

## Quadrant II - Transcript

**Paper Code: CON0413/CON0115**

**Module Name: Citizenship under the Constitution and Citizenship Act**

**Module No: 05**

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Welcome students, I am Assistant Professor. Aamod Shirali from V.M. Salgaocar College of Law, Miramar, Goa and in this module we will be discussing about the citizenship and under the Constitution and under the Indian Citizenship Act 1955. In this module, more particularly, we will be discussing about the meaning of citizenship, the citizenship at the commencement of the Constitution, Articles 5 to 11, and citizenship under the Indian Citizenship Act 1955. At the end of this module, the students will be able to comprehend the meaning of the term citizenship, the provisions of Indian constitution relating to citizenship and understand the significant provisions of the Citizenship Act, 1955.

What is the meaning of citizenship? Before I come to the meaning of citizenship, let us briefly distinguish between citizenship and nationality. Citizenship is a term which is used within the domestic legal system or within the country, whereas nationality is a term which is used within the domain of international law. Now, in a country there are two sets of persons. Citizens and aliens. Citizenship means that a person Who enjoys full membership of the political community of the state and as a consequence he enjoys full civil and political rights and therefore, citizenship assumes a lot of importance. There are some articles in the Constitution, particularly fundamental rights which belongs to citizens alone. Some fundamental rights are available for persons which includes aliens and some fundamental rights are

available only for citizens like Article 15 which prohibits discrimination on various grounds. Article 16. Equal opportunity 18. 19 and 29. These are some of the fundamental rights which only are available to citizens and there are various higher office offices in the Constitution, in various constitutional positions which can be occupied only if you are a citizen of India.

Part 2 of the Constitution describes the class of persons who could be deemed to be citizens at the time of commencement of the Constitution of India. Article 11 gives the power to the Parliament to enact a law relating to matters relating to citizenship. So Parliament has enacted the Indian Citizenship Act 1955. It is important to understand here that the provisions of the Constitution relating to citizenship or pertaining to Citizenship at the commencement of the Constitution. After the commencement of the Constitution or after coming into force of the Constitution, matters relating to citizenship are dealt with by Indian Citizenship Act, 1955.

Now let us discuss Article 5 of the Indian Constitution which speaks about citizenship at the commencement of the Constitution, a person is entitled to citizenship by domicile. If he fulfills 2 conditions. He must, at the commencement of the Constitution, have domicile in the territory of India and he should fulfill the conditions which are given in Article 5.

Article 5 has three conditions for domicile. One is his born in the territory of India, either of whose parents are born in the territory of India. And thirdly he should be domicile in India for five years before the commencement of constitution. Now what is the meaning of 'domicile' and 'residence'? Domicile means that a person makes his residence a permanent home, he is likely to stay in that country indefinitely as well, as residence in this context would be a

physical act of just being or staying in that place temporarily. So domicile includes 2 things, one is residence and second it includes intention to indefinitely stay in that country. So therefore, Article 5 deals with citizenship by domicile in the territory of India. In *Louis De Raedt v. Union of India* (1991) 3 SCC 554., the honourable Supreme Court said that intention to reside in that country for indefinite period or forever is an essential constituent element in the existence of domicile.

Article 6 of the Constitution deals with citizenship of migrants to India from Pakistan. That means people who have migrated to India from Pakistan and this involves These are persons who have migrated from Pakistan can be classified into two categories of persons. Those who have come to India or immigrated to India before July 19th 1948 and those who have immigrated to India after July 19, 1948. Now those who have entered India or immigrants who have come to India after night before 19th July 1948 has to fulfill the two conditions. One is he or either of his parents were or grandparents were born in India. And secondly, he has been ordinarily residing in India since the time of his migration. The persons who have immigrated after 19th of July 1948 have to fulfill the conditions that he, or either of his parents or grandparents were born in India or he's applied for citizenship in India. He has been residing for six months before the date of application and he has been registered as a citizen by a government officer.

Article 7 deals with migration from India to Pakistan. So when a person migrates to India from India to Pakistan after first March 1947, he ceases to be a citizen of India. He is deemed to be not a citizen of India. In other words, The only exception is if that person returns back with a permit for resettlement in India and if he fulfills all the conditions which are required for an immigrant

from Pakistan after 19th of July 1948 as required. Under Article 6, then he shall be a citizen of India.

Article 8 deals with rights of citizens of persons of Indian origin who are domicile. Abroad, that means that a person. Who Wants the citizenship rights. his parents or grandparents were born in India but they are residing abroad. So such persons who are born abroad but are persons of Indian origin can apply for citizenship in the diplomatic representative in the country where they are residing.

Article 9 provides for voluntary Possession of citizenship. If a person voluntarily acquires citizenship of a foreign state, but you have to bear in mind that this article applies only if citizenship is obtained under Article 5 by domicile under Article 6 if a person is migrated from from. To to India from Pakistan and under Article 8 where a person is domicile abroad. So if a person who has obtained citizenship under Article 5-6 or eight if he voluntarily acquires foreign citizenship, then the Indian citizenship lapses. So therefore the point here is that voluntary acquisition of foreign citizenship after the commencement of the Constitution is dealt with by Indian. Citizenship Act 1955, and at the commencement of the Constitution. If a person has obtained foreign citizenship, then it is governed by Article 9.

Now under the Indian Citizenship Act, acquisition of Indian citizenship can be by birth by descent. That is, the nationality of citizenship of parents at birth by registration by naturalisation, and by incorporation of a territory. Now citizenship by birth. Any person who is born in the territory of India on or after 26th January 1950 but before 1st July 1987 is a citizen of India on or he is born in India on or after 1st July 1987 but before the commencement of

Citizenship Amendment Act 2003, and either of his parents are citizens of India at birth or a person is born after the commencement of the Citizenship Amendment Act 2003, where both the parents are citizens of India or either of the parents are citizens of India but. Other parent is not an illegal immigrant.

Now, citizenship by descent means the nationality of the father or the parents at birth, so on or after a person who is born outside India on or after 26 January 1950 but before 10th December 1992. If the father is a citizen of India, then the child can acquire the citizenship of India. If the child is born or a person is born outside India after 10th December 1992, and if either of his parents he's a citizen of India. At the time of birth, then the person can acquire Indian citizenship so citizenship by descent means the citizenship of the parents at birth. Where a person is born outside India.

Citizenship can also be acquired by registration, so an application has to be made and the following conditions have to be fulfilled by the applicant. One is he should be ordinary resident in India for seven years before the date of registration. A person of Indian origin who is ordinarily resident in any country or a place outside India. A person who is married to a citizen of India and is ordinarily resident of India for seven years prior to the application, minor children of parents who are citizens of India. A person whose parents are earlier citizens of independent India and has been residing in India for one year immediately before the making of the application and a person who has been registered as an overseas citizen of India. Overseas Citizen of India means a person of Indian origin living in a specified country as per the Citizenship Act and he has been living for five years and residing in India for two years prior to the application.

Citizenship can be acquired by naturalization also, so naturalization means he must not be a citizen of a country where Indian citizens are prevented from becoming citizens by naturalization. He has renounced the citizenship of another country. Resident in India for and has been working in the government for one year before making the application or during seven years prior to one year before the making of the application has been resident in India or he has been in government service for not less than four years. He must also take an oath of allegiance. He should be of good character. He should have adequate knowledge of any one of the official languages in the Constitution and after naturalization being granted to him, he should intention to reside in India. So these are the conditions which are mentioned in 3rd schedule to the Citizenship Act of 1955 and that should be fulfilled for naturalization. By citizenship can also be acquired by incorporation of a directory. So if the Union of India acquires any territory, foreign territory, the citizens of that or the persons of that territory can become citizens of India.

Citizenship can also be terminated. One way of terminating is renunciation. Renunciation means giving up voluntarily, the citizenship of India. 2nd is termination of citizenship under Section 9, so citizenship can be terminated when one person acquires the citizenship of a foreign country safe, for example a Goan acquires a Portuguese passport. While he already has an Indian passport, that means cessation of Oregon, termination of Indian citizenship. And thirdly, a person can be deprived of his citizenship, particularly when citizenship is obtained by domicile or residence or registration or naturalisation, and in order to that extent can be passed by the Government of India and he he can be deprived of his Indian citizenship.

Here are some of the references.

Thank you very much.