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CITIZENSHIP IN INDIAN CONSTITUTION

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India was established as the independent Dominion of India from 15th August, 1947. All Indians resident, born in or naturalized in the Indian provinces legally remained British subjects by virtue of Section 18(3) of the Indian Independence Act, 1947. Indians residents in the princely states that acceded to India were also regarded as British subjects, while those resident in British protectorates retained the status of British protected persons. People living in the territory of India as on 26th November, 1949 automatically became Indian citizens through of operation of the relevant provisions of the Indian Constitution coming into force, and most of these constitutional provisions came into force on 26th January, 1950. The Constitution of India also made provision regarding citizenship for migrants from the territories of Pakistan which had been part of India before partition.

The laws in India are governed by the Constitution of India.

Article Five: Citizenship during the commencement of the Constitution

During the commencement of the Indian Constitution, each person who has his or her domicile in the territory of India and

- (a) who was born in the Indian territory; or
- (b) either of whose parents was born in the Indian territory; or
- (c) an individual who has been ordinarily resident in the Indian territory for atleast 5 years immediately preceding such commencement, shall be a Citizen of India.

Article Six: Rights of Citizenship of certain persons who have migrated to Indian Territory from Territory of Pakistan

The sixth citizenship Article of the Indian Constitution provides citizenship rights to migrants from Pakistan to India. Regardless of anything in Article 5, a person who has migrated to the territory of India from the territory currently enclosed in Pakistan shall be deemed to be an Indian citizen at the commencement of this Constitution if –

If a person migrated from Pakistan to India before 19th July, 1948 shall be considered as an Indian citizen if either of the person's parents or any of his grand-parents were born in India as expressed in the Government of India Act, 1935 and has been living or residing since the date of migration.

- ♦ For people who migrated after 19th July, 1948, they should be registered as

a Citizen of India by an officer from the Government of India but for registration, the subjected person has to be a resident in the territory of India for a minimum of six months, preceding the date of his application.

Article Seven: Rights of Citizenship of certain migrants to Pakistan

Regardless of anything in citizenship Articles 5 and 6, a person who has after the 1st day of March, 1947, migrated from the Indian territory now encompassing in Pakistan shall not be deemed to be a Citizen of India:

Given that nothing in this article shall apply to a person who after having migrated to the territory now included in Pakistan has returned to the Indian territory under a permit for resettlement or returning permanently issued by the authority of any law and every such person shall for the purposes of Clause (b) of Article 6 be deemed to have migrated to the territory of India after the 19th day of July, 1948.

Article Eight: Rights of Citizenship of certain persons of Indian Origin residing outside India

- ♦ The eighth article reads that any person who or either of whose parents or grandparents were born in India as stated in the Government of India Act, 1955 and who is residing ordinarily in any country outside India shall be considered to be a Citizen of India.
- ♦ If he has registered as a Citizen of India by an Indian diplomatic or consular representative in that country on an application made by him or her in the prescribed document form to such diplomatic or consular representative, whether before or after the commencement of the Constitution.

Article Nine: Persons voluntarily acquiring citizenship of a foreign State not to be Citizens

- ♦ According to Article 9, the Constitution of India does NOT allow dual citizenship, *i.e.*, holding Indian citizenship

and citizenship of a foreign country simultaneously.

Article Ten: Continuance of the Rights of Citizenship

- ♦ The Article 10 states that every person who is or is deemed to be a Citizen of India in any of the preceding provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, still be a citizen.

Article Eleven: Parliament to regulate the Right of Citizenship by Law

Given the already declared provisions in this part, there is nothing else that can take away the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and any other matter regarding the same.

- ♦ Apart from the above Articles of the Indian Constitution, citizenship is also deeply connected with the Citizenship Act, which is passed by the Indian Parliament in 1955.
- ♦ Citizenship Act, 1955 speaks about the citizenship of India after the commencement of the Constitution. It is an act to provide for the acquisition and termination of Indian citizenship.
- ♦ The legislation related to this matter is the Citizenship Act, 1955, which has been amended by the Citizenship (Amendment) Act, 1986, the Citizenship (Amendment) Act, 1992, the Citizenship (Amendment) Act, 2003, the Citizenship (Amendment) Act, 2005, and the Citizenship (Amendment Act, 2019).

Citizenship Act of 1955 and its Amendments

- (a) Citizenship Act of 1955 deals with acquisition and termination of citizenship after the commencement of Constitution. The provisions under it include:
 - ♦ A person born in India after 26th January, 1950 would be Citizen of India except those of children of diplomats and enemy aliens cannot be Citizens of India by birth.

- ♦ Any person born after 26th January, 1950 would be Citizen of India subject to certain requirements, for example either parent (mother or father) to be a Citizen of India.
 - ♦ Certain categories of citizens can acquire citizenship by registration in the prescribed manner.
 - ♦ Foreigners could acquire Indian citizenship by naturalization on certain Conditions.
 - ♦ If any territory becomes part of India, Government of India could specify the conditions for them becoming citizens.
 - ♦ Citizenship could be lost by termination, renunciation, deprivation on certain Grounds.
 - ♦ Citizen of a Commonwealth country would have status of a Commonwealth Citizen in India.
- (b) *The Citizenship (Amendment) Act of 1986:* This act specifically deals with the citizenship of the State of Assam. It mentions that illegal migrants to get citizenship need to be registered with Indian consulate in prescribed format.
- (c) *The Citizenship (Amendment) Act of 1992:* According to this Act any person born outside India is considered as Citizen of India by virtue of Citizenship by Descent if either of the parents was citizen at the time of his birth.
- (d) *The Citizenship (Amendment) Act of 2003:* This Act further restricted the *jus soli* principle by requiring that no parent of the child can be an illegal immigrant for the child to qualify for citizenship. It also ruled that illegal immigrants are not eligible for acquiring citizenship by registration or naturalization.
- (e) *The Citizenship (Amendment) Act of 2005:* This Act is based on the recommendations of Parliamentary Standing Committee on Home Affairs. It provides for dual citizenship to PIO's of 16 countries.
- (f) *The Citizenship (Amendment) Act of 2019:* This act provides for a path to citizenship for religiously persecuted minorities, namely Hindus, Sikhs, Buddhists, Jains, Parsis and Christians, from Afghanistan, Bangladesh and Pakistan, who faced "persecution or fear of persecution" in their countries and entered India on or before 31st December, 2014.

The main object to introduce the bill 2019 was that trans-border migration of population has been happening continuously between the territories of India and the areas presently comprised in Pakistan, Afghanistan and Bangladesh. Millions of citizens of undivided India belonging to various faiths were staying in the said areas of Pakistan and Bangladesh when India was partitioned in 1947. The constitutions of Pakistan, Afghanistan and Bangladesh provide for a specific State religion. As a result, many persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities have faced persecution on grounds of religion in those countries. Some of them also have fears about such persecution in their day-to-day life where right to practice, profess and propagate their religion has been obstructed and restricted. Many such persons have fled to India to seek shelter and continued to stay in India even if their travel documents have expired or they have incomplete or no documents. Under the existing provisions of the Act, migrants from Hindu, Sikh, Buddhist, Jain, Parsi or Christian communities from Afghanistan, Pakistan or Bangladesh who entered into India without valid travel documents or if the validity of their documents has expired are regarded as illegal migrants and ineligible to apply for Indian citizenship under Section 5 or Section 6 of the Act.

The Citizenship (Amendment) Act, 2019 does not apply to tribal areas of Tripura, Mizoram, Assam and Meghalaya because of being included in the Sixth Schedule of the Constitution. Also areas that fall under the Inner Limit notified under the Bengal Eastern Frontier Regulation, 1873, will also be outside the Act's purview. This keeps almost entire

Arunachal Pradesh, Mizoram and Nagaland out of the ambit of the Act.

Modes of Acquisition of Citizenship

Citizenship by birth.

Any person born in India on or after 26th January, 1950, but prior to the commencement of the 1986 Act on 1st July, 1987, is a Citizen of India by birth. A person born in India on or after 1st July, 1987 but before 3rd December, 2004 is a Citizen of India if one of parents was a Citizen of India at the time of the birth. Those born in India on or after 3rd December, 2004 are considered Citizens of India only if both of their parents are citizens of India or if one parent is a Citizen of India and the other is not an illegal migrant at the time of their birth. In September, 2013, Bombay High Court gave a judgment that a birth certificate, passport or even an Aadhaar card alone may not be enough to prove Indian citizenship, unless the parents are Indian citizens.

Citizenship by Descent

Persons born outside India on or after 26th January, 1950 but before 10th December, 1992 are citizens of India by descent if their father was a Citizen of India at the time of their birth.

Persons born outside India on or after 10th December, 1992 are considered citizens of India if either of their parents is a Citizen of India at the time of their birth. From 3rd December, 2004 onwards, persons born outside of India shall not be considered citizens of India unless their birth is registered at an Indian diplomatic mission within one year of the date of birth. In certain circumstances it is possible to register after one year with the permission of the Central Government. The application for registration of the birth of a child must be made to an Indian diplomatic mission and must be accompanied by an undertaking in writing from the parents of the child that he or she does not hold the passport of another country.

Citizenship by registration

The Central Government may, on an application, register as a Citizen of India under Section 5 of the Citizenship Act, 1955 any person (not being an illegal migrant) if she belongs to any of the following categories:

- ♦ a person of Indian origin who is ordinarily resident in India for seven years before making application under Section 5(1)(a) (throughout the period of twelve months immediately before making application and for six years in the aggregate in the eight years preceding the 12 months).
- ♦ a person of Indian origin who is ordinarily resident in any country or place outside undivided India;
- ♦ a person who is married to a Citizen of India and is ordinarily resident in India for seven years before making an application for registration;
- ♦ minor children of persons who are Citizens of India;
- ♦ a person of full age and capacity whose parents are registered as Citizens of India.
- ♦ a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and has been residing in India for one year immediately before making an application for registration;
- ♦ a person of full age and capacity who has been registered as an overseas Citizen of India for five years, and who has been residing in India for one year before making an application for registration.

Citizenship by naturalization

Citizenship of India by naturalization can be acquired by a foreigner who is ordinarily resident in India for 12 years (throughout the period of 12 months immediately preceding the date of application and for 11 years in the aggregate of 14 years preceding the 12 months) and other qualifications as specified in Section 6(1) of the Citizen Act, 1955 the 1986 amendment, legislated after

the Assam agitation and Assam Accord, restricted citizenship by birth to children born of Indian citizens. At least one parent had to be an Indian citizen for the child to qualify for citizenship. This was a serious restriction of the *jus soli* principle adopted in the Constitution and the original Citizenship Act and by incorporation of territory.

Loss of Citizenship

The Citizenship Act of 1955 deals with loss of citizenship also in addition to acquisition. Accordingly, it is carried by the following means:

- ♦ *By renunciation:* Any person who has made declaration stating his willingness to renounce the citizenship shall cease to be the Citizen of India.
- ♦ *By termination:* If a person voluntarily or knowingly becomes citizen of any foreign country and by deprivation.

Overseas Citizen of India

According to the Citizenship (Amendment) Act of 2003, the following categories of persons (except Pakistan and Bangladesh) are eligible to apply under OCI Scheme:

- ♦ Who is a citizen of another country, but was a Citizen of India at the time of, or at any time after, the commencement of the constitution; or
- ♦ Who is a citizen of another country, but was eligible to become a Citizen of India at the time of the commencement of the constitution; or
- ♦ Who is a citizen of another country, but belonged to a territory that became part of India after the 15th day of August, 1947; or
- ♦ Who is a child or a grand-child or a great grandchild of such a citizen; or

Non-Resident Indian

An NRI is a Citizen of India who holds Indian passport and has temporarily immigrated to other country either for employment or education or any other purpose.

Persons of Indian Origin.

A PIO is a person of India origin whose parents or grandparents are citizens of India but he is not Citizen of India but of other country.

- ♦ The issue of citizenship plays a vital role in a democratic nation State and hence citizenship is a significant principle of a democratic policy.
- ♦ While PIO card-holders do not require a separate visa and can enter India with multiple entry facility for 15 years; the OCI card is multiple entries, multi-purpose lifelong visa for visiting India. OCI card-holders have parity with non-resident Indians in respect of economic, financial and educational matters except in acquiring agricultural land.
- ♦ A PIO card-holder is required to register with local Police authorities for any stay exceeding 180 days in India on any single visit.
- ♦ OCI is not dual citizenship. There are no voting rights for an OCI card-holder.
- ♦ The President of India is termed the first Citizen of India.

Commonwealth citizenship

- ♦ Every person who is a citizen of a Commonwealth country specified in the First Schedule shall, by virtue of that citizenship, have the status of a Commonwealth Citizen in India.

Power to confer rights of Indian citizen or citizens of certain countries

- ♦ The Central Government may, by order notified in the Official Gazette, make provisions on a basis of reciprocity for the conferment of all or any of the rights of a Citizen of India on the citizens of any country specified in the First Schedule.
- ♦ Any order made under sub-section (1) shall have effect notwithstanding anything inconsistent therewith contained in any law other than the Constitution of India or this Act.

Territorial acquisitions

On 20th December, 1961, after military action, India acquired the territories of Goa, Daman and Diu and Dadra and Nagar Haveli which were under the territories of Portugal. The French territories of Puducherry, Karaikal, Mahe and Yanam, were acquired under treaty of cession with France in 1954 (ratified by the French National Assembly in 1962). Previously, the French territory of Chandernagore had voted in a referendum to join the Indian Union in 1949. Sikkim was also merged with India and became a constituent State with effect from 16th May, 1975. Some of the enclaves in the eastern part of India were also acquired under border agreements with Pakistan and Bangladesh.

In order to expressly provide the citizenship for people in territories as mentioned above, the Central Government issued the Goa, Daman and Diu (Citizenship) Order, 1962, Dadra and Nagar Haveli (Citizenship) Order, 1962 and Citizenship (Pondicherry) Order, 1962, in exercise of its powers under Section 7 of the Citizenship Act and for Sikkim, the President extended the Citizenship Act, and the relevant rules under Article 371-F(n) of Indian Constitution. In case of acquired enclaves, that did not necessitate legislative action, as that was only a border demarcation agreement.

“Nationality” and “Citizenship”
“Nationality” has reference to the jural relationship which may arise for consideration under international law. On the other hand, “citizenship” has reference to the jural relationship under municipal law. In other words, nationality determines the civil rights of a person, natural or artificial, particularly with reference to the international law, whereas citizenship is intimately connected with civic rights under municipal law. Hence all citizens are nationals of a particular State but all nationals may not be citizens of the State. In other words, citizens are those persons who have full political rights as distinguished from nationals who may not enjoy full political rights and are still domiciled in that country. Citizenship and nationality are not

entirely under concepts though the words are sometimes used interchangeably owing to the fact that most citizens are also nationals and *vice versa*. But strictly speaking citizenship. “Is a term of municipal law, and denotes the possession within the particular State of full civil and political rights, subject to special disqualification such as minority or sex. The conditions on which citizenship is acquired are regulated by Municipal Law” *J.B. Moore* (Digest of International Law, Vol.III (1906) P.273).

Citizenship and Domicile – Citizenship and domicile represent two different conceptions. Citizenship has a reference to the political status of a person and domicile to his civil rights, Article 5, which defines citizenship, itself proceeds on the basis that it is different from domicile, because domicile is not by itself sufficient in confer on a person the status of a citizen of this country, *D.P. Joshi v. State of M.B.*, AIR 1955 SC 334.

In *Izhar Ahmad Khan v. Union of India*, AIR 1962 SC 1052, the Court held that Status of citizenship was not a fundamental right under the Constitution and the Parliament had clearly the power under Article II of the Constitution to regulate the right of citizenship by law.

In *State Trading Corpn. of India v. CTO*, AIR 1963 SC 1811, held, Constitution Bench of the Supreme Court discussed that what is the legal significance of the term “citizen”? It has not been defined by the Constitution. Part-II of the Constitution deals with ‘**Citizenship**’, at the commencement of the Constitution. Part-II, in general terms, lays down that **citizenship** shall be by birth, by descent, by migration and by registration. Every person who has domicile in the territory of India shall be a Citizen of India, if he was born in the territory of India or either of whose parents was so born or who has been ordinarily resident in the territory of India for not less than five years immediately preceding the commencement of the Constitution (Article 5). Secondly, any person who has migrated to the territory of India from the territory included in Pakistan

shall be deemed to be a Citizen of India, if he satisfied the conditions laid down in Article 6(a) and 6(b)(i). Any person who does; not come within the purview of Article 6(a), and 6(b)(i), but who has migrated to India and has been registered, as, laid down in Article 6(b)(ii), shall also, be deemed to be a Citizen of India. Similarly, a person of Indian origin, residing outside India, shall be deemed to be a Citizen of India if he has been registered as such by an accredited diplomatic or consular, representative of India in the country where he has been residing (Article 8). Persons coming within the purview of Articles 5, 6 and 8, as aforesaid, may still not be Citizens of India if they have migrated from India to Pakistan, as laid down in Article 7, or if they have voluntarily acquired the **citizenship** of any foreign State (Article 9). Those, in short, are the provisions of the Constitution in Part II relating to **'Citizenship'** and they are clearly inapplicable to juristic persons. By Article 11, the Constitution has vested Parliament with the power to regulate, by legislation, the rights to **citizenship**. It was in exercise of the said: power that Parliament has enacted the **Citizenship Act, 1955**. It is absolutely clear on a reference to the provisions of this statute that a juristic person is outside the purview of the Act. This is an act providing for acquisition and termination of Indian **citizenship**. The Constitution in Part-II, as already indicated, has determined who are Indian citizens at the commencement of the Constitution. As the Constitution does not lay down any provisions with respect to acquisition of **citizenship** or its termination or other matters relating to **citizenship**, after the commencement of the Constitution, this law had to be enacted by way of legislation supplementary to the provisions of the Constitution. Article 19 lays down that "all citizens" shall have the right to freedoms enumerated in Clauses (a) to (g). Those freedoms, each and all of them, are available to "all citizens". The article does not say that those freedoms or only such of them as may be appropriate to particular classes of citizens shall be available to them. The word "citizen" used in Article 19 of the

Constitution was not used in a different sense from that in which it was used in Part-II of the Constitution. The makers of the Constitution deliberately and advisedly made a clear distinction between fundamental rights available to "any persons and those guaranteed to all citizens". In order words, all citizens are persons but all persons are not citizens, under the constitution Part-II, in general terms, lays down that citizenship shall be by birth, by descent, by migration and by registration.

In *Luis De Raedt v. Union of India and others*, (1991) 3 SCC 554, the Supreme Court held every person must have a personal law, and accordingly of origin which remains his domicile, wherever he goes, unless and until he requires a new domicile. The new domicile, acquired subsequently, is generally called a domicile of choice. The domicile of origin is received by operation of law at birth and it is retained until the acquisition of a domicile choice and also held that Person claiming citizenship must have intentional to stay in India permanently at the time of commencement of the Constitution. Foreigner not acquiring Indian citizenship under Article 5 not entitled to claim rights under Article 19(1)(e), he has only rights under Article 21.

In *S.R. Bommai v. Union of India*, AIR 1994 SC 1918, Supreme Court discussed that The Indian Constitution is both a legal and social document. It provides a machinery for the governance of the country. It also contains the ideals expected by the nation. The political machinery created by the Constitution is a means to the achieving of this ideal. Unlike the Constitution of the United States of America which recognizes dual **citizenship** (Section 1(1), 14th Amendment), the Constitution of India, Article 5, does not recognise the concept of dual **citizenship**. Under the American Constitution all persons born or naturalised in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside whereas under Article 5 of the Indian Constitution at its commencement, every person domiciled 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. Article 9 makes it clear that if any person voluntarily acquires the **citizenship** of any foreign country, he will cease to be a Citizen of India. These provisions clearly negate the concept of dual **citizenship**, a concept expressly recognized under the American Constitution. The concept of **citizenship** assumes some importance in a federation because in a country which recognizes dual **citizenship**, the individual would owe allegiance both to the Federal Government as well as the State Government but a country recognizing a single **citizenship** does not face complications arising from dual **citizenship** and by necessary implication negatives the concept of State sovereignty.

In *Sarbananda Sonowal v. Union of India and another*, (2005) 5 SCC 665, the Supreme Court clearly held that, the foremost duty of the Central Government is to defend safe and secure. The Government also has a duty to prevent any internal disturbance and maintain law and order. *Kautilya* in his masterly work “the Arthashastra” has said that a King had two responsibilities to the state, one internal and one external, for which he needed an army. One of the main responsibilities was raksha or protection of the State from external aggression. The defense of the realm, a constant pre-occupation for the King, consisted not only of the physical defense of the kingdom but also the prevention of treachery, revolts and rebellion. The physical defensive measures were the frontier posts to prevent the entry of undesirable aliens and forts in various parts of the country.

In *Sarbananda Sonowal (II) v. Union of India*, (2007) 1 SCC 174, the Supreme Court clearly held that the burden of proof would be upon the proceedee as he would be possessing the necessary documents to show that he is a citizen not only within the meaning of the provisions of the Constitution but also within the provisions of the Citizenship Act. The procedure laid down

in Para 3 of the 1964 Order ensures that the burden of proving that he was a citizen was on the alleged illegal immigrant. Section 9 of the 1946 Act also containing provisions to that effect is based on a sound principle of law. It is also recognized by the Evidence Act, 1872 in the form of Section 106 thereof. The evidence required for deciding as to whenever a person is or is not a foreigner is necessarily within the personal knowledge of the person concerned. There cannot be any doubt whatsoever that adequate care should be taken to see that no genuine Citizen of India is thrown out of the country. A person who claims himself to be a Citizen of India in terms of the Constitution or the Citizenship Act is entitled to all safeguards, both substantive and procedural provided for therein to show that he is a citizen. Only because the burden of proof under certain situations is placed on the accused, the same would not mean that he is deprived of the procedural safeguard.

Conclusion

The entire country is taken as one nation with one citizenship and every effort of the Constitution makers is directed towards emphasizing, maintaining and preserving the unity and integrity of the nation. Now if India is one nation and there is only one citizenship, namely, citizenship of India, and every citizen has a right to move freely throughout the territory of India and to reside and settle in any part of India, irrespective of the place where he is born or the language which he speaks or the religion which he professes and he is guaranteed freedom of trade, commerce and intercourse throughout the territory of India and is entitled to equality before the law and equal protection of the law with other citizens in every part of the territory of India. Recent Citizen Amendment Act, 2019 nothing to do with any Indian citizen in any way and does not affect any Indian citizens, including Muslim citizens. The Indian citizens enjoy fundamental rights conferred on them by the Constitution of India. Central Government has exclusive jurisdiction to determine the question of citizenship of a person.