

Article 5

Citizenship at the commencement of the Constitution.

Came into effect in 26 January 1950

At the commencement of this Constitution every person who has his domicile in the territory of India and—

[\(a\)](#) who was born in the territory of India;

or

[\(b\)](#) either of whose parents was born in the territory of India;

or

[\(c\)](#) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India.

An individual who has been ordinarily resident in the Indian territory for at least 5 years immediately preceding such commencement, shall be a citizen of India.

History:

Draft Article 5 (Article 5) laid down basic principles of citizenship. The Assembly discussed this Draft Article on 10, 11 and 12 August 1949.

Some members sought to include a residuary provision for citizenship based on religion. They argued that every Hindu or Sikh who is not a citizen of any

other state, irrespective of their residence should be entitled for Indian citizenship. In rebuttal, one member strongly urged against hyphenating religion and citizenship. He argued that rules must be informed by justice and equity and not on extraneous conditions.

Another member was keen on the draft article accommodating dual citizenship. He added that this privilege must be extended to countries on the principle of reciprocity.

One member believed that this Draft Article made Indian citizenship cheap and easily available. In response, it was pointed out that the provisions of this Draft Article were stricter than the American law on citizenship.

Few members voluntarily withdrew their amendments, while other amendments which were put to vote were negatived. The Constituent Assembly adopted Draft Article 5 as introduced by the Drafting Committee on 12 August 1949.

Article 5 reflects the historical circumstances of India's independence and the need to define citizenship status for individuals residing in the country at the time of the Constitution's adoption. It addresses the complexities arising from the partition of British India and the migration of people between India and newly formed Pakistan.

Definition of Citizen:

Article 5 specifies who qualifies as a citizen of India when the Constitution comes into effect. It recognizes individuals as Indian citizens if they were born in the territory of India or had Indian parentage or were domiciled in India or intended to reside permanently in India before the commencement of the Constitution.

Categories of Citizenship:

Birth in India:

Individuals who were born in the territory of India are automatically considered citizens of India at the commencement of the Constitution.

Indian Parentage:

Individuals born outside India whose parents were Indian citizens are considered Indian citizens, provided their birth was registered at an Indian consulate within prescribed time limits or they registered themselves as Indian citizens within India.

Domiciled in India:

Individuals who were domiciled in the territory of India at the commencement of the Constitution, and were not citizens of any other country, are considered Indian citizens. Intended Permanent Residence: Individuals who had the intention to reside permanently in India before the commencement of the Constitution and were not citizens of any other country are also recognized as Indian citizens.

Transitional Provision:

Article 5 serves as a transitional provision to determine the citizenship status of individuals at the time of the Constitution's commencement. It lays down the criteria for acquiring citizenship for those who were residing in the Indian territory before independence and who continued to reside there after independence.

Importance:

Article 5 plays a crucial role in determining the citizenship status of individuals who were residing in India before and at the time of the

Constitution's adoption. It establishes the foundation for Indian citizenship and sets the criteria for individuals to be recognized as citizens of India.

Example:

One example could be the interpretation and application of citizenship laws in cases where individuals claim Indian citizenship based on their birth in the territory of India or their parentage. These cases often involve issues such as the registration of births, documentation of parentage, and proof of domicile.

Another example could be cases involving disputes over citizenship status for individuals who were residing in India at the time of the Constitution's commencement but may have faced challenges in establishing their citizenship due to lack of documentation or other factors.

Use of this article:

The court may refer to Article 5 of the Indian Constitution in cases involving disputes or questions related to citizenship status, particularly those concerning individuals who claim Indian citizenship based on their circumstances at the time of the Constitution's commencement. Here are some reasons why the court may use Article 5:

- **Citizenship Disputes:**

The court may invoke Article 5 in cases where there is a dispute over an individual's citizenship status, especially if the person claims to be a citizen of India based on the criteria outlined in Article 5, such as birth in Indian territory or Indian parentage.

- **Proof of Citizenship:**

In situations where individuals are required to prove their citizenship for legal or administrative purposes, the court may examine whether they meet the criteria set forth in Article 5 to determine their citizenship status.