# PART V

# POLITICAL AND CIVIL RIGHTS

## CHAPTER XVIII

## CITIZENSHIP

### SYNOPSIS



### A. CONSTITUTIONAL PROVISIONS

Though India is a Federation having two levels of government,[1] Centre and the States—there is only single citizenship, *viz.*, the Indian citizenship, and no separate State citizenship.

**1.** *Supra*, Chs. X—XVII.

Articles 5 to 11 in the Constitution lay down as to who are the citizens of India at the commencement of the Constitution, *i.e.*, on January 26, 1950. These citizens have been classified into:

(1) citizens by domicile;
(2) citizens by migration, and
(3) citizens by registration,[2]

**(a) CITIZENS BY DOMICILE**

Under Art. 5, every person having domicile in India at the commencement of the Constitution, and fulfilling *any* of the following conditions, is a citizen of India, *viz,*:

(*a*) he was born in India;
(*b*) either of whose parents was born in India;
(*c*) who has been ordinarily resident in India for not less than five years immediately preceding the commencement of the Constitution.

Conditions (*a*), (*b*) and (*c*) are not cumulative but alternative and, therefore, any one of them needs to be fulfilled by a person having domicile in India to be an Indian citizen.[3]

The term 'domicile' is not defined in the Constitution. Domicile is a complex legal concept in the area of the Conflict of Laws.[4] Art. 5 draws a distinction between 'domicile' and 'residence', for neither 'domicile' nor mere 'residence' is sufficient to make a person an Indian citizen. Domicile and five years' residence are necessary to make a person a citizen.

The basic idea of 'domicile' is permanent home. A person's domicile is the country which is considered by law to be his permanent home. Residence in the country, and the intention to make it his home are necessary to constitute a domicile. The residence in a place by itself is not sufficient to constitute it his domicile. It must be accompanied by the intention to make it his permanent home.

As the Supreme Court has observed in *Central Bank of India v. Ram Narain*,[5] an intention to reside for ever in a country where one has taken up his residence is an essential constituent element for the existence of domicile in that counrty. The Supreme Court has expounded this theme in *Louis De Raedt v. Union of India*[6] as follows:

> "For the acquisition of a domicile of choice, it must be shown that the person concerned had a certain state of mind, the *animus manendi*. If he claims that he acquired a new domicile at a particular time, he must prove that he had formed

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**2.** On this topic see, R.B. Sethi, *The Law of Foreigners and Citizenship* (1981). See also, *Izhar Ahmed Khan v. Union of India*, AIR 1962 SC 1052 : 1962 Supp 3 SCR 235.
**3.** *Abdul Sattar v. State of Gujarat*, AIR 1965 SC 810 : (1965) 1 CriLJ 759.
**4.** The Indian Succession Act, 1925, lays down some rules on this topic for the purposes of the Act. The courts may seek guidance therefrom to determine the question of 'domicile' under Art. 5.
On domicile, see generally, Graveson, *The Conflict of Laws*, 145 et seq. (1965).
For a discussion on domicile in India see, *Joshi v. Madhya Bharat*, AIR 1955 SC 334; *Central Bank of India v. Ram Narain*, AIR 1955 SC 36 : (1955) 1 SCR 697; *Mohd. Reza Debstani v. State of Maharashtra*, AIR 1966 SC 1436 : (1966) 3 SCR 441.
**5.** AIR 1955 SC 36.
**6.** AIR 1991 SC 1886, 1889 : (1991) 3 SCC 554. Also see, *Kedar Pandey v. Narain Bikram Sah*, AIR 1966 SC 160 : (1965) 3 SCR 793.

> the intention of making his permanent home in the country of residence and of continuing to reside there permanently. Residence alone, unaccompanied by this state of mind, is insufficient."

An Indian who lived for thirty years in England and died there was held to have retained his domicile in India as he had expressed a desire to come back to India in some of his letters.[7] But, on appeal, the Supreme Court held that he had no definite intention to return to India and he died domiciled in England.[8]

In *Louis De Raedt*,[9] a foreigner had been living in India since 1937 and for more than five years immediately preceding the Constitution. He claimed Indian citizenship under Art. 5(e). But the Supreme Court rejected his claim. The Court held that, on facts, it could not said that he had his domicile in India for more than five years at the commencement of the Constitution. Mere residence is not enough.

The question was whether the petitioner had an intention of staying here permanently. The burden to prove such an intention lay on the petitioner. Louis was staying in India on the basis of a foreign passport with the permission of the Indian authorities. There was nothing to even remotely suggest that he had formed any intention of permanently residing in India.

A minor takes the domicile of his father.[10] A married woman takes the domicile of her husband.[11]

As stated above, India has one citizenship only and no separate State citizenship. A question has, however, arisen whether the same is true of domicile; whether there is one Indian domicile only or there can be a separate State domicile as well.

In *Joshi v. Madhya Bharat*,[12] a majority of the Supreme Court expressed the view that it was theoretically possible to have a separate State domicile, because domicile has reference to the system of law by which a person is governed. Domicile and citizenship are two different concepts. Art. 5 makes this clear because under it domicile alone is not sufficient to confer citizenship on a person. "When we speak of a person as having a domicile of a particular country, we mean that in certain matters such as succession, minority and marriage he is governed by the law of that country." If, therefore, in one country different laws relating to succession and marriage prevail in different places and areas, then each area having a distinct set of laws can itself be regarded as a country for the purpose of domicile.

The Representation of the Peoples Act, 1951 initially required "domicile" in the State concerned for getting elected to the Council of States. This was deleted in 2003.[13]

Under the Indian Constitution, the power to legislate on succession, marriage and minority has been conferred on both the Union and the State Legislatures,[14]

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**7.** *Sankaran Govindan v. Lakshmi Bharathi*, AIR 1964 Ker 244. Also, *Abdus Samad v. State of West Bengal*, AIR 1972 SC 505 : (1973) 1 SCC 451.
**8.** *Sankaran v. Lakshmi*, AIR 1974 SC 1764 : (1975) 3 SCC 351.
**9.** *Supra*, footnote 6.
**10.** *Dawood Mohd. v. Union of India*, AIR 1969 Guj 79; *Malkiat Singh v. State of Punjab*, AIR 1969 Punj 250; *Sharafat v. State of Madhya Pradesh*, AIR 1960 All 637; *Vishal Nilesh Mandlewala v. Justice R.J. Shah (Retd.)*, 2007 (2) GLR 1764.
**11.** *Karinum Nisa v. State of Madhya Pradesh*, AIR 1955 Nag 6.
**12.** *Supra*, footnote 4.
**13.** *Kuldip Nayar v. Union of India*, (2006) 7 SCC 1 : AIR 2006 SC 3127.
**14.** Entry 5, List III; *supra*, Ch. X, Sec. F.

and so it is quite conceivable that until the Centre intervenes and enacts a uniform code for the whole of India, each State may have its own laws on these subjects, and, thus, there could be different domiciles for different States.

JAGANNADHADAS, J., dissenting from the majority, however, pointed out that since the personal laws in India are mostly on religious affiliations, that statutory modifications introduced therein have been almost entirely of an all-India character and not on a regional basis, that there is very little State legislation on any matter of personal laws and that, too, within an extremely small compass, there is not much scope in India for the growth of any concept of State domicile as distinct from the Indian domicile.

In *Pradeep Jain v. Union of India*,[15] the Supreme Court has repudiated the notion of State domicile. The Court has asserted that there is only one domicile, namely domicile in India. Art. 5 recognises only one domicile, namely, "domicile in the territory of India". The Court has now emphasized that the Indian Federation has not emerged as a result of a compact of sovereign States and so it is "not a federal State in the traditional sense of that term".[16] India has one single indivisible system with a single unified justicing system having the Supreme Court at the apex of the hierarchy.[17]

**(b) CITIZENS BY MIGRATION**

The Independence of India was accompanied by a large scale migration of people from Pakistan. As these people belonged to the territory which ceased to be a part of India after the Independence, they could not be regarded as Indian citizens under Art. 5 and, therefore, special provisions had to be made for them in the Constitution.

Under Art. 6, an immigrant from Pakistan became a citizen of India if he, or either of his parents, or any of his grandparents, was born in India (as it was prior to the Independence), and, in addition, fulfilled *either* of the following two conditions:

(1) in case he migrated to India before July 19, 1948,[18] he had been ordinarily resident in India since the date of his migration; or

(2) in case he migrated on or after July 19, 1948, he had been registered as a citizen of India.

A person could be so registered only if he had been resident in India for at least six months preceding the date of his application for registration.

The migration envisaged in Art. 6 only means coming to India from outside[19] and it must have taken place before, and not after, the commencement of the Constitution.[20]

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**15.** AIR 1984 SC 1420 : (1984) 3 SCC 654.
**16.** See Ch. XIV, Sec. H, *supra.*
**17.** In *State of Bombay v. Narayandas*, AIR 1958 Bom 68, the Bombay High Court held that a Sate Legislature could not claim jurisdiction on marriages performed outside the States on the ground that these were performed by those domiciled within the State as there was no State domicile as such in India apart from the Indian domicile.
**18.** On this date, the Influx from Pakistan (Control) Ordinance introduced a permit system to control the admission into India of persons from West Pakistan.
**19.** *Union of India v. Karam Ali*, AIR 1970 A. & N. 1416.
**20.** *Shanno Devi v. Mangal Sain*, AIR 1961 SC 58 : (1961) 1 SCR 576.

**(c) CITIZENS BY REGISTRATION**

According to Art. 8, a person who, or either of whose parents, or any of whose grandparents, was born in India (before independence) but who is ordinarily residing in any country outside India and Pakistan, may register himself as a citizen of India with the diplomatic or consular representative of India in the country of residence.

This provision confers Indian citizenship on a person who *prima facie* has no domicile in India and it seeks to cover the overseas Indians who may want to acquire Indian citizenship.

**(d) TERMINATION OF CITIZENSHIP**

Under Art. 7, a citizen of India by domicile (Art. 5), or by migration (Art. 6), ceases to be citizen if he has migrated to Pakistan after March 1, 1947. If, however, after migration to Pakistan, he has returned to India under a permit of resettlement, or permanent return, he can register himself as a citizen of India in the same manner as a person migrating from Pakistan after July 19, 1948.

Article 7 thus overrides Arts. 5 and 6. Art. 7 envisages only those persons who migrated to Pakistan between March 1, 1947, and January 26, 1950.[21] These persons lost their Indian citizenship. The question of citizenship of persons migrating to Pakistan after January 26, 1950, has to be decided under the provisions of the Indian Citizenship Act.[22]

A woman born and domiciled in India, going to Pakistan after March 1, 1947, would lose her Indian citizenship under Art. 7, even though her husband remained in India, as the rule of Private International Law that her domicile was the same as that of her husband, *viz.*, India, could not render Art. 7 nugatory as she did in fact migrate to Pakistan. Art. 7 is pre-emptory in its scope and makes no exception in favour of a wife who migrates to Pakistan leaving her husband in India.[23] The concept of domicile is contained in Art. 5, but as both Arts. 6 and 7 have been made operative 'notwithstanding Art. 5,' the concept of 'domicile' has been excluded from the scope of Arts. 6 and 7.

The word 'migration' has been used in the sense of people going from one territory to the other, whether or not with the intention of permanent residence there. In *Shanno*,[24] a narrow view of the word 'migration' used in Art. 6 was adopted by the Supreme Court. 'Migration' was envisaged to mean coming to India with the intention of residing there permanently. But the Court dissented from this view in *Kulathil*[25] and interpreted 'migration' (used in Arts. 6 and 7) in a broad sense and not in a narrow sense as meaning going or coming from one territory to another without bringing in the concept of domicile. The Court pointed out that Arts. 6 and 7 make special provisions for dealing with an abnormal situation created by large movement of population between India and Pakistan.

These Articles lay down special criteria of their own, in one case to decide who shall be deemed to be citizens of India (Art. 6), and in the other case who

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**21.** *State of Madhya Pradesh v. Peer Mohd.*, AIR 1963 SC 645 : 1963 Supp (1) SCR 429.
**22.** See, *infra*, Sec. B.
**23.** *State of Bihar v. Amar Singh*, AIR 1955 SC 282 : (1955) 1 SCR 1259.
**24.** *Supra.*
**25.** *Kulathil Mamma v. State of Kerala*, AIR 1966 SC 1614 : (1966) 3 SCR 706.

shall not be deemed to be such citizens (Art. 7). The Constitution-makers did not intend that "the concept of domicile should be brought into Articles 6 and 7."

But the movement should be voluntary and should not have been for a specific purpose and for a short and limited period. Therefore, a boy of 12 years' age who left for Pakistan in 1948, leaving behind his parents in India, came back to India on a Pakistani passport in 1954, again left for Pakistan and came back to India in 1956, was held to have lost his Indian citizenship because of migration.

**(e) DUAL CITIZENSHIP**

Under Art. 9, no person can be a citizen of India under Arts. 5, 6 and 8, if he has voluntarily acquired the citizenship of a foreign country. This provision thus recognises the principle that no Indian citizen can claim a dual or plural citizenship. However, this is subject to Parliament's power under Art. 11 to provide for *inter alia*, the acquisition of citizenship.

Article 9 thus applies only to those cases where foreign citizenship had been acquired before, and not after, the commencement of the Constitution. The latter type of situation has been dealt with under the provisions of the Indian Citizenship Act, 1955.[26]

## B. THE CITIZENSHIP ACT, 1955

The above-mentioned provisions of the Constitution regarding citizenship are not exhaustive but fragmentary and skeletal. These provisions are confined mainly to defining who are citizens of India at the commencement of the Constitution but do not deal with the problem of acquisition of citizenship subsequent to that date. Nor is there any provision in the Constitution to deal with such matters as termination of citizenship (other than Arts. 7 and 9), or other matters concerning citizenship. Art. 11 expressly empowers Parliament to make a law to provide for such matters and, accordingly, Parliament has enacted the Citizenship Act, 1955, to provide for the acquisition and determination of Indian citizenship.

In this connection, reference may be made to entry 17, List I[27] which runs as "citizenship, naturalisation and aliens". Thus, Parliament has exclusive power to legislate with respect to "citizenship". Also, Art. 10 says that a person who is a citizen of India under Arts. 5 to 8 shall, subject to any law made by Parliament, continue to be such citizen. This means that the law enacted by Parliament can make changes even in Arts. 5 to 8.

The Act provides for acquisition of Indian citizenship after the commencement of the Constitution, makes necessary provisions for termination and deprivation of citizenship in certain circumstances and seeks to recognise formally the concept of Commonwealth citizenship. The Act does not apply to a company, association or body of individuals whether incorporated or not.

The Act provides for five ways for acquiring Indian citizenship, *viz.*,

(a) birth;

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**26.** *State of Madhya Pradesh v. Peer Mohd.*, AIR 1963 SC 645 : 1963 Supp (1) SCR 429; *Kulathil v. State of Kerala, op. cit.*; *State of Uttar Pradesh v. Shah Mohammad*, AIR 1969 SC 1234; *State of Assam v. Jilkadar Ali*, AIR 1972 SC 2166 : (1972) 3 SCC 320.

**27.** *Supra*, Ch. X, Sec. D.

(b) descent;

(c) registration;

(d) naturalisation and

(e) incorporation of some territory into India.

**(a) CITIZENSHIP BY BIRTH**

According to section 3, a person born in India on or after the 26th January, 1950, but before the commencement of the Citizenship (Amendment) Act, 1986, and those born in India on or after such commencement and either of whose parents is a citizen of India at the time of his birth is a citizen of India by birth except when—(1) his father possesses diplomatic immunity and is not an Indian citizen; or (2) his father is an enemy alien and his birth occurs at a place under enemy occupation.

**(b) CITIZENSHIP BY DESCENT**

S. 4 provides for citizenship by descent. A person born outside India on or after January 26, 1950, but before the commencement of the Citizenship (Amendment) Act, 1992, is a citizen of India by descent if at the time of his birth his father is an Indian citizen, or a person born outside India on or after such commencement shall be a citizen of India by descent if either of his parents is a citizen of India at the time of his birth provided that in the later case if either of the parents of such a person was a citizen of India by descent only, that person shall not be an Indian citizen by virtue of this provision unless his birth is registered at an Indian consulate, or either of his parents is, at the time of his birth, in service under Government in India.

**(c) CITIZENSHIP BY REGISTRATION**

S. 5 deals with citizenship by registration. The following categories of persons, if not already citizens of India, can be registered as Indian citizens, after taking an oath of allegiance:

(*a*) persons of Indian origin ordinarily resident in India and residing there for six months immediately preceding the application for registration;

(*b*) persons of Indian origin who are ordinarily resident outside undivided India;

(*c*) women married to the Indian citizens;

(*d*) minor children of Indian citizens;

(*e*) persons of full age and capacity who are citizens of a Commonwealth country.

Category (*a*), mentioned above, covers migrants from Pakistan who could not become Indian citizens under the provisions of the Constitution.

In prescribing conditions and restrictions subject to which citizens of a Commonwealth country may be registered as Indian citizens under head (*e*), mentioned above, the Central Government is to keep due regard to the conditions subject to which the Indian citizens may become citizens of that country by registration.

Cls. (*a*) and (*e*) of this section are mutually exclusive and a person of Indian origin who is a citizen of a Commonwealth country falls under (*e*) and not (*a*).[28]

Since 2003, citizenship can be granted to an overseas citizen of India right in accordance with the provisions of Sections 7A and 7B.[29]

The Citizenship Act does not have any provision providing for cancellation of a certificate of registration issued under s. 5.[30]

In spite of a certificate of registration under Section 5(1)(c) of the Citizenship Act, 1955 having been granted to a person and in spite of his having been enrolled in the voters' list, the question whether he is a citizen of India and hence qualified for, or disqualified from, contesting an election can be raised before and tried by the High Court hearing an election petition.[31]

The registration granted to an overseas citizen under Section 7A can be withdrawn/cancelled in terms of Section 7D by the Central Government.[32]

**(d) CITIZENSHIP BY NATURALIZATION**

S. 6 deals with citizenship by naturalisation. A person of full age and capacity who is a citizen of a non-Commonwealth country may become a citizen by naturalisation, if the Central Government is satisfied that he fulfils the conditions laid down in the Act. These conditions are:

(1) he is not a subject or citizen of a country where Indian citizens are prevented from becoming citizens by naturalisation;

(2) he renounces his citizenship of the other country;

(3) he has resided and/or been in government service for 12 months immediately preceeding the date of application;

(4) during 7 years prior to these 12 months, he has resided and/or been in government service for not less than four years;

(5) he is of good character;

(6) he has an adequate knowledge of a language recognised by the Constitution;

(7) after naturalisation he intends to reside in India, or enter into service with government international organisation, or a society or company in India.

If the Central Government is of the opinion that the applicant has rendered distinguished service to the cause of science, philosophy, art, literature, world peace or human progress generally, it may waive the conditions for naturalisation in his case. The applicant for citizenship must be communicated the grounds for refusing the grant and allowed to make a representation against the order.[33]

S. 6A was enacted in 1985 to give effect to the Assam accord.

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**28.** *Ghaurul Hasan v. State of Rajasthan,* AIR 1958 Raj 173.
**29.** See *infra* under "Dual Citizenship".
**30.** *Hari Shankar Jain v. Sonia Gandhi,* (2001) 8 SCC 233 : AIR 2001 SC 3689.
**31**. *Hari Shanker Jain v. Sonia Gandhi,* (2001) 8 SCC 233 at page 250 : AIR 2001 SC 3689.
**32**. *Satish Nambiar v. Union of India,* AIR 2008 Bom 158.
**33**. *Hasan Ali Raihany v. Union of India,* (2006) 3 SCC 705 at page 707 : AIR 2006 SC 1714. See also *K. Krishna M.A. Raihany v. Union of India,* (2007) 5 SCC 533 at page 534 : (2007) 7 JT 258.

**(e) CITIZENSHIP BY INCORPORATION OF TERRITORY**

S. 7 provides for citizenship by incorporation of territory. On any territory becoming a part of India, the Central Government may notify the persons who shall be citizens of India by reason of their connection with that territory.

**(f) COMMONWEALTH CITIZEN**

A citizen of a Commonwealth country has the status of a Commonwealth citizen in India. The Central Government may, by an order notified in the official gazette, make provisions, on a basis of reciprocity, for the conferment of all or any of the rights of an Indian citizen of a Commonwealth country.

**(g) DUAL CITIZENSHIP**

The Citizenship Act was twice amended to provide for dual citizenship. By the amending Act of 2003[34] provision was made for acquisition of overseas citizenship of India by persons of indian origin of 16 specified countries other than Pakistan and Bangladesh. The 2003 amendment provides for the manner and methods by which a person could acquire a citizenship of India and its revocation. In 2005, the Act was further amended[35] to (i) expand the scope of grant of overseas citizenship of India to persons of indian origin of all countries except Pakistan and Bangladesh; and (ii) reduce the period of residence in India from two years to one year for persons registered as overseas citizens of India to acquire Indian citizenship. However, this concept is distinct from Indian Citizenship, not only with regard to the procedure for grant of citizenship and the privileges consequent upon registration but also with regard to the cancellation of the citizenship.[36]

Section 8 provides that an Indian citizen of full age and capacity, who is also a citizen or national of another country, can renounce his Indian citizenship by making a declaration to that effect and having it registered. Registration of such a declaration is withheld when made during a war in which India may be engaged.

When a male person renounces his citizenship, every minor child of his also ceases to be an Indian citizen though such a child, within a year of his attaining full age, may resume Indian citizenship by making a declaration to that effect.

**(h) CESSATION OF CITIZENSHIP**

Section 9 provides for termination of Indian citizenship upon acquisition of citizenship of another country which event entails cessation of citizenship of India.[37]

According to S. 9, a citizen of India ceases to be so on his voluntarily acquiring citizenship of another country by naturalization, registration or otherwise. This provision does not apply during a war in which India may be engaged. If any question arises as to whether, when or how any person has acquired the citi-

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**34**. Citizenship (Amendment) Act, 2003 (6 of 2004).
**35**. Citizenship (Amendment) Ordinance, 2005 subsequently replace by Act 32 of 2005.
**36**. *Satish Nambiar v. Union of India,* AIR 2008 Bom 158; *Mr. Criag Maxwell Sterry v. Ministry of Home Affairs;* High Court of Bombay at Goa: Writ Petition No. 513/2009: Judgement dated 11-09-2009.
**37.** *Ibid.*

zenship of another country, it is to be determined by such authority and in such manner as may be prescribed by the rules.

Under Rule 30 of the Citizenship Rules, this authority is the Central Government which acts in a *quasi-judicial* capacity while discharging this function.[38] Voluntarily obtaining the passport of a foreign country is, according to the Citizenship Rules, conclusive proof of an Indian citizen having voluntarily acquired citizenship of that country.[39]

There is no automatic loss of Indian citizenship by acquisition of a foreign passport. Whether a person has lost his Indian citizenship or not is to be decided by the Central Government and it is only after such a decision that he can be dealt with as a foreigner.[40]

The child of Sri Lankan parents who were found guilty of assassinating the former Prime Minister Rajiv Gandhi, was held to be an Indian citizen since she was born while her mother was in an Indian prison. She did not cease to be an Indian citizen and was entitled to enter and live in this country till the status of her citizenship was determined by the Central Government under section 9(2), although soon after her parents were awarded the death penalty, her grandmother took her to Sri Lanka on a Sri Lankan passport and she had resided there ever since.[41]

The rule-making power conferred by the Act, and Rule 30 along with the rule of evidence, have been held to be valid as these provisions are based on the accepted principle that an Indian citizen cannot acquire a dual citizenship and the rule-making power covers cases of voluntary acquisition of foreign citizenship otherwise than by registration or naturalisation.[42]

These provisions become relevant only when the person concerned is, to start with, a citizen of India and has lost this citizenship thereafter.[43] The Supreme Court has observed that "the question whether a person is a foreigner is a question of fact which would require careful scrutiny of evidence since the inquiry is *quasi-judicial* in character. This question has to be determined by the Central Government".

In *Lal Babu Hussain*,[44] the name of a person entered in an electoral roll was deleted on the ground of his citizenship being suspect. The Supreme Court quashed the order on the ground that the procedure followed by the electoral registration officer was flawed. The Supreme Court emphasized that a person must be a citizen of India for his name to be included in the electoral roll. A non-

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**38.** *Ayub Khan v. Commr. of Police*, AIR 1965 SC 1623 : (1965) 2 SCR 884; *State of Uttar Pradesh v. Shah Mohammad*, AIR 1969 SC 1234; *State of Gujarat v. Ibrahim*, AIR 1974 SC 645 : (1974) 1 SCC 283.

**39.** *Izhar Ahmad Khan v. Union of India*, AIR 1962 SC 1052 : 1962 Supp 3 SCR 235; *S.K. Moinuddin v. Govt. of India*, AIR 1967 SC 1143 : (1967) 2 SCR 401; *Bhanwaroo Khan v. Union of India*, (2002) 4 SCC 346 at page 349 : AIR 2002 SC 1614.

**40.** *State of Andhra Pradesh v. Mohd. Khan*, AIR 1962 SC 1778; *State of Uttar Pradesh v. Rahmatullah*, AIR 1971 SC 1382; *Dipali Katia Chadha v. Union of India*, (1996) 7 SCC 432.

**41**. *S. Nalini Srikaran v. Union of India*, AIR 2007 Mad 187 : (2007) 2 MLJ 831.

**42.** *Izhar Ahmad v. Union of India*, AIR 1962 SC 1052 : (1962) Supp (3) SCR 295.
Also see, *Bhanwaroo Khan v. Union of India*, AIR 2002 SC 1614 : (2002) 4 SCC 346.

**43.** *Ibrahim v. State of Rajasthan*, AIR 1965 SC 618 : (1964) 7 SCR 441.

**44.** *Lal Babu Hussein v. Electoral Registration Officer*, AIR 1995 SC 1189 at 1194 : (1995) 3 SCC 100.

citizen cannot be registered in an electoral roll. When the name of a person is already entered in the electoral roll, his name can be removed only after giving him a reasonable opportunity of being heard.

**(i) DEPRIVATION OF CITIZENSHIP**

Under S. 10, citizens of India by naturalisation, marriage, registration, domicile and residence may be deprived of citizenship by an order of the Central Government, if it is satisfied that—

(*a*) the registration or naturalisation was obtained by means of fraud, false representation or concealment of any material fact,[45] or,

(*b*) he has shown himself by act or speech, to be disloyal or disaffected towards the Indian Constitution; or,

(*c*) during a war in which India may be engaged he has unlawfully traded or communicated with the enemy; or,

(*d*) within five years of his registration or naturalisation, he has been sentenced to imprisonment for not less than two years; or,

(*e*) he has been ordinarily resident out of India for seven years continuously.

This provision does not apply if he is a student abroad, or is in the service of a government in India, or an international organisation of which India is a member, or has registered annually at an Indian consulate his intention to retain his Indian citizenship.

Before making an order depriving a person of his citizenship, the Central Government is to give to the person concerned, a written notice containing the ground on which the order is proposed to be made. The person concerned may have his case referred to a committee of inquiry if the ground is not (*e*). The Central Government is bound to refer the case to a committee consisting of a chairman (a person who has held a judicial office for at least ten years) and two other members appointed by the Government. The committee holds the inquiry and the Central Government is to be ordinarily guided by its report in making the order.

**(j) EXPULSION OF A FOREIGNER**

The Supreme Court has asserted that the power of the Government to expel a foreigner is absolute and unlimited. There is no provision in the Constitution fettering this discretion of the Government.

The Government has an unrestricted power to expel a foreigner without assigning any reasons. A foreigner has no right to claim Indian citizenship. No foreigner can claim to stay in India as a matter of right. The Government has an unrestricted right to expel a foreigner.[46] A foreigner can claim the protection to his

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**45.** *Ghaurul Hasan v. State of Rajasthan,* AIR 1967 SC 107.

**46.** *Hans Muller of Nuremberg v. Superintendent, Presidency Jail, Calcutta,* AIR 1955 SC 367 : (1955) 1 SCR 1284; *Louis De Raedt v. Union of India, Supra; Gilles Preiffer v. Union of India,* 1996 Writ LR 386; *David John Hopkins v. Union of India,* AIR 1997 Mad 366; *Sarbananda Sonowal v. Union of India,* (2005) 5 SCC 665 at page 693 : AIR 2005 SC 2920.

life and liberty under Art. 21,[47] but the right to reside and settle in India as conferred by Art. 19(1)(d) is available only to the citizens of India and not to non-citizens.[48]

## C. CORPORATION NOT A CITIZEN

There are certain Fundamental Rights conferred by the Indian Constitution on 'persons', and certain on 'citizens'. For example, the right to freedom of speech under Art. 19(1)(a) is conferred only on the citizens of India.[49] In this connection, a question of great interest has arisen, *viz.*, whether a statutory corporation, or a company registered under the Indian Companies Act, can be treated as a citizen and given the benefit of the Fundamental Rights which are available only to the citizens.

Till 1960, the Supreme Court, without specifically deciding this question, entertained a number of writ petitions[50] from companies and corporations under Art. 32[51] claiming Fundamental Rights under Arts. 19(1)(*f*) and 19(1)(*g*).[52] The question was left open whether an Indian Company could have the rights of a citizen under Art. 19.[53] But the Supreme Court gave a definitive opinion on this point in *State Trading Corporation v. Commercial Tax Officer*.[54] The question was whether the State Trading Corporation could claim the benefit of Art. 19(1)(*g*), *viz.*, right to carry on any trade or business.[55]

The Corporation is a government company registered under the Indian Companies Act and consists only of the President of India and the Secretary of the Ministry of Commerce as its shareholders. Its status is that of a private limited company. The Corporation moved the Supreme Court under Art. 32 to quash sales tax proceedings against it by a State on the ground that the imposition of the sales tax was illegal and infringed its Fundamental Right guaranteed by Art. 19(1)(*g*).[56]

The basic question which arose was whether the 'Corporation' was a 'citizen', for the freedom under Art. 19(1)(*g*) is available only to a citizen and to none else.

The Supreme Court answered the question in the negative. The Court argued that the Indian Constitution does not define citizenship. Arts. 5 to 9 of the Constitution deal with citizenship in certain circumstances only, but the tenor of these Articles is such that they cannot apply to a juristic person. The Citizenship Act specifically excludes a company, association, body or individuals, whether incor-

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**47.** See, Ch. XXVI, *infra.*
**48.** See, Ch. XXIV, Sec. F, *infra.*
**49.** See, for example, Art. 19, *Infra*, Ch. XXIV. Secs. C to H.
**50.** See, for example, *The Bengal Immunity* case, AIR 1955 SC 661 : (1955) 2 SCR 603; *The Sholapur Mills* case, AIR 1951 SC 41; *Express Newspaper Ltd. v. Union of India*, AIR 1958 SC 578 : 1959 SCR 12; *Lord Krishna Sugar Mills Ltd. v. Union of India*, AIR 1959 SC 1124 : (1960) 1 SCR 39.
In *Hamdard Dawakhana v. Union of India*, AIR 1960 SC 554 : (1960) 2 SCR 671, a petition by a Muslim wakf was entertained by the Supreme Court and some relief was given under Art. 19(1)(*a*) : see, *infra*, Ch. XXIV, Sec. C.
**51.** For Art. 32, see, Ch. XXXIII, Sec. A.
**52.** *Infra*, Ch. XXIV, Section H.
**53.** *Sewpujanrai v. Customs Collector*, AIR 1958 SC 845 : 1959 SCR 821.
**54.** AIR 1963 SC 1811 : (1964) 4 SCR 99.
**55.** For a detailed discussion on Art. 19(1)(*g*), see, *infra*, Ch. XXIV, Sec. H.
**56.** For a detailed discussion on Art. 32, see, *infra*, Ch. XXXIII, Sec. A

porated or not, from the concept of a person under the Act, and so from the concept of the Indian citizenship.

Thus, under the Constitution, or the Citizenship Act, only a natural person can be a citizen. Drawing a distinction between citizenship and nationality, the Court stated that while all citizens are nationals of a State, the reverse is not always true because nationality is a concept of international law while citizenship is a concept of municipal law. Therefore, while a company might have 'nationality', which ordinarily is determined by the place of its incorporation, it does not have 'citizenship'. Refusing to hold the State Trading Corporation as a citizen, the Court rejected its petition under Art. 32.[57]

The case could, however, have been decided on another ground, *viz.*, the State Trading Corporation is a government instrumentality composed of government officials; all its capital comes from the government. As a government body, it could not claim to enforce Fundamental Rights which are meant for the protection of private parties against the government or its instrumentalities.[58] If such a body could claim to enforce a Fundamental Right against a State, then, on a parity of reasoning, it could claim a similar right against the Centre. Suppose the Parliament passes a law to regulate trade carried on by the State Trading Corporation. Can it challenge the Act claiming that its rights under Art. 19(1)(*g*) have been infringed? The answer appears to be in the negative. And if it cannot enforce a Fundamental Right against the Centre, it cannot enforce the same against a State.

The *State Trading Corporation* case was concerned with a government company, whereas in the *Tata* case,[59] a public limited company having a majority of Indian citizens as shareholders was involved. The Court also denied to such a company the Fundamental Right claimed.

In the *Tata* case, along with the company, two shareholders had also joined in making the petition. The shareholders argued that the corporate veil of the Tata Company should be pierced and its substantial character determined without reference to the technical doctrine of the corporation's separate entity. The Court in a majority decision refused to accept this argument saying that piercing of the corporate veil has been done only in a very few cases and that this is an exception rather than the rule. The Court held that a company has a legal entity of its own which is entirely separate from that of its shareholders and to accept the plea of the shareholders would amount to enforcing indirectly what the company could not claim directly. Thus, even individual shareholders cannot claim a Fundamental Right so as to benefit the company.

These cases, in effect, withdraw the safeguard of Art. 19 from the corporate sector. Even if a corporation is Indian in every sense, *e.g.*, it is registered in India, has Indian capital and all of its shareholders and directors are Indians, it can

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**57.** The minority view in the instant case was that the word 'citizen' in Art. 19 included a corporation of which all the members were citizens of India and that the State Trading Corporation could claim Fundamental Rights.

**58**. For the concept of state instrumentality, see, Ch. XX, *infra.*

**59.** *Tata Engineering v. State of Bihar*, AIR 1965 SC 40 : (1964) 6 SCR 885.
For a comment on the case see, 7 *JILI*, 568-9; also, *S.S. Nigam*, Companies and the Fundamental Rights to Property, 3 *Benaras LJ 1* (1967); *State of Gujarat v. Sri Ambica Mills*, AIR 1974 SC 1300 : (1974) 4 SCC 656.

claim no right under Art. 19. So long as individuals carry on a business, they enjoy the freedoms under Art. 19(1)(*g*) but they lose this protection as soon as they are incorporated. The position is anomalous. The Court could have avoided the anomaly by resorting to the doctrine of piercing the corporate veil which has already been invoked in several situations.

The denial of the Fundamental Right to the shareholders does not appear to be justified since the shareholders have a direct interest in the property and business of the company. If the company's career is jeopardised, the value of their shares in the company is prejudicially affected. Thus, there was justification for piercing the corporate veil and for granting relief on the petition of the shareholders who were citizens of India.

The concept of separate entity of a company from its shareholders is a fiction of law evolved to protect the shareholders from liabilities beyond those which they had assumed by being shareholders. This doctrine has made the company a popular instrument to carry on vast commercial enterprises. The fiction of separate entity of the company, in course of time, has been subjected to a few exceptions by the evolution of the doctrine of piercing the corporate veil. The Supreme Court has taken the fiction of separate entity too far and what was once a shield has now become a handicap so far as Art. 19 is concerned.

It remains doubtful whether the framers of the Indian Constitution ever envisaged that the Fundamental Rights under Art. 19(1)(*g*) should not be available to a corporation which is Indian in every sense. The Court adopted a dogmatic view. If each one of the shareholders of a company carries on the business himself, he would be protected by Art. 19(1)(*g*). Could it be that as soon as these individuals incorporate, they lose the protection of Art. 19(1)(*g*)? As it was a case of enforcement of a Fundamental Right, the Court ought to have looked behind the corporate veil and taken notice of the fact that all shareholders of the corporation are citizens and thus bring the corporation within Art. 19(1)(*g*).

If a Fundamental Right, by its nature, is not one which must be confined to natural persons, then that must legitimately be extended to a corporate or a company having a majority of Indian shareholders. It may be noted that the minority view was that the word 'citizen' in Art. 19 includes a corporation of which all the members were citizens of India and that the State Trading Corporation could claim Fundamental Rights. This seems to be a rational view to take.

In course of time, the rigours of the above pronouncements have been diluted by resorting to the strategy of joining a natural person along with a company in the writ petition challenging violation of Art. 19(1)(*g*). Thus, in *Sakal Papers v. Union of India*,[60] a company and a reader of the newspaper filed writ petitions challenging the Daily Newspapers (Price & Page) Order, 1960, under Art. 19(1)(*a*). In the *Bank Nationalisation* case,[61] a Central law acquiring banks was challenged in writ petitions under Art. 32 by the concerned banking companies, a shareholder, a director and a holder of a current account in a bank. The argument was that the law in question infringed Arts. 19(1)(*f*) and 31(2). The Supreme Court held the petitions maintainable on the ground that the rights of the companies as well as the shareholders were involved, and "the Court will not, concen-

**60.** AIR 1962 SC 305 : (1962) 3 SCR 842.
Also *infra*, Ch. XXIV, Sec. C.

**61.** *Cooper v. Union of India*, AIR 1970 SC 564 : (1970) 1 SCC 248; *infra*, Ch. XXXI, Sec. C.

trating merely upon the technical operation of the action, deny itself jurisdiction to grant relief."

Then, in the *Bennett Coleman* case,[62] the Newsprint Control Order was challenged under Arts. 19(1)(*a*) and 14 in writ petitions filed by several newspaper companies and several readers, newspaper editors and shareholders. The petitions were held maintainable as the rights not only of the newspapers companies but also of the editors, readers and shareholders were also involved. These individuals exercised their right of freedom of speech through "their newspapers through which they speak."

In the *Statesman v. Fact Finding Committee*,[63] the Government of India appointed a fact finding committee to enquire into the economics of the newspaper industry. This was sought to be challenged through writ petitions filed by the Statesman, a company, and a shareholder of the company. The High Court held that though the company, as such, had no Fundamental Right, the shareholder had and so the petitions were maintainable. "The press reaches the public through the newspapers. The shareholders speak through their editors."[64] The fact that the company was the petitioner did not prevent the High Court from giving relief to the shareholder.

When an electric company was sought to be nationalised by the State Government, writ petitions to challenge the same were filed by the company and a shareholder. The shareholder's petition was held maintainable under Arts. 19(1)(*f*) and (*g*), as his right to carry on the business through the company, and his right to a divisible share in future of the property of the company, were being diminished by the take-over of the company.[65]

The Government of India issued an order fixing wage structure for working journalists. A petition by a shareholder of a company was held maintainable to challenge this order under Art. 19(1)(*f*). If a heavy burden is placed on the resources of the company, it will affect the shareholders also, and their rights will be infringed. A shareholder can thus validly challenge the order under Art. 19.[66]

The result of the above judicial pronouncements is that it is now an established practice to file writ petitions by the company concerned as well as by a shareholder to challenge the state action against the company, and, thus, invoke the Fundamental Rights granted only to the citizens. An effective method has thus been found to get over the disability otherwise imposed on the companies by judicial dicta.

In *D.C. & G.M. v. Union of India*,[67] the Supreme Court has stated that the law with regard to a company challenging the violation of its Fundamental Rights under Art. 19 is in a "nebulous state". The Court has gone on to say: "Thus apart from the law being in a nebulous state, the trend is in the direction of holding that in the matter of fundamental freedoms guaranteed by Art. 19, the rights of a shareholder and the company which the share-holders have formed are rather

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**62.** *Bennett Coleman & Co. v. Union of India*, AIR 1973 SC 106 : (1972) 2 SCC 788; *infra*, Ch. XXIV, Sec. C.
**63.** AIR 1975 Cal 14; *infra*, Ch. XXIV, Sec. C.
**64.** *Ibid.*, 38.
**65.** *Godhra Electric Co. v. State of Gujarat*, AIR 1975 SC 32 : (1975) 1 SCC 199.
**66.** *The P.T.I. v. Union of India*, AIR 1974 SC 1044; *infra*, Ch. XXIV, Sec. H.
**67.** AIR 1983 SC 937. See also *Star India P. Ltd. v. The Telecom Regulatory Authority of India*, 146 (2008) DLT 455.

co-extensive and the denial to one of the fundamental freedom would be denial to the other. It is time to put an end to this controversy....."

This statement could perhaps be read as implying that the Court was willing to concede to a company itself the right to challenge under Art. 19 the governmental action affecting its rights rather than adopting the fiction of a shareholder filing the writ petition.[68] But nothing seems to have happened since then and the old practice continues still.

To avoid confusion, the better thing to do may be to add an explanation to Art. 19 saying that the term 'citizen' will include a company registered in India and having a majority of the Indian shareholders.

A writ petition can be filed by a firm for enforcement of a Fundamental Right available to a citizen. Unlike a corporation which has a legal identity of its own separate from the shareholders, a firm stands for all the partners collectively and, therefore, the petition is deemed to have been filed by all the partners who are citizens of India.[69]

A municipal committee is not regarded as a citizen within the meaning of Art. 19.[70]

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**68.** In *Divisional Forest Officer v. Bishwanath Tea Co. Ltd.,* AIR 1982 SC 1368 : (1981) 3 SCC 238, the company was the sole petitioner. The Supreme Court ruled that a company cannot complain of breach of a Fundamental Right under Art. 19(1)(*g*).

**69.** *A.I. Works v. Chief Controller of Imports,* AIR 1973 SC 1539 : (1974) 2 SCC 348.

**70.** *Amritsar Municipality v. State of Punjab,* AIR 1969 AC 1100.