

Quadrant II - Notes

Paper Code: CON0413/CON0115

Module Name: Citizenship under the Constitution and Citizenship Act

Module No: 05

NOTES

Meaning of Citizenship

Population of State is divided into Citizens and aliens. A Citizen of a State is a person who enjoys full membership of the political community of the State. A citizen of a State is a person who enjoys full civil and political rights.

In India aliens do not enjoy all the fundamental rights secured to the citizens. Articles 15, 16, 18(2), 19, and 29 declare fundamental rights belonging to citizens alone. High offices such as President Vice-President, Governor, Judge of Supreme Court or High Court or Attorney General etc. which can be held by citizens alone.

Constitutional Provisions in relation to Citizenship

Part II of the Constitution describes the class of persons who would be deemed to be citizens of India at the commencement of Constitution. Article 11 has conferred power on Parliament to make laws to provide for matters concerning Citizenship. Parliament enacted the Indian Citizenship Act 1955.

The following articles provide for Citizenship at the commencement of constitution.

- Citizenship by Domicile- Article 5
- Citizenship of emigrants from Pakistan- Article 6
- Citizenship of migrants to Pakistan- Article 7
- Rights of citizenship of certain persons of Indian origin residing outside India -Article 8

Citizenship at the commencement of the Constitution- Article 5

A person is entitled to citizenship by domicile if he fulfills two conditions:-

- i. He must at the commencement of constitution have his domicile in the territory of India
- ii. Such person must fulfill any of the three conditions laid down in the Article 5.

Domicile in India is considered essential requirement for acquiring the status of Indian Citizenship. Domicile means permanent home, or place where a person resides with the intention of remaining there for an indefinite period. Residence implies a purely physical fact, the fact of just being and living in a particular place.

- Louis De Raedt v. Union of India (1991) 3 SCC 554.

The Supreme Court held that an intention to reside forever in the country where one has taken up his residence is an essential constituent element for existence of domicile in country.

Citizenship of migrants to India from Pakistan –Article 6

Persons who have migrated from Pakistan have been classified into two categories for purpose of citizenship-

1. Those who came in India before July 19, 1948 and
2. Those who came on or after July 19 1948.

19th July 1948, is the date on which the permit system for such migration was introduced.

With respect to the first category of persons i.e. an immigrant before 19th July 1948 has to fulfill the following conditions for citizenship:-

- i. He or either of his parents or any of his grand parents was born in India as defined in Government of India Act 1935, and
- ii. He has been ordinarily residing in India since date of migration.

An immigrant on or after 19th July 1948 has to fulfill the following conditions for citizenship:-

- i. He or either of his parents or any of his grand parents were born India as defined in the Government of India Act 1935,
- ii. He must make application for citizenship,
- iii. He must prove that he has resided in India for six months, and
- iv. He must be registered as a citizen by an officer appointed by Government of India.

Citizenship of migrants to Pakistan -Article 7

A person who has after 1st March 1947, migrated from territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India. The only exception is if a person has returned to India on the basis of a permit for resettlement in India, and if he fulfills all other conditions for immigrants from Pakistan after 19th July, 1948 under Art. 6.

Rights of citizenship of certain persons of Indian origin residing outside India - Article 8

This article confers Indian citizenship on a person who on the face of it had no domicile in India. This article deals with persons who or whose parents or grandparents were born in India, but are residing abroad. Such persons are deemed to be citizens if they have registered as citizens by the diplomatic representative in the country of their residence.

Persons voluntarily acquiring citizenship of a foreign State not to be citizens- Article 9

This article enacts that a person who has voluntarily acquired the citizenship of a foreign state shall not remain a citizen of India. It only deals with voluntary acquisition of a foreign citizenship before the Constitution came into force. Voluntary acquisition of foreign citizenship after the commencement of Constitution will have to be dealt with under Citizenship Act, 1955

INDIAN CITIZENSHIP ACT 1955

Acquisition of Citizenship

1. Citizenship by birth- Section 3
2. Citizenship by descent- Section 4
3. Citizenship by Registration- Section 5
4. Citizenship by naturalisation- Section 6
5. Incorporation of territory-Section 7

1. Citizenship by birth- Section 3

Every person born in India

- a) On or after 26th January, 1950, but before 1st July, 1987,
- b) On or after 1st July, 1987, but before the commencement of the Citizenship Amendment Act 2003, and either of whose parents is a citizen of India at the time of birth,
- c) On or after the commencement of the Citizenship Amendment Act, 2003, where both of his parents are citizens of India, or one of whose parents is a citizen of India and the other is not illegal immigrant at the time of birth, shall be a citizen of India by birth.

2. Citizenship by descent- Section 4

A person born outside India shall be a citizen of India by descent –

- a) On or after 26th January, 1950, but before 10th December 1992 if his father is a citizen of India at the time of his birth, or
- b) On or after 10th day of December, 1992, if either of his parents is a citizen of India at the time of his birth.

- An application for registration can be made to Prescribed authority
- Conditions for applicants-
 - i. A person of Indian origin who is ordinarily resident of India for 7 years before making application,

- ii. Person of Indian origin who is ordinarily resident in any country or place outside undivided India,

3. Citizenship by Registration- Section 5

An application for registration can be made to Prescribed authority Conditions for applicants-

- i. A person of Indian origin who is ordinarily resident of India for 7 years before making application,
- ii. Person of Indian origin who is ordinarily resident in any country or place outside undivided India,
- iii. A person who is married to a citizen of India and is ordinarily resident of India for 7 years prior to application.
- iv. Minor children of persons who are citizens of India.
- v. A person of full age and capacity whose either of his parents, was earlier citizens of independent India and has been residing in India for one year immediately before making application.
- vi. A person who has been registered as an overseas citizen of India for 5 years, and residing in India for two years prior to application

4. Citizenship by Naturalisation- Section 6

- i. He must not be citizen of country where Indian citizens are prevented from becoming citizen by naturalization.
- ii. He has renounced the citizenship of another country.
- iii. Resided in India or has been in government service for 12 months before making application or during 7 years prior to these 12 months, he has resided or has been in the government service for not less than 4 years.
- iv. He must take oath of allegiance
- v. He is of good character
- vi. He has an adequate knowledge of a language recognised by Constitution

- vii. After naturalisation being granted to him, he intends to reside in India or to serve under the Government of India.

5. Citizenship by Incorporation of Territory -Section 7

If any new territory becomes a part of India, the Government of India can specify that the persons of the territory to be citizens of India.

Termination of Citizenship

1. Renunciation of Citizenship- Section 8
2. Termination of Citizenship- Section 9
3. Deprivation of Citizenship- Section 10