

Restrictive Citizenship Policies Within the Commonwealth

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Introduction

Citizenship laws of the Commonwealth member countries provide evidence of two contrary developments in the last two decades: liberalization by the United Kingdom and restrictiveness by the former colonial areas. That there is racial exclusiveness in the older members, Canada, Australia, and New Zealand, is well known.¹ That the newer Afro-Asian members have established highly restrictive citizenship laws is less widely recognized. Since 1948 the citizenship law of the United Kingdom has become a model of liberality.² Among other lenient provisions it permits multiple nationality in that the acquisition of another nationality by adult Britons does not cause forfeiture of British nationality.³ Moreover, British law contains the "common clause" recognizing citizens of other Commonwealth countries (and also those of the Republic of Ireland) as British subjects and not aliens in the United Kingdom.⁴ British subjects, or Commonwealth citizens, may acquire United Kingdom citizenship by the relatively simple procedure of registration rather than naturalization, which is required of aliens seeking British nationality.⁵

The rapid expansion of the Commonwealth since the end of the Second World War has produced a multi-racial association whose member states exhibit varying degrees of development. As each new member has achieved independence, it has tended to assert its individuality by modifying various institutions borrowed from the United Kingdom. For example, the relative positions of the

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¹ As in American law before 1965, this has been secured by restrictive immigration policies.

² The British Nationality Act, 1948 (11 & 12 Geo. 6 c. 56) as amended.

³ Sect. 19. Amplified in Regulation No. 11, Nationality Regulations, 1948.

⁴ Sect. 1. Under the provisions of the Ireland Act, 1949 (12, 13 & 14 Geo. 6 c. 41), the Republic of Ireland is not a "foreign country" in the eyes of United Kingdom citizenship laws. Also see *Report of the Royal Commission on Population*. Cmd. 7695, 1950.

⁵ Sect. 6. Broad ministerial discretion to waive registration requirements is granted in Sect. 3, British Nationality Act, 1958 (6 & 7 Eliz. 2 c. 10).

executive and the legislature have been considerably changed in comparison with the British model. Such modifications have included a higher degree of executive authority at the center and correspondingly a lower degree of parliamentary power. When a former colony becomes free of outside control, it also typically develops a different attitude toward the British two-party system. The position of the Opposition is considerably circumscribed. In like manner the independence of the courts and the basic civil liberties have been more restricted in the newer member countries.⁶ Another frequent modification of the British model after independence is the new country's treatment of nationality. In general the citizenship laws of the newer Commonwealth countries are more restrictive than those of either the United Kingdom or the original dominions. The new countries look upon citizenship as a fundamental factor in the development of a national consciousness. In their efforts to develop strong national unity, Afro-Asian members of the Commonwealth have regularly made plural nationality impossible.

The citizenship laws of Ceylon, India, Pakistan, Ghana, and Malaysia are briefly examined in this study as examples of the attitude toward nationality of the newer members of the Commonwealth. Immigration is not a matter of political importance in these countries. That is to say, there are no assisted passage programs or official encouragement to any large-scale entry of foreigners for permanent residence. The relatively little attention given to immigration in the laws and regulations of the Afro-Asian members, however, does follow the trend of immigration laws of the older member countries to the extent of granting extensive ministerial discretion in the admission and exclusion of intending immigrants.⁷

Ceylon

The first of the Afro-Asian member nations to establish a separate citizenship law following the Second World War was

⁶ The Ghana Nationality and Citizenship Act, 1957 (No. 1).

⁷ (Ceylon) The Indian and Pakistani Residents (Citizenship) Act, 1949 (No. 3), Sect. 1. (Colombo: Government Printer, 1949)

(India) Rule 4, Citizenship Rules, 1956. *Gazette of India Extraordinary*, 1956. No. 204. (New Delhi: Government Printer, 1956)

(Pakistan) The Foreigners (Amendment) Act, 1957 (No. 35), Sects. 1-2. (Karachi: Government Printer, 1957)

(Ghana) Immigration Regulation No. 4, *Ordinances and Acts of Ghana*, 1957. (Accra: Government Printer, 1958)

(Malaya) Regulation No. 1, *Federation of Malaya Government Gazette*, Vol. II, No. 1, 1949. (Kuala Lumpur: Government Printer, 1949).

Ceylon. Neither the Constitution of 1947 nor the Citizenship Act, 1948,⁸ makes any reference to the former British law dealing with nationality. Thus no connection or continuity is preserved with the earlier law in force in the country. The law omits the "common clause" altogether, and there is no reference to the Commonwealth. Citizens of Ceylon are neither British subjects nor Commonwealth citizens, nor is there any reference to a common status of citizens of other Commonwealth countries.

There are still other departures from the practices embodied in the citizenship laws of the older Commonwealth members. Ceylonese law makes no provision for ordinary *jus soli*, or citizenship by reason of birth within the country. There are no procedures provided for acquisition of citizenship by naturalization, adoption, or incorporation of territory. Moreover, the law governing acquisition of citizenship by descent is very restrictive. Such citizenship is possible only by means of a connection with Ceylon extending through two generations. A person born in the country is a citizen if his father was a native-born citizen or if the person's paternal grandfather and great grandfather were born in Ceylon.⁹ The largest group of residents who are denied Ceylonese citizenship is composed of Tamil-speaking Indian immigrants and their children. The law was written to deny citizenship to this group, and there has been little additional immigration since 1948.¹⁰

Section 2 of the Citizenship Act designates two categories of Ceylonese nationality: citizens by descent and citizens by registration. The procedure of registration, however, is considerably different from that found in the citizenship laws of the older member countries. Registration in Ceylon is ordinarily available only to resident spouses of citizens by descent and to persons of long residence in the country whose mothers were citizens by descent.¹¹ A statutory quota of 25 per year restricts registration of persons unconnected with Ceylon by means of marriage or descent.¹²

⁸ No. 18 of 1948, as amended by No. 40 of 1950 and No. 13 of 1955. *The Acts of Ceylon*.

⁹ *Ibid.*, Sect. 2.

¹⁰ *Report of the Commission on Constitutional Government in Ceylon*. Cmd. 6677 (London: HMSO, 1945), pp. 4-7. Also see: Saragarajasingham Namasivayam, *Parliamentary Government in Ceylon, 1948-1958*. (Colombo: De Silva and Sons, 1959), pp. 17-22.

¹¹ Sect. 11.

¹² Sect. 12. Also see: *Tennekoon, Comr. for Registration of Indian and Pakistani Residents v. Duraisamy* [1958], 2 All E. R. 479, 102 Sol. Jo. 437 (P.C.).

Ceylon specifically prohibits dual nationality on the part of its citizens.¹³ Any national who may have acquired some other nationality involuntarily is required to renounce it when he reaches 22 years of age.¹⁴ Voluntary acquisition of foreign nationality results in automatic forfeiture of Ceylonese citizenship. Finally a person who acquires citizenship of Ceylon by registration must formally renounce all other nationalities immediately.¹⁵

The very rigid citizenship provisions are defended on the ground that Ceylon has a higher standard of living than that of neighboring countries and therefore attracts immigrants from other Asian nations. The island produces only about a half of its food requirements, however, and has a very high birth rate of its own. Another defense is grounded upon the problem of divided allegiance on the part of many residents of the country. Ceylon has a large non-indigenous population of Indian origin having close ties with India. There are about 800,000 such persons who regard India as their home and intend to return there. Much of the income of these Indian residents is routinely sent to their families remaining in India.¹⁶ Another group of residents has similar ties to Pakistan.

In 1952 the Ceylon Supreme Court was asked to declare the Ceylon Citizenship Act of 1948 and the Ceylon (Parliamentary Elections) Amendment Act of 1949¹⁷ invalid in so far as they purported to deprive Indians in Ceylon of the franchise. The Supreme Court upheld the Acts in *Mudanayake v. Sivagnanasunderam*¹⁸ and the Judicial Committee of the Privy Council agreed in *Pillai v. Mudanayake*.¹⁹ The basis of the Ceylonese citizenship law was held to be a peculiar form of *jus sanguinis* rather than *jus soli*. The 1955 amending act makes provision for bilateral agreements granting reciprocal treatment to citizens of other Commonwealth countries.²⁰ To date, however, none have been negotiated.

India

The Republic of India stresses reciprocity in its citizenship law. In the Citizenship Act, 1955,²¹ there is no mention of the "common

¹³ Indian and Pakistani Residents (Citizenship) Act (No. 3 of 1949).

¹⁴ Sect. 19, Act of 1948.

¹⁵ *Ibid.*, Sect. 20.

¹⁶ Ivor Jennings, *The Constitution of Ceylon*. (Bombay: Oxford University Press, 1953), pp. 37-40.

¹⁷ No. 48 of 1949.

¹⁸ (1952) 53 N.L.R. 25.

¹⁹ [1953] A.C. 514 (P.C.).

²⁰ The Citizenship (Amendment) Act, 1955. (No. 13).

clause," and citizens of other Commonwealth countries are aliens in the same category with nationals of countries outside the Commonwealth. While provision is made for citizens of other member countries to acquire Indian nationality by registration,²² the conditions that they must meet are no different from those required in ordinary naturalization proceedings.²³ Moreover, there is a unique provision in the Act that no alien is eligible for citizenship in India on conditions any more favorable than those required of Indian citizens seeking citizenship in the home country of the applicant.²⁴ The restrictions in Indian citizenship laws have been directed particularly toward nationals of South Africa and Pakistan. Persons from these countries who enter India intending permanent residence must comply with special permit and registration procedures restricting travel and employment.²⁵

Except for involuntary acquisition of another citizenship by descent, Indian law is inimical to plural nationality. There is automatic forfeiture of Indian nationality if a citizen voluntarily acquires another citizenship, whether or not the other country involved is a member of the Commonwealth.²⁶ When a person of full age acquires Indian citizenship, he must renounce all other allegiance.²⁷ The formal renunciation obligation has been extended to women who acquire their Indian nationality through marriage.²⁸

Pakistan

The citizenship law of Pakistan²⁹ is somewhat less restrictive than those of Ceylon and India, but is more so than those of the older member countries. It does not contain the "common clause" recognizing citizens of other Commonwealth countries as either British subjects or Commonwealth citizens. However, there are several apparent inconsistencies in the Pakistan law. In spite of the omission of the "common clause," for example, every citizen

²¹ No. 57 of 1955.

²² Sect. 5.

²³ Sect. 6.

²⁴ Sect. 12. Amplified in the Citizenship Rules, 1956; see Footnote 7 above.

²⁵ Ordinance No. 22, Influx from Pakistan (Control) Amendment, 1950. *Gazette of India Extraordinary, 1959, Part II, p. 213.*

²⁶ Sect. 9.

²⁷ Sect. 6.

²⁸ Rule 4, Citizenship Rules, 1956. *Gazette of India Extraordinary, 1956, No. 204.*

²⁹ The Pakistan Citizenship Act, 1951 (No. 2 of 1951), amended by the Pakistan Citizenship (Amendment) Act, 1952 (No. 5 of 1952).

of Pakistan is declared to have the status of "Commonwealth citizen."³⁰ There is also reference to registration of persons other than minors and married women which presumably would concern citizens of other Commonwealth members.³¹ To date no legislation has been enacted providing the conditions and procedure for such registration.

In its opposition to plural citizenship, however, the Pakistan nationality law is quite clear. Any adult citizen who possesses any other nationality, whether voluntarily or involuntarily acquired, forfeits his Pakistan citizenship unless he formally renounces the other nationality.³² There is also automatic forfeiture of citizenship if a citizen resides outside Pakistan for seven years.³³

In a recent law designed to restrict the movements of aliens,³⁴ the term "foreigner" is defined as a person who is not a citizen of Pakistan. For this purpose at least, citizens of other Commonwealth countries are not distinguished from non-Commonwealth country nationals.

Pakistan imposes many special restrictions on Indian citizens. They must obtain permits to travel in the country and are prohibited from entering certain areas. Indian residents also must make financial reports of all money sent from Pakistan.³⁵

Ghana

Ghana closely followed the United Kingdom law in form in establishing Ghanaian citizenship.³⁶ In addition, however, the African statute contains several very restrictive parts. It includes the "common clause," recognizing the non-alien status of citizens of other Commonwealth countries.³⁷ There is also established a procedure for registration rather than naturalization of Commonwealth citizens.³⁸ The requirements for citizenship by registration and for citizenship by naturalization are very similar, however, and the distinction between alien and Commonwealth citizen applicants for

³⁰ Sect. 15.

³¹ Sect. 9. These are the ordinary categories of persons subject to registration under United Kingdom law.

³² Sect. 14.

³³ Sect. 16. Excepted classes are persons in Government service.

³⁴ The Foreigners (Amendment) Act, 1957 (No. 35 of 1957).

³⁵ *Report of the Royal Commission on Population*. Cmd. 7695. (London: HMSO, 1950).

³⁶ The Ghana Nationality and Citizenship Act, 1957 (No. 1 of 1957).

³⁷ Sect. 9. There is no reference to citizens of the Republic of Ireland, however.

³⁸ Sect. 11.

Ghanaian nationality is slight.³⁹ Applicants in both categories must declare their willingness to renounce any other nationality.⁴⁰ In addition the Government may require any citizen to renounce any other nationality he may have or suffer forfeiture of Ghanaian citizenship.⁴¹

Much ministerial discretion is permitted in the Ghanaian immigration statute.⁴² There is an extensive category of "prohibited immigrants" which includes persons designated as "undesirable" by the Minister of Immigration. Section 5 provides that prohibited immigrants may be apprehended and placed across the frontier without trial by police or immigration officials.

Since early 1959 Ghanaian immigration and deportation provisions have been made increasingly severe by the inclusion of vague categories of prohibited actions on the part of immigrants. Unacceptable political activity, for example, is a ground for deportation at the discretion of immigration officials.⁴³

Malaysia

The Federation of Malaysia came into being on September 16, 1963. The original date for the merger of Malaya, Singapore, Sarawak, North Borneo, and Brunei was August 31, 1963.⁴⁴ Indonesian opposition to the proposed new state, however, caused a postponement of formal federation. The Territory of Brunei withdrew from the plan, and during the early part of September, 1963, the United Nations' Malaysia Survey Team investigated whether or not the populations of North Borneo and Sarawak were in favor of federation.⁴⁵ When the Survey Team reported acceptance by the populations concerned, the Constitution of Malaya was amended to include the new states of Singapore, Sarawak, and Sabah (North Borneo), and the name of the new federation was changed to Malaysia. With this change in name, the constitution and laws of Malaya were continued in force.⁴⁶

³⁹ Sect. 14.

⁴⁰ Immigration Regulation No. 4, *Ordinances and Acts of Ghana, 1957*. (Accra: Government Printer, 1958).

⁴¹ Sect. 16.

⁴² The Immigration Act, 1957 (No. 15 of 1957).

⁴³ Immigration Regulation No. 1, *Ordinances and Acts of Ghana, 1959*. (Accra: Government Printer, 1960).

⁴⁴ *The New York Times*, Vol. CXII, No. 38,570. August 31, 1963, p. 1.

⁴⁵ *Ibid.*, Vol. CXIII, No. 38,600. September 30, 1963, p. 5.

⁴⁶ *Ibid.*, p. 1. Also see the statement of Dr. Mukammad Ghazali, Permanent Secretary of the Ministry of Foreign Affairs of Malaysia, *Ibid.*, Vol. CXII, No. 38,587. September 17, 1963, pp. 1-3.

After achieving independence in 1947, the Federation of Malaya established a very restrictive citizenship law.⁴⁷ One reason for the considerable change of the colonial law was the apprehension felt by Malays of domination by the Chinese population of Malaya. It was feared that continuation of British colonial citizenship rules together with the inclusion of Singapore within the federation would reduce the Malay population to economic and political impotence.⁴⁸ Rivalry between the ethnic Chinese, who dominate the Malaysian economy, and Malays, who control the Federation government, culminated in the secession of Singapore in August, 1965.⁴⁹

Since independence, Malaysian law has made no distinction between citizens of Commonwealth countries and those of other nations. The ordinary method of acquiring Malaysian citizenship for both categories of persons is naturalization at the discretion of the government. An unusually long residential requirement, ten years, is prescribed for applicants seeking naturalization.⁵⁰

Plural citizenship is discouraged. Voluntary acquisition of any other nationality, including that of another Commonwealth country, is a ground for discretionary removal of citizenship by the government.⁵¹

Considerable difficulties accompanied the effort to bring about a Malaysian Federation composed of Malays, Chinese, and Indians because of deeply-rooted cultural differences.⁵² Therefore, the new country will for some years retain a transitional form to permit the gradual blending of its more advanced and its less advanced elements. Special arrangements recommended by the Cobbold Commission are designed to insure gradual unification.⁵³ Even before the secession in 1965, for example, immigration of Chinese immigrants from Singapore into other parts of the Federation was not to be permitted for an indefinite period.⁵⁴

⁴⁷ The Constitution of the Federation of Malaya, Parts III and XIII.

⁴⁸ *Federation of Malaya, Summary of Revised Constitutional Proposals*, Cmd. 7171, July, 1947. (London: HMSO, 1947), p. 3.

⁴⁹ *The New York Times*, Vol. CXIV, No. 39,279. August 9, 1965, p. 1.

⁵⁰ Constitution, Sect. 19.

⁵¹ *Ibid.*, Sect. 24. *Government Gazette*, *op. cit.*, Regulation No. 1.

⁵² In all of the federated states Chinese residents compose an influential segment of the population.

⁵³ *Report of the Commission of Enquiry, North Borneo and Sarawak 1962*. Cmd. 1794. (London: HMSO, 1962).

⁵⁴ *Manchester Guardian Weekly*, Vol. 87, No. 6, August 9, 1962, p. 8.

Conclusion

In general the Afro-Asian members of the Commonwealth have established highly restrictive citizenship laws. Their regulations prohibit plural nationality and are designed to prevent large-scale immigration as well. Forfeiture of citizenship follows the acquisition of a second nationality. In most of the countries referred to as examples there are laws restricting immigration and acquisition of citizenship of nationals of neighboring Commonwealth countries in particular. Moreover broad ministerial discretion is used as a restrictive device in citizenship matters.

While the newer member countries make provision for "reciprocal arrangements" with other members in citizenship matters, there are no such agreements actually in effect. Except for Ceylon and Malaysia, there are few prospective immigrants to these countries. In all of them immigration is insignificant.

The exclusiveness of the laws in the newer member countries may be attributed in large part to the forces of nationalism. The yearning for independence has been coupled with a fear of other countries now that the former colonies are outside direct British protection. In all the newer members there is also evidence of extreme self-consciousness and lack of confidence. A difference between the newer and older member countries is the absence in the former of "British" liberality. The idea of the "loyal Opposition" is not strong, and viewpoints opposed to the government are rarely tolerated.

Finally, the ties that bind the Afro-Asian members to Britain do not bind these countries very tightly to each other. Until their self-confidence is established, the newer members can be expected to emphasize internal unity and to discourage outside allegiances and connections.
