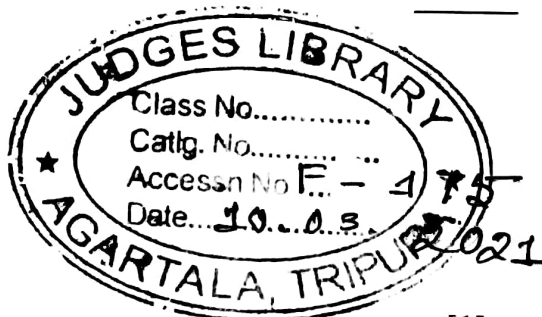


The Foreigners Act, 1946

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The Foreigners Act, 1946

[Act 31 of 1946]

[23rd November, 1946]

*An Act to confer upon the Central Government certain
powers in respect of foreigners*

Whereas it is expedient to provide for the exercise by the Central Government of certain powers in respect of the entry of foreigners into ¹[India], their presence therein and their departure therefrom;

It is hereby enacted as follows:—

Statement of Objects and Reasons.—“At present the only permanent measures governing foreigners specifically are the Registration of Foreigners Act of 1939 and the Foreigners Act, 1864. The Act of 1939 provides for the making of rules to regulate registration of foreigners and formalities connected therewith, their movement in, or departure from, India. The Act of 1864 provides for the expulsion of foreigners and their apprehension and detention pending removal and for a ban on their entry into India after removal: the rest of the Act which provides for report on arrival, travel under a licence and certain incidental measures can be enforced only on the declaration of an emergency. The powers under this Act have been found to be ineffective and inadequate both during normal times and during an emergency.

The needs of the war emergency were met by the enactment of a Foreigners Ordinance in 1939 and the promulgation under it of the Foreigners Order and the Enemy Foreigners Order. Even at that time the need for more satisfactory permanent legislation was recognised but it was decided to postpone consideration of such a measure until after the war. The Ordinance was, therefore, repealed by the Foreigners Act, 1940, the life of which was to expire on the 30th September, 1946, but has recently been extended by the Foreigners Act (Amendment) Ordinance, 1946, up to the 25th March, 1947.

Meanwhile the question of permanent legislation, more or less on the lines of the Act of 1940 has been examined, in consultation with the Provincial Governments. All Provincial Governments agree that such permanent legislation in repeal of the Act of 1864, is necessary. The Bill in the main reproduces the provisions of the Foreigners Act of 1940”.— Gazette of India, 1946. Part V, page 361.

Statement of Objects and Reasons of Amending Act 42 of 1962.—“In view of the present emergency, it is necessary that powers should be available to deal with any person not in Indian origin who was at birth a citizen or subject of any country at war with, or committing external aggression against, India or of any other country assisting the country at war with or committing such aggression against India but who may have subsequently acquired Indian citizenship in the same manner as a foreigner. It is also necessary to take powers to arrest and detain and confine these persons and the nationals of all such countries under the Foreigners Act, 1946, should such need arise.

2. Since the Parliament was not in session and immediate action had to be taken in the interest of national security an Ordinance called the Foreigners Law (application and Amendment) Ordinance, 1962, was promulgated on 30th October, 1962, to take the above powers. The object of the Bill is to convert this Ordinance into an Act of the Parliament.”

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

1. Subs. for “British India” by Act 38 of 1947, S. 2.

S. 3]

(2) It extends to the whole of ²[India] ³[* * *].**2. Definitions.**—In this Act—⁴[(a) “foreigner” means a person who is not a citizen of India;](aa) ⁵[* * *]

(b) “prescribed” means prescribed by orders made under this Act;

(c) “specified” means specified by direction of a prescribed authority.

CASE LAW ▶ “Foreigner”.—In 1953 a person born within His Britannic Majesty’s Dominion was not a “foreigner” and could not, therefore, have committed a breach of Paragraph 7 of the Foreigners Order, *Fida Hussain v. State of U.P.*, AIR 1961 SC 1522.

Person who had opted for and had gone to Pakistan in 1947 was a foreigner if he came back on a Pakistani Passport for a short visit, *State of Assam v. Jilkadar Ali*, (1972) 2 SCC 320 : 1972 SCC (Cri) 662.

3. Power to make orders.—(1) The Central Government may by order make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into ⁶[India] or their departure therefrom or their presence or continued presence therein.

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

(a) shall not enter ⁷[India], or shall enter ⁸[India] only at such times and by such route and at such port or place and subject to the observation of such conditions on arrival as may be prescribed;

(b) shall not depart from ⁹[India], or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed;

(c) shall not remain in ¹⁰[India] or in any prescribed area therein;

¹¹[(cc) shall, if he has been required by order under this section not to remain in India, meet from any resources at his disposal the cost of his removal from India and of his maintenance therein pending such removal];

(d) shall remove himself to, and remain in, such area in ¹²[India] as may be prescribed;

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

2. *Subs.* for “British India” by Act 38 of 1947, S. 2.

3. The words “except the State of Hyderabad” *ins.* by the A.O. 1950 were *omitted* by Act 3 of 1951, S. 3 and Schedule.

4. *Subs.* by Act 11 of 1957, S. 2 (w.e.f. 19-1-1957).

5. Cl. (aa) *omitted* by Act 3 of 1951, S. 3 and Sch.

6. *Subs.* for “British India” by Act 38 of 1947, S. 2.

7. *Subs.* for “British India” by Act 38 of 1947, S. 2.

8. *Subs.* for “British India” by Act 38 of 1947, S. 2.

9. *Subs.* for “British India” by Act 38 of 1947, S. 2.

10. *Subs.* for “British India” by Act 38 of 1947, S. 2.

11. *Ins.* by Act 38 of 1947, S. 4.

12. *Subs.* for “British India” by Act 38 of 1947, S. 2.

- (i) requiring him to reside in a particular place;
 - (ii) imposing any restrictions on his movements;
 - (iii) requiring him to furnish such proof of his identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;
 - (iv) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as may be prescribed or specified;
 - (v) requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified;
 - (vi) prohibiting him from association with persons of a prescribed or specified description;
 - (vii) prohibiting him from engaging in activities of a prescribed or specified description;
 - (viii) prohibiting him from using or possessing prescribed articles;
 - (ix) otherwise regulating his conduct in any such particular as may be prescribed or specified;
- (f) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions;
- ¹³[* * *] and make provision ¹⁴[for any matter which is to be or may be prescribed and] for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act.

¹⁵[(g) shall be arrested and detained or confined;]

¹⁶[(3) Any authority prescribed in this behalf may with respect to any particular foreigner make orders under clause (e), ¹⁷[or clause (f)] of sub-section (2).]

CASE LAW ► Constitutional validity.—Foreigners Act, 1946 (31 of 1946) is held to be valid, *Hans Muller of Nuremberg v. Supdt., Presidency Jail, Calcutta*, AIR 1955 SC 367.

Procedure under Foreigners Act, 1946 and Foreigners (Tribunals) Order, 1964 is just, fair and reasonable and does not offend any constitutional provision, *Sarbananda Sonowal v. Union of India*, (2005) 5 SCC 665.

► **Natural justice.**—Where foreigner failed to show that in case of issuance of notice to him, he could have produced relevant material in support of his claim for acquisition of citizenship, non-affording of opportunity of hearing would not vitiate the expulsion order, *Louis De Raedt v. Union of India*, (1991) 3 SCC 554 : 1991 SCC (Cri) 886.

13. The brackets, letter and words “(g) shall be arrested and detained or confined;” omitted by Act 11 of 1957, Section 3 (w.e.f. 19-1-1957).

14. *Ins.* by Act 38 of 1947, S. 4.

15. *Ins.* by Act 42 of 1962, S. 3.

16. *Ins.* by Act 38 of 1947, S. 4.

17. *Sub.* for “clause (f) or clause (g)” by Act 11 of 1957, S. 3 (w.e.f. 19-1-1957).



► **Validity of order.**—Competent authority is Central Government and where decision is taken by Central Government and Superintendent of Police merely executes it by issuing the order then order not vitiated, *Louis De Raedt v. Union of India*, (1991) 3 SCC 554 : 1991 SCC (Cri) 886.

Order restricting movement made as per Section 3(2)(e) is not preventive detention nor did it violate rights guaranteed under Articles 14 and 21 of foreigners, *Premavathy v. State of T.N.*, (2004) 2 CTC 10.

► **Order prohibiting entry.**—No notice/opportunity of being heard be given to a foreigner before passing order prohibiting his entry into India. Regulating or banning entry of any foreigner into India, is absolute and unfettered discretion of Central Government [*Hans Muller v. Supdt., Presidency Jail Calcutta*, AIR 1955 SC 367, followed]. Expulsion of foreigner is different. If order under challenge is in nature of expulsion of foreigner from India, notice should be given by Central Government to foreigner to afford an opportunity to make representation, *R.I. Jebaraj v. Union of India*, (2009) 3 CTC 572.

► **Constitution of Tribunals.**—Subsequent to the decision in *Sonowal (I)*, (2005) 5 SCC 665, instead of implementing the directions therein, the Central Government in exercise of its power under Section 3 of the Foreigners Act, 1946 (“the 1946 Act”) made an Order known as “the Foreigners (Tribunals) Amendment Order, 2006” (“the Amendment Order”), which amended the Foreigners (Tribunals) Order, 1964 (“the 1964 Order”) principally making the same inapplicable to the State of Assam, and instead notified the Foreigners (Tribunals for Assam) Order, 2006 (“the 2006 Order”). It is an attempt by way of subordinate legislation to nullify the mandamus issued by the Supreme Court. The parent Act remains in force and applicable, *Sarbananda Sonowal (II) v. Union of India*, (2007) 1 SCC 174.

► **Question of fact.**—The question whether the respondent is foreigner is a question of fact on which there is a great deal of dispute which would require a detailed examination of evidence. A proceeding under Article 226 of the Constitution would not be appropriate for a decision of the question, *Union of India v. Ghaus Mohd.*, AIR 1961 SC 1526.

► **Functions of Central Government.**—Functions of Central Government entrusted to the State Government under the provision are lawful, *Anwar v. State of J&K*, (1971) 3 SCC 104.

► **Repatriation of foreign nationals.**—It is unfortunate that 37 Pakistani prisoners who have served out their sentence and are not required under the Indian laws have been kept in jail because their nationality has not been confirmed by the Pakistan High Commission. Their continued imprisonment is uncalled for. In no way, can these 37 Pakistani prisoners be treated as prisoners once they have served out their sentence. It is true that unless their nationality is confirmed, they cannot be repatriated and have to be kept in India but until then, they cannot be confined to prison and deprived of basic human rights and human dignity. They have to be formally released from jail immediately and be kept at appropriate place with restricted movements pending their deportation/repatriation. The places where they are to be kept—detention centres or by whatever name such places are called—must have basic facilities of electricity, water and hygiene. Twenty-one persons out of these 37 persons who are mentally challenged, on release, have to be given proper medical help/assistance or treatment in suitable government hospitals or the hospitals/clinics run by NGOs, *Bhim Singh v. Union of India*, (2012) 13 SCC 471 : (2012) 4 SCC (Cri) 307.

► **Nature of order restricting movement of person.**—An order directing a person to stay in a Special Camp with a restriction cannot be construed as a detention or confinement as envisaged under Section 3(2)(g) of the Foreigners Act, *State v. G. Karunairaj*, 2013 SCC OnLine Mad 3541 : (2014) 1 CTC 113.

¹⁸[3-A. **Power to exempt citizens of Commonwealth countries and other persons from application of Act in certain cases.**—(1) The Central Government may, by order, declare that all or any of the provisions of this Act or of any order made thereunder shall not apply, or shall apply only in such circumstances or with such exceptions or modifications or subject to such conditions as may be specified in the order, to or in relation to—

- (a) the citizens of any such Commonwealth country as may be so specified; or
- (b) any other individual foreigner or class or description of foreigner.

(2) A copy of every order made under this section shall be placed on the table of both Houses of Parliament as soon as may be after it is made.]

4. Internees.—¹⁹[(1) Any foreigner (hereinafter referred to as an internee) in respect of whom there is in force any order made under clause (g) of sub-section (2) of Section 3, directing that he be detained or confined, shall be detained or confined in such place and manner and subject to such conditions as to maintenance, discipline and the punishment of offences and breaches of discipline as the Central Government may from time to time by order determine.]

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

²⁰[(3) No person shall—

- (a) knowingly assist an internee or a person on parole to escape from custody or the place set apart for his residence, or knowingly harbour an escaped internee or person on parole, or
- (b) give an escaped internee or person on parole any assistance with intent thereby to prevent, hinder or interfere with the apprehension of the internee or the person on parole.

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

5. Change of name.—(1) No foreigner who was in ²¹[India] on the date on which this Act came into force shall, while in ²²[India] after that date, assume or

18. *Ins.* by Act 11 of 1957, S. 4 (w.e.f. 19-1-1957).

19. *Ins.* by Act 42 of 1962, S. 3.

20. *Subs.* for sub-sections (3) and (4) by Act 42 of 1962, S. 3.

21. *Subs.* for "British India" by Act 38 of 1947, S. 2.

22. *Subs.* for "British India" by Act 38 of 1947, S. 2.

use or purport to assume or use for any purpose any name other than that by which he was ordinarily known immediately before the said date.

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

(3) In relation to any foreigner who, not having been in ²³[India] on the date on which this Act came into force, thereafter enters ²⁴[India], sub-sections (1) and (2) shall have effect as if for any reference in those sub-sections to the date on which this Act came into force there were substituted a reference to the date on which he first enters ²⁵[India] thereafter.

(4) For the purposes of this section—

- (a) the expression “name” includes a surname, and
- (b) a name shall be deemed to be changed if the spelling thereof is altered.

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

- (a) of any name in pursuance of a ²⁶[* * *] licence or permission granted by the Central Government; or
- (b) by any married woman, of her husband’s name.

6. Obligations of masters of vessels, etc.—(1) The master of any vessel landing or embarking at a port in ²⁷[India] passengers coming to or going from that port by sea and the pilot of any aircraft landing or embarking at any place in ²⁸[India] passengers coming to or going from that place by air, shall furnish to such person and in such manner as may be prescribed a return giving the prescribed particulars with respect to any passengers or members of the crew, who are foreigners.

(2) Any District Magistrate and any Commissioner of Police or, where there is no Commissioner of Police, any Superintendent of Police may, for any purpose connected with the enforcement of this Act or any order made thereunder, require the master of any such vessel or the pilot of any such aircraft to furnish such information as may be prescribed in respect of passengers or members of the crew on such vessel or aircraft, as the case may be.

(3) Any passenger on such vessel or such aircraft and any member of the crew of such vessel or aircraft shall furnish to the master of the vessel or the pilot of the aircraft, as the case may be, any information required by him for the purpose of

23. *Subs.* for “British India” by Act 38 of 1947, S. 2.

24. *Subs.* for “British India” by Act 38 of 1947, S. 2.

25. *Subs.* for “British India” by Act 38 of 1947, S. 2.

26. The word “Royal” *omitted* by Act 11 of 1957, S. 6 (w.e.f. 19-1-1957).

27. *Subs.* for “British India” by Act 38 of 1947, S. 2.

28. *Subs.* for “British India” by Act 38 of 1947, S. 2.

furnishing the return referred to in sub-section (1) or for furnishing the information required under sub-section (2).

²⁹[(4) If any foreigner enters ³⁰[India] in contravention of any provision of this Act or any order made thereunder, the prescribed authority may, within two months from the date of such entry, direct the master of the vessel or the pilot of the aircraft on which such entry was effected or the owner or the agent of the owner of such vessel or aircraft, to provide, to the satisfaction of the said authority and otherwise than at the expense of Government, accommodation on a vessel or aircraft for the purpose of removing the said foreigner from India.

(5) The master of any vessel or the pilot of any aircraft which is about to carry passenger from a port or place in India to any destination outside India, or the owner or the agent of the owner of any such vessel or aircraft shall, if so directed by the Central Government and on tender of payment therefor at the current rates, provide on the vessel or aircraft accommodation to such port or place outside India, being a port or place at which the vessel or aircraft is due to call, as the Central Government may specify, for any foreigner ordered under Section 3 not to remain in India and for his dependents, if any, travelling with him.]

³¹[(6)] For the purposes of this section—

- (a) “master of a vessel” and “pilot of any aircraft” shall include any person authorised by such master or pilot, as the case may be, to discharge on his behalf any of the duties imposed on him by this section;
- (b) “passenger” means any person not being a *bona fide* member of the crew, travelling or seeking to travel on a vessel or aircraft.

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

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

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

(3) The keeper of every such premises shall maintain a record of the information furnished by him under sub-section (1) and of the information obtained by him under sub-section (2) and such record shall be maintained in such manner and preserved for such period as may be prescribed, and shall at all times be open

29. Sub-sections (4) and (5) were *inserted* and the original sub-section (5) *renumbered* as (6) by Act 38 of 1947, S. 5.

30. *Subs.* for “British India” by Act 38 of 1947, S. 2.

31. Sub-sections (4) and (5) were *inserted* and the original sub-section (5) *renumbered* as (6) by Act 38 of 1947, S. 5.

to inspection by any police officer or by a person authorised in this behalf by the District Magistrate.

³²[(4) If in any area prescribed in this behalf the prescribed authority by notice published in such manner as may in the opinion of the authority be best adapted for informing the persons concerned so directs, it shall be the duty of every person occupying or having under his control any residential premises to submit to such person and in such manner such information in respect of foreigners accommodated in such premises as may be specified; and the provisions of sub-section (2) shall apply to every person accommodated in any such premises.]

CASE LAW ▶ Nature and Scope.—Section 7 mandates to give correct information, *Som Chai Sri Chawla v. State*, (2009) 110 DRJ 211.

▶ **Illegal migrant.**—If foreign national staying in India without obtaining residential permit on or before January 5, 1960 then he is guilty of an offence under the Act and the rule as he had the requisite mens rea, *Delhi Administration v. Mohd. Iqbal*, (1970) 3 SCC 498 : 1971 SCC (Cri) 104.

³³[**7-A. Power to control places frequented by foreigners.**—(1) The prescribed authority may subject to such conditions as may be prescribed, direct the owner or person having control of any premises used as a restaurant or as a place of public resort or entertainment or as a club and frequented by foreigners—

- (a) to close such premises either entirely or during specified periods, or
- (b) to use or permit the use of such premises only under such conditions as may be specified, or
- (c) to refuse admission to such premises either to all foreigners or to any specified foreigner or class of foreigner.

(2) A person to whom any direction has been given under sub-section (1) shall not, while such direction remains in force, use or permit to be used any other premises for any of the aforesaid purposes, except with the previous permission in writing of the prescribed authority and in accordance with any conditions which that authority may think fit to impose.

(3) Any person to whom any direction has been given under sub-section (1) and who is aggrieved thereby may, within thirty days from the date of such direction, appeal to the Central Government; and the decision of the Central Government in the matter shall be final.]

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

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

32. *Ins.* by Act 38 of 1947, S. 6.

33. *Ins.* by Act 38 of 1947, S. 7.

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

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

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

CASE LAW ▶ Illegal migrant.—Declaration under 1983 Act that appellant was illegal migrant, revoked and matter remanded to Foreigner's Tribunal as Appellate Tribunal under Illegal Migrants (Determination by Tribunal) Act, 1983 had ceased to exist by orders of Court, *Mohd. Harun rashid v. Union of India*, (2017) 11 SCC 501.

9. Burden of proof.—If in any case not falling under Section 8 any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), lie upon such person.

CASE LAW ▶ Jurisdiction of Civil Court.—Enquiry by the Central Government under Section 9(2) of the Citizenship Act is not necessary, where the case of the detenu is that he did not acquire the citizenship of any foreign country. Civil courts have no jurisdiction to adjudicate as to whether the acquisition of foreign citizenship by an Indian was done voluntarily or otherwise, *Syed Safullah Quadri v. State of A.P.*, (1996) 2 AP LJ 78 (SN).

▶ **Burden of proof.**—Burden of proof, is on alleged foreigner to show that he is not one, *Sarbananda Sonowal v. Union of India*, (2005) 5 SCC 665.

The Illegal Migrants (Determination by Tribunals) Act, 1983 does not contain any provision similar to Section 9 of the Foreigners Act, 1946 regarding burden of proof. On the contrary it is conspicuously silent about it. In such circumstances a very heavy burden is cast upon the authorities of the State or the applicant to establish that a person is an illegal migrant as defined in Section 3(1)(c) of the Illegal Migrants (Determination by Tribunals) Act, 1983 and is liable for deportation, *Sarbananda Sonowal v. Union of India*, (2005) 5 SCC 665.

Only because burden of proof is on proceedee, same by itself would not mean that the procedure is ultra vires Article 21 of Constitution. Article 21 would not be offended if the procedure is fair and reasonable, *Sarbananda Sonowal (II) v. Union of India*, (2007) 1 SCC 174.

Suspected foreign national if claiming Indian citizenship then burden of proof is on him to establish that he is an Indian citizen, *Salam Dewan v. Union of India*, (2010) 87 AIC 463 (Gau).

Burden is on the proceedee to prove that he is an Indian citizen and not a foreigner. Non-appearance of the proceedee before the Tribunal amounts to failure to discharge the statutory burden under Section 9 of the Act. Tribunal would be justified to decide the reference against the proceedee, *Asan Ali v. Union of India*, 2016 SCC OnLine Gau 843 : (2017) 2 Gau LR 166.

► **Declared foreigner incorrectly.**—Foreigner's Tribunal after finding discrepancy in name of grandfather, and fact that grandfather and father later lived in different villages, declared appellant to be a foreigner, which was held to be not sustainable by the Supreme Court, *Sirajul Hoque v. State of Assam*, (2019) 5 SCC 534.

► **Procedure for determining citizenship status.**—Burden of proof under Section 9, is just, fair and reasonable. It is duty of Central Government under Article 355 of the Constitution to protect the State against "external aggression". Word "aggression" in Article 355 of the Constitution is of very wide import and includes influx of foreigners who had illegally migrated, *Abdul Kuddus v. Union of India*, (2019) 6 SCC 604.

10. Power to exempt from application of Act.—³⁴[* * *]

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

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

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

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

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

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

34. Omitted by Act 11 of 1957, S. 7 (w.e.f. 19-1-1957).

(3) The master of any vessel or the pilot of any aircraft, as the case may be, by means of which any foreigner enters or leaves ³⁵[India] in contravention of any order made under, or direction given in pursuance of, Section 3 shall, unless he proves that he exercised all due diligence to prevent the said contravention, be deemed to have contravened this Act.

³⁶[14. **Penalty for contravention of provisions of the Act, etc.**—Whoever—

- (a) remains in any area in India for a period exceeding the period for which the visa was issued to him;
- (b) does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder;
- (c) contravenes the provisions of this Act or of any order made thereunder or any direction given in pursuance of this Act or such order for which no specific punishment is provided under this Act,

shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if he has entered into a bond in pursuance of clause (f) of sub-section (2) of Section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the convicting court why such penalty should not be paid by him.

Explanation.—For the purposes of this section, the expression “visa” shall have the same meaning as assigned to it under the Passport (Entry into India) Rules, 1950 made under the Passport (Entry into India) Act, 1920 (34 of 1920).]

CASE LAW ▶ Nature of Conventions.—The conventions are not made enforceable by governing against itself nor does the act gives a cause of action to any party for the enforcement of conventions. There is only an obligation to respect the convention regarding the treatment of civilian population but there is no right created in favour of protected persons which the Court has been asked to enforce.

Annexation occurs when the occupying power acquires and makes the occupied territory as its own. It means that there is not only possession but uncontested sovereignty over the territory.

The occupying power must apply the convention even when it claims during conflict to have annexed the occupying territory, *Rev. Mons Sebastiao Fransisco Xavier Dos Remedios Monterio v. State of Goa*, (1969) 3 SCC 419.

▶ **Determination of status.**—Determination of status by Central Government cannot have retrospective effect, *State of U.P. v. Rehmatullah*, (1971) 2 SCC 113 : 1971 SCC (Cri) 463.

▶ **Person without passport.**—Persons coming to India without passport or valid visa have to be identified, detained and deported from the country but they cannot be enlarged on bail, *Janarajan Alias Krishnamurali v. State of T.N.*, (2005) 5 CTC 762.

▶ **Basis of conviction.**—Hearsay evidence that the accused was a man of Bangladesh cannot be the basis of conviction under Section 14 of the Foreigner’s Act, *Sk. Rejaul v. State of W.B.*, (2008) 2 CHN 1018.

35. *Subs.* for “British India” by Act 38 of 1947, S. 2.

36. *Subs.* by Act 16 of 2004, S. 2.

Prosecution of a person on ground that he has lost citizenship by acquiring a citizenship of a foreign country can be initiated only after termination of his Indian citizenship, *Mohd. Elahi v. State of W.B.*, (2009) 74 AIC 747 (Cal).

► **Proof of offence.**—Offence under this section is proved against accused as he was arrested in Srinagar without any passport or visa and he is admittedly a Pakistani national, *Chandra Prakash v. State of Rajasthan*, (2014) 8 SCC 340 : (2014) 3 SCC (Cri) 457.

► **Illegal immigrants.**—As a result of the huge influx of illegal migrants from Bangladesh into Assam, periodic clashes have been taking place between the citizens of India and these migrants resulting in loss of life and property, sounding in a violation of Articles 21 and 29 of the Constitution of the Assamese People as a whole. Not only is there an assault on the life of the citizenry of the State of Assam but there is an assault on their way of life as well. The culture of an entire people is being eroded in such a way that they will ultimately be swamped by persons who have no right to continue to live in this country, *Assam Sanmilita Mahasangha v. Union of India*, (2015) 3 SCC 1.

³⁷[**14-A. Penalty for entry in restricted areas, etc.**—Whoever—

- (a) enters into any area in India, which is restricted for his entry under any order made under this Act, or any direction given in pursuance thereof, without obtaining a permit from the authority, notified by the Central Government in the Official Gazette, for this purpose or remains in such area beyond the period specified in such permit for his stay; or
- (b) enters into or stays in any area in India without the valid documents required for such entry or for such stay, as the case may be, under the provisions of any order made under this Act or any direction given in pursuance thereof,

shall be punished with imprisonment for a term which shall not be less than two years, but may extend to eight years and shall also be liable to fine which shall not be less than ten thousand rupees but may extend to fifty thousand rupees; and if he has entered into a bond in pursuance of clause (f) of sub-section (2) of Section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting court why such penalty should not be paid by him.]

³⁸[**14-B. Penalty for using forged passport.**—Whoever knowingly uses a forged passport for entering into India or remains therein without the authority of law for the time being in force shall be punishable with imprisonment for a term which shall not be less than two years, but may extend to eight years and shall also be liable to fine which shall not be less than ten thousand rupees but may extend to fifty thousand rupees.]

³⁹[**14-C. Penalty for abetment.**—Whoever abets any offence punishable under Section 14 or Section 14-A or Section 14-B shall, if the act abetted is committed

37. *Ins.* by Act 16 of 2004, S. 2.

38. *Ins.* by Act 16 of 2004, S. 2.

39. *Ins.* by Act 16 of 2004, S. 2.

in consequence of the abetment, be punished with the punishment provided for the offence.

Explanation.—For the purposes of this section,—

- (i) an act or offence is said to be committed in consequence of the abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the offence;
- (ii) the expression “abetment” shall have the same meaning as assigned to it under Section 107 of the Indian Penal Code (45 of 1860).]

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

16. Application of other laws not barred.—The provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Registration of Foreigners Act, 1939, the Indian Passport Act, 1920⁴⁰, and of other enactment for the time being in force.

17. Repeals.—[*Repealed by the Repealing and Amending Act, 1950 (35 of 1950), Section 2 and Schedule I.*]

40. **Ed.** Renamed the Passport (Entry into India) Act, 1920 by Act 15 of 1967, S. 25.