



## BOOK REVIEWS

*Law of Citizenship and Aliens in India* : By A. N. Sinha, Asia Publishing House, (Issued under the auspices of the Indian Council of World Affairs), 1962, pp. 387, price Rs. 24/-.

Citizenship laws have assumed special significance in the new States of Asia. The presence on the soil of sizeable racial groups belonging to neighbouring nations generates an understandable suspicion of their unpredictable loyalties during an hour of crisis. There exist additional factors which complicate the citizenship problems of India in the context of the partition of the country. Cases involving citizenship laws have become a regular and frequent feature in India. Consequently there exists an urgent need for a systematic study of the subject. Mr. Sinha has made an earnest attempt in that direction and he is largely successful at it.

The subject matter of the book is discussed in three Parts. The first part devoted to a general discussion on topics like 'citizen and alien', 'allegiance', 'citizenship' etc. The second Part deals with 'Citizenship in India' and the third Part deals with 'Aliens'. A little over a third of the book is allotted to Appendices wherein the texts of the relevant Constitutional provisions, the Citizenship Act, 1955, the Citizenship Rules, 1956, etc., are reproduced.

The author has vividly described the citizenship law prevailing in India during the British rule. His treatment of the subject subsequent to the commencement of the Constitution is at once exhaustive and impressive. He has clearly analysed and closely examined the relevant Constitutional provisions, the Citizenship Act of 1955 and the Citizenship Rules of 1956. A scholarly exposition is attempted on various aspects of the subject such as, modes of acquisition and termination of citizenship, regulation of the entry and movements of foreigners, their expulsion and their deportation, their rights and disabilities, the scope and ambit of the applicability of the Indian Fundamental Rights to aliens, etc.

The learned author has expressed his opinions on various controversial issues. Referring to the exclusion contemplated in section 3(2)(a) of the Citizenship Act, 1955,<sup>1</sup> the author, for instance, poses the problem whether it relates "to the legitimate child only of a diplomat

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1. Section 3 of the Citizenship Act, 1955, states :

" 3(1) Except as provided in sub-section (2) of this section, every person born in India on or after the 26th January, 1950, shall be a citizen of India by birth.



and not to illegitimate child?" and expresses a plausible opinion by observing that the "answer perhaps depends on whether the law of the diplomat's home State confers its nationality on the illegitimate child."<sup>3</sup> He further anticipates a situation "where one of the parents is an alien diplomat and the other an Indian citizen and they have children born in India." Without speculating on a solution, the author leaves it at that with a Brazilian analogy wherein "such children may opt for Brazilian nationality within four years of attaining majority."<sup>3</sup> Raising the problem whether citizenship by descent as recognized by section 4(1) of the (Indian) Citizenship Act of 1955<sup>4</sup> would be available to an illegitimate child, the author observes that "The British Nationality Act, 1948, has defined 'child' and 'father' indicating that they should be legitimate . . . The draftsman of the Citizenship Act had before him the British Nationality Act, 1948. It is difficult to presume that he did not apply his mind to this aspect. The omission as to any provision about legitimacy seems to be deliberate."<sup>5</sup> The author is particularly pricked when the Act denies a right to the Indian woman to transmit her status of citizenship to her children by descent. "The Citizenship Act of India", he deplures, "has denied women equality of sex in respect of citizenship by descent", and challenges as well its constitutional validity by urging that "women citizens of India have, thus, been denied the fundamental right to equality guaranteed by the Constitution and to that extent section 4 of the Citizenship Act is void."<sup>6</sup>

The author questions the validity of rule 5(b) of the Citizenship Rules, 1956,<sup>7</sup> which stipulates that both the parents should be citizens of India before their minor child is registered for citizenship. He contends that "This condition or restriction in rule 5(b) is *ultra vires*."

(2) 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 suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and is not a citizen of India ;

2. P. 93

3. *Ibid.*

4. Section 4(1) of the Citizenship Act, 1955, states ; inter alia, that : "A person born outside India on or after the 26th January, 1950, shall be a citizen of India by descent if his father is a citizen of India at the time of his birth....."

5. pp. 94-95.

6. P. 96.

7. Rule 5 of the Citizenship Rules, 1956, runs as follows : "An application for the registration of a minor child of a citizen of India as a citizen thereof made under



There is no warrant for such a condition or restriction in section 5(1)(d).<sup>8,9</sup>

Referring to the controversy over the validity of rule 3 of Schedule III of Citizenship Rules, 1956, which makes possession of passport conclusive proof of voluntary acquisition of the citizenship of another country, the author prefers the view of the Andhra Pradesh High Court which held the rule invalid<sup>10</sup> to the views of the Bombay<sup>11</sup> and Rajasthan<sup>12</sup> High Courts which affirmed the validity of the rule.<sup>13</sup> The author is convincing when he observes that "one has to give a rational meaning to the provision of section 9(2) [of the Citizenship

section 5(1)(d) [of the Citizenship Act, 1955] shall be in Form III and shall include the following particulars, that is to say—

.....

(b) a statement showing that each of the parents of the child is, or if, deceased, was at the time of death, a citizen of India....."

8. Section 5(1)(d) of the Citizenship Act, 1955, is in the following terms :

"5(1) Subject to the provisions of this section and such conditions and restrictions as may be prescribed the prescribed authority may, in 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 other provision of this Act and belongs to any of the following categories—

(d) minor children of persons who are citizens of India ;....."

9. P. 103.

Note: The word "persons" in section 5(1)(d) of the Citizenship Act, 1955, includes a single "person" as well in that a child or children of a person who is a citizen of India, can be registered for Citizenship. If the section is so construed, it is sufficient for the registration of a child even if one of its parents is a citizen of India and to that extent Rule 5(b) of the Citizenship Rules, 1956, which anticipates that both the parents should be citizens of India is at variance with the principal Act. If, on the other hand, the expression 'person' in the above section is to be construed in its pluralistic conception, the same conception is to be extended in the interests of consistency to the word "children" also, meaning thereby that only parents having more than one minor child can register for citizenship their children in a package deal but not if they have one minor child !

10. *Syed Mohammed Khan and Others v. The Government of Andhra Pradesh*, A.I.R. 1957 A.P. 1047. The same view was subsequently adopted by the Allahabad High Court in *Sharafat Ali Khan v. State of Uttar Pradesh*, A.I.R. 1960 All. 637.

11. *State v. Sharifbhai*, A.I.R. 1960 All. 637.

12. *Ghaurul Hasan v. State of Rajasthan*, A.I.R. 1958 Raj. 172. Similar view was later expressed by the Madras High Court *T.E. Mohomad Usman v. State of Madras*, I.L.R. (1960) Mad. 697.

13. For a scholarly discussion on this problem, see, M.K. Nawaz: *Is passport conclusive proof of voluntary acquisition of citizenship?* J.I.L.I. Vol. 3, No. 1 (1961), p. 87. The Supreme Court has recently held in *Jzhar Ahmad v. Union of India* (A.I.R. 1962 S.C. 1052) that the rule is a "rule of evidence" and falls within the scope prescribed by s. 9(2) of the Act.



Act, 1955].<sup>14</sup> The power is to prescribe “rules of evidence” and not to terminate the citizenship by such rules if, in fact, a person has not acquired the citizenship of another country. The status of citizenship arises irrespective of any rules relating to proof. Foreign Citizenship is not acquired by an entry in a register or the issue of a passport . . .”<sup>15</sup>

The present work is marked for distinction yet for another reason. On all aspects relating to the citizenship law in general, the author has brought to bear a profound scholarship in the exposition of corresponding laws, both statutory and judge-made, prevailing in a great number of countries. Perhaps this explains largely why the learned author could not help avoiding detailed discussions of the Indian case law on the subject under review.

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*International Law Through Cases* : By L.C. Green, (Stevens), Second edition, 1959, pp. xxxii+886, price £ 3 15 s.

Professor Green makes it plain in the preface of the book that he has prepared the framework of his work by following, to a large extent, the pattern set up by Dr. Schwarzenberger in his *Manual of International Law* and *International Law as Applied by International Courts and Tribunals* and the case-book “is primarily designed to be used together with the *Manual*.” In adopting such a course, the editor has the advantage of being relieved from the burden of making his own arrangement. This method has its own disadvantages. Many points may be dealt with and many observations may be made, in a case of which some only constitute the *ratio decidendi* and others may be just casual remarks or *obiter dicta*. An author of an ordinary text book may have occasions to refer to a case in different contexts, but the weightage and the relevancy of the reference cannot be co-equal in all the contexts. If this fact is lost sight of, it results in reproducing a case at a place where it is least relevant with only a reference to it at places where it is most appropriate. One can find such instances in the book under review.

For example, *Legal Status of Eastern Greenland* case<sup>1</sup> is placed under the broad-title: ‘International Personality’ and chapter-title:

14. Section 9(2) of the Citizenship Act, 1955, states: “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*.” Emphasis supplied.

15. P. 129.

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1. (1933) Series A/B, No. 53 (3 W.C.R., p. 151).