

LAW COMMISSION OF INDIA

ONE HUNDRED AND SEVENTH

REPORT

ON

LAW OF CITIZENSHIP

DECEMBER, 1984

JUSTICE K.K. MATHEW

D.O.No. F. 2(11)/84-IC  
CHAIRMAN  
LAW COMMISSION  
GOVERNMENT OF INDIA

Dated, the 3rd December, 1984.

My dar Minister,

I am forwarding herewith the One Hundred and Seventh Report of the Law Commission on "LAW OF CITIZENSHIP". The subject was taken up by the Law Commission on its own.

The Commission is indebted to Shri Vepa P. Sarathi, Part-time Member, and Shri A.K. Srinivasamurthy, Member-Secretary, for their valuable assistance in the preparation of the Report.

With regards,

Yours sincerely,

Sd/-  
(K.K. MATHEW)

Shri Jagannath Kaushal,  
Hon'ble Minister of Law and Justice  
NEW DELHI

Encl: 107th Report

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## CHAPTER I

### LAW OF CITIZENSHIP

Articles  
6, 7 of  
Constitution

1.1. The law relating to Indian Citizenship is set out in Articles 5 to 11, in Part II of the Constitution of India and in the Citizenship Act 57 of 1955. Article 5 deals with the citizenship of persons who stayed in the territory allotted to India after partition of the country in 1947 into India and Pakistan. Such persons became Indian citizens provided they had their domicile in India by birth or descent, or, if they had been domiciled in India and were ordinarily resident in India for not less than five years immediately before the commencement of the Constitution. Article 6 deals with persons who were residing in the territory allotted to Pakistan, at the time of partition, but who wished to acquire an Indian domicile and become citizens of India. Article 7 deals with persons who, after March 1, 1947, had left India, that is the territory allotted to India on partition, for the territory allotted to Pakistan. Such persons were not deemed to be citizens of India. The proviso to the Article deals with the possibility that some of these persons might have left for Pakistan because of the violence and disorder which preceded and followed the partition, but since then desired to return to India. If such persons returned to India under a permit for resettlement or permanent return, they are deemed to be Indian citizens. Article 8 confers Indian

citizenship on Indians residing abroad if they complied with the provisions of that Article. Article 9 provides that a person shall not be a citizen of India if he has voluntarily acquired the citizenship of any foreign state. The Supreme Court<sup>1</sup> held that Article 9 applies only to cases of acquisition of citizenship of a citizenship of a foreign state prior to the commencement of the Constitution, because of the phrase 'has voluntarily acquired' in the Article. This has led to the anomaly that the acquisition of foreign citizenship after January 26, 1950, did not involve the loss of Indian citizenship. Parliament, however, in S.9(1) of the Citizenship Act, 1955, dealt with the situation by providing that any citizen of India who by naturalization, registration or otherwise voluntarily acquires or has at any time between the 26th January 1950, and the commencement of the Act voluntarily acquired, the citizenship of another country shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India. That is to say, if a person acquired foreign citizenship after January 26, 1950, and before the commencement of the Citizenship Act (December 30, 1955) then such person would cease to be an Indian citizen only on and from December 30, 1955.

Articles 10 and 11 of the Constitution.

1.2. Article 10 provides that any person who is a citizen of India, shall continue to be such citizen, subject to the provision of any law made by Parliament, and Article 11 gives power to Parliament to legislate on the acquisition and termination of citizenship, and other matters relating to citizenship, even to the extent of modifying or overriding articles 5 to 9.

Citizenship Act 1955, SS. 3 to 7.

1.3. The Citizenship Act, 1955, was passed in exercise of the power conferred on Parliament by Article 11. It deals with the acquisition and termination of citizenship on or after January 26, 1950. The Act provides for 5 modes of becoming an Indian citizen - (1) Citizenship by birth (S.3); (2) Citizenship by descent (s.4); (3) Citizenship by registration (s.5); (4) Citizenship by naturalization (S.6); and (5) Citizenship by incorporation of territory as part of India (S.7).

Sections 8 to 10, Citizen-ship Act.

1.4. Section 8 of the Act deals with renunciation of citizenship; Section 9 with termination of citizenship and Section 10 with deprivation of citizenship.

Sections 11 and 12, Citizenship Act.

1.5. Section 11 deals with Commonwealth citizenship and Section 12 with the right of the Central Government to confer the rights of an Indian citizen on citizens of any other country.

Sections 13 to 19, Citizenship Act.

1.6. Section 13 provides for certifying that a person is a citizen of India in case of doubt and the remaining sections 14 to 19 deal with procedural and miscellaneous matters.

CHAPTER II  
THE PROBLEMS

Problems  
relating to  
citizenship

2.1. The Law Commission has suo moto examined the law relating to citizenship and has noticed the following problems in working the Citizenship Act :

(1) How to make the provisions of r.3, Sch. III of the Citizenship Rules, 1956, effective?

(2) What is the scope of r.9 of the Citizenship Rules?

(3) Whether there should be a time limit for disposal of applications under s.9(2), Citizenship Act?

The First  
Problem

2.2. The first problem relating to r.3, Sch. III of the Citizenship Rules, arises in the following manner.

Sections 9(1)  
and (2),  
Citizenship Act

2.3. Sections 9(1) and (2) of the Citizenship Act, 1955, are as follows :

Section 9(1) - Any citizen of India who by naturalization, registration or otherwise voluntarily acquires, or has at any time between the 26th January, 1950 and the commencement of this Act voluntarily acquired the citizenship of another country shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India. Provided that nothing in the sub-section shall apply to a citizen of India, who, during any war in which India may be engaged, voluntarily acquires the citizenship of another country, until the Central Government otherwise directs.

(2) If any question arises as to whether, when or how any person has acquired the

citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf.

Rule 30,  
Citizenship  
Act

2.4. Rule 30 of the Citizenship Rules provides that, (1) if any question arises as to whether, when or how any person has acquired the citizenship of another country, the authority to determine such question shall, for the purposes of s. 9(2) be the Central Government; and (2) the Central Government shall, in determining any such question, have due regard to the rules of evidence specified in Schedule III.

Rule 3,  
Sch. III  
Citizenship  
Act

2.5. Rule 3 of Schedule III provides : The fact that a citizen of India has obtained on any date a passport from Government of any other country shall be conclusive proof of his having voluntarily acquired the citizenship of that country before that date.

Judicial  
Interpretation  
of s.9(2) and  
Rule 3, Sch. III

2.6. The scope of s.9(2) and r.3, Sch. III has been the subject matter of several decisions. Some of them took the view that the idea of 'conclusive proof' is a matter of substantive law and not a rule of evidence, and hence, r.3, Sch. III was beyond the scope of s.9(2) and hence ultra vires. Others have taken the view that r.3, Sch. III only provides for rule of evidence and is intra vires s.9(2). This conflict was resolved by a majority of 3 to 2 by the Supreme Court in favour of the latter view that r.3, Sch. III, is intra vires.

The Problem:

2.7. Assuming that r.3, Sch. III of the Citizenship Act only provides for a rule of evidence, the validity

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2. Md. Khan v. A.P. AIR 1957 AP 1047; Sharafat v. AIR AIR 1960 All 637

3. Shantilal Nagari v. Rajasthan, AIR 1958 Raj 172; Shah v. Sharifbhai, AIR 1959 Bom 192 and Md. Usman v. Madras, AIR 1961 Mad 129.

4. Zhang Ahmed v. Union, AIR 1962 SC 1052



of the rule is still doubtful and the majority decision of the Supreme Court may not be correct.

Article 5 of the Constitution provides: At the commencement of the Constitution, every person who has his domicile in the territory of India and -

- (a) who was born in the territory of India; or
- (b) either of whose parents was born in the territory of India; or
- (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement,

shall be a citizen of India.

The relevant portion of Article 9 of the Constitution provides : No person shall be a citizen of India by virtue of article 5 ..... if he has voluntarily acquired the citizenship of any foreign State. (Emphasis supplied):

Therefore, when s.9(2) of the Citizenship Act deals with the question of acquisition of the citizenship of another country, it contemplates voluntary acquisition as provided for in Article 9 of the Constitution. If this is so, under r.30 of the Citizenship Rules, the Central Government is the authority to decide whether a person has voluntarily acquired the citizenship of another country, and the Central Government shall do so in accordance with the rules of evidence specific in Sch.III. In the case of a person who has obtained a passport of any other country, since r.3, Sch.III is a rule of evidence, the Central Government will have to automatically decide that such person has voluntarily acquired the citizenship

of another country and ceased to be a citizen of India under Art. 9. This leads to the following contradiction. The question whether a person did something voluntarily is a question of fact, because, it is a question regarding his state of mind. But r.3, Sch. III, does not allow any inquiry into the state of mind of the person who has acquired a passport from another country. The rule is thus repugnant to s. 9(2) Citizenship Act, which contemplates an enquiry, and hence void.

the  
second  
problem

2.8 The second problem relating to r.9, Citizenship Rules, has arisen because of a decision of the Calcutta High Court.<sup>5</sup>

Section 5,  
Citizenship  
Act

2.9 Section 5 of the Citizenship Act provides for the acquisition of citizenship by registration. Sub-s.(1)(a) provides that subject to the provisions of the section and such conditions and restrictions as may be prescribed, the prescribed authority may, on application made in this behalf, register as a citizen of India any person who is not already such citizen by virtue of the Constitution or by virtue of any of the other provisions of the Act and belongs to any of the following categories : (a) persons of Indian origin who are ordinarily resident in India and have been so resident for 6 months immediately before making an application for registration.

5. Abdul Hakim v. SDO, AIR 1965 Cal 160.

Rules 8  
and 9,  
Citizenship  
Rules

2.10 Rules 8 and 9 of the Citizenship Rules provide:

Rule 8 - The authority to register a person as a citizen of India under s.5(1)(a) or s.5(1)(b) shall be the Collector, and in any other case under these rules, the Central Government.

Rule 9 - The Collector shall, before registering a person under s.5(1)(a), satisfy himself that the person -

(a) is of Indian origin and has been actual resident in India for 6 months immediately preceding the date of application;

(b) has close connections in India;

(c) has an intention to make India his permanent home;

(d) has signed an oath of allegiance specified in the Second Schedule to the Act

(e) is of good character and is otherwise a fit and proper person to be registered as citizen of India.

Calcutta  
High Court  
decision

2.11 On the question whether a summary dismissal of an application under s.5(1)(e) without making any enquiry was in contravention of r.9, it was held that it was not, because, the Collector may inform himself in such manner as he thinks fit, that is, by making confidential enquiries, or act on his own personal knowledge. The Calcutta High Court observed that neither the Act nor the Rules require him to

make an enquiry in case he rejects the application, since the action of the Collector is an executive and political act, and the Collector is not bound to register an applicant as a citizen even if all the conditions of r.9 are satisfied, and that he is not bound to assign any reason for the grant or refusal of the application.

The Third Problem

2.12 The third problem relating to quick disposal of applications under s.9(2), arises in the following circumstances :

Decision of the Allahabad High Court

2.13 In a case from Allahabad<sup>7</sup>, the petitioner who came to India was ordered to be arrested and deported under the Foreigners Act, while his application to the Central Government under s. 9(2) that he be declared a citizen of India was pending. The Court observed that any action could be taken against the petitioner only after the question of his citizenship was determined by the Central Government. The point to be noted however is that in that case the petitioner applied under s. 9(2), Citizenship Act, in 1958, and the matter was not disposed of even till 1964, when the matter was considered by the High Court. According to the High Court no action could be taken against him because his application was pending before the Central Government. If it was ultimately decided that he was a foreigner, the result would be that an undesirable foreigner gets a stay in India for more than seven years and this makes the Foreigners Act, an ineffective statute.

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7. Devi Lal Ahmed v. UP, AIR 1965 All 191

CHAPTER III

COMMENTS RECEIVED

Comments 3.1 In response to the working paper issued by us, we have received the following comments:

(1) The Advocates Association has commented that the first problem need not be dealt with by the Commission in view of the fact that that decision of the Supreme Court has been the law for the last 22 years. As regards the second problem the Association agrees with the suggestion of the Commission; and as regards the third, the Association doubted whether a mere fixation of time limit would be sufficient.

(2) One gentleman has pointed out that some persons, living in foreign countries, take up foreign citizenship for professional purposes and that such an action thrusts foreign citizenship on the minor children. He suggested that Indian citizenship should be automatically restored to such persons and the children or that the Government of India should recognise dual citizenship for such persons.

There is at present a provision for a minor to apply for Indian citizenship when he becomes a major. As regards the person who has acquired foreign citizenship, he also can apply for Indian citizenship.

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1. Law Commission File No.2(11)/84-LC.S.No.9(R).

2. Izhar Ahmed's case AIR 1962 SC 1052.

3. Law Commission File No.2(11)/84-LC.S.No.7(R).

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(3) An advocate has pointed that in Bombay, the application under s. 5(1)(a), Citizenship Act, is to be filled before the Chief Metropolitan Magistrate, that the application is then forwarded to the CID Office, then to the Passport Section in the Bombay Secretariat and finally to the Home Office or Foreign Office at New Delhi. He points out that this processing of the application causes enormous delay in the disposal of the application.

Commission's views.

3.2. The Commission has given full consideration to the views expressed for which it records its appreciation. After giving adequate consideration the Commission has made the suggestions set out in the next Chapter.

CHAPTER IV

RECOMMENDATIONS

Problem  
re: rule 3,  
Sch. III.

4.1. The decision in Izhar Ahmed's case, has been approved in the later decision of the Supreme Court<sup>2</sup> that rule 3, Sch. III is intra vires. The Supreme Court in the later decision has however taken the view that, in spite of r.3, the obtaining of a foreign passport does not operate as conclusive proof that the applicant has acquired foreign citizenship. In view of this coherent conflict on the scope and effect of the rule (not a section of the Act), the Commission feels that the matters should be left to the Supreme Court of India to resolve the conflict. The Commission is therefore not making any suggestion with respect to the matter.

Problem  
re:  
opportunity  
under  
s.5(1)(a)  
and time  
limit under  
s.9(2).

4.2 As regards problems (2) & (3) considered by it, the Commission makes the following suggestions:-

Problem (2): The Commission considers that there should be an enquiry with adequate opportunity to the applicant under s.5(1)(a) Citizenship Act before his application is rejected by the Collector under r. 9, Citizenship Rules.

Problem (3): The Commission considers that a reasonable time limit of six months should be fixed in the Citizenship Act for disposal of the application under s. 9(2), so that quick action can be taken against undesirable foreigners.

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1. Izhar Ahmed v. Union of India AIR 1962 SC 1052,

2. Id. Ayub Khan v. Union of India AIR 1965 SC.

(K.K. MATHW)  
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DATED: 3rd December, 1984.