

Draft Citizenship Bill, 2016

The Need for a thorough Revision

Summary

In February 2016 the Bangladesh Cabinet approved the draft Citizenship Bill. A sensitive reading of the draft law informs that many of its provisions are contrary to the country's Constitution and in breach of provisions of international treaties that Bangladesh has adhered to. The draft law makes a clear distinction in entitlements between those who secure citizenship through birth and those through other means (descent, marriage or naturalization). The draft law has also created scope for several categories of people to become stateless. It is in this context Refugee and Migratory Movements Research Unit (RMMRU) has engaged in an advocacy campaign for a public scrutiny of the text and demanded revision of the draft law.



Panelists (From Left to Right) Advocate Asaduzzaman, Prof. Asif Nazrul, Dr. C R Abrar, Dr. Shahdeen Malik and Advocate Z. I. Khan Panna at RMMRU consultation with lawyers.

Introduction

The draft citizenship Bill 2016 received the Bangladesh's Cabinet's approval in early February 2016. In contrast to other law making initiatives this draft was not made available in the concerned ministry's website nor did it go through any public scrutiny. It is under such circumstances RMMRU organized several consultations of lawyers, journalists and other stakeholders, and acted as catalyst in the formation of an Alliance for Citizenship Laws and Rights, a coalition of six national NGOs that include Ain O Shalish Kendro, Bangladesh National Women Lawyers' Association, Nagorik Uddog, Naripakkho, Shushashoner Jonno Nagorik (Shujon) and RMMRU. RMMRU also took the initiative to mobilise the Non-resident Bangladeshis through electronic communication by providing them information about how the draft law could affect the community. The key concerns about the draft law are listed below:

Key Concerns

- It will introduce different sets of rights for different types of citizens.
- It will adversely affect citizenship rights of children, particularly those born abroad, or who have one parent who is foreign national, or any one of whose parents or grandparents has been alleged to have been involved in any war or 'activities' against Bangladesh.
- It will adversely affect the right to family life of citizens, in particular by restricting their right to choose whom to marry.
- It will create the risk of statelessness for several groups of persons (including persons living in enclaves which have been incorporated into Bangladesh, but who have not yet been enlisted as citizens; members of the camp dwelling Urdu speaking communities, and children who have one foreign national parent, who is Rohingya, where their birth has not been registered)
- It will discriminate between citizens, without any reasonable basis, in particular with respect to their place of birth.
- It may cause retroactive effects, depriving several groups of existing citizens of Bangladesh of their rights as citizens, in disregard of earlier judgments passed on by the highest court.

Observations of the Concerned Citizens

In addition to the many defects the proposed law does not address the issue of Bangladeshis who have now become citizens of other countries such as USA. - *Dr. Shahdeen Malik*

After 45 years of independence we have engaged in this exercise (to frame a citizenship law). We have to take positive lessons from experiences of other countries and address important concerns of various categories of people.

- *Barrister Sara Hossain*

The non-obstante clause incorporated in the draft includes judgments and decrees of courts. This is a serious violation of the Constitution.

- *Advocate Asaduzzaman*

The bill fails to recognise children as individuals with personal rights, holds children accountable for actions of their parents by depriving them of citizenship. - *Barrister Rashna Imam*

The existing law does not have provisions for forcibly depriving a person his citizenship, nor does it discriminate one group against others. The proposed law has compromised such positive gains. - *Prof. Redwanul Huq*

This law is contrary to various provisions of the Sustainable Development Goals that we have just adhered to.

- *Mr. Badiul Alam Majumdar, Citizens for Good Governance (Shujon)*

Various provisions (of the draft law) would go against natural justice and the concept of rule of law. Those would be inconsistent with the Constitution, in breach of a number of international treaties and charters and against the country's economic and cultural interests. The implementation of such a law would bring the country's democratic credentials into disrepute.

- *Barrister Najrul Khasru, Tribunal Judge, UK.*

Pertinent Issues

Primacy of the Act

The Bill states that “[n]otwithstanding anything



contained in any other Act, legal instrument, judgment, decree etc. the provisions of the Act will prevail”(Section 3).

This non-obstante clause is unprecedented as it seeks to override pre-existing court judgments and decrees. The intent of this provision appears to be to override and invalidate any pre-existing judgment or decree. Such a provision, appears to inconsistent with the principles of constitutional democracy, where the Constitution is regarded as sovereign and the judiciary is empowered to interpret and enforce the Constitution.

Discrimination

The draft law discriminates between individuals who secure citizenship through birth and those through other means (descent, marriage and naturalization).

The Bangladesh Constitution guarantees that all citizens are equal before the law and are entitled to equal protection of law (Art 27); that the State shall not discriminate against any citizen on grounds only of religion, race, caste sex or place of birth (Art. 28), be eligible for, or discriminated against in respect of, any employment or office in the service of the

Republic (Art. 29).

Citizenship by Birth

Section 4(2)(b) of the Bill states that a child cannot obtain citizenship if “his/her father or mother is an enemy alien”.

This Section is contrary to the Constitution, as it would arbitrarily deprive individuals of constitutional protection. The Constitution provides that “all citizens are equal before the law and are entitled to equal protection of the law” (Art. 27), and that “to enjoy protection of the law and to be treated in accordance with law is the inalienable right of every person” (Art. 31). The provision would deny the children of enemy aliens the right to equality before the law, all other rights specific to citizens.

The provision derogates from the Article 15 of the Universal Declaration of Human Rights “[n]o one shall be subjected to arbitrary deprivation of his nationality” and Article 7 of Convention on the Rights of the Child that stipulates that a “child shall have the right from birth to a name, the right to acquire a nationality”.



View of a National Consultation on Citizenship Bill, 2016 held under the auspices of Alliance for Citizenship Rights and Law held on 30 December 2016.



Citizenship by Descent

According to Section 5(2)(a) of the Bill a person born outside Bangladesh “shall not be a Bangladeshi citizen by descent, if his/her birth is not registered within 2 (two) years of his/her birth or commencement of this Act”.

This provision exposes a person of Bangladeshi parentage to the risk of statelessness owing to the failure of his/her parents to register his/her birth within two years from the date of his/her birth or commencement of this act, whoever is later. Omission of their parents may lead those children being deprived substantive entitlements to citizenship. Moreover, nationality is a right as opposed to favour conferred by the state, and thus the right to nationality should not be denied on grounds of missing a timeline or be the subject matter of penalty for a procedural omission.

Section 5(3) of the Bill disqualifies a person from becoming a citizen by birth and descent “if he/she or his/her father or mother joins any military or quasi military or any special force and engages or had engaged in war against Bangladesh or denied the existence of Bangladesh”.

This provision would expose children to statelessness for their parents’ actions/ omissions, which may otherwise be questionable. The terms ‘denial of existence of Bangladesh’ or ‘activity against Bangladesh’ are not defined in the Bill and thus are likely to be subjectively interpreted. It is also inconsistent with the principle of natural justice in that it purports to impose penalty on children due to their parents’ political views and role.

The provision is inconsistent with Article 7 of the CRC which provides that “every child shall be registered immediately after birth and ... the right to acquire a nationality...”.

Citizenship of Expatriates

Section 6 of the Bill entitles expatriates (the term is not defined in the Bill) to acquire citizenship. Section 7 of the Bill limits the rights of expatriates and disqualifies them from participating as candidates in elections to Parliament, the Presidency and Local Government; setting up any political party or being involved with/supporting any political party; and being appointed to any service of the republic, including as a judge of the Supreme Court.

Section 7 tends to create arbitrary categories of citizenship and distinguishes between citizens based on their birth within or outside Bangladesh. This appears



Panelists Barrister Rashna Imam, Dr. C R Abrar and Prof. James Gomez at RMMRU consultation on Citizenship Bill, 2016 held on 19 November 2016.



to be contrary to Article 28 of the Constitution which prohibits discrimination “against any citizen on grounds of ... place of birth”.

The provisions are also contrary to Articles 66, 95 and 122(2) of the Constitution pertaining to qualifications and disqualifications for election to Parliament, appointment of judges and qualifications for registration as voter, respectively. These provisions clearly state that citizenship is a requirement for election to Parliament, registration as a voter, and appointment of a judge, but do not classify category of citizens.

Sections 6, 7 and 13 of the Bill are contrary to Articles 2 and 26 of the International Covenant on Civil and Political Rights.

Citizenship through Marriage

Section 11 of the Bill lays down the conditions for a person to acquire citizenship through marriage. A foreign national may acquire Bangladeshi citizenship through marriage if:

- his/her father, mother, grandfather or grandmother is not engaged in a war against Bangladesh or not a member of an enemy alien force, (Sub-section (c));
- s/he is not an illegal immigrant in Bangladesh (Sub-section (d)).

Sub-section 11(c) of the Bill disqualifies a person on the basis of acts/omissions on the part of the parents or grandparents. It effectively penalises a person, or limit his rights, based on the acts/omissions of their parents or grandparents. 11(d) would deny Bangladeshi citizens their right to family life, by denying them the opportunity to pass on their nationality to their spouse or child. This could severely impact on Rohingyas married to Bangladeshi citizens. Currently, there is no prohibition on a Bangladeshi citizen marrying a foreign citizen.

Section 11 of the Bill that purports to limit the right to marry and found family and transmit nationality through marriage would appear contrary to the principle of non-discrimination enshrined in various international standards on human rights including Article 16(1) of UDHR that provides that “(Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family” and Article 16 of CEDAW that recognizes every man and woman has a “right freely to choose a spouse and to enter into marriage.

Citizenship through Incorporation of Territory

Section 12 of the Bill sets out the provisions of citizenship for the inhabitants of territories which are added or incorporated as part of Bangladesh (recently exchanged enclaves with India). Section 12(2) states “a list of people obtaining Bangladeshi citizenship will be published by the government through a notification in the official gazette...”.

The provision has not addressed the issue of about fate of those erstwhile enclave-dwellers who have not been able to register their names with the authorities. The absence of clear provision in the Bill may render such people stateless.

Disqualifications for Citizenship

Section 18 of the Bill states that a person shall not be qualified to be a citizen of Bangladesh, if he/she

- expresses direct or indirect allegiance to any foreign state except for dual nationality;
- had joined any force of an alien state and engaged in war against Bangladesh or provided assistance to such force and thus not been living permanently in Bangladesh until immediate prior to commencement of the Act;
- is a citizen or inhabitant of a state that was or is engaged in war against Bangladesh; and
- resides in Bangladesh as an illegal immigrant.

The Bill does not contain any definition of ‘direct or indirect allegiance’, ‘allegiance’ and ‘providing assistance’ and thus leaves interpretation of these expressions open-ended. It may lead to arbitrary decision of the executive authority resulting, potentially, in their becoming stateless. The Bill neither contains any definition of ‘illegal immigrant’ nor does it distinguish ‘illegal immigrant’ and ‘refugee’.

Termination of Citizenship

Section 20 of the Bill confers authority on the Government to terminate citizenship of any Bangladeshi citizen, except citizens by birth, in certain circumstances, namely if:

- s/he expresses lack of allegiance towards the sovereignty of Bangladesh or the Constitution of Bangladesh through any action or behavior (Sub-section (c)).



-if any information is received regarding his/her withdrawing allegiance towards Bangladesh (Sub-section (d)).

The terms 'lack of allegiance' and 'withdrawal of allegiance' are vague and accord wide and unfettered discretion on the executive authority and is therefore is arbitrary. It contravenes Articles 26, 27 and 31 of the Constitution. Citizenship once conferred cannot be withdrawn or diminished because of the commission of an offence. If any person commits an offence, they may be held accountable under criminal laws. The right to citizenship cannot be linked to the issue of commission of an offence, and deprivation of citizenship cannot be a punishment.

Repeal and Savings

Section 28(2)(a) of the Bill states that [c]itizenship of persons who obtained Bangladeshi citizenship under the repealed Acts shall prevail, subject to consistency with the provisions of this Act.

The phrase 'subject to consistency with the provisions of the Act' derogates from the protection against ex post facto application of laws. If a person was eligible for, or has acquired citizenship, under any provision of earlier laws that were not consistent with the provisions of the Bill, s/he will be at risk of losing citizenship due to the operation of this provision. Such a consequence is contrary to the constitutional guarantees discussed above and to the principle of natural justice.

The provision also contravenes Article 15 of the ICCPR that prohibits giving a law retrospective effect. Article 15(1) of the ICCPR provides that "(n)o one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a

criminal offence, under national or international law, at the time when it was committed".

Conclusion

The draft citizenship law falls short of being a good law. Contrary to established jurisprudence, the proposed law contains a provision that allows it to supersede judgment of courts and gives retrospective effect to offences committed before the law is framed. The vagueness of some of the terms and phrases used will only lead to its misapplication. Making children liable for the deeds of their parents and grandparents is unjust. Some of its provisions are not only contrary to the Constitution, international treaties that Bangladesh has ratified and the principle of natural justice, they are also discriminatory, unreasonable and non-enforceable. RMMRU urges the government of Bangladesh to substantially revise the text before placing it in the parliament.

Acknowledgement

RMMRU acknowledges the contribution of Barrister Sara Hossain in preparing the Policy Brief. It also thanks Barrister Najrul Khasru, Dr. Shahdeen Malik, Advocate Asaduzzaman, Mr. Reza Lenin and partner organisations of Alliance for Citizenship Rights and Law for their support and contribution. The Policy Brief was designed by Parvez Alam.



**Other Policy briefs of RMMRU are available on www.rmmru.org
Refugee and Migratory Movements Research Unit (RMMRU)**

Sattar Bhaban (4th Floor), 179, Shahid Syed Nazrul Islam Sarani, Bijoy Nagar, Dhaka-1000, Bangladesh

Tel: 880-2-9360338, Fax: 880-2-58313560

E-mail: info@rmmru.org, Web: www.rmmru.org

Copyright©RMMRU

April 2017

