

Citizenship in India

By Subodh Asthana - August 3, 2019



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History

When there was a declaration of independence, the country was divided into two parts one was India and the other was Pakistan. The people were provided independence to join any country they want to get the nationality of. Thus the situation demanded strict provisions to frame the nationality policy of India before the commencement of the constitution.

Constitutional Provisions governing citizenship

After the partition it was seen that people were migrating from one border to another, thus it was difficult to frame the provision for citizenship in India.

Article	Provision	Case laws
Article 5	<p>It says that certain conditions are to be fulfilled to be a citizen of India</p> <ul style="list-style-type: none"> The person should have taken birth in the Indian territory. In case either of the parents has taken birth in the Indian territory. If a person has been staying for more than five years in the territory of India. 	<p>In the case of Mohd. Reza Debestani v. State of Bombay[1], it was seen that the appellant's request for citizenship of India was rejected. The appellant had come to India with his uncle and after several years of stay, he went to Iraq on pilgrimage. Then he was permitted to stay in India for years with repeated extension. But then he was denied and thus he pleaded. Then he returned to Iraq a got employed, this fact was enough to satisfy that he can't be granted citizenship of India according to the provisions made.</p>
Article 6	<p>When a citizen of Pakistan has migrated to the territory of India, would be entitled to a right of citizenship under these conditions</p> <ul style="list-style-type: none"> If the person's parents or grandparents were born in India, according to the Government of India Act,1935 If a person has migrated and is ordinarily residing in India before the nineteenth day of July 1948 	<p>In the case of Kulathil Mammu v. State of Kerela[2], the term "migrated" in this section was defined. It was held that the term means voluntary and permanently leaving from India to Pakistan.</p>
Article 7	<p>If a person has migrated to the territories of Pakistan after the first day of March 1947, shall not be considered as a citizen of India.</p> <p>Exception</p>	<p>In the case of State of Bihar v Kumar Amar Singh[3], the wife left her husband and went to Karachi. According to her statement, she went to Karachi temporarily for treatment. Then she returned back to India and was permitted to stay as she stated that she was Pakistan domicile. Then after the expiry of the period, she returned back to Pakistan. Then she wanted to get the permanent citizenship of India, when her property in India was to be taken under custody.it was held that as she had migrated before the date</p>

	<ul style="list-style-type: none"> • A person who has migrated to the Pakistan territory and then returns back with the permission from the requisite authority. 	stated in the provision, she won't be given permanent citizenship.
Article 8	If a person is residing in a different country but either of the parents or grandparents have taken birth in the Indian territory and if the person is registered as a citizen of India by the diplomatic or consular representative of India, shall be considered as a citizen of India.	
Article 9	If a person has voluntarily adopted the citizenship of any Foreign State, then we won't be considered as a citizen of India.	In the case of State of U.P. v. Rehmatullah [4], it was held that the Central Government is authorised to take action against people who have acquired the foreign citizenship and have lost the citizenship of India, but they are still residing in the country.
Article 10	When a person is considered as a citizen of India under the provisions provided, the person would continue to be a citizen if also new provisions are made by the Parliament.	In the case of Ebrahim Vazir Mavat v State of Bombay [5],, the constitutional validity of the Influx from Pakistan Control Act, 1949 was put forward. This act provided that when a person has the domicile of either India or Pakistan, can't enter the premises of the above stated countries without permission. And if any person goes against the rule then he would be convicted of the offence mentioned in the act. According to Section 7, a person can be denied citizenship by the Central Government under certain grounds. It was held that removing a citizen from the country under Section 7 of the Constitution of India would amount to a deprivation of the right of citizenship as mentioned in Part II of the constitution.
Article 11	It states that nothing can prohibit the Parliament's power to make any provision	

on termination or acquisition of citizenship and all other subjects related to citizenship.

Citizenship act and its amendment

Citizenship Act of 1955

Section	Provision
Section 3	Citizenship by birth
Section 4	Citizenship by descent
Section 5	Citizenship by registration
Section 6	Citizenship by naturalisation
Section 7	Citizenship by incorporation of territories
Section 8	Renunciation of citizenship
Section 9	Termination of citizenship
Section 10	Deprivation of citizenship
Section 11	Commonwealth citizenship
Section 12	Power to confer rights of Indian citizen or citizens of certain countries
Section 13	Certificate of citizenship in case of doubt
Section 14	Disposal of application
Section 15	Revision
Section 16	Delegation of power
Section 17	offences
Section 18	Power to make rules
Section 19	Repeals

Amendments



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Amendments year wise	Provision
The Citizenship (Amendment) Act of 1986	<ul style="list-style-type: none">• According to the provisions of this amendment, a person who is not born in India would be granted citizenship. But at the time of the birth of the person, it is necessary that either one of the parents has to be a citizen of India• The maximum time period required to stay in India to acquire its citizenship in the case of registration, naturalisation or marriage was modified.
The Citizenship (Amendment) Act of 1992	<ul style="list-style-type: none">• It stipulated that if a person is born after 26th January 1950 and before the commencement of this Act, then he would be considered as a citizen of India but his father should be India at the time the person was born.• But if the person has taken birth after the commencement of the Act, then he would be considered as a citizen of India if either of his parents is Indian during birth.• The word "male person" was amended with "persons".
The Citizenship (Amendment) Act of 2003	<ul style="list-style-type: none">• Provision of registration, right of overseas citizens was amended in this act.
The Citizenship (Amendment) Act of 2005	<ul style="list-style-type: none">• It incorporated the system of dual citizenship• This was applicable to citizens of all the countries, except for the persons who have been the citizen of Pakistan and Bangladesh.
The Citizenship (Amendment) Act 2016	<ul style="list-style-type: none">• This bill allowed the Indian citizenship to minor communities like (Sikh, Buddhist, Jain, Parsi or Christian) who illegally migrated from Pakistan, Bangladesh and Afghanistan.• But Muslim communities from Pakistan, Bangladesh and Afghanistan were not allowed for citizenship.• The maximum period required to reside in India to acquire its citizenship was decreased from 11 years to 6 years. This is applicable for minor communities like (Sikh, Buddhist, Jain, Parsi or Christian) who illegally migrated from Pakistan, Bangladesh and Afghanistan.

Modes of acquiring of citizenship

Citizenship By Birth

According to **Section 3 of The Citizenship Act**, if a

- When a person is born on or after 26th January 1950 but before 1st July 1987, then he would be entitled to get citizenship by birth.
- When a person's parents are a citizen of India or either of the parents is a citizen of India then the person would be entitled to get citizenship by birth.
- If one parent is a citizen of India and the other is not, then it is necessary to establish the fact that the other parent is not an illegal migrant at the time of the birth of the child.

Citizenship By Descent

According to **Section 4 of The Citizenship Act**,

- A person born outside India on or after January 26, 1950, is a citizen of India by descent if his/her father was a citizen of India by birth.
- A person born outside India on or after December 10, 1992, but before December 3, 2004, if either of his/her parents was a citizen of India by birth.
- If a person born outside India or after December 3, 2004, has to acquire citizenship, his/her parents have to declare that the minor does not hold a passport of another country and his/her birth is registered at an Indian consulate within one year of birth.
- Provided that a minor under this section is if a citizen of another country must renounce that within six months.

Citizenship By Registration

According to **Section 5 of The Citizenship Act**,

- A person of Indian origin who has been a resident of India for 7 years before applying for registration.
- A person of Indian origin who is a resident of any country outside undivided India.
- A person who is married to an Indian citizen and is ordinarily resident for 7 years before applying for registration.
- Minor children of persons who are citizens of India.

Citizenship By Naturalisation

According to **Section 6 of The Citizenship Act**,

- When an application for grant of a certificate of naturalisation is made by a person who is fully aged or has attained the capacity and the Central Government is satisfied that all the conditions are fulfilled, then the person is granted the certificate of naturalisation.
- When a person is granted the certificate of citizenship by naturalisation, he has to take oath in the manner specified in the Third Schedule.

Citizenship By Incorporation of Territory

According to **Section 7 of The Citizenship Act,**

- When any territory is added to the constitution of India, then the people of those territories would be considered as the citizen of India.
- These people would be granted citizenship by the Official Gazette once the Central Government notifies them.
- They would be considered as the citizen from the date specified in the order.

Overseas citizenship of India

- A foreign citizen of Indian origin is given the permission of immigration to live and work in the Republic of India, this is known as Overseas Citizenship of India.
- It was introduced for the purpose of granting dual citizenship.
- It was brought into light from **The Citizenship (Amendment) Act, 2005.**
- People with Overseas Citizenship of India are permitted from certain rights

1. No right to vote.
2. No right to hold constitutional offices
3. No right to buy agricultural properties

Requirements to apply and use Overseas Citizenship of India document

1. Citizenship
2. Should be a holder of a passport of another country

History

Previously citizens of India were not permitted to hold dual citizenship and this provision was laid down by the Constitution of India. Thus, a person was not permitted to hold any other countries passport with an Indian passport.

- This provision raises many problems, thus High-Level Committee on Indian Diaspora recommended the Government of India to provide Overseas Citizenship of India as specified in the Section 7A of the Citizenship Act, 1995.
- Earlier travelling required the travellers of Overseas Citizenship of India card to carry a passport and it should have a lifetime visa. But this provision was rejected and it is not mandatory to carry.

Eligibility

A person is eligible to get registered as Overseas Citizenship of India by the Government of India under certain conditions

- Should be a citizen of India as per dated on 26th of January 1950 or after the date stated.
- The person's grandfather or grandparents should be a citizen of India.
- When the person's grandfather or grandparents are a citizen of India and the person is a minor child.
- When a person's both parents are a citizen of India or either of the parents is a citizen of India and the person is the minor child.
- When the person's spouse is of foreign origin of a citizen of India or holder of Overseas Citizen of India and the marriage has been registered for more than two years.
- Exception: if the person's either parents or grandparents or great grandparents had or having the citizenship of Pakistan or Bangladesh, is eligible for registration under Overseas Citizen of India

Application

Application for Overseas Citizenship of India is submitted online.

- A person while submitting the application for Overseas Citizenship of India has to attach a photograph of him/ her in the application.
- It is mandatory for the person to produce all the documents required for verification, to prove the eligibility criteria.
- The person is required to submit the application fee.
- Application submitted outside of India is charged with the amount of US\$275
- The application submitted inside India is charged with the amount of Rs. 15,000

- The person is required to produce the proof of citizenship he is currently possessing and in addition, he needs to produce a photocopy of the passport. And the passport must be having the validity of six months at least
- If the application made by the person is within the Indian jurisdiction, then it is mandatory for him to submit a photocopy of the Indian visa.
- The person is required to produce the proof that either of his/her parents or grandparents or great grandparents are the citizens of India.
- The person needs to produce a photocopy of the Indian visa, photocopy of the Domicile Certificate, photocopy of the Nativity Certificate of either of his/her parents or grandparents or great grandparents.
- If the above-stated documents produced are checked and the basis of Indian origin is proved then the person is required to show that the relationship stated above is a lawful relationship.
- The documents required to prove the relationship can be a birth certificate in which both the parent's identity is mentioned.

Renewal

- Till the completion of 20years of age, a new passport is to be issued.
- After attaining the age of 50years it is required to re-issue the Overseas Citizen of India registration certificate as well as the visa.
- For the person's between the age of 21 to 50, It is not mandatory to re-issue the document of Overseas Citizen of India to get the new passport.

Privileges

- The Overseas Citizen of India cardholders are given multiple-entry, multi-purpose visa forever.
- their period of stay in India is not restricted.
- Uniformity is provided to the non-resident Indians in the matter of financial, economic, and educational fields.
- Uniformity is maintained between the non-resident Indians and resident Indians in the domestic Airfares.
- The non-resident Indians are given the right to employment in private sectors.
- Overseas Citizen of India cardholders are exempted from producing employment visa and for registration with Overseas Citizen of India **Foreigners Regional Registration Office** for the job.
- OCI holders are exempted to apply for the Inner Line Permit or Protected Area Permit. They are allowed to travel around any part of India.

Disadvantages of OCI Card

- The OCI cardholders do not have the right to vote.
- The OCI cardholders are exempted from the right to hold the office of Prime Minister, President, Vice-President, Judge of the Supreme Court and the High Court, member of Lok Sabha, Rajya Sabha, Legislative Assembly, or Council.
- The OCI cardholders are exempted from the right of employment in government sectors.
- The OCI cardholders have no right of acquisition of agricultural or plantation properties.

Cancellation of OCI card

The existing registration of OCI can be cancelled through the provisions of Section 7D of the Citizenship Act,1995. The Government of India has the right to cancel the OCI if it has been obtained by false representation or concealment of facts.

The followings are the conditions in which OCI is cancelled according to Section 7D of the Citizenship Act,1995

- If the registration was based on the facts of false representation, concealment of facts and the OCI was obtained.
- If the OCI cardholder's action is not according to the law established by the Constitution of India.
- During any war relating to India, if it is found that any OCI cardholder was involved with the enemies and had unlawful communication or any trade or business that helped the enemy during the course of the war.
- If an OCI cardholder is sentenced with imprisonment for a term not less than two years.

Renunciation of OCI

When the person has registered for OCI document, but they find it necessary to abstain from it and withdrawal the application, then renunciation of OCI is done. The provisions followed in the procedure of renunciation of OCI are laid down in Section 7C of the Citizenship Act.

According to Section 7C of the Citizenship Act

- When an overseas citizen of India who has attained the age of capacity decides to renounce his overseas citizenship of India, then he can do so on registration before the Central Government. And after the registration, the person would cease to be a citizen of India.
- After the renounce of the person, the minor child of the person would cease to be a citizen of India

Person of Indian origin

When a person of Indian origin has been entitled to the passport of other countries, they hold Person of Indian Origin Card. But the passport should not be from countries like Afghanistan, Bangladesh, Bhutan, China, Iran, Nepal, Pakistan, and Sri Lanka.

The Person of Indian Origin Card has ceased to work from 9th January 2015 and has been merged with the OCI card provision. Thus the holders of The Person of Indian Origin Card are treated as OCI cardholders.

Conditions

Certain conditions are required to be fulfilled to issue the Person of Indian Origin Card are as follows.

- If the person has never been an Indian passport holder.
- If the person's parents, grandparents or great grandparents were residing permanently in India and they never had the citizenship of countries like Pakistan and Bangladesh.
- If the person's spouse is a citizen of India or PIO cardholder.

Benefits to PIO card holder

- A person with a PIO card is allowed to enter into India, without producing a visa.
- A person with a PIO card is allowed to stay in India for a period of six months without registration.
- Uniformity is provided to the non-resident Indians in the matter of financial, economic, and educational fields.
- They have the right to acquisition, transfer, and disposal of immovable properties in India.
- Child of the person with a PIO card has the right to education in any government or private educational sectors.

Dual citizenship

Availing dual citizenship of India and another country requires certain strict provisions. Earlier there was no provision of dual citizenship in India. These certain provisions are required to be fulfilled to obtain dual citizenship in India

- When a person from another country is working in India and their child is born in India, then dual citizenship is granted to the child until the period of employment in India.
- A minor of Indian origin has the right to hold dual citizenship of India as well as another country. The minor is provided with dual citizenship so that the minor child chooses the preference of nationality before six months of attaining the age of eighteen.

Renunciation of Indian citizenship

Under Section 8 of the Citizenship Act,1995 the provisions for renunciation of citizenship has been laid down

- When both the parents are no more citizen of India, then their minor child is given the right to choose the nationality of his/her preference within the given period of time, after he/she attains the age of eighteen
- When a citizen of India has attained the age of maturity or capacity and decides to renunciate the citizenship of India then he can submit his renunciation by registering under the prescribed authority.
- After submission to the prescribed authority, the person ceases to be a citizen of India.
- But if the person submits the request for renunciation of citizenship during the period of war India is engaged in then the request would be kept pending until directed by the Central Government of India.

Termination of Indian citizenship

According to Section 9 in the Citizenship Act,1995 the following provisions are provided for the termination of Citizenship

- When a citizen of India voluntarily acquires the citizenship of another country, then he ceases to be a citizen of India.
- But a citizen of India who voluntarily acquires the citizenship of some other country during the period of war, then his citizenship won't be ceased till the Central Government directs.

Case law

In the case of [Bhagwati Prasad Dixit v. Rajeev Gandhi](#)[6], it was seen that the question raised was against the validity of the election. According to the appellant, the respondent was to be disqualified from being a candidate in the election as he has ceased to be a citizen of India. The respondent had challenged the verdict of the High Court.

It was held that the High Court has correctly dismissed the plea because it the arguments that were put forward did not disclose **any cause of action**. Moreover, the question of acquisition of Foreign citizenship under Section 9 of the Citizenship Act, is to be answered by the Central Government and the High Court does not have the jurisdiction.

To know more about the topic on citizenship laws, [Click Here](#).

Reference

[1] AIR 1996 SC 1436