

**THE FOREIGNERS ACT, 1946**<sup>1</sup> ACT NO. XXXI OF 1946

[23rd November, 1946]

*An Act to confer upon the <sup>2</sup>[Federal Government]  
certain powers in respect of foreigners*

WHEREAS it is expedient to provide for the exercise by the <sup>2</sup>[Federal Government] of certain powers in respect of the entry of foreigners into <sup>3</sup>[Pakistan], their presence therein and their departure therefrom;

It is hereby enacted as follows:-

**COMMENTS**

Provisions of Foreigners Act, 1946 are to be read in a manner which would not be violative of Article 10 of the Constitution [1994 PCR LJ 2362].

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

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1946, Pt. V, p. 254.

This Act has been applied to Baluchistan, see Gazette of India, 1946, Pt. I, p. 1913; and also to all tribal areas with certain conditions, see *ibid* 1947, Pt. I, p. 343.

The Act has been extended to-

- (a) the Leased Areas of Baluchistan, see the Leased Areas (Laws) Order, 1950 (G. G. O. 3 of 1950);
- (b) the Baluchistan States Union, see the Baluchistan States Union (Federal Laws) (Extension) Order, 1953 (G. G. O. 4 of 1953);
- (c) the Khairpur State, see the Khairpur (Federal Laws) (Extension) Order, 1953 (G. G. O. 5 of 1953); and
- (d) the State of Bahawalpur, see the Bahawalpur (Extension of Federal laws) Order, 1953 (G. G. O. 11 of 1953), as amended.

The Act has been and shall be deemed to have been brought into force in Gwadar with effect from the 8<sup>th</sup> September, 1958, by the Gwadar (Application of Central Laws) Ordinance, 1960 (37 of 1960), s. 2.

The Act, rules, notifications and orders made under it, have been applied to the Tribal Areas or to the part of those areas to which they have not been already applied, see the Tribal Areas (Application of Acts) Reg., 1965, Gaz. of P., 1965, Ext., pp. 1016-1018.

<sup>2</sup> Subs. by the Preventive Detention Laws Amendment Act, 1975 (44 of 1975), s. 3, for "Central Government".

<sup>3</sup> Subs. by the Adaptation (Security Laws) Order, 1956 (P. O. No. 8 of 1956), Art. 2 and Sch. (with effect from the 23<sup>rd</sup> March, 1956), for "the Provinces and the Capital of the Federation" which had been subs. by A. O., 1949, for "British India".

<sup>1</sup>[(2) It extends to the whole of Pakistan.]

**2. Definitions.-** In this Act—

- <sup>2</sup>[(a) “foreigner” means a person who is not a citizen of Pakistan;]  
 (b) “prescribed” means prescribed by orders made under this Act;  
 (c) “specified” means specified by direction of a prescribed authority]

**COMMENTS**

**Afghan Refugees.** Afghan refugees had been provided refuge temporarily and they being citizens of Pakistan are governed by Foreigners Act, 1946, and not by Citizenship Act, 1951, which was not applicable to them [PLD 1999 Pesh. 18]. Status of citizens of Pakistan given to those refugees who came to Pakistan after partition of sub-continent from territories which formed undivided India and to refugees from Jammu and Kashmir State. Such categories of refugees are clearly covered by provisions of Pakistan Citizenship Act, 1951. Afghan refugees having not been given status of citizens of Pakistan are governed by the Foreigners Act, 1946 [PLD 1989 Lah. 223].

Temporary asylum given to Afghan refugees. Such refugees accommodated in refugees camps set up by Government. Petitioners-refugees instead of staying in camps specified for them settled in city and carrying on regular business. Government's entitlement to restrict such refugees' movements to specified areas. Afghan refugees having been granted temporary political asylum were governed by the provisions of Foreigners Act, 1946. Government is competent to restrict such refugees' movements and drive them back to specified areas set up for them. Refugees petitioners' Constitutional petition against restriction of their movements and business thus being without substance was dismissed [PLD 1989 Lah. 223].

Temporary asylum extended to Afghan nationals who have come to Pakistan on account of political disturbance and occupation of foreign troops. Stay and movement of such refugees to be governed by provisions of Foreigners Act, 1946. Provisions of Pakistan Citizenship Act, 1951 do not apply to such refugees. Such refugees can live in the specified areas and they are to follow Code of Conduct and other Rules promulgated by Government of Pakistan. Government can impose reasonable restrictions on movements of refugees as demanded by dictates of security [PLD 1989 Lah. 223].

**3. Power to make orders.-** (1) The <sup>3</sup>[Federal Government] may by <sup>4</sup>order make provision, either generally or with respect to all foreigners or with respect to any

<sup>1</sup> Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960) s. 3 and 2nd Sch. (with effect from the 14<sup>th</sup> October, 1955), for the original sub-section (2) as amended by A. O. 1949 and P. O. No. 8 of 1956.

<sup>2</sup> Subs. by the Foreigners (Amdt.) Act, 1957 (35 of 1957) s. 2 for the original cl. (a) as amended by A. O. 1949 and P. O. No. 8 of 1956.

<sup>3</sup> Subs. by the Preventive Detention Laws (Amendment) Act, 1975 (44 of 1975) s. 3, for “Central Government”.

<sup>4</sup> For the Foreigners Order 1951, see Gaz. of P. 1951; Pt. I pp. 611-614; for the Enemy Foreigners Order 1965, see *ibid.*, 1965, Ext., pp. 1019-1023; and for the Foreigners (Parolees) Order, 1965, see *ibid.*, 1965, Ext., pp. 1027-1029.



particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into \*[Pakistan] 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 \*[Pakistan], or shall enter \*[Pakistan] only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed;
- (b) shall not depart from \*[Pakistan], 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 \*[Pakistan] or in any prescribed area therein;
- (d) shall remove himself to, and remain in, such area in \*[Pakistan] as may be prescribed.
- (e) shall comply with such conditions as may be prescribed or specified—
  - (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;

\* Subs. by the Adaptation (Security Laws) Order, 1956 (P. O. No. 8 of 1956), Art. 2 and Sch. (with effect from the 23<sup>rd</sup> March, 1956), for the "Provinces and the Capital of the Federation" which had been subs. by A. O., 1949, for "British India".

- (vi) prohibiting him from association with persons of 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 or specified articles;
  - (ix) otherwise regulating his conduct in any such particular which may be prescribed or specified;
- (f) shall enter into a bond with or without sureties for the observance of, or as an alternative to the enforcement of, any or all of the prescribed or specified restrictions or conditions;
- <sup>1</sup>[(g) shall be arrested and, in the interest of the defence or the external affairs or the security of Pakistan, or any part thereof, detained and confined.]

<sup>2</sup>[(3) An order made under sub-section (2) may make provision for such incidental and supplementary matters as may, in the opinion of the <sup>3</sup> [Federal Government], be expedient or necessary for giving effect to the provisions of this Act.

(4) The provisions of <sup>4</sup>[clause (b) of sub-section (1) of section 3 of the Security of Pakistan Act, 1952 (XXXV of 1952), and those of <sup>5</sup>[sub-section (2) of section 6 and] section 6A of that Act, shall *mutatis mutandis* apply in relation to a person detained under this Act as they apply in relation to a person detained under that Act.]

### COMMENTS

#### Synopsis

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|--------------------------------|--|
| 1. State's powers to restrict. | 2. Delegation of power to Provincial Government. |
| 3. Detention without orders.   | 4. Continuous detention.                         |

<sup>1</sup> Subs. by the Preventive Detention Laws (Amendment) Act, 1975 (44 of 1975), s. 3, for cl. (g). This clause was previously amended by various enactments.

<sup>2</sup> Sub-sections (3) and (4) ins. by Act 4 of 1962, s. 3.

<sup>3</sup> Subs. by F. A. O., 1975 Art. 2 and Table for "Central Government".

<sup>4</sup> Subs. by Act 44 of 1975, s. 3 for "sub-section (2) of section 6".

<sup>5</sup> Ins. *ibid*.



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| 5. Legality of detention.                                | 6. Rearrest.                  |
| 7. Migration.  | 8. State security.            |
| 9. Constitutional petition against cancellation of visa. | 10. Quashment of proceedings. |
| 11. Order against Citizen of Pakistan.                   |                               |

1. **State's powers to restrict.** Every sovereign State possesses inherent powers to restrict, entry into, or movements in its territory. Such right of sovereign State, held, cannot be hampered with by any principle of natural justice or on ground of equity [PLD 1980 Pesh. 275].

2. **Delegation of power to Provincial Government.** Central Government is empowered to provide for prohibiting, regulating or restricting entry of foreigners into Pakistan or departure therefrom or presence or continued presence therein. Central Government having delegated power with regard to entry, departure etc. of foreigner, to Provincial Government, same would be automatically empowered to exercise such power with respect to Karachi Division after dissolution of West Pakistan [1986 CLC 1123].

3. **Detention without orders.** Appointment of Civil Authority by Central Government to deal with arrest or detention of any foreigner in such manner and at such place as may appear suitable. No order was passed by any competent Authority either of the Central Government or of Provincial Government to keep persons as internees. Detention of detenus in jail was thus illegal and not warranted by any law. Detenus were ordered to be set free in circumstances with the observation that the Central or Provincial Government would be at liberty to take any further action under the law with regard to the alleged detenus [1989 PCrLJ 2138].

4. **Continuous detention.** Order of continuous detention cannot be passed beyond a period of three months unless the Federal Review Board has met, heard the detenu and opined that there were sufficient causes for continuous detention. No order detaining the person for an indefinite period of time which may extend beyond a period of three months can be passed [1994 PCrLJ 2362].

Safeguards provided by sub-clause (4) of Article 10 of the Constitution were available to the detenu [1994 PCrLJ 2362]. Detenu was in continuous detention under Section 3(2), clauses (b) & (c) of the Foreigners Act, 1946 for the last about eight months under different orders of the Provincial Government. No justification was available to the Authorities to have directed the detention of the detenu till the next meeting of the Federal Review Board which admittedly had not taken place despite the expiry of a period of more than three months since the date of the order. Direction which was based on a letter addressed by the Federal Review Board to the Provincial Government had been given without any application of mind by the Detaining Authority in clear violation of the mandate of sub-Article (4) of Article 10 of the Constitution. Detention of the detenu, being without lawful authority, he was directed to be released forthwith [1994 PCrLJ 2362].

Where a detenu was not produced before Review Board within two months, his detention was not warranted by law. Competent authority, however has passed detention order in respect of period when no such order was obtained even if there was no requirement of law to produce detenu before Review Board [1987 MLD 1072].

5. **Legality of detention.** Foreign nationals, convicted under Foreigners Act and detained in jail for the purposes of repatriation only is not a case of illegal detention [1987 MLD 855].

Detenu an Indian national, convicted for having been found at control line between Indo-Pakistan boarder, when there existed hostility between two countries, in suspicious condition and was sentenced to ten years' rigorous imprisonment which he had undergone. Unconditional release of detenu, held, was not proper and just. Detenu ordered to be produced before Review board and to be repatriated to India [1987 MLD 1072].

Question whether detenu at time of his arrest was an Indian national or Pakistani national, held, could not be agitated in a constitutional petition [1987 MLD 1072].

6. **Rearrest.** Detenus had even previously been detained under Section 3 of the Foreigners Act, 1946, by the Government and their release had been ordered by the Federal Review Board. Detenus and their family members could not subsequently be rearrested and detained under the same provision. Orders passed by the Government for the subsequent detention of the detenus were consequently declared to have been passed without lawful authority and to be of no legal effect and they were set free accordingly [1995 PCrLJ 606].

7. **Migration.** Permanent transfer of residence from one country to another with intention to permanently settle in country of migration and abandon citizenship of country of origin. Determination of domicile of choice or fresh domicile depending upon residence and intention of immigrant. Visits for temporary purpose in country of origin, held, would not affect immigrants' intention of permanent settlement in country of residence [1984 CLC 2876].

8. **State security.** Tie between State security/ integrity and liberty of a person. Balance, held, had to be struck down and Court would pass an order which would safeguard security/ integrity of country [1987 MLD 1072].

9. **Constitutional petition against cancellation of visa.** Government being fully competent to permit any foreigner to stay or to deport him if found not entitled to stay in the country, had absolute powers to give or cancel the visa without hearing him or giving any reason. Order cancelling the visa of the applicant who was not a citizen of Pakistan fell within the jurisdiction of the Authority and his exercise of such jurisdiction was not colourful and mala fide. Impugned order being not without lawful authority, Constitutional petition was dismissed [1997 MLD 1594].

10. **Quashment of proceedings.** Fact of the applicants being citizens of Pakistan or foreigners was disputed and could only be decided after recording of evidence by Trial Court. Mere production of National Identity Cards whose authenticity had been seriously challenged was not enough to hold their contents being correct. Citizenship of the applicants of Pakistan was yet to be established, therefore violation of any of their Fundamental Rights was not questionable. Applicants without exhausting their remedy before Trial Court had rushed to High Court which was not proper. Proceedings initiated against applicants in the Court of Magistrate were not quashed in circumstances [PLD 1996 Kar. 144].

11. **Order against Citizen of Pakistan.** Order to leave Pakistan cannot be made against person who is Citizen of Pakistan [PLD 1962 Dacca 349].

4. **Internees.** (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 <sup>1</sup>[Federal Government] may from time to time <sup>2</sup>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 <sup>3</sup>[Federal Government] may from time to time by order determine.

(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 a 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 <sup>4</sup>[Federal Government] may by order<sup>5</sup> provide for regulating access to, and the conduct of persons in, places in <sup>6</sup>[Pakistan] 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 <sup>7</sup>[Pakistan] on the date on

<sup>1</sup> Subs. by F. A. O., 1975, Art. 2 and Table for "Central Government".

<sup>2</sup> For the Enemy Foreigners Order, 1965 see Gaz. of P., 1965, Ext., pp. 1019-1023, and for the Internees (Discipline and offences) Regulation 1965, see *ibid.*, 1965, Ext., pp. 1024-1027.

<sup>3</sup> Subs. by F. A. O., 1975, Art. 2 and Table for "Central Government".

<sup>4</sup> Subs. by the Preventive Detention Laws (Amendment) Act, 1975 (44 of 1975), s. 3, for "Central Government".

<sup>5</sup> For an order imposing restriction on communication, etc. with the person detained or confined by an order under cl. (g) of sub-section (2) of s. 3, see S.R.O. No. 145 (R)/65, dated the 10<sup>th</sup> September, 1965, Gaz. of P., 1965, Ext., P. 1029.

<sup>6</sup> Subs. by the Adaptation (Security Laws) Order, 1956 (P. O. No. 8 of 1956), Art. 2 and Sch. (with effect from the 23<sup>rd</sup> March, 1956), for "the Provinces and the Capital of the Federation" which had been subs. by A.O. 1949, for "British India".

<sup>7</sup> Subs. by the Adaptation (Security Laws) Order, 1956 (P. O. No. 8 of 1956), Art. 2 and Sch. (with effect from the 23<sup>rd</sup> March, 1956), for "the Provinces and the Capital of the Federation" which had been subs. by A.O. 1949, for "British India".

which this Act came into force shall, while in <sup>1</sup>[Pakistan] after that date, assume or 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 the name 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 that 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 <sup>1</sup>[Pakistan] on the date on which this Act came into force, thereafter enters <sup>2</sup>[Pakistan], sub-section (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 entered <sup>3</sup>[Pakistan] 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 <sup>4</sup>\*\*\* permission granted by the

<sup>1</sup> Subs. by the Adaptation (Security Laws) Order, 1956 (P. O. No. 8 of 1956), Art. 2 and Sch. (with effect from the 23<sup>rd</sup> March, 1956), for "the Provinces and the Capital of the Federation" which had been subs. by A.O. 1949, for "British India".

<sup>2</sup> Subs. by the Adaptation (Security Laws) Order, 1956 (P. O. No. 8 of 1956), Art. 2 and Sch. (with effect from the 23<sup>rd</sup> March, 1956), for "the Provinces and the Capital of the Federation" which had been subs. by A.O. 1949, for "British India".

<sup>3</sup> Subs. by the Adaptation (Security Laws) Order, 1956 (P. O. No. 8 of 1956), Art. 2 and Sch. (with effect from the 23<sup>rd</sup> March, 1956), for "the Provinces and the Capital of the Federation" which had been subs. by A.O. 1949, for "British India".

<sup>4</sup> The original words "Royal licence or" omitted by the Adaptation (Security Laws) Order, 1956 (P.O. No. 8 of 1956), Art. 2 and Sch. (with effect from the 23<sup>rd</sup> March, 1956).



<sup>1</sup>[Federal 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 <sup>2</sup>[Pakistan], passengers coming to or going from that port by sea and the pilot of any aircraft landing or embarking at any place in <sup>3</sup>[Pakistan], 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 <sup>4</sup>[District Coordination Officer or any officer authorised by the Federal Government or] <sup>5</sup>\*\*\* 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 furnishing the return referred to in sub-section (1) or for furnishing the information required under sub-section (2).

(4) 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.

<sup>1</sup> Subs. by the Preventive Detention Laws Amendment Act, 1975 (44 of 1975), s. 3, for “Central Government”.

<sup>2</sup> Subs. by P.O. No. 8 of 1956, Art. 2 and Sch., (with effect from the 23<sup>rd</sup> March, 1956), for “the Provinces and the Capital of the Federation” which had been subs. by A.O., 1949, for “British India”.

<sup>3</sup> Subs. by P.O. No. 8 of 1956, Art. 2 and Sch., (with effect from the 23<sup>rd</sup> March, 1956), for “the Provinces and the Capital of the Federation” which had been subs. by A.O., 1949, for “British India”.

<sup>4</sup> Subs. for “District Magistrate and” by Ord. 44 of 2002; s. 2.

<sup>5</sup> The words “any Commissioner of Police or, where there is no Commissioner of Police,” omitted by A. O., 1949.

**7. Obligation of hotel keepers and others to furnish particulars.-** (1) 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 to inspection by any police officer or by a person authorised in this behalf by the <sup>1</sup>[District Coordination Officer or any officer authorised by the Federal Government].

**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 <sup>2</sup>[Federal Government] so directs either generally or in a particular case, 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 recognised 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:

<sup>1</sup> Subs. for "District Magistrate" by Ord. 44 of 2002, s. 3.

<sup>2</sup> Subs. by the Preventive Detention Laws (Amendment) Act, 1975 (44 of 1975), s. 3, for "Central Government".



Provided that the <sup>1</sup>[Federal Government], either of its own motion or on an application by the foreigners concerned, may revise any such decision.

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 Evidence Act, 1872 (I of 1872), lie upon such person.

### COMMENTS

**Burden of proof of being not Foreigner.** Accused had failed to produce any documentary evidence to prove his citizenship having been acquired through either birth, naturalisation or migration. Passport and National Identity Card produced by accused were, prima facie, forged documents. Even otherwise, passport was not sufficient to establish citizenship. Bona fide citizenship could be established by proof of habitation and existence of relatives in Pakistan which was not done. Ultimate burden of proof under Section 9 of the Foreigners Act, 1946, was on the accused to establish that he was not a foreigner which he had failed to discharge. Conviction and sentence of accused were upheld in circumstances [1999 MLD 1521].

Allegation against accused was that he was a Bangladeshi National and had entered into territory of Pakistan illegally in the year 1985 via India through Wagah Border without any passport and valid visa. By virtue of S. 16-A of Pakistan Citizenship Act, 1951, a person domiciled in the territory of Pakistan from Bangladeshi origin before 16-12-1971 alone, could not be treated as foreigner as Bangalis were given statutory recognition. Accused had produced N.I.C., Passport and other documents which established a chain of circumstances relating to the habitation and existence of relatives in Pakistan. Since the parents of accused were not being accused of entering into Pakistan illegally, plea of accused carried weight as the said documents were not controverted by the prosecution. Accused had discharged the burden of proof showing that he was not a foreigner. Impugned judgment being not sustainable in law same was set aside [2008 MLD 414].

The plain reading of Section 9 would show that onus of showing that he is not a foreigner was upon the detenu. The petitioner's counsel entirely overlooked the provisions of this section when he contended that it was the duty of the respondents to prove that the detenu was a foreigner [1986 CLC 1123].

<sup>2</sup>10. **Power to exempt from application of Act.**- The <sup>3</sup>[Federal Government] may by order <sup>4</sup>declare that any or all of the provisions of this Act or the orders made thereunder shall not apply, or shall apply only with such modifications or subject to such

<sup>1</sup> Subs. by the Preventive Detention Laws (Amendment) Act, 1975 (44 of 1975), s. 3, for "Central Government".

<sup>2</sup> For instance of notifications issued under this section, see Gaz. of P., 1954, Pt. I, P. 264; *ibid.*, 1960, Pt. I, P. 534; and *ibid.*, 1960, Ext., P. 1585 a.

<sup>3</sup> Subs. by the Preventive Detention Laws (Amendment) Act, 1975 (44 of 1975), s. 3, for "Central Government".

<sup>4</sup> For the Enemy Foreigners Order, 1965, see Gaz. of P., 1965, Ext., pp. 1019-1023.

conditions as may be specified, to or in relation to any individual foreigner or any class or description of foreigner.

**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 reasonably 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 be conferred upon any person acting in exercise thereof a right of access to any land or other property whatsoever.

#### COMMENTS

**Unauthorised entry.** Authority properly invested to enforce order to deport, held, can keep foreigners in necessary custody as step towards securing compliance with orders of deport from country. Such step neither punitive nor preventive nor otherwise illegal and foreigners only kept as internees for repatriation to their country with no object to keep them in custody. Release of such foreigners, held, uncalled for in circumstances [PLD 1983 Quetta 97].

**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<sup>1</sup> 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 or 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

<sup>1</sup> For the Foreigners (Parolees) Order, 1965, see Gaz. of P., 1965, Ext. pp. 1027-1029. For instance of notifications issued under this section, see Gaz. of P. 1965, Ext., p. 1029.



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.

(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 <sup>1</sup>[Pakistan] 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.

**<sup>2</sup>[13A. Prohibition of assisting illegal entry.-** No one shall make or carry out arrangements for securing or facilitating the entry into Pakistan of any one whom he knows, or has reasonable cause for believing, to be an illegal entrant.

**13B. Prohibition to employ an illegal entrant.-** No one shall knowingly employ or provide employment to a person who has no permission to stay in Pakistan.]

**<sup>3</sup>[14. Penalties.-** (1) Where any person contravenes any provision of this Act, or of any order made thereunder, or any direction given in pursuance of this Act or order, he shall, except as otherwise provided herein, be punished with imprisonment for a term which may extend to three years and shall also be liable to fine, and if such person has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall be liable to be forfeited, and any person bound thereby shall be liable to pay the penalty thereof, or show cause to the satisfaction of the convicting court as to why such penalty should not be paid.

(2) Where any person knowingly enters into Pakistan illegally, he shall be guilty of an offence under this Act and shall be punished with imprisonment for a term which may extend to ten years and fine which may extend to ten thousand rupees.]

<sup>1</sup> Subs. by the Adaptation (Security Laws) Order, 1956 (P.O. No. 8, of 1956), Art. 2 and Sch. (with effect from the 23<sup>rd</sup> March, 1956), for "the Provinces and the Capital of the Federation" which had been subs. by A. O., 1949, for "British India".

<sup>2</sup> Sections 13A and 13B inserted by the Foreigners (Amendment) Ordinance, 2000 (XXV of 2000).

<sup>3</sup> Section 14 subs. *ibid*.

## COMMENTS

## Synopsis

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|--|--|
| 1. Quashment of F.I.R.                                   | 2. Powers of High Court under Section 561 A, CrPC. |
| 3. Deportation of accused.                               | 4. Orders of the Court regarding deportation.      |
| 5. Constitutional petition against cancellation of visa. | 6. Appreciation of evidence.                       |
| 7. Bail matters.   |  |

1. **Quashment of F.I.R.** Applicants being Pakistan National, had not contravened any provision of Foreigners Act, 1946 as they had neither abetted nor attempted to abet any person in contravention of any provision of any law and had not provided any assistance to the passengers in any manner either to enter Pakistan or to exist Pakistan in contravention of any law for the time being in force. F.I.Rs. against applicants/ accused were registered without lawful authority, which fell within the abuse of process of the court. Allowing the applications, applicants were released [2007 MLD 1393].

2. **Powers of High Court under Section 561-A, Cr.P.C.** Petitioner/ accused was not available for trial in the main case and for disposal of petition for quashing of F.I.R. Petition was not maintainable and competent because petitioner was arrested by the local police on the charge of staying in Pakistan without valid documents; that two conflicting versions/ claims had been laid before the High Court, one by the police and other by petitioner/ accused and High Court was not obliged to examine, analyse and scrutinize said counter-claims with the yardstick of the Trial Court. Petitioner challenged the allegation set up in the F.I.R. in the petition with the plea that he was not a foreigner, but was resident of Bajaur Agency. Petitioner produced certain documents before High Court in support of his plea, genuineness of which had been challenged by the law officer. High Court while deciding petition under Article 199 of Constitution read with Section 561-A Cr. P.C. was not supposed and expected to assume the role of investigator. Petitioner should have put forward his defence version and the documents before the investigator instead of the High Court. Provisions of Article 199 of the Constitution were not meant to hamper investigation of criminal cases. High Court though was possessed with inherent powers under Section 561-A Cr.P.C., but said provisions were not meant for the purpose of thwarting the criminal proceedings pending before the Trial Court or the investigation pending before the Investigating Agency. Petition being without any substance, was dismissed, accordingly [2008 MLD 712].

3. **Deportation of accused.** Accused was convicted and sentenced to undergo R.I. for six months with benefit of Section 382-B Cr. P.C. Trial Court, while deciding the case, had mentioned in the judgment that after completion of sentence accused should be deported from Pakistan to his parent country (Bangladesh). Sentence of six months' R.I awarded to accused had been completed, but accused was still in custody as he allegedly had another case under Section 420 P.P.C. in respect of preparing forged documents. Serving of sentence by accused, would not serve the purpose because there was an order of deportation of accused and he would continue to remain in jail till arrangements for his deportation were made; he could not be released because for getting release, he had to acquire citizenship of Pakistan for which he needed proof which he could not produce in the court. Conviction order would always come in



his way and it would not be possible for him to get the nationality/ citizenship of Pakistan. Since accused had served the sentence awarded to him and in that case he had been detained just for want of deportation process to be completed, order of deportation was set aside, in circumstances. Law had to take its own course and accused, if not required in any other case, be released forthwith from jail [2008 MLD 916].

4. **Orders of the Court regarding deportation.** Petitioner who was convicted and sentenced under Section 14 of Foreigners Act, 1946, had already undergone period of his imprisonment for the main sentence and had paid fine. Submission of petitioner was that observations/ orders of the Court regarding deportation were extraneous to provisions of Section 14 of Foreigners Act, 1946 and being not required in circumstances of case, could be quashed as neither request for them was made to the Court nor any arrangement for deportation of petitioner was made. Provisions of Section 14 of Foreigners Act, 1946 were related only to the grant of punishment and supplied no other purpose including the deportation. Federal Government could, by orders, make provisions either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigners, for prohibiting, regulating or restricting their entry into Pakistan or their departure therefrom or their presence or continued presence therein, in accordance with Section 3 of Foreigners Act, 1946. Judicial Magistrate/ the Court was not responsible to have gone beyond the scope of provisions of Section 14 of Foreigners Act, 1946. Impugned remarks of Judicial Magistrate were uncalled for and unnecessary. Remarks and observations of Judicial Magistrate, were recalled by the High Court, in circumstances [2005 PCrLJ 1183].

5. **Constitutional petition against cancellation of visa.** Government being fully competent to permit any foreigner to stay or to deport him if found not entitled to stay in the country, had absolute powers to give or cancel the visa without hearing him or giving any reason. Order cancelling the visa of the applicant who was not a citizen of Pakistan fell within the jurisdiction of the Authority and his exercise of such jurisdiction was not colourful and mala fide. Impugned order being not without lawful authority, Constitutional petition was dismissed [1997 MLD 1594].

6. **Appreciation of evidence.** Complainant in his statement under Section 154, Cr. P.C. had not mentioned the place from where he had apprehended both the accused and where he was searching for the foreign nationals. Had the complainant been really searching the foreign nationals and had apprehended accused, it was incumbent upon him to disclose the place where he was searching them and had apprehended the accused. Complainant, in his statement before the lower court, had narrated entirely different story in derogation to his statement under Section 154, Cr.P.C. Search of foreigners as stated by complainant in his statement under Section 154, Cr.P.C. appeared to be false, fabricated and fallacious and accused had been arrested by him for certain motive. Accused had produced their CNICs which had been issued on the basis of their N.I.Cs and had also produced their birth certificates, which had shown their birth in Pakistan, which evidence had shown that at the time of their birth they were residing in Pakistan and since they were Pakistani, their N.I.C.s and CNICs were issued by NADRA. Allegations of prosecution having not been substantiated properly, court below was not justified in convicting the accused. Documentary evidence including CNICs issued in favour of accused by NADRA, duly confirmed by them, had shown that accused neither entered in Pakistan illegally nor they were foreigners and court below, without any sufficient reason, had discarded documentary evidence produced by both the accused. Judgement passed by court below was set aside and accused was acquitted of the charge [2008 YLR 785].

Accused, though by appearance seemed to be Bengalis, but they had produced documents, which were duly verified by the concerned Government Departments/ Agencies to be genuine, which supported their plea that they were Pakistanis. Pakistani need not have a citizenship certificate and it was for the prosecutor to prove its case that accused or their parents had entered illegally into Pakistan after 1972, but the prosecution had failed to prove its case through any document or the evidence. Prosecution had relied

upon the statements of accused persons while they were in custody, which statements had no value. Contrary to the provisions of Qanun-e-Shahadat, 1984, the Trial Court had based its judgment on presumption and surmises and failed to discuss the evidence adduced during the trial. When the Trial Court had sent for verification the documents produced by accused persons in proof of their being Pakistani nationals; and when the same were declared to be genuine, in such a situation, instead of convicting accused persons on the basis of surmises and conjectures and the bare statement of accused persons made by them while being in custody, they should have been straightaway acquitted. Impugned judgment, being not sustainable in law, was set aside and accused persons were acquitted [2008 YLR 2821].

7. **Bail matters.** In cases falling under Section 14, Foreigners Act, the Government is only interested in securing presence of detenu at the time of their expatriation. Detenus were ordered to be released on bail with the direction that they shall appear before District Magistrate on fifth of each month to show their presence [1986 PCrLJ 1063].

Reasonable grounds did not exist to believe the accused being guilty of an offence punishable with death, imprisonment for life or imprisonment for ten years. Accused were enlarged on bail in circumstances [2001 PCrLJ 157].

Accused claimed themselves to be Pakistani Nationals but in proof thereof no documentary evidence was produced on record. No birth certificate was even placed on the file to show that they were Pakistani Nationals by birth. Punishment provided for the offence was ten year's imprisonment. Bail refused [1996 PCrLJ 1407].

Prosecution witnesses being the police personnel there was no possibility of tampering with the prosecution evidence by the accused. Law was not to be stretched in favour of prosecution and benefit of doubt arising from prosecution case was to be given to the accused. Foreigners Act, 1946, no doubt, had created a bar on the release of accused on bail, but High Court in exercise of its inherent power under Section 561-A, Cr.P.C. could pass appropriate orders in order to secure the ends of justice. Foreigners Act, 1946 although had made the offence punishable with imprisonment extending to ten years and not less than two years, yet the trial Magistrate could not under the law award sentence up to ten years to accused if found guilty. Accused was in custody for the last more than one year and his trial had not so far concluded. Accused was admitted to bail in circumstances [1997 MLD 279].

Accused held a Pakistani passport and a National Identity Card and genuineness or falsehood of such documentary evidence could be determined by the Trial Court at the trial. Case of accused in circumstances was one of further inquiry which was not covered by the prohibition contained in Section 497(1), Cr.P.C. Accused was admitted to bail accordingly [1995 PCrLJ 1348].

Accused charged with offence punishable with imprisonment for a term which may extend to five years and also a fine and thus entitled to bail. Court, however, without any material on record, allowed its mind to be influenced by extraneous circumstances and refused bail. Court, held, failed to exercise its discretion judiciously. Bail allowed [PLD 1988 Kar. 64].

<sup>1</sup>[14A. Restriction on release on bail.- Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), hereinafter referred to as the said Code, any person accused of an offence punishable under sub-section (2) of section 14

<sup>1</sup> Sections 14A, 14B, 14C and 14D inserted by the Foreigners (Amdt.) Ordinance, 2000 (XXV of 2000).



shall not be released on bail if there appear reasonable grounds for believing that he has been guilty of such an offence.

**14B. Deportation pending trial or undergoing sentence of imprisonment.**

Notwithstanding anything contained in this Act, the code or any other law for the time being in force, a foreigner having no permission to stay in Pakistan or for whose deportation arrangements have been made by the Federal Government, may, if his presence in Pakistan is not required in connection with any other case,—

- (i) with the consent of the Federal Government, be permitted by the Court trying him for any offence under this Act to depart from Pakistan; or
- (ii) under the order of the Federal Government, be permitted to depart from Pakistan while he is undergoing any sentence passed under this Act.

**COMMENTS**

**Deportation of accused.** Accused was convicted and sentenced to undergo R.I. for six months with benefit of Section 382-B Cr. P.C. Trial Court, while deciding the case, had mentioned in the judgment that after completion of sentence accused should be deported from Pakistan to his parent country (Bangladesh). Sentence of six months' R.I. awarded to accused had been completed, but accused was still in custody as he allegedly had another case under Section 420 P.P.C. in respect of preparing forged documents. Serving of sentence by accused, would not serve the purpose because there was an order of deportation of accused and he would continue to remain in jail till arrangements for his deportation were made; he could not be released because for getting release, he had to acquire citizenship of Pakistan for which he needed proof which he could not produce in the court. Conviction order would always come in his way and it would not be possible for him to get the nationality/ citizenship of Pakistan. Since accused had served the sentence awarded to him and in that case he had been detained just for want of deportation process to be completed, order of deportation was set aside, in circumstances. Law had to take its own course and accused, if not required in any other case, be released forthwith from jail [2008 MLD 916].

**Orders of the Court regarding deportation.** Petitioner who was convicted and sentenced under Section 14 of Foreigners Act, 1946, had already undergone period of his imprisonment for the main sentence and had paid fine. Submission of petitioner was that observations/ orders of the Court regarding deportation were extraneous to provisions of Section 14 of Foreigners Act, 1946 and being not required in circumstances of case, could be quashed as neither request for them was made to the Court nor any arrangement for deportation of petitioner was made. Provisions of Section 14 of Foreigners Act, 1946 were related only to the grant of punishment and supplied no other purpose including the deportation. Federal Government could, by orders, make provisions either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigners, for prohibiting, regulating or restricting their entry into Pakistan or their departure therefrom or their presence or continued presence therein, in accordance with Section 3 of Foreigners Act, 1946. Judicial Magistrate/ the Court was not responsible to have gone beyond the scope of provisions of Section 14 of Foreigners Act, 1946. Impugned remarks of Judicial Magistrate were uncalled for and unnecessary. Remarks and observations of Judicial Magistrate, were recalled by the High Court, in circumstances [2005 PCrLJ 1183].

**14C. Custody pending deportation.-** A foreigner, having no permission to stay in Pakistan, who has been convicted and sentenced to imprisonment under this Act shall not be released on the expiry of the sentence and shall continue to remain in custody for a period not exceeding three months to enable arrangements for his deportation to be finalized.

**14D. Registration of illegal immigrants.-** (1) The Federal Government may, by order, establish an Authority to be known as the Aliens Registration Authority hereinafter referred to as the Authority.

(2) Any foreigner in Pakistan who, immediately before the commencement of the Foreigners (Amendment) Ordinance, 2000, has no permission to stay in Pakistan shall get himself registered with the Authority.

(3) The Authority may permit a foreigner registered with it to work in Pakistan at such place and for such period as the Federal Government may, from time to time, prescribe.

(4) The Federal Government may, by order, confer on the Authority such other functions in relation to foreigners as it may deem appropriate.]

**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 <sup>1</sup>[Passport Act, 1974], and of any other enactment for the time being in force.

**17. [Repeal].-** Omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (XXVII of 1981), s.3 and Sch. II.

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<sup>1</sup> Subs. by the Federal Laws (Revision and Declaration) Ordinance, 19: 1 (27 of 1981), s. 3 and Sch., II. "Passport Act, 1920".