

**Report on the proposed amendment of the draft of the Citizenship Act, 2009 made
final on 13.07.2009**

The decision dated 13.07.2009 on the draft Citizenship Act, 2009 communicated under the signature of Md. Golam Hossain, Additional Secretary of the Ministry of Home Affairs was brought to the notice of the Law Commission. The Commission has closely examined the draft and found certain amendments of the draft necessary for public interest.

It may be mentioned that in 2005 the Commission submitted a report to the Government for consolidation of the laws relating to the citizenship of Bangladesh together with a draft bill. It understands that the Ministry of Home on behalf of the Government deliberated since then on the matter and at last finalized the draft.

We examined our Citizenship Act, 1951 (Act II of 1951), which was also the law of citizenship of Pakistan; the Bangladesh Citizenship (Temporary Provisions) Order, 1972 (President Order 149 of 1972); the Bangladesh Citizenship (Temporary Provisions) Ordinance, 1973 (Ordinance No. X of 1973) and the Bangladesh Citizenship (Temporary Provisions) Ordinance, 1978 (Ordinance No. VIII of 1978). We have also studied the Citizenship Act, 1955 (India) together with its latest amendments; the Nationality Act, 1981 (UK); U S Immigration and Nationality Act, 1952 with latest amendments of 2009; the Hague Convention on the Conflict of Nationality Laws, 1930; U N Convention on the Nationality of Married Women, 1957 and the Convention on the Reduction of Statelessness, 1961.

Unlike the Fourteenth Amendment to U S Constitution or Part II comprising article 5 to 11 of the Constitution of the Republic of India providing, *inter alia*, the basis for determination of citizenship, our Constitution has ordained only in article 7 that the citizenship of Bangladesh shall be determined and regulated by law and article 152 defines 'citizen' as a person who is a citizen of Bangladesh according to such law. Any law determining citizenship of Bangladesh is therefore very important.

Citizenship is a legal status in a state and may affect the nationality of any nation. In the context of today's world, the march of humanity towards greater understanding, unity, peace and prosperity of one world could not be denied. In the march, interaction of individuals is making tremendous demands on the laws of citizenship of every nation.

Originally, the basis of citizenship was (1) *jus soli* meaning right of the soil i.e. citizenship to be based on birthplace and according to which children's citizenship is determined by the place of their birth, and (2) *jus sanguinis* meaning right of the blood i.e. citizenship to be based on parents' citizenship and according to which children's citizenship is determined by the citizenship of their parents.

After World War II, when the movement and/or displacement of the people for war, conflict, service or livelihood became so enormous that no national government could resist accepting the reality of the day--the demand for citizenship of newly settled people in its territory. Besides, settlement by way of migration and/or immigration and marriage expedited the legislation for recognition of other basis for citizenship, namely, citizenship by descent, by naturalization, by registration etc. Acquisition of citizenship of more than one country thus became a reality.

Earlier no nation, in particular, imperial power could conceive of its citizen having any citizenship other than that of his birth that is dual citizenship. All developed countries have now solved the problem through a process of registration after recognition of the rights of such people, pattern of which appears to be common. Indian experience on the subject may be more relevant than others since the question of citizenship of our forefathers would be governed by the Government of India Act, 1935.

On December 22, 2003 the Indian Parliament passed a Bill to grant dual citizenship to the people of Indian origin. The Bill received the President's approval on January 7, 2004, and became operational from 2nd December 2005. The Bill helped granting dual citizenship to Persons of Indian Origin (PIOs) belonging to, or having citizenship of other countries subject to certain conditions. The grant of dual citizenship was intended to remove for those who have taken foreign passports, the obstacle in travel to and from India, permit investment in business ventures and foster a greater sense of belonging.

The Overseas citizenship of India (OCI) is granted to persons who migrated from India and acquired citizenship of a foreign country other than Pakistan and Bangladesh. They are eligible for grant of OCI as long as their home countries allow dual citizenship in some form or the other under their local laws. However persons registered as OCI shall not have any voting rights and rights for public employment.

Every registered OCI will be issued a registration certificate which is printed like an Indian passport in different colour and an OCI visa sticker will be pasted in the person's foreign passport. These two documents will have the photograph of the individual and all necessary security features.

A foreign national, who was eligible to become citizen of India on 26.01.1950 or was a citizen of India on or at anytime after 26.01.1950 or belonged to a territory that became part of India after 15.08.1947 such as Sikkim, Pondicherry, Dadra and Nagar Haveli, Goa, Daman and Diu and his/her children and grand children, provided his/her country of citizenship allows dual citizenship in some form or the other under the local laws, is eligible for registration as Overseas Citizen of India (OCI). Minor children of such persons are also eligible for OCI. However, if the applicant had ever been a citizen of Pakistan or Bangladesh, he/she will not be eligible for OCI. A person registered as OCI is eligible to apply for grant of Indian citizenship under section 5(1)(g) of the Citizenship Act, 1955 if he/she is registered as OCI for five years and has been residing in India for one year out of the five years before making the application.

Such dual citizenship shall have to be processed through registration in accordance with the provisions of the Citizenship Act, 1955. We find similar provisions in

the laws of other countries for accepting such people as citizen, who are eligible to earn dual citizenship, however through a process of registration but could not find any provision under the heading of dual citizenship for recognizing citizenship of another country.

Reason is not far to seek. No law of citizenship could make any provision granting citizenship more than one. Law of citizenship should demand respect in the comity of nations and a citizen of a nation enjoys certain rights in the land of others on the basis of such law and aforesaid international laws and agreements.

Emergence of Bangladesh was made possible by immeasurable sacrifice of the people giving blood, sweat and energy, and the sufferings of and insult to our womenfolk. Citizenship of such a nation must be made a matter of pride and prized possession. Provision for reciprocity as is provided in India in dealing with the issue of dual citizenship should not be compromised. Law for citizenship of Bangladesh therefore must correspond to the laws of other countries and international norms and standards.

In the context of developments in the laws determining and regulating the questions of citizenship, the Commission has updated its draft bill of Citizenship Act, 2005 by incorporating all the ideas of the government final draft dated 13.07.2009. Comments for the changes have been supplied in the annexure-I. In the draft, all the provisions for recognizing and granting dual citizenship have been accommodated. Provisions for citizenship of an abandoned child, domicile certificate, determining birthplace etc have also been made clearer.

In view of above, we recommend a new, consolidated and comprehensive single law relating to citizenship of Bangladesh be passed without any further delay. For convenience and ready reference, the Commission encloses herewith a draft bill for the Citizenship of Bangladesh as annexure-II.

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15 November, 2009