fails to give up his certificate within one month from the aforesaid date, shall be punishable with fine, which may extend to one thousand <sup>47</sup> [Taka].

(7) For the purposes of this section, any person who has acquired any of the rights, privileges or capacities of naturalisation under sub-section (2) of section 5 or sub-section (2) of section 7 by reason of the grant to his parent of a certificate of naturalisation, may, after he has attained majority, be deemed to be a person to whom a certificate of naturalisation has been granted.

**9. Effect of revocation of certificate.**—(1) Where a certificate is revoked under section 8, the former holder thereof shall cease to be deemed to be a <sup>48</sup>[citizen] of <sup>49</sup>[Bangladesh].

(2) On such revocation, the <sup>50</sup>[Government] may, by order in writing, direct that the wife and minor children (or any of them) of the person whose certificate is revoked shall cease to be deemed to be <sup>51</sup>[citizens of <sup>52</sup>[Bangladesh]]; but where no such direction is made, the status of the wife and minor children of the person, whose certificate is revoked shall not be affected by the revocation :

<sup>53</sup>[Provided that no such order shall be made in the case of a wife unless by reason of the acquisition by her husband of a new nationality she has also acquired that nationality:]

Provided <sup>53</sup>[further] that, in the case of a wife who <sup>54</sup>[was, or, if the <sup>55</sup>[Citizenship Act, 1951 (II of 1951)], had been in force at the date of her birth, would have been, by birth a citizen of <sup>52</sup>[Bangladesh]], no such order as aforesaid shall be made, unless the <sup>50</sup>[Government] is satisfied that, if she had held a certificate of naturalisation in her own right, the certificate could properly have been revoked under section 8, and the provisions of that section as to referring cases for inquiry shall apply to the making of any such order as they apply to the revocation of a certificate.

47. Subs. by Act VIII of 1973 as amended by Act LIII of 1974 for "Rupees".

48. Subs. by Act LXI of 1952 for "British Subject".

49. Subs. by Act VIII of 1973 as amended by Act LIII of 1974, for "Pakistan".

50. Subs. by Act VIII of 1973 as amended by act LIII of 1974 for "Central Government".

51. Subs. by Act LXI of 1952, for "British subject".

52. Subs. by Act VIII of 1973 as amended by Act LIII of 1974 for "Pakistan".

53. Ins. by Act I of 1935. s. 3.

54. Subs. by Act LXI of 1952, for "was at birth a British subject".

55. Subs. by Act VIII of 1973 as amended by Act LIII of 1974, for "Pakistan Citizenship Act, 1951."

**10. Declaration of alienage.**—(1) A declaration of alienage in such manner as may be prescribed by rules made under this Act may be made,-

(a) within one year of his attaining majority, by any child who has acquired any of the rights, privileges or capacities of naturalisation under sub-section (2) of section 5, or sub-section (2) of section 7; or

(b) Within six months from the date of the revocation of a certificate under section 8, or of the death of, or of the dissolution of her marriage with, the holder of any such certificate as is therein referred to, by the wife of the person whose certificate has been revoked, or who has died, or whose marriage to her has been dissolved, as the case may be.

(2) Where a declaration of alienage has been made in the manner aforesaid, the person making the same, and the wife of any such person, and any children of any such person who are minors and are not by birth <sup>56</sup>[citizens of <sup>57</sup>[Bangladesh], shall cease to be deemed to be <sup>66</sup>[citizens of <sup>57</sup>[Bangladesh] :

<sup>58</sup> [Provided that the wife of any such person shall not cease to be deemed to be <sup>56</sup>[citizen of <sup>57</sup>[Bangladesh]] under this sub-section, unless by reason of the acquisition by her husband of a new nationality she has also acquired that nationality.]

**11. Inquiries.**— Every person making an inquiry under the orders of the <sup>59</sup>[Government] under sub-section (3) of section 4, and every person appointed to hold an inquiry under sub-section (5) of section 8, shall be deemed to be a public servant within the meaning of the <sup>60</sup>[Penal Code], and shall for the purposes of such inquiry have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters:-

- (i) enforcing the attendance of any person and examining him on oath;
- (ii) compelling the production of documents and material objects; and
- (iii) issuing commissions for the examination of witnesses; and every such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the <sup>61</sup>[Penal Code].

56. Subs., by Act LXI of 1952 for "British Subjects".

57. Subs., by Act VIII of 1973 as amended by Act LIII of 1974 for "Pakistan".

58. Added by Act of 1935.

59. Subs. by Act LIII of 1974, for "Central Government."

60. Subs. *ibid.*, for "Pakistan Penal Code".

61. Subs. by Act LIII of 1974, for "Pakistan Penal Code".



**12. Oaths and affidavits.**— (1) All oaths and affidavits for the purposes of this Act shall be sworn before a Magistrate or such other person as may be appointed in this behalf by the <sup>62</sup>[Government].

(2) The Magistrate or other person by whom an oath of allegiance is administered under section 6 shall grant to the person making the same a certificate in writing of his having taken and subscribed such oath and of the date of his taking and subscribing the same, and shall forward to the <sup>62</sup>[Government] the oath so taken and subscribed, together with a copy of such certificate.

**13. Power to make rules.**— (1) The <sup>62</sup>[Government] may, <sup>63</sup>\*

<sup>\*</sup>, by notification in the <sup>64</sup>[Official Gazette], make rules <sup>65</sup>to give effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely :-

(a) the form or forms in which certificates of naturalisation shall be granted, and the manner in which they shall be recorded;

(b) the manner in which declarations of alienage shall be made and recorded;

(c) the recording of oaths of allegiance; and

(d) the fees which may be imposed for the issue of any certificate, whether of naturalisation or otherwise, granted under this Act.

**14. Limitation to the grant of naturalisation under this Act.**— Nothing contained in this Act shall be deemed to entitle to any of the rights, privileges or capacities of a <sup>66</sup>[citizen of <sup>67</sup>[Bangladesh]] the child of any person who is himself so entitled by reason only of the inclusion of his name in a certificate of naturalisation under sub-section (2) of section 5 or of the grant of a certificate of naturalisation to his parent.

<sup>68</sup> \* \* \*

**15.** [Repeals] Rep. by the Repealing Act, 1927 (XII of 1927), s. 2 and Sch.

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62. Subs. by act VIII of 1973 as amended by Act LIII of 1974, for "Central Government".

63. The words "with the previous sanction of the G.G. in Council" omitted by A.O., 1937.

64. Subs. *ibid* for "Local official Gazette".

65. For the Naturalisation Rules, 1961, see Pak. Gaz. 1961 Pt. 1, pp. 450-456.

66. Subs. by Act LXI of 1952, s. 10, for "British Subject".

67. Subs. by Act VIII of 1973, 2nd Sch., as amended by Act LIII of 1974, for "Pakistan".

68. Sections 14A, 14B and 14C were omitted, *ibid*.

## **The Pakistan Naturalisation Rules, 1961**

S.R.O. 1098 (K)/61.—In exercise of powers conferred by section 13 of the Naturalisation Act, 1926 (VII of 1926), and in supersession of the Indian Naturalisation Rules, 1938, the Central Government is hereby pleased to make the following rules, namely:—

**1. Short title.**—These rules may be called the Pakistan Naturalisation Rules, 1961.

**2. Definition.**—In these rules, unless there is anything repugnant in the subject or context, "the Act" means the Naturalisation Act, 1926 (VII of 1926).

**3. Form of application.**—Every application for a certificate of Naturalisation shall be in Form 'A' hereto appended and shall be addressed to the Directorate of Immigration and Passports through the Provincial Government.

**4. Form of Certificate.**—Certificates of Naturalisation shall be issued in the following Forms hereto appended, namely:—

(a) in Form B, in the case of a person who applies for a certificate of Naturalisation for the first time and whose children are not included in the Certificate;

(b) in Form C, in the case of a person who applies for a certificate of Naturalisation for the first time and whose children are included in the certificate;

(c) in Form D, in the case of a person who had been previously granted a certificate of Naturalisation under the Indian Naturalisation Act, 1852, and applies for one under the Act and whose children are not included in the certificate;

(d) in Form E, in the case of a person who had been previously granted a certificate of Naturalisation under the Indian Naturalisation Act, 1852, and applies for one under the Act and whose children are included in the certificate.

**5. Issue of Certificates.**—Certificate of Naturalisation shall be issued by the Director of Immigration and Passports and shall be sent to the Provincial Government for delivery to the applicant.

**6. Recording of Certificates.**—Every certificate of Naturalisation granted under the Act and every oath of allegiance relating to such certificate shall be recorded in a register in Form 'F' hereto appended, in the Directorate of Immigration and Passports.

**7. Declaration of Pakistan Citizenship by a wife.**— A declaration of Pakistan Citizenship by a wife of a person to whom a certificate of Naturalisation is granted under sub-section (1) of section 7 of the Act, shall be made in Form 'G' hereto appended. Such declaration shall be made before any Magistrate. The Magistrate shall forward a copy of such declaration for record to the Directorate of Immigration and Passports through the Provincial Government.

**8. Declarations of alienage.**— Declaration of alienage shall be made in the following Forms appended hereto, namely,

in Form 'H', where the declaration of alienage is made by children on attaining majority,

in Form 'I', where the declaration of alienage is made by a wife or a widow.

**9. Persons before whom Declarations may be made and their recording.**— Declaration of alienage may be made before any Magistrate. The Magistrate before whom a declaration of alienage is made under sub-section (1) of section 10 of the Act shall grant to the person making the declaration a certified copy of the declaration and shall forward the declaration in original together with the affidavit relating thereto to the Directorate of Immigration and Passports through Provincial Government.

**10. Registration of Declaration of Alienage.**— Every declaration of alienage shall be recorded in a register in Form 'J' hereto appended, in the Directorate of Immigration and Passports.

**11. Oath of Alienance.**— The oath of aliegnance required by section 6 of the Act shall be taken and subscribed before a Magistrate in Form 'K' hereto appended. The Magistrate shall, after filling in and signing the certificate in Form 'K', forward the document to the Provincial Government for transmission to the Directorate of Immigration and Passports. He shall also fill in and sign the certificate, included in the certificate of Naturalization, of the oath having been taken and subscribed.

**12. Fees.**— \* \* \* \* \*

# **The Bangladesh Passport Order, 1973**

**(President's Order No. 9 of 1973)**

**[8th February, 1973]**

WHEREAS it is expedient to provide for the issue of Passports and travel documents to regulate, in the interest, the departure from Bangladesh of citizens of Bangladesh and other persons and for matters incidental or ancillary thereto;

NOW, THEREFORE, in pursuance of paragraph 3 of the Fourth Schedule to the Constitution of the People's Republic of Bangladesh, and in exercise of all powers enabling him in that behalf, the President is pleased to make the following Order:-

1. (1) This Order may be called the Bangladesh Passport Order, 1973.

(2) It extends to the whole of Bangladesh and applies to all citizens of Bangladesh.

(3) It shall come into force at once.

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

(a) "departure", with its grammatical variations and cognate expressions, means departure from Bangladesh by water, land or air;

(b) "Government" means the Government of the People's Republic of Bangladesh;

(c) "passport" means a passport issued or deemed to have been issued under this Order;

(d) "passport authority" means an officer or authority empowered under rules made under this order to issue Passports or travel documents;

## **Case Law**

**Meaning of :-** A passport is an official document issued in the name of the head of the State, to a traveller for his safe passage to and protection in a foreign country and is intended to be presented to a foreign Government for this purpose.

**Purpose of the Passport :-** "A passport is not only of great value, indeed, necessary abroad.

(e) "prescribed" means prescribed by rules made under this Order;

(f) "travel document" means a travel document issued or deemed to have been issued under this order.

3. No person shall depart or attempt to depart from Bangladesh unless he holds a valid passport or travel document.

4. (1) The classes of Passports and travel documents, the conditions subject to which and the forms in which a passport or a travel document shall be issued or renewed and the period for which a passport or a travel document shall be issued or renewed shall be as may be prescribed.

(2) A passport or a travel document issued under this Order shall at all time remain the property of the Government.

5. (1) An application for the issue of a passport or travel document, for visiting such foreign country or countries as may be specified in the application, shall be made to the passport authority in such form, containing such particulars and accompanied by such fee, if any, as may be prescribed.

(2) On receipt of an application, the passport authority, after making such inquiry, if any, as it may consider necessary, shall, subject to the provisions of this Order, by order in writing issue passport or travel document, as the case may be, or refuse to issue passport or travel document or restrict the number of countries to be endorsed upon such passport or travel document.

### Case Law

Article 5(2) either in case of cancellation or refusal of passport opportunity should be given to the person concerned to show cause against grounds for the action [47 DLR, 29; Ziauddin Ahmed Vs. Bangladesh & other] 5 BLC 413 Hussain Muhammad Ershad Vs. Bangladesh and ors.

6. *Subject to the provisions of this Order, the passport authority.*—(1) may refuse to issue a passport or travel document on any one or more of the following grounds-

(a) that the applicant is not a citizen of Bangladesh;

(b) that the applicant was convicted under the Bangladesh Collaborators (Special Tribunal) Order, 1972 (P.O. No. 8 of 1972);

(c) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in Bangladesh for any offence involving moral turpitude, and sentenced in respect thereof to imprisonment for not less than two years;

(d) that the applicant was convicted or is reasonably suspected of smuggling of currency, drugs, arms, trafficking in woman and slaves, foreign currency, Passports or of indulging in illegal dealings involving foreign exchange, trade or commerce;

(e) that the applicant is evading or likely to evade appearance in any pending proceedings against him in a criminal court in Bangladesh or that an order prohibiting the departure from Bangladesh or the applicant has been made by any such court;

(f) that the applicant was previously deported from abroad on account of his undesirable activity;

(g) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;

(h) that the applicant is likely to become destitute and his repatriation would be a charge on public funds;

(i) that the applicant has been made for a minor, suspected of being taken out of Bangladesh against an order of the court or against the wishes of the legal guardian;

(j) that the applicant is suffering from such mental or physical deficiency which renders him incapable of taking care of himself unless accompanied by legal guardian or an authorised person; and

(2) shall refuse to issue a passport or travel document on any one or more of the following grounds-

(a) that the applicant, in the opinion of the Government, is likely to engage outside Bangladesh in activities prejudicial to the sovereignty, integrity or security of Bangladesh;

(b) that the applicant, in the opinion of the Government, is reasonably suspected of evading or attempting to evade the duty to render any service which, under any law, he is required to render in the public interest;

(c) that the issue of a passport or travel document to the applicant, in the opinion of the Government, will not be in the public interest.

7. (1) The passport authority may vary or cancel the endorsement on a passport or travel document or the conditions, other than the prescribed conditions, subject to which a passport or travel document is issued and may, for that purpose, require the holder of a passport or travel document, by notice in writing, to deliver up such passport or travel document to it within such time as may be specified in such notice.

(2) The passport authority may impound or cause to be impounded or revoke a passport or travel document-

(a) if the passport authority is satisfied that the holder of the passport or travel document is in wrongful possession thereof;

(b) if the passport or travel document was obtained by suppression of material facts;

(c) if the passport authority deems it necessary to do so in the interest of sovereignty, integrity or security of Bangladesh, or in the public interest.

### **Case Law**

The impugnant order of seizure and impounding the passport of the petitioner for an indefinite period debarring his from getting the passport back or from making prayer for fresh passport, have been passed without any lawful authority and is of no legal effect [47 DLR 256; *Ekrum Ibrahim Lody Vs. Bangladesh & others*].

Although in the Passport Order there is no positive word requiring that the citizen whose passport is impounded shall be given an opportunity of being heard, yet the principle of audi alterem partem mandates that no one shall be condemned unheard. [Per A M Mahmuder Rahman, J; *Hussain Muhammad Ershad Vs. Bangladesh and others*; 21 BLD 2001- (AD)-69].

### **Article 7—Impounding of passport—**

**Constitution of Bangladesh— Article 36— Freedom of movement—**

A citizen's right to leave and re-enter Bangladesh is a fundamental right which cannot be curtailed except on reasonable restrictions imposed by law. Writ petition against impounding of passport is not maintainable as there is the provisions of appeal to the Government and the petitioner did not avail of this provisions. (Over ruled by A.D.) [*Hussain Mohammad Ershad Vs. Bangladesh & others*; 5 MLR (2000) (HCD) 267].

### **Articles-31, 36 and 102**

#### **Delay in renewal of passport**

Delay in renewal of the Passport will be prejudicial to him as he will be deprived of the opportunity of performing the holy Haj. [*Government of Bangladesh Vs. Professor Gholam Azam*; 21 BLD 2001-(AD)-62].

(d) If the holder of the passport or travel document has, at any time after the issue of the passport or travel document, been convicted by a court in Bangladesh for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years or if the holder of the passport or travel document has been convicted under the Bangladesh Collaborators (Special Tribunal) Order 1972 (P.O. No. 8 1972);

(e) if an order has been passed by any court in Bangladesh prohibiting the departure of the holder of the passport or travel document from

Bangladesh and requiring the passport authority to impound or cause to be impound or revoke such passport or travel document;

(f) if any of the conditions of the passport or travel document has been contravened;

(g) if the holder of the passport or travel document has failed to comply with a notice under clause (1) requiring him to deliver up the same.

(3) The passport authority may also revoke a passport or travel document on the application of the holder thereof.

(4) Where the passport authority makes an order under clause (2) of Article 5 refusing to issue passport or travel document or restricting the number of countries to be endorsed upon such passport or travel document, or makes an order varying or cancelling the endorsements on, or varying the conditions of, a passport or travel document under clause (1), or makes an order impounding or revoking a passport or travel document under clause (2), of this Article, it shall record in writing a brief statement of the reasons for making such order and furnish to the person concerned on demand a copy of the same;

Provided that the passport authority may refuse in the interest of the sovereignty, integrity or security of Bangladesh, or in the public interest to furnish such a copy.

### **Case Law**

The appellant having not been supplied with the copy of the order recording reasons therefor restricting the appellant from leaving the country certainly is violative of Article 7(4) of the Bangladesh Passport Order as the appellant had no opportunity to take a decision to avail of the alternative remedy by way of appeal as provided in Article 10 of the Passport Order, 1973. [*Per A M Mahmuder Rahman, J; Hussain Muhammad Ershad Vs. Bangladesh and others; 21 BLD 2001- (AD)-69*].

Passport Act (XXXIV of 1920), ss. 3.4.5; Bangladesh Passport Order (P.O. 9 of 1973) Arts. 7 & 11; Passport (Offences) Act (LVI of 1952) s. 3;

Passport Rules, 1974, r. 9;

Passport Rules, 1955, rr. 4 & 6.

(a) Passport - A person can be denied entry in Bangladesh if he does not possess a valid passport-Suppression of material facts in obtaining passport does not render the passport invalid-for such suppression the holder of passport may be otherwise dealt with but cannot be denied entry in Bangladesh.



(b) Power of attorney-When petition has been filed against the Government by virtue of Power of Attorney authorising institution of legal proceeding against Government, the Power of Attorney is not invalid and does not attract the mischief of Art. 52 of the Constitution merely because it authorises the donee to institute legal proceeding against the President-Constitution of Bangladesh 1972, Arts. 52 and 102; Power of Attorney Act, 1882, s. 2.

(c) Writ petition-*Locus Standi*-Petition by a person as constituted attorney of the person aggrieved is maintainable-Constitution of Bangladesh, 1972, Art. 102; Power of Attorney Act, 1882, s. 2.

#### Case Law

[Standard Vacuum Oil Company Vs. Trustees for the Port of Chittagong. P.L.D. 1961 Dac 278; ref.]

(d) Writ petition-Agrieved person-No hard and fast meaning could be ascribed to the term "aggrieved person"-The meaning of the term is to be determined with reference to facts and circumstances of each case.

#### Case Law

[Tariq Transport Co. Lahore Vs. Sargoda Bhera Bus Service, Sargoda and another, P.L.D. 1958 S.C. 437; Mia Fazal-Din Vs. Lahore Improvement Trust, PLD 1969 S.C. 223; Dr. A. N. M. Mahmood Vs. The Syndicate of Dacca University, PLD 1970 Dacca 85; Province of East Paistan Vs. Hiralal Agarwala, PLD 1970 S.C. 339; Attorney General of Gambia Vs. N'jie. (1961) 2 All E. R. 504, ref.]

(e) Writ petition-Government of Bangladesh made respondent-Petition not bad for not impleading some of the officers of the respondent-Constitution of Bangladesh (1972) Art. 102.

#### Case Law

[Joinal Abedin Vs. Collector of Central Excise, PLD 1959 Dac. 342. distinguished.]

(f) Writ-Mandamus-Demand for justice-When there are special circumstances to indicate that demand for justice would be futile, mandamus can issue even though no demand for justice was made prior to filing of the writ petition-Constitution of Bangladesh (1972), Art. 102.

(g) Writ-mandamus-Respondent having not denied the impugned action, the objection that mandamus has never been issued only for declaring that act of a person is unlawful or for declaring the title of a person to an office has been overruled-Constitution of Bangladesh, 1972, Art. 102 [1981 BLD (HC) 304].

8. (1) A court convicting the holder of a passport or travel document of any offence under this Order or the rules made thereunder may also revoke the passport or travel document;

Provided that if the conviction is set aside on appeal or otherwise the revocation shall become void.

(2) An order of revocation under clause (1) may also be made by the Supreme Court when exercising its powers of appeal or revision.

9. On the revocation of a passport or travel document under this Order the holder thereof shall, without delay, surrender the passport or travel document, if the same has not already been impounded, to the authority by whom it has been revoked or to such other authority as may be specified in the order of revocation.

10. Any person aggrieved by an order of the passport authority under clause (2) of Article 5 or clauses (1) and (2) of Article 7 may prefer an appeal against that order to such authority, hereinafter referred to as the appellate authority, and within such period and in such manner as may be prescribed;

Provided that no appeal shall lie against any order made by the Government.

### **Case Law**

**Article 10**— Appeal against impounding of passport when does not operate as bar against writ-petition—

Article 7(2)— Principle of natural justice mandates that an opportunity of hearing should be given before impounding passport—

Constitution of Bangladesh— Article 103(3)— Special Leave Petition—

Inordinate delay caused by gross negligence— Government stands on the same footing with ordinary litigant—

Although the apex court takes usually liberal attitude to condone delay of Government cases in granting leave to appeal, no unlimited latitude can be given in case of gross negligence because the Government as well as the private litigants stand on the same footing. The court took serious view about the gross negligence on the part of the Government official failing to protect the Government interest.

*Government of Bangladesh represented by the Secretary Ministry of Works and others Vs. Alauddin being dead his heirs Md. Salahuddin and others—6 MLR 2001-(AD)-1.*

**11. Whoever.—**

(a) contravenes the provisions of Article 3; or

(b) knowingly furnishes any false information or suppresses any material fact with a view to obtaining a passport or travel document under this Order or without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document; or

(c) fails to produce for inspection his passport or travel document (whether issued under this Order or not) when called upon to do so by the prescribed authority; or

(d) knowingly uses a passport or travel document issued to another person; or

(e) Knowingly allows another person to use a passport or travel document issued to him,

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to Taka two thousand, or with both.

(2) Whoever contravenes any condition of a passport or travel document or any provision of this Order or any rule made thereunder for which no punishment is provided elsewhere in this Order shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to Taka five hundred, or with both. [For Comments on Art. 11 please see comments on Art. 7; ante.]

**12.** (1) Any Officer of customs empowered in this behalf by a general or special order of the Government <sup>1</sup> [or any officer of the Bangladesh Bureau of Anti-Corruption not below the rank of an Assistant Inspector or any officer of police] not below the rank of a Sub-Inspector may search any place and seize any passport or travel document from any person or arrest such person without warrant if a reasonable suspicion exists that he has committed any offence punishable under Article 11.

(2) The provisions of the Code of Criminal Procedure, 1898 (Act V of 1898) relating to search and seizure and arrest shall, so far as may be, apply to search and seizure and arrest under this Article.

**13.** No suit, prosecution or other legal proceedings shall lie against the Government or any officer or authority for anything which is in good faith done or intended to be done under this Order.

1. Substituted by Ordinance No. LV of 1975. s. 2.

14. Upon the issue of a notification by the Government that a foreign country is-

(a) a country which is committing external aggression against Bangladesh; or

(b) a country assisting the country committing external aggression against Bangladesh; or

(c) a country where armed hostilities are in progress; or

(d) a country to which travel must be restricted in the public interest because such travel would seriously impair the conduct of foreign affairs of the Government, a passport or travel document for travel through or visiting such country shall cease to be valid for such travel or visit unless in any case a special endorsement in that behalf is made by the prescribed authority.

15. Notwithstanding anything contained in the foregoing provisions relating to issue of a passport or travel document, the Government may issue, or cause to be issued, a passport or travel document to a person who is not a citizen of Bangladesh if the Government is of the opinion that it is necessary so to do in the public interest.

16. The Government may, by notification in the *Official Gazette*, direct that any power or function which may be exercised or performed by it under this Order, in relation to such matters and subject to such conditions, if any, as it may specify in the notification, be exercised or performed-

(a) by such officer or authority subordinate to the Government; or

(b) in any foreign country in which there is no diplomatic mission of Bangladesh, by such foreign Consular Officer, as may be specified in the notification.

17. (1) The Government may, by notification in the *Official Gazette*, make rules for carrying out the purposes of this Order.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely:-

(a) the appointment, jurisdiction, control and functions of passport authorities;

(b) the form and particulars of application for the issue or renewal of a passport or travel document and where the application is for the renewal, the time which it shall be made;

(c) the period for which passports and travel documents shall continue in force;

(d) the form in which and the conditions subject to which the different classes of passports and travel documents may be issued, renewed or travel;

(e) the fees payable in respect of any application for the issue of renewal of a passport or travel document or for varying any endorsement or making a fresh endorsement on passport or a travel document and the fees payable in respect of any appeal under this Order;

(f) the appointment of appellate authorities under Article 10, the jurisdiction of, and the procedure which may be followed by, such appellate authorities;

(g) the services (including the issue of a duplicate passport or travel document lost, damaged or destroyed) which may be rendered in relation to a passport or travel document and the fees therefor;

(h) any other matter which is to be or may be prescribed or in respect of which this Order makes no provision or makes insufficient provision and provision is, in the opinion of the Government, necessary for the proper implementation of the Order.

**18.** (1) Every Passport and every travel document issued by or under the authority of the Governemnt before the commencement of this Order and in force immediately before such commencement shall be deemed to have been issued under this Order and shall, subject to the provisions of this Order, continue in force-

(a) for the unexpired portion of the period for which such passport or travel document had been issued; or

(b) for a period of five years from such commencement, whichever is less.

### **Case Laws on P.O. 9 of 1973**

#### **A passport can be revoked under P.O. 9 of 1973.**

A passport of any citizen of Bangladesh can be impugned by the Government under the provision of P.O. 9 of 1973 and ultimately the issuance of such passport can be revoked for many reasons under the aforesaid Presidential Order and proceedings may follow for violation of any of the provisions of the said Order.<sup>2</sup>

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2. 32 DLR (1980) 160

# Bangladesh Passport Rules, 1974

[August 21, 1974]

1. *Short title.*— These rules may be called the Bangladesh Passport Rules, 1974.

2. *Classes of Passports.*— There shall be the following classes of Passports, namely:-

- (a) international passport for travel to any foreign country;
- (b) special passport for travel to India only; and
- (c) diplomatic passport.

3. *Passport authorities.*— (1) The Secretary, Ministry of Home Affairs and the <sup>1</sup>[Director-General, Immigration and Passports] may issue any class of passport and travel document.

(2) The Secretary, Ministry of Foreign Affairs or an officer authorised by him may issue diplomatic Passports.

(3) The officers specified in column 1 of Schedule 1 to these rules may issue the Passports and travel document specified in column 2 thereof to any citizen of Bangladesh residing for the time being within the jurisdiction specified in column 3 of that Schedule.

(4) An Officer empowered to issue a passport under this rule shall be a passport authority for the purposes of these rules.

## Case Law

**Rules 3 and 11**— In the absence of any evidence that petitioners ailment can not be treated in Bangladesh and upon a reading of Article 36 it appears that freedom of movement has been guaranteed subject to reasonable restrictions imposed by law when Article 5 and 7 of the Bangladesh Passport Order (P.O. No. 9 of 1973) empowers the passport authority to such impounding and that the reasons for impounding the petitioners passport fits with the provisions of the Passport Order and that the Passport Order falls within the competence of the legislature and it does not contraven any provision of the Constitution particularly Article 36 and hence the impounding of the petitioner's passport is legal and in accordance with law. Petitioners writ petition is also not maintainable as he has the remedy by way of Appeal. [*Hussain Muhammad Ershad Vs. Bangladesh and Ors.* 5 BLC 413.]

**4. Forms of application.**— (1) An application for the issue of a passport or travel document or for the renewal thereof or for an endorsement thereon shall be made in the appropriate form set out in Schedule II to these rules.

<sup>2</sup>[(2) An application for the issue of a passport or travel document shall be required to be attested by any one of the following:-

(a) a Member of Parliament;

(b) a Gazetted Officer of the Government;

(c) a Professor, Associate Professor, Assistant professor or Lecturer of a University;

(d) the Mayor, Deputy Mayor or Commissioner of a Municipal Corporation;

(e) the Chairman of a Pourashava;

(f) the Chairman of a Upazila Parishad;

(g) the Chairman of a Union Parishad;

(h) the Principal of a private college;

(i) the Head Master of a private high school;

(j) the Editor of a daily newspaper;

(k) an officer of a local authority drawing pay in the New National Pay Scale of Grade VII or above]

(3) A passport authority may return an application, stating the reasons therefor, if he finds that it is not in order or is not accompanied by requisite documents or is not otherwise complete in all respects.

**5. Duration of passport.**— (1) A passport shall initially be valid for such period not exceeding five years as may be specified therein.

(2) A passport may be renewed for further period or periods not exceeding a period of five years at a time, but in no case the validity of the passport shall extend beyond a period of ten years from the date of its issue.

(3) a travel document shall be valid for such period not exceeding one year as may be specified therein.

<sup>3</sup>[5A. **Restriction on visits to certain foreign countries.**—

(1) No international or special passport shall be valid for more than two visits to India, Pakistan, Nepal, Ceylon and Burma during a calender year.

(2) Nothing in sub-rule (1) shall apply-

(a) in the case of a Government servant or any other person visiting the countries on official duty; and

2. Substituted by SRO No. 497-L dt. 28.12.1983

3. Inserted by SRO No. 22-L dt. 4-1-1976

(b) in the case of a businessman or an industrialist visiting the countries after obtaining a no objection certificate from the Ministry of Home Affairs on the recommendation of the Ministry concerned.

(3) Any person visiting a country mentioned in sub-rule (1) shall, if the period of his stay in such country exceeds or is likely to exceed more than sixty days, register himself with the Bangladesh Mission or Consulate, if any, in that country.]

**6. Financial Guarantee.**—(1) Except in the cases mentioned in sub-rule (3), an application for the issue of a passport, other than a diplomatic passport, shall be accompanied by a surety bond or a bank guarantee executed in the appropriate form set out in Schedule III to these rules.

<sup>4</sup>[(2) In the case of a surety bond, the applicant for a passport shall furnish a personal undertaking on a non-judicial stamp paper of the value of taka two duly attested by the person attesting the application for passport under sub-rule (2) of rule 4.]

(3) No surety bond or bank guarantee shall be necessary where the applicant is-

(a) a Member of Parliament;

(b) a Class 1 officer of the Government or the wife or child of such officer;

(c) a person settled abroad, his wife and children;

(d) an officer or employee of the Government or of a statutory corporation or local authority going abroad on official duty;

(e) a recipient of an employment voucher from the United Kingdom or a work permit from any other country.

(f) a recipient of scholarship or fellowship;

(g) a member of any delegation sponsored or approved by the Government;

(h) a child accompanying its parent who is not required to furnish any surety bond or bank guarantee; <sup>5</sup>[\*\*\*\*]

(i) a wife accompanying her husband who is not required to furnish any surety bond or bank guarantee <sup>6</sup>[;and] <sup>7</sup>[(j) an income tax payee.]

**7. Fees.**— An application for the issue of a passport or travel document or for the duplicate or renewal thereof or for an endorsement

4. Substituted by SRO 497-L dt. 28.12.1983

5. Omitted by SRO 497-L dt. 28.12.1983

6. Substituted by SRO 497-L dt. 28.12.1983

7. Added by SRO 497-L dt. 28.12.1983



thereon shall be accompanied by the fee specified in Schedule IV to these rules;

Provided that no such fee shall be payable where such passport, document, duplicate or renewal is necessary for a journey required by Government.

**8. Forms of passport and travel document.**— A passport or travel document shall be issued in such form as the Government may direct.

**9. Issue of additional passport or travel document.**— (1) Subject to sub-rule (2), a person holding a passport or travel document shall not be entitled to another passport or travel document unless he surrenders the passport or travel document held by him.

(2) Separate Passports or travel documents may be issued to a person if it is necessary to do so for facilitating his visits to different countries.

### Case Law

Rule 9-passport-Holding of more than one passport. The Bangladesh passport order, 1973 puts no express embargo on holding more than one passport. Separate Passports or travel documents may be issued to a person under the Rules if it is necessary to do so for facilitating his visits to different countries. [*Syed Mokbul Hossain Vs. Bangladesh*, 44 DLR 39.]

**10. Functions of the 8[Director-General, Immigration and Passports].**— The <sup>8</sup>[Director-General, Immigration and Passports] shall supervise and control the work of all passport authorities specified in Schedule 1 to these rules.

**11. Appellate Authority.**— (1) A person aggrieved by an order of a passport authority may within a period of two months from the date of the order, prefer an appeal-

(a) Where the order is that of any authority other than the Secretary, Home Affairs, to the Secretary, Home Affairs; and

(b) Where the order is that of the Secretary, Home Affairs, to the Minister for Home Affairs.

(2) Before making an order on an appeal under sub-rule (1), the appellant shall be given an opportunity of being heard.

**12. Repeal.**— The Bangladesh Passport Rules, 1973, are hereby repealed.

**The Passport Act, 1920**  
**<sup>1</sup>Act No. XXXIV of 1920**  
**[9th September, 1920]**

An Act to take power to require Passports of persons entering <sup>2</sup>[Bangladesh].

WHEREAS it is expedient to take power to require Passports of persons entering <sup>3</sup>[Bangladesh].

It is hereby enacted as follows : -

**1. Short title and extent.**— (1) This Act may be called the <sup>4</sup>[Passport] Act, 1920.

<sup>5</sup>(2) It extends to the whole of <sup>6</sup>[Bangladesh]

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

"entry" means entry by water, land or air;

"passport" means a passport for the time being in force issued or renewed by the prescribed authority and satisfying the conditions prescribed relating to the class of Passports to which it belongs; and "prescribed" means prescribed by rules made under this Act.

**Case Law**

**Passport - evidentiary value**— A passport is also a very strong piece of evidence. It contain 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 Mnullify

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1. For statement of Objects and Reasons, see Gazette of India, 1920, pt. v. p. 54; for Report of Select Committee see *ibid.*, 1920, pt. v. p. 252; and for Proceedings in Council, see *ibid.*, 1920, pt. VI pp 397, 1003 and 1144.  
It has been applied to Chittagong Hill-tracts, vide notification No. 1963 H.S.P. of 7th March, 11959, see Dacca Gazette, 1959 pt. 1.1 p. 245.
  2. Subs. by Act VIII of 1973 as amended by Act LIII of 1973, for "Pakistan".
  3. Subs. by Act VIII of 1973 as amended by Act LIII of 1974, for "Pakistan".
  4. The word "Indian" omitted by A.O. 1949.
  5. Subs. by the Passport (Amdt.) Act, 1950 (XIII of 1950). s. 2. for the original sub-section (2) as amended by A.O. 1949.
  6. Subs. by Act VIII of 1973 as amended by Act LIII of 1974, for "Pakistan".

the passport altogether and make it no passport in the eye of law at all [*Mashkurul Hasan Vs. Union of India*, AIR 1967 All 565 at P. 567].

*Statements as to nationality and domicile in passport.*

It cannot be said that no weight should be attached to the statements as to nationality and domicile in a passport. A passport is a document of identity and nationality issued to citizens or subjects of a State who intend to travel or visit foreign countries. It is a document which requests and requires in the name of the State of the Government issuing it, all those to whom it may concern to give to the bearer every assistance and protection as a subject or the citizen of the State issuing the passport in foreign countries. [*Naziran Bai Vs. State*, AIR 1957 Madh Bh 1]

**3. Power to make rules.**—(1) The <sup>7</sup>[Government] may make rules <sup>8</sup>requiring that person entering <sup>9</sup>[Bangladesh] shall be in possession of Passports, and for all matters ancillary or incidental to that purpose.

(2) Without prejudice to the generality of the foregoing power such rules may-

(a) prohibit the entry into <sup>10</sup>[Bangladesh] or any part thereof of any person who has not in his possession a passport issued to him;

(b) prescribe the authorities by whom Passports must have been issued or renewed, and the conditions with which they must comply, for the purposes of this Act; and

(c) provide for the exemption, either absolutely or on any condition, of any person or class of persons from any provision of such rules.

(3) Rules made under this section may provide that any contravention thereof or of any order issued under the authority of any such rule shall be punishable with imprisonment for a term which may extend to three months, or with fine or with both.

(4) All rules made under this section shall be published in the <sup>11</sup>[Official Gazette], and shall thereupon have effect as if enacted in this Act.

**4. Power of Arrest.**—(1) Any Officer of police, not below the rank of a sub-inspector, and any officer of the Customs Department empowered

7. Subs. by Act VIII of 1973, as amended by Act LIII of 1974, for "Central Government".

8. For the Passport Rules, 1955, see Gaz. of Pak., 1955. pt. 1 pp. 135-136 and see also Gen. R & O.

9. Subs. by Act VIII of 1973 as amended by Act LIII of 1974, for "Pakistan".

10. Subs. by Act VIII of 1973 as amended by Act LIII of 1974, for "Pakistan".

11. Subs. by A.O., 1937, for "Gazette of India".

by a general or special order of the <sup>12</sup>[Government] in this behalf may arrest without warrant any person who has contravened or against whom a reasonable suspicion exists that he has contravened any rule or order made under section 3.

(2) Every officer making an arrest under this section shall, without unnecessary delay, take or send the person arrested before a Magistrate having jurisdiction in the case or to the officer in charge of the nearest police-station and the provisions of section 61 of the Code of Criminal Procedure, 1898, shall, so far as may be, apply in the case of any such arrest.

5. *Power of removal.*— The <sup>13</sup>[Government] may, by general or special order, direct the removal of any person from <sup>14</sup>[Bangladesh] who, in contravention of any rule made under section 3 prohibiting entry into <sup>15</sup>[Bangladesh] without passport, has entered therein, and thereupon any <sup>16</sup>[Officer of the Government] shall have all reasonable powers necessary to enforce such direction.

17. \* \* \* \*

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12. Subs. by Act VIII of 1973 as amended by Act LIII of 1974, for "Central Government" (w.e.f. 26.3.1971)
  13. Subs. by Act VIII of 1973 as amended by Act LIII of 1974, for "Central Government" (w.e.f. 26.3.1971)
  14. Subs. by Act VIII of 1973 as amended by Act LIII of 1974, for "Pakistan".
  15. Subs. *ibid*.
  16. The original words "Officer of Governemnt" were first substituted by A.O., 1937 and then amended by A.O., 1961, Art. 2 (w.e.f. 23.3.1956), to read as above.
  17. Section 6 omitted by Act VIII of 1973 as amended by Act LIII of 1974 (w.e.f. 26.3.1971).

## Passport Rules, 1955

No. PV.1-4/1-51, 2nd May, 1955 (Gazette 13th May, 1955).-In exercise of the powers conferred by section 3 of the Passport Act, 1920 (XXXIV of 1920), and in supersession of the Indian Passport Rules, 1921, the <sup>1</sup>[Central] Government is pleased to make the following rules, namely:-

**1. Short title, application and commencement.**— (1) These rules may be called the Passport Rules, 1955.

(2) They shall not apply to any person to whom the <sup>2</sup>[Control of Entry] Act, 1952 applies.

(3) They shall come into force at once.

**2. Definition.**— In these rules, unless there is anything repugnant in the subject or context—"competent authority" means any person authorised by order in writing by the <sup>1</sup>[Government] to exercise the powers of a competent authority under these rules.

**3. Condition for entry into <sup>3</sup>[Bangladesh].**— Subject to the provisions hereinafter contained, no person proceeding from any place outside <sup>3</sup>[Bangladesh] shall enter <sup>3</sup>[Bangladesh] by sea or by air or by land unless he is in possession of a passport.

**Explanation.**— A person proceeding from one part of <sup>3</sup>[Bangladesh] to another by sea or by air shall not be deemed to be proceeding into <sup>3</sup>[Bangladesh] from a place outside <sup>3</sup>[Bangladesh] by reason only of the fact that he has traversed extra-territorial waters or air-space during the course of his journey.

**4. Requirements of a valid passport.—Every such passport.**—

(a) shall have been issued or renewed by or on behalf of the country of which the person to whom it relates is a subject and shall be within the period of its validity;

(b) shall, except in the case of Passports issued to pardahnashin women, have affixed to it a photograph of the person to whom it relates, duly authenticated by the issuing authority;

1. The word "Central" omitted by SRO 357-L dt. 24.12.1994.

2. The words "control of entry" substituted for the words "Pakistan (Control of Entry)" by SRO 357-L dt 24-12-1994.

3. Substituted by SRO 357-L dt. 24-12-1994.

(c) when issued by or on behalf of Her Majesty's Government in any part of the Commonwealth, shall have been made valid for entry into <sup>1</sup>[Bangladesh] unless it is already endorsed as being valid for all commonwealth countries :

(d) when issued by or on behalf of the Government of a foreign country shall have been endorsed by way of visa for <sup>1</sup>[Bangladesh] by a <sup>1</sup>[Bangladesh] diplomatic, consular or passport authority, or, where there is no such authority, by an authority authorised in this behalf by the <sup>2</sup>[Government]. Such visa shall be of one of the following kinds namely:-

(i) a single journey visa valid for six months, or for such shorter period as may be specified therein, for one journey only to <sup>1</sup>[Bangladesh] for any legitimate purpose specifying therein the period of stay in <sup>1</sup>[Bangladesh] not exceeding three months;

(ii) a transit visa valid for six months or for such shorter period as may be specified therein (Provided that in no case shall it be valid for a period exceeding the period for which the visa for the country of ultimate destination is valid), for one or more direct journeys through <sup>1</sup>[Bangladesh] undertaken for the sole purpose of reaching the territory of a foreign State or of a Commonwealth country and occupying in each case not more than fifteen days in <sup>1</sup>[Bangladesh], unless an extension of the time for such journey be allowed by a competent authority; or

(iii) a multiple journey visa valid for six months or of such shorter period as may be specified therein for any number of journeys to <sup>1</sup>[Bangladesh] within a specified period not exceeding <sup>3</sup>[Five years] for any legitimate purpose. The period of stay in <sup>1</sup> [Bangladesh] specified under such visa shall not exceed three months at a time.

**5. Power to exempt, etc.**—(1) The <sup>2</sup>[Government] may by general or special orders exempt any persons or classes or persons, whether absolutely or on such conditions as it considers necessary, from the provisions of rule 3.

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1. The word "Bangladesh" substituted for the word "Pakistan" by SRO 357-L dt. 24-12-1994.

2. The word "Central" omitted by SRO 357-L dt. 24-12-1994:

3. The words "five years" substituted for the words "one year" by SRO No. 357-L dt. 24-12-1994.

1. The words "Central" omitted by SRO No. 357-L dt. 24-12-1994.

(2) The following persons and classes of persons shall be exempted from the provisions of rule 3 :-

- (a) persons whose age is less than fifteen days;
- (b) persons returning from pilgrimage and in possession of pilgrim passes issued by a competent authority;
- (c) persons or classes of persons exempted absolutely by the<sup>1</sup>[Government];

(d) persons or classes of persons exempted by the<sup>1</sup>[Government] on certain specified conditions, when the conditions have been duly fulfilled.

**6. Duty of persons in charge of aircraft etc.**—(1) No person in charge of any aircraft or ship shall bring into<sup>2</sup>[Bangladesh] from a place outside<sup>2</sup>[Bangladesh] any person who has not in his possession a valid passport specifically endorsed by a competent authority, whether by way of visa or otherwise as valid for entry into<sup>2</sup>[Bangladesh] under these rules.

(2) If any person is brought into<sup>2</sup>[Bangladesh] in contravention of sub-rule (1) an authority empowered by the<sup>1</sup>[Government] generally or specially in this behalf may direct the owner or person in charge of the aircraft or ship, as the case may be, to take the person back on board and remove him from<sup>2</sup>[Bangladesh] or otherwise to arrange for the immediate removal from<sup>2</sup>[Bangladesh] of the said person, and the owner, or as the case may be, the person in charge of the aircraft or ship shall comply with such direction.

**7. Penalty.**—Any person who :

- (a) enters<sup>2</sup>[Bangladesh] in contravention of the provisions of rule 3; or
- (b) does any act in contravention of any condition prescribed under sub-rule (1) of rule 5; or

(c) brings any person into<sup>2</sup>[Bangladesh] in contravention of sub-rule (1) of rule 6, or omits to obey a direction under sub-rule (2) of that rule, shall be punishable with imprisonment for a term which may extend to three months or with fine or with both.

**8. Attempt and abetment.**—Any person who attempts to commit or abets or attempts to abet the commission of any offence punishable under rule 7 shall be punishable in like manner as if he had committed the offence.

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2. The word "Bangladesh" substituted for the word "Pakistan" by SRO 357-L dt. 24-12-1994.

# The Passport (Offences) Act, 1952

<sup>1</sup>Act No. LVI of 1952

[14th December, 1952]

An Act to introduce legislation declaring forgery of a passport or a false statement in an application for a passport to be punishable offences.

Whereas it is expedient to make more effective provision for the prevention of certain offences relating to Passports and other travel documents;

It is hereby enacted as follows :

**1. Short title, extent and commencement.**—(1) This Act may be called the Passport (Offences) Act, 1952.

(2) It extends to the whole of <sup>2</sup>[Bangladesh] <sup>3</sup>[and also applies to all citizens of <sup>2</sup>[Bangladesh] wherever they may be].

(3) It shall come into force at once.

**2. Definition.**—In this Act the word "Passport" means and includes any permit, visa or other travel document authorising the holder thereof to travel from <sup>2</sup>[Bangladesh] to any other country, or from any other country to <sup>2</sup>[Bangladesh].

**3. Penalties for certain offences relating to passport.**—(1) Any person who—

(a) makes, attests or verifies any statement which he does not know or believe to be true in any document which he knows or has reason to think will be used or obtaining a passport; or

(b) makes use of any statement which he knows or has reason to think to be untrue in any document for obtaining a passport; or

(c) wilfully conceals any fact which under the circumstances he ought to disclose for the purpose of obtaining a passport for himself or another person; or

(d) forges, alters or tampers with any passport <sup>3</sup>[or with any document which he knows or has reason to believe will be used for obtaining a passport]; or

1. For statement of objects and reasons, see Gav. of Pak. 1952, pt. IX P. 22.

2. The word "Bangladesh" substituted for the word "Pakistan" by SRO No. 357-L dt. 24-12-1994.

3. Ins. by the Passport (Offences) (Amdt.) Ordinance, 1959 (27 of 1959), s. 3.



(e) uses a passport which he knows or has reason to believe to be forged, altered, or tampered with;

or

(f) is in wrongful possession for any purpose prejudicial to the interests of the State of a passport not lawfully issued to him; or

(g) traffics in Passports;

shall be punished with imprisonment which may extend to two years or with a fine, or with both.

**Explanation.**— A person who *bona fide* works for an applicant for a passport at the desire of the applicant though it may be for a gain does not traffic in Passports within the meaning of this section.

<sup>4</sup>[(2) No court shall take cognizance of any offence under this section except with the previous sanction in writing of Government].

# The Emigration Ordinance, 1982

Ordinance No. XXIX of 1982

## An Ordinance

*to repeal and, with certain amendments, re-enact the Emigration Act, 1922.*

WHEREAS it is expedient to repeal and, with certain amendments, re-enact the Emigration Act, 1922 (VII of 1922), for the purposes hereinafter appearing;

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, application and commencement.**— (1) This Ordinance may be called the Emigration Ordinance, 1982.

(2) It applies to all citizens of Bangladesh wherever they may be,

(3) It shall come into force on such date as the Government may, by notification in the official Gazette, appoint; and different dates may be appointed for different provisions of this Ordinance.

**2. Definitions.**— (1) In this Ordinance, unless there is anything repugnant in the subject or context.-

(a) "citizen" means a citizen of the People's Republic of Bangladesh;

(b) "demand" means any requirement or offer for employment of workers by a foreign or Bangladesh employer, having any project or contract or establishment abroad, which is supported by visa instructions or work permit from the competent Government authority of the country of employment;

(c) "depart" and "departure" means the departure out of Bangladesh of any person for employment by any foreign or Bangladeshi employer or for self-employment by any means;

(d) "dependent" means any woman or child who is related to an emigrant and any aged or incapacitated relative of an emigrant;

(e) "emigrant" means any person who emigrates or is assisted to emigrate or has emigrated under this Ordinance and includes any dependent of an emigrant;

(f) "emigrante" and "emigration" means the departure by sea, air or land out of Bangladesh of any person for the purpose or with the intention of working for wages or engaging in any trade, profession or calling in any country beyond the limits of Bangladesh;

(g) "licence" means a document issued by the Government authorising a person or an entity to operate as recruiting agent for employment abroad;

(h) "newspaper" shall have the same meaning as defined in the Printing Presses and Publications (Declaration and Registration) Act, 1973 (XXIII of 1973);

(i) "overseas employment" means employment of a citizen outside Bangladesh;

(j) "prescribed" means prescribed by rules made under this Ordinance;

(k) "recruiting agent" means a person licensed under section 10 :

(l) "recruit" means issuing a letter of appointment signing contracts for employment abroad by a foreign or Bangladeshi employer, making preliminary arrangements for selecting persons for employment abroad through advertisement, publicity, letter, preparation of panel, verbally or in writing, and any other steps towards furtherance of the objectives of the employment of a citizen abroad;

(m) "Registrar" means a Registrar of Emigrants appointed under this Ordinance; and

(n) "rules" means rules made under this Ordinance.

(2) In case of any doubt or dispute arising otherwise than in the course of any proceedings, as to whether a person is an emigrant within the meaning of this Ordinance, the question shall be determined by the Government and such determination shall be final.

*For Bangladesh*  
**3. Appointment of Registrar of Emigrants.**— (1) The Government may appoint a person to be a Registrar of Emigrants and define the area to which the authority of a Registrar so appointed shall extend.

(2) Every Registrar shall be a public servant within the meaning of section 21 of the Penal Code (Act XLV of 1860).

**4. Duties and functions of the Registrar.**— Every Registrar shall, in addition to the duties assigned to him by or under this Ordinance, perform such functions as may be assigned to him by the Government.

**5. Agents in foreign countries.**— The Government may, for the purpose of safeguarding the interest of emigrants and promoting overseas

employment, appoint persons to be agents in any place outside Bangladesh and may define their powers and duties.

**6. Delegation of certain authority.**—The Government may authorise any authority subordinate to it to-

- (a) promote emigration of citizens;
- (b) contract and regulate such emigration; and
- (c) look after the interest and welfare of emigrants at home and abroad.

**7. Regulation for emigration.**—(1) Emigration for overseas employment shall not be lawful from any port or place except from such ports or places as the Government may, by notification in the *official Gazette*, declare to be ports or places from which such emigration is lawful.

(2) No person shall, unless he possesses a valid demand, recruit or attempt to recruit any citizen for overseas employment except in accordance with the provisions of this Ordinance and the rules made thereunder.

(3) Notwithstanding anything contained in any other law for the time being in force, emigration of a citizen shall be lawful, if he is in possession of valid travel documents with registration endorsement under sub-section (4) of section 11, and-

(a) he is in possession of a letter of appointment or a work permit from a foreign employer, or an employment or emigration visa from a foreign Government; or

(b) he has been selected for emigration by a foreign employer through an organisation or authority or by a recruiting agent, recognised by the Government in this behalf or under an agreement or treaty between the Government and foreign Government.

**8. Power to prohibit emigration of workers.**—(1) If the Government, having regard to the occupation, profession, vocation or qualification of any person or class of persons is satisfied that emigration of such person or class of persons is not in the public interest, it may, by order, prohibit the emigration of such person or class of persons and thereupon the departure of such person or class of persons otherwise than in accordance with such order shall not be lawful.

(2) Notwithstanding the provisions of sub-section (1), where the Government has reason to believe that sufficient grounds exist for prohibiting emigration of any person or any class of persons to any country, it may, by notification in the *official Gazette*, declare that emigration of

such person or class of persons to that country shall cease to be lawful from a date specified in the notification; and from that date such emigration to that country shall accordingly cease to be lawful.

**9. Prohibition of advertisement, etc.**—(1) No person or organisation shall, except with the prior permission of the Government or any authority designated, recruit or attempt to recruit a citizen for overseas employment or issue an advertisement or publish any material or hold any interview or examination for such recruitment for the purpose of emigration.

(2) No newspaper shall publish any advertisement for employment abroad unless it is satisfied that the same is intended to be issued with the Government approval or clearance.

**10. Grant of licence.**—(1) Whoever desires to engage, or to recruit, or to assist, any person to emigrate shall apply to the Government, for licence at such time and in such manner, and shall, with his application, furnish such information and documents and pay such security and fee as may be prescribed.

(2) On receiving an application under sub-section (1), the Government may, after such enquiry regarding the character, antecedents and solvency of the applicant as it may consider necessary, grant the licence applied for on such terms and conditions, if any, as may be prescribed, or reject the application for licence.

(3) The decision of the Government under sub-section (2) shall be final and shall not be questioned in any court of law.

(4) A licence under this section may be issued in favour of a citizen or in favour of a corporation, company, partnership firm or any other entity, if—

(a) in the case of corporation or company, at least sixty per cent of the stock of the corporation or the company, and

(b) in the case of a partnership firm or any other entity, at least sixty percent of the capital or proprietary right of the firm or the entity, is owned or controlled by Bangladeshi citizens.

**11. Appearance of emigrants before the Registrar, etc.**—

(1) Before any person departs from Bangladesh, the person by whom he has been engaged or assisted shall appear in person or by his duly authorised agent before the Registrar and furnish such information regarding terms of his engagement or contract, and such other matters concerning his selection as may be prescribed.

(2) If the person departing from Bangladesh is directly appointed or recruited by a foreign Government or organisation or agency or by other foreign employers, such person shall furnish required information to the Registrar.

(3) If the Registrar is satisfied that the terms of agreement under which a person has been engaged or assisted are in conformity with the terms on the basis of which the licence to recruit was granted, he shall register in a book to be kept for the purpose such particulars concerning the person engaged or assisted and his dependants, if any, and the person engaging or assisting him in such form as may be prescribed.

(4) Registration of persons departing Bangladesh shall be endorsed on their Passports by the Registrar.

**12. Registration of emigrants residing abroad.**— An emigrant residing abroad and who has not been registered under this Ordinance shall get himself registered with such labour Attache or, in his absence, with any such other officer as may be specified by the Government in this behalf and such registration shall be reported to the Registrar.

**13. Non-transferability of licence or authority.**— (1) No licence shall be used, directly or indirectly, by any person other than the person in whose favour it was issued or at any place other than the place mentioned in the licence nor shall the licence be transferred, conveyed or assigned to any person or entity.

(2) No transfer of the business address or designation of any agent or representative mentioned in the licence shall be made without prior approval of the Government.

**14. Cancellation, suspension, forfeiture of security, etc.**— (1) If, at any time during the pendency of a licence, the Government is satisfied, after making such enquiry as it may deem necessary, that the licensee has been guilty of misconduct or that his conduct or performance as a licensee has been unsatisfactory or that he has violated any of the provisions of this Ordinance or the rules made thereunder or the prescribed Code of Conduct, it may, after giving the licensee an opportunity of being heard, by order in writing, cancel the licence or suspend it for a period to be specified in the order and may also forfeit the security furnished by him under section 10 in full or in part.

(2) The security money forfeited under sub-section (1) may be—

(a) paid to an affected person, or

(b) utilised for repatriating of any stranded person in foreign country or for such other purpose as the Government may deem appropriate in the public interest.

(3) On expiry of the period for which the licence is granted or on the intimation by the licensee that he does not intend to continue to act as a recruiting agent and on being satisfied that no ground for forfeiting the security in whole or in part exists, the Government may order the refund of the security or part thereof to the person by whom it was furnished or to his authorised representative.

### Case Law

#### Section 14 (1)—Cancellation of licence and forfeiture of security without proper show-cause notice—Violation of natural justice—

Licence is a legal privilege and not a charity. Once granted licence can not be cancelled without sufficient ground and proper show cause notice providing adequate scope of defence. Show cause notice is not a mere technicality, nor it is an idle ceremony. The show cause notice must not be vague and ambiguous. Cancellation of licence without proper show cause notice and without reasonable opportunity of defence is grossly arbitrary and violative of natural justice and a such is not sustainable in law.

*Government of Bangladesh and others Vs. Md. Tajul Islam; 4 MLR (1999) (AD) 5.*

✓ **15. Power to withdraw licence.**—Notwithstanding anything to the contrary contained in this Ordinance, if, at any time, the Government is satisfied that it is necessary in the public interest discontinue the practice of granting licence to recruiting agents, it may, by notification in the *official Gazette*, withdraw all licences granted under section 10.

✓ **16. Decision under sections 14 and 15 to be final.**—The decisions of the Government under sections 14 and 15 shall be final and shall not be questioned in any court of law.

**17. Inspection, etc., to ensure compliance with the provisions of the Ordinance.**—The Government may, for the enforcement of the provisions of this Ordinance and the rules made thereunder, appoint such officers as it may deem fit and an officer so appointed may—

(a) enter into any office or premise maintained or used by any person or entity in connection with the recruitment of emigrants for overseas employment;

(b) require and enforce the production of any books of accounts and records maintained by such person or entity and inspect such books of accounts and records; and

(c) examine such person or entity and obtain from him or it statement in writing in this behalf.

**18. Power to search and detain vessels.**— All the powers for the time being conferred by law on officers of customs with regard to the searching and detention of vessels may be exercised for the prevention of offences under this Ordinance by any such officer or by any officer authorised by the Government in this behalf.

**19. Power to make rules.**— (1) The Government may, by notification in the *Official Gazette*, make rules for carrying out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) powers and duties of officers appointed by the Government under the Ordinance;

(b) the licensing, supervision and control of persons engaged in recruiting persons for overseas employment or causing or assisting persons to emigrate and in the conveyance and accommodation of emigrants, and the prohibition of unlicensed persons from doing so engaged.;

(c) The establishment, supervision and regulation of any place of accommodation provided for emigrants and for their medical care while resident there;

(d) the forms to be maintained and the returns to be submitted by persons licensed in accordance with the rules made under clause (b);

(e) the manner of inspection of premises, books of accounts and records of any person or entity connected with recruitment of emigrants for overseas employment;

(f) the information to be furnished by recruiting agents to emigrants and the language in which such information is to be furnished;

(g) appearance of emigrants before the Registrar and furnishing information under section 11;

(h) fees to be paid by a recruiting agent to the Registrar for each emigrant departing Bangladesh;

(i) setting up training, orientation and briefing centres to guide and advise intending emigrants and their dependants proceeding abroad;



- (j) recall and repatriation, in the public interest, of an emigrant;
- (k) measures to be adopted for the welfare of emigrants and their dependants;
- (l) disposal of complaints against recruiting agents;
- (m) formation of an association of recruiting agents and framing of Code of Conduct to be observed by recruiting agents;
- (n) service charge to be paid to a recruiting agent;
- (o) depositing of fees and securities by a recruiting agent;
- (p) procedure for sending of emigrants by persons possessing secured contract or sub-contract for the purpose;
- (q) the security, well-being and protection of emigrants; and
- (r) fees receivable from persons recruited and going abroad for employment.

29. Unlawful emigration.—(1) Whoever, except in conformity with the provisions of this Ordinance and the rules made thereunder, emigrants or attempts to emigrate or departs or attempts to depart shall be punishable with imprisonment for a term which may extend to one year simple imprisonment or with fine not exceeding Taka five thousand or with both.

(2) Whoever, except in conformity with the provisions of this Ordinance or the rules made thereunder,—

- (a) makes or attempts to make, any agreement with any person purporting to bind that person, or any other person, to emigrate, or
- (b) causes or assists, or attempts to cause or assist any person to emigrate or depart or to attempt to emigrate or depart or to leave any place for the purpose of emigrating or departing, or
- (c) causes any person engaged, assisted or recruited by him, after grant of the licence under section 10 to depart without appearing before the Registrar as required under section 11, or
- (d) furnishes or publishes information or notice or documents in relation to recruitment for employment abroad, or
- (e) substitutes or alters any employment contract approved and verified by the Registrar, or
- (f) Withholds or denies travel documents from a prospective emigrant for monetary or financial consideration other than those authorised under this Ordinance,

shall be punishable with rigorous imprisonment for a term which may extend to five years, or with fine, or with both.

(3) When in the course of any proceeding in connection with emigration in which a recruiting agent or a person or an organisation is concerned, a breach of the provisions of this Ordinance or the rules made thereunder is committed, such agent or, as the case may be, person or organisation shall be liable to the punishment provided by sub-section (2) unless he proves that he was not responsible for and could not have prevented the commission of the breach.

(4) A person who recruits a citizen or holds an interview or examination or issues an advertisement for such recruitment in contravention of the provisions of section 9 shall be liable to the punishment provided by sub-section (2).

### CASE LAW

Woman sent by her husband to a foreign country on forged passport refusing to be used as a prostitute and reporting to Embassy and on her statement being recorded repatriated to Pakistan report also indicating petitioner not being willing party to nefarious activities gang. Bail allowed. [1981 P Cr. LJ 1270].

**21. Fraudulently inducing to emigrate.**—Whoever, by means of intoxication, coercion or fraud, causes or induces, or attempts to cause or induce, any person to emigrate, or enter into an agreement to emigrate, or leave any place with a view to emigrating, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

**22. False representation of Government authority.**—Whoever falsely represents that any emigrant is required by the Government or is to be engaged on behalf of the Government, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

**23. Receiving money etc., for providing foreign employment.**—Whoever for providing or securing, or on the pretext of providing or securing, to or for any person, employment in any country beyond the limits of Bangladesh—

(a) being a recruiting agent, charges fee in addition to the prescribed amount;

(b) not being a recruiting agent, demands or receives or attempts to receive, for himself or for any other person any money or other valuable thing;

shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

**24. Penalty for contravention or agreement.**—Whoever contravenes the terms of the agreement with his foreign employer by abandoning his employment or otherwise, shall, after the repatriation to Bangladesh, be punishable with fine which may extend to five thousand taka.

**25. Recovery of expenditure for repatriation, etc.**—(1) The amount of expenditure, if any, incurred by the Government for repatriation to Bangladesh of a person who is convicted of an offence punishable under sub-section (1) of section 20 or section 24, shall be recoverable from such person in accordance with the provisions of the Public Demands Recovery Act, 1913 (Ben. Act III of 1913).

(2) The Government may recover the amount involved in an offence under section 21 in accordance with the provisions of the Public Demands Recovery Act, 1913 (Ben. Act III of 1913) and the amount so recovered shall be paid to the person who had paid it.

**26. Special courts.**—(1) The Government may, by notification in the Official Gazette, establish as many special courts as it considers necessary for trial of offences under this Ordinance and, where it establishes more than one special court, shall specify in the notification the headquarters of each special court and the territorial limits within which it shall exercise jurisdiction under this Ordinance.

(2) A special court shall consist of a person who is the Chairman of a Labour Court established under the Industrial Relations Ordinance, 1969 (XXIII of 1969).

(3) A special court shall take cognizance of, and have jurisdiction to try, an offence punishable under this Ordinance only upon a complaint in writing made by such person as the Government may, by a general or special order, authorise in this behalf.

(4) A special court trying an offence under this Ordinance shall try such offence summarily and in trying such offences, such special court shall follow the procedure laid down in the Code of Criminal Procedure, 1898 (Act V of 1898) for summarily trial.

27. *Indemnity.*—No suit, prosecution or other legal proceeding shall lie against the Government, Registrar or any person for anything in good faith done or intended to be done under this Ordinance.

28. *Ordinance not to apply to certain persons.*— This Ordinance shall not apply to the departure of a person-

- (a) who is not a citizen of Bangladesh, or
- (b) who is in the service of the Republic or of a local authority and is proceeding on duty, or on training, or leave, or for employment with any international organisation, with the permission of the Government, or
- (c) who is engaged as a member of the crew on board a foreign-going vessel, or
- (d) who is a dependent of a citizen already resident or employed in a foreign country and is on a temporary visit to Bangladesh.

29. *Repeal and savings.*—(1) The Emigration Act, 1922 (VII of 1922), shall stand repealed in relation to any provisions in respect of which this Ordinance comes into force.

(2) Notwithstanding such repeal-

- (a) anything done or any action taken or any rule made or any notification issued or any proceeding commenced under the provisions of the said Act, shall, in so far as it is not inconsistent with the provisions of this Ordinance, be deemed to have been done, taken, made, issued or commenced, as the case may be, under the corresponding provision of this Ordinance; and
- (b) all cases pending before any court immediately before the commencement of this Ordinance shall be tried and disposed of by such court, and all matters in connection with such cases shall be regulated in accordance with the provisions of the said Act, as if the said Act had not been repealed by this Ordinance.