

# Gender-sensitive law a must

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**T**HE language used in the Pakistan Citizenship Act, 1951, is not gender-neutral, and the law appears to discriminate on the basis of sex. Such discrimination is patent in quite a few sections of the Act, in particular, sections 4 and 10. Such discriminatory provisions have been the subject of criticism by women groups and human rights activists, both within and outside the country. These provisions have resulted in many complications and caused hardships to couples, as also to children begotten of marriages of Pakistani women with foreign nationals. Many complaints and grievances to this effect have been and are voiced through the media.

The discrimination in the law is contrary to the provisions of our Constitution, in particular, Article 25, providing for "equality of citizens," and Article 2-A, guaranteeing "equality of status, of opportunity and before law." Such provisions are also contrary to the principles of the (international) Convention on the Elimination of All Forms of Discrimination Against Women, 1979, which Pakistan has ratified, thereby obligating the state to remove all forms of gender discrimination from its laws, practices and policies.

The report of the Commission of inquiry for Women (1997), having examined the discriminatory provisions in the Pakistan Citizenship Act, 1951, suggested appropriate changes. The reform of the law is necessary as "citizenship" forms the basis for nationality, conferring upon citizens the enjoyment of important legal and fundamental rights and freedoms.

Indeed, the the Citizenship Act as a whole requires to be reviewed with a view to doing away with several of its obsolete provisions and so as to make the law conform to present-day requirements. Meanwhile, however, Sections 4 and 10 may be examined to address the genuine grievances

(1) Any woman, who by reason of her marriage to a British subject before the first day of January, 1949, has acquired the status of a British subject shall, if her husband becomes a citizen of Pakistan, be a citizen of Pakistan.

(2) Subject to the provisions of sub-section (1) and sub-section (4) a woman who has been married to a citizen of Pakistan or to a person who but for his death would have been a citizen of Pakistan under sections 3, 4 or 5 shall be entitled, on making applications thereof to the federal government in the prescribed manner, and if she is an alien, on obtaining a certificate of domicile and taking the oath of allegiance in the form set out in the Schedule to this Act, to be registered as a citizen of Pakistan whether or not she has completed twenty-one years of her age and is of full capacity.

(3) Subject as aforesaid, a woman who has been married to a person who, but for his death, could have been a citizen of Pakistan under the provisions of sub-section (1) of section 6 (whether he migrated as provided in that sub-section or is deemed under the proviso to section 7 to have so migrated) shall be entitled as provided in sub-section (2) subject further, if she is an alien, to her obtaining the certificate and taking the oath therein mentioned.

It is obvious that the law permits the foreign wife of a Pakistani husband to acquire Pakistan citizenship, but alter-

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ment of this Act shall be a citizen of Pakistan by birth: provided that 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 suit and legal process as is accorded to an envoy of an external

sovereign power accredited in Pakistan and is not a citizen of Pakistan; or

(b) his father is an enemy alien and the birth occurs in a place then under occupation by the enemy.

This section apparently does not have any negative connotations for female citizens of Pakistan. However, the language sounds discriminatory, inasmuch as it does not countenance a woman to be an envoy, or for that matter, an enemy alien. By implication, it would mean that children begotten of female foreign envoys or female enemy aliens are entitled to Pakistan citizenship. But that hardly can be construed to have been the intent of the legislature. Accordingly, the section needs to be suitably amended to make it gender-sensitive. The word 'father' in the text should, therefore, be substituted by the word 'parent.' The amended provisions shall read:

Section 4: Citizenship by birth. Every person born in Pakistan after commencement of this Act shall be a citizen of Pakistan by birth: provided that person shall not be such a citizen by virtue of this section if at the time of his birth

(a) his parent possesses such immunity from suit and legal process as is accorded to an envoy of an external

sovereign power accorded to an envoy of an external sovereign power accredited in Pakistan and is not a citizen of Pakistan; or

(b) his parent is an enemy alien and the birth occurs in a place then under occupation by the enemy.

Similarly, section 10 also discriminates on the basis of sex.

The relevant clauses read:

Section 10: Married women.

Section 10: Married couple. (1) Any woman who by reason of her marriage to a British subject before the first day of January, 1949, has acquired the status of a British subject shall, if her husband becomes a citizen of Pakistan, be a citizen of Pakistan.

(2) Subject to the provisions of sub-section (1) and sub-section (4) a person who has been married to a citizen of Pakistan or to a person who but for his or her death would have been a citizen of Pakistan under section 3, 4 or 5 shall be entitled, on making application thereof to the federal government in the prescribed manner, and, if he or she is an alien, on obtaining a certificate of domicile and taking the oath of allegiance in the form set out in the Schedule to this Act, to be registered as a citizen of Pakistan whether or not he or she has completed twenty-one years of his or her age and is of full capacity.

(3) Subject as aforesaid, a person who has been married to a person who but for his or her death, could have been a citizen of Pakistan under the provisions of sub-section (1) of section 6 (whether he migrated as provided in that sub-section or is deemed under the proviso to section 7 to have so migrated) shall be entitled as provided in sub-section (2) subject further, if he or she is an alien, to his or her obtaining the certificate and taking the oath therein mentioned.

It may be pointed out that last year an important amendment (see Ordinance XIII of 2000) was made to Section 5 of the said Act, whereby children born of wedlock between Pakistani females and foreign husbands were made entitled to acquire citizenship by descent. Earlier, only children of Pakistani fathers could claim such a right. The amendments, therefore, are essential, and, when carried out, shall go a long way in addressing the concerns of women and reforming the law with a view to removing gender discrimination. ■

be examined to address the genuine grievances of female citizens of Pakistan so as to put an end to gender-discrimination.

*removing gender  
discrimination.*

Section 4 provides for the right of citizenship on the basis of birth. It states that every person born in Pakistan shall be a citizen by birth, except one whose father enjoys immunity from legal process as accorded to an envoy of a foreign state or is an enemy alien. The relevant provisions read:

Section 4: Citizenship by birth. Every person born in Pakistan after the commence-

natively, the same right is not available to the foreign husband of a Pakistani wife. This provision, thus, also suffers from gender discrimination, and requires amendment. Accordingly, in sub-sections (2) and (3), the words 'woman' and 'women' may be substituted by the words 'person' and 'persons.' The amended provisions shall read: