

CITIZENSHIP IN INDIA

In India, citizens enjoy full civil and political rights. There are certain fundamental rights which are available only to the Indian citizens. An Indian citizen has the right not to be discriminated against any citizen on ground of religion, race, caste, sex or place of birth (Article 15 of the Indian Constitution); the right to equality of opportunity in the matter of public appointment (Article 16 of the Indian Constitution); the right to six freedoms enumerated in Article 19 of the Constitution; Cultural and educational rights (Articles 29 and 30 of the Indian Constitution). Furthermore, there are certain constitutional positions which belong to Indian citizens only like the office of the President (Article 58 of the Indian Constitution); Vice President (Article 67 of the Indian Constitution); Judges of the Supreme Court (Article 124(3)) or of High Court (Article 217); Attorney-General (Article 76(1)); Governor of a State (Article 157); Advocate General of a State (Article 165). Again, an Indian Citizen has political rights including the right to vote, right to contest elections, etc.

The matter of citizenship was discussed in detail at the time of the making of the Indian Constitution. The Constitution makers considered the willingness and unwillingness of all people regarding their stay in India. It was strictly determined whether they want to settle permanently in India or not. However, Dr. B.R. Ambedkar recommended that the Parliament should make a law over the matter of citizenship. But he further emphasized on one of the fact that such law should not be permanent.

Currently, despite the fact of its federal structure, India does not provide dual citizenship. There is only single citizenship i.e. the Indian citizenship. The Indian Constitution does not define citizenship. It describes classes of person, who became automatically the citizens of India at the time of the commencement of the Constitution. It is the Parliament who has an authority to make law on citizenship. In exercise of its power the Parliament has enacted the India Citizenship Act, 1955. Articles 5 to 11 of the Indian Constitution lays down as to who are the citizens of India at the Commencement of the Constitution.

In India, the citizenship can be acquired through various ways like citizenship by birth, citizenship by domicile, citizenship by migration, citizenship by registration, being son or daughter of parent/s of Indian Origin, citizenship by marriage, etc.

Citizenship under Indian Constitution

Article 5 made certain persons as Indian citizens at the time of the commencement of Indian Constitution. The first condition to be an Indian Citizen is of 'domicile' i.e. a person has domicile in the territory of India. The term 'domicile' has not been defined in the Indian Constitution. 'Domicile' means the place where a person's habitation is fixed without any present intention of moving there from. Every person has a domicile at his birth called the domicile of origin. The domicile of origin remains unchanged until the person acquires a new domicile, i.e. by actually settling in another country with the intention of permanently residing there. Till then the domicile of origin continues even if he has left the country with an intention of never returning again.¹ The onus to prove that a person has changed his domicile of origin lies upon him.² It has been held by the Supreme Court that there must be factum and animus to constitute the existence of domicile in India.³ Similarly, the Supreme Court said in *Louis Raedt v Union of India*, that the person should show his appropriate state of mind required for acquisition of domicile by choice.

In *Pradeep Jain v Union of India*, the Supreme Court held that there is only one domicile in India. The court said that the domicile does not change with the change of residence within India. A minor or married person does not have the legal capacity to make a change of domicile. Therefore, a minor carries the domicile of his father⁴ and a married woman gets the domicile of her husband.⁵ Article 6 provides for the rights of citizenship of certain persons who have migrated to India from Pakistan. Article 7 provides for rights of citizenship of certain migrants to Pakistan.

Both Articles 6 and 7 use the term 'migrated'. The meaning of the term 'migrated' came into consideration of Supreme Court in *Kulathi v State of Kerala*. The majority held that the word 'migrate' was used in a wider sense of moving from one country to another with the qualification that such movement was not for a short visit or for a special purpose.

Article 8 provides for the Rights of citizenship of certain persons of Indian origin residing outside India. Article 9 provides that no person shall be a citizen of India by virtue of Article 5, or be deemed to be a citizen of India by virtue of Article 6 or Article 8, if he has voluntarily

¹ Central Bank of India v Ram Narain AIR 1955 SC 36

² Kedar Pandey v Narain Bikram Sah AIR 1966 SC 160.

³ Michael v State of Bombay AIR 1956 Bom.729.

⁴ Naziranbani v State of M.P. AIR 1975 MP 1; Sharafat v State of U.P. AIR 1960 All. 637.

⁵ Karimunissa v State of M.P. AIR 1955 Nag.6

acquired the citizenship of any foreign State. It deals only with voluntary acquisition of citizenship of a foreign state before the Constitution came into force. Under Article 10 Parliament may take away the right of citizenship of any person.

Article 11 gives a proper way to the Parliament for making any law relating to Citizenship. While exercising the authority, the Parliament enacted the Citizenship Act, 1955 for the acquisition and termination of the citizenship in India.

Overseas Citizenship

The Citizenship Amendment Act of 2003, provided for acquisition of overseas citizenship of India by persons of Indian origin of 16 specified countries other than Pakistan and Bangladesh. In 2005, the Act was further amended in order to grant more and more overseas citizenship of India to persons of Indian origin of all Countries except Pakistan and Bangladesh.

By this amendment, the earlier requirement of period of residence in India was also reduced from two years to one year for persons registered as overseas citizens of India to acquire Indian citizenship. The Overseas Citizenship of India (OCI) Scheme was introduced by amending the Citizenship Act, 1955 in August 2005. The Scheme was launched in 2006. The Scheme provides for registration as Overseas Citizen of India (OCI) of all Persons of Indian Origin (PIOs) who were citizens of India on 26th January, 1950 or thereafter or were eligible to become citizens of India on 26th January, 1950. But the scheme excludes citizens of Pakistan and Bangladesh. Overseas Citizen of India (OCI) does not mean 'dual citizenship'. Overseas Citizen of India (OCI) does not confer any political right on the concerned persons. The registered Overseas Citizens of India cannot enjoy the same status as that of Indian citizens in case of equal opportunities in public employment. It means Overseas Citizen of India (OCI) cannot enforce Article 16 of the Indian Constitution. Furthermore, Overseas citizens of India cannot enjoy voting rights. Overseas Citizen of India (OCI) cannot enjoy the right to hold offices like President, Vice-President, Judge of Supreme Court and High Court, Member of Lok Sabha, Rajya Sabha, Legislative Assembly or Council. Overseas Citizen of India (OCI) cannot be appointed to the Public Services.

However, Overseas Citizen of India (OCI) enjoys some other rights. A registered Overseas Citizen of India gets Indian visa for his whole life. He or she enjoys the same status as that of Non-Resident Indians in matters of inter-country adoption, tariffs in domestic air fares, entry fee for visiting national parks, the national monuments, museums, etc. in India. Overseas citizen is eligible to practice professions of doctors, dentists, nurses and pharmacists,

Advocates, Architects, Chartered Accountants in India. But Overseas Citizen of India (OCI) does not enjoy the same parity with Non-Resident Indians in matters of agricultural properties.

Non-Resident Indian's Voting Rights

Parliament has approved voting rights to Non-Resident Indians in elections with the Lok Sabha adopting the Representation of the People (Amendment) Bill, 2010. However, the Non-Resident Indian has to be present in the constituency on the date of polling. The new law would allow an Indian citizen residing abroad to get himself enrolled in voter's list even if he or she was not in India for more than six months because of employment, education or otherwise. In the present busy world, however, it seems unreasonable when Non-Resident Indians have to come back to India from abroad just for casting their votes. Therefore, there is need to computerize the voting rights of Non-Resident Indians.

Is Corporation a Citizen?

The Supreme Court in *State Trading Corporation v Commercial Tax Officer* 1963 held that company or corporation is not a citizen of India and cannot claim fundamental rights. The court said that citizenship is concerned with natural persons only. The court said that citizenship cannot be conferred upon the juristic persons. However, the Supreme Court in *Cooper v Union of India* 1970, also known as Bank Nationalization case, held that a shareholder of a company should be considered as an Indian citizen and is entitled to the protection given under Article 19 of the Indian Constitution. The Fundamental rights of the shareholders as citizens should not be violated by any state action. In *Bennett Coleman Case* 1973, the Supreme Court again said that the State Action not only affects the right of newspapers companies but also of the editors, readers and shareholders. These individuals do have freedom of speech and expression which should be protected against any unreasonable State action. In *Godhra Electric Co. Ltd v State of Gujarat* 1975 the court held that a managing director of a company had right to carry on business through agency of company. The court said that he had right to challenge the constitutional validity of the concerned enactment.

Following Bank Nationalization and Bennet Coleman cases the Supreme Court in *D.C. & G.M. v Union of India* 1983 , has held that writ petition filed by a company complaining denial of fundamental rights guaranteed under Article 19 is maintainable.