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Review Document
The Citizenship Act, 1956

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THE CITIZENSHIP ACT, 1956

ACT NO. 57 OF 1955

[30th December 1955]

SIGNIFICANCE

The Indian Citizenship Act, 1955 was enacted in the exercise of Article 11 of the Constitution which confers power on the parliament to make laws regarding citizenship.

OBJECTIVE

In India, citizenship is regulated by the Citizenship Act, 1955 (“Act”) ¹which regulates the grounds on which Indian citizenship may be acquired. The Act lays down rules for the acquisition and determination of Indian citizenship.

IMPORTANT PROVISION

As per the provisions of the Act, the citizenship can be acquired in five ways-

1. By birth in India
2. By descent
3. Through registration
4. By naturalization (extended residence in India)
5. By incorporation of the territory into India.

By Birth In India, Section 3:

As per Section 3, the following people are citizens by birth:

1. Born in India after 26 January 1950 but before 1 July 1987
2. Born after 1 July 1987 but before 3 December 2004 and either of his parents is a citizen of India at the time of his birth
3. Born after 3 December 2004 and both of his parents are a citizen of India or one of his parents are a citizen of India and the other is not an illegal migrant at the time of his birth

And the following people are not considered citizens by birth:

¹The Citizenship Act, 1955 (Act No. 57 of 1955), accessed at https://www.indiacode.nic.in/bitstream/123456789/4210/1/Citizenship_Act_1955.pdf

1. if at the time of his birth any of his parents possesses such immunity from suits or legal process as is accorded to invite to an envoy of foreign sovereign power accredited to the President of India and he or she is not a citizen of India
2. any person whose parents is an enemy alien and the birth occurs in a place then and occupation by the enemy.

By Descent, Section 4:

People born outside of India are citizens by descent:

1. If he is born after 26 January 1950 but before 10 December 1992 and his father is a citizen of India at the time of this his birth, provided if the father or either of his parent is born after 10.12.1992 of such person is a citizen by descent, then that person shall not be a citizen of India unless his birth is registered at Indian consulate or his father is in the service of Government of India and either of the parents works under the Government of India. Secondly, if he is born after 10 December 1992, but before December 3, 2004, if either of his/her parents was a citizen of India by birth.

One important condition to be kept in mind is that if the father mentioned in the clause was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless— (a) his birth is registered at an Indian consulate within one year of its occurrence or the commencement of this Act, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or (b) his father is, at the time of his birth, in service under a Government in India

2. If a person is born outside India on or after January 26, 1950, but before December 3, 2004 then he is a citizen of India by descent if his/her father was a citizen of India by birth.
3. If a person is born outside India or after December 3, 2004, then he can acquire citizenship if his/her parents 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.
4. If a person born outside undivided India and was a citizen of India at the commencement of our Constitution shall be deemed to be a citizen of India by descent only.

By Registration, Section 5:

The following people can acquire citizenship by registration,

- A person of Indian origin who has been ordinarily residing in India for seven years before making an application for registration.
- A person of Indian Origin who is an ordinary resident of any country outside the territory of undivided India
- A person who is married to an Indian citizen and is an ordinary resident for seven years before applying for registration
- Minor children of persons who are Indian citizens.
- A person of full age and capacity whose parents are registered as citizens of India under clause (a) of this sub-section or sub-section (1) of section 6;
- A person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and is ordinarily resident in India for twelve months before making an application for registration;
- A person of full age and capacity who has been registered as an Overseas Citizen of India Cardholder for five years, and who is ordinarily resident in India for twelve months before making an application for registration.

By Naturalization, Section 6

A person can acquire citizenship by naturalization if he/she is ordinarily resident of India for 12 years throughout 12 months preceding the date of application and 11 years in the aggregate and fulfils all qualifications in the third schedule of the Citizenship Act.

By Incorporation of territory, Section 7

If any territory becomes a part of India, then the persons in connection with that territory will become citizens of India.

As per the provisions of the Act, citizenship can be terminated in three ways-

1. Renunciation
2. Termination
3. Deprivation

Renunciation, Section 8

If a person of full age and capacity makes a declaration of renunciation of Indian citizenship, then that person loses its Indian citizenship. In addition, any minor child of that person also loses Indian citizenship from the date of renunciation but has a right to restore his citizenship after attaining the age of 18.

Termination, Section 9

Section 9(1) provides that any citizen of India who by naturalization or registration acquires the citizenship of another country shall automatically lose their claim to Indian citizenship if at any time after birth they acquire a citizenship of another. This is because the Constitution of India provides for single citizenship.

Deprivation, Section 10

The Government of India may terminate the citizenship of an Indian citizen if;

1. Citizen has disrespected the Constitution
2. Has obtained citizenship by fraud
3. The citizen has unlawfully traded or communicated with the enemy during war.
4. Within 5 years of registration or naturalization, a citizen has been sentenced to 2 years of imprisonment in any country.
5. Citizen has been living outside India for 7 years continuously.

AMENDMENT

Since the commencement of this Act in 1955, it has been amended five times in the year 1986, 2003, 2005, 2015 and 2019.

The Citizenship (Amendment) Act, 1986:²

⇒At the time of birth either one of the parents has to be an Indian citizen for the person to become a citizen of India.

² The Citizenship (Amendment) Act, 1986 (Act No. 6 of 1986), accessed at [http://www.parliament.gov.sb/files/legislation/Acts/1986/THE%20CITIZENSHIP%20\(AMENDMENT\)%20ACT%201986.pdf](http://www.parliament.gov.sb/files/legislation/Acts/1986/THE%20CITIZENSHIP%20(AMENDMENT)%20ACT%201986.pdf)

- ⇒The threshold of qualifying periods of stay within India for grant of citizenship by registration, marriage, or naturalization has been raised.
- ⇒It also changed the definition of 'Indian origin' by excluding from its purview those people whose grandparents, but not parents, were born in India.
- ⇒After the 1971 India-Bangladesh war, Assam witnessed large scale illegal migration from Bangladesh. To deport the illegal migrants, National Register of Citizens ("NRC") was demanded which led to the creation of *Assam Accord of 1985*, signed by the Rajiv Gandhi led Government which set March 25, 1971 as the cut-off date for deportation of illegal migrants. This was given force by amending the Citizenship Act and introducing Section 6A in the Act.
- Section 6A: This Section is applicable in the State of Assam, and lays down that that all persons of Indian origin who entered Assam before January 1, 1966, and have been ordinary residents will be deemed Indian citizens and the ones who came later than that but before March 25, 1971, and have been ordinary residents, will get citizenship at the expiry of 10 years from their detection as a foreigner.

The Citizenship (Amendment) Act, 2003³

- ⇒To curb the problem of infiltration from Bangladesh, the Act was again amended in the year 2003 which required that the parents of the people born on or after December, 2004, should also be Indian citizens or one parent must be an Indian citizen and other should not be an illegal migrant.
- ⇒Mandate of NRC is provided in section 14A of Citizenship Act, 1955 which was inserted by way of Amendment Act, 2003

The Citizenship (Amendment) Act, 2005

- ⇒ The concepts of Person of Indian Origin (PIO) and Overseas Citizen of India (OCI) was introduced to grant them certain limited citizenship rights.

³The Citizenship (Amendment) Act, 2003 (Act no. 6 of 2004), accessed at http://egazette.nic.in/WriteReadData/2004/E_7_2011_119.pdf

- ⇒ Whereas, PIO cardholders were exempted from reporting to the police during their period of stay in India. They were also entitled to visa-free entry into India during the validity of the card i.e. 15 years, provided they carried valid national passports.
- ⇒ An overseas citizen of India includes a person of Indian origin being a citizen of a specified country and should be a citizen of India immediately becoming a citizen of other country and registered as OCI by the central government.
- ⇒ A PIO is a person of India origin whose parents or grandparents are citizens of India, but he is not a citizen of India but of other countries.

The Citizenship (Amendment) Act, 2015⁴

- ⇒ Introduces the concept of an Overseas Citizen of India Cardholder (“OCC”) that essentially replaces and merges together OCIs and PIOs.
- ⇒ Clause 7A-7D has been inserted to give effect to an OCC.
- ⇒ The amendment provides for additional grounds for registering for an Overseas Citizen of India card under Section 7A. These are: citizens of another country, children and spouses.
- ⇒ Citizens of Pakistan or Bangladesh (and other countries that may be notified by the Central Government) are not permitted to register as OCCs and the restrictions applying to those nationals have been extended to cover such person's parents, grandparents or great grandparents under the Amendment Act.
- ⇒ Renunciation and cancellation of overseas citizenship: The Act provides that where a person renounces their overseas citizenship; their minor child shall also cease to be an Overseas Citizen of India. But the amendment extends this provision to cover spouses of Overseas Citizen of India cardholders and also allows the central government to cancel the Overseas Citizenship of India card where it is obtained by the spouse of an Indian citizen or Overseas Citizen of India cardholder, if: (i) the marriage is dissolved by a court, or (ii) the spouse enters into another marriage even while the first marriage has not been dissolved.
- ⇒ Under the Amendment Act, the condition of a continuous stay in India for twelve months for eligibility towards Indian citizenship has also been relaxed to permit foreign travel for up to 30 (thirty) days in aggregate. This relaxation is available only

⁴The Citizenship (Amendment) Act, 2015, (Act no.1 of 2015), accessed at <https://indiancitizenshiponline.nic.in/UserGuide/E-gazette.pdf>

when the Central Government is satisfied that special circumstances exist, and such circumstances shall be recorded in writing

The Citizenship (Amendment) Act, 2019⁵

⇒The provisions of the amendment act proposes to permit members of six communities, namely, — Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Pakistan, Bangladesh and Afghanistan to avoid religious persecution in the mentioned countries to continue to live in India if they entered India before December 14, 201 and reduces the requirement for citizenship from 11 years to 6years.

LOOPHOLES

The amendment of 2003 gave a narrow scope to the Act and lays down that an illegalmigrant cannot claim citizenship by naturalization or registration even if he has been a resident of India for seven years.

Also, the latest amendment to the Citizenship Act in the year 2019 has been criticized by many to be violative of the basic structure of the Constitution. Giving concession of six years of residence, based only on religion is against the tenets of secularism. The amendment Act very conveniently excludes Muslims within its ambit. The amendment Act is also violative of Article 14 of the Constitution which makes illegal immigrants from neighboring countries citizen of India but excludes Muslims from these neighboring countries which discriminates against Muslims.

CONCLUSION

While exercising Article 11 of the Constitution, which confers power on the parliament to make laws regarding citizenship, the Citizenship Act, 1955 was enacted. The Act lays down ways in which citizenship can be acquired and terminated. The Act has been amended a couple of times, but it can well inferred from the amendment acts that it has always paved a new way to reduce the scope of acquiring citizenship. The latest one was arbitrary to the extent that it violated the basic structure doctrine of the Constitution, which is considered the supreme law of the land. It has shaken the very pillar of the Constitution, i.e. Article 14, which rests on the basic principles of human rights. Granting citizenship on the basis of religion is the most

⁵The Citizenship (Amendment) Act, 2019 (Act No. 47 of 2019), accessed at <http://egazette.nic.in/WriteReadData/2019/214646.pdf>

barbaric crime a government can do to is people and to its Constitution which took efforts of great scholars and philosophers to draft it in a way as to provide basic human right protection to every person without any discrimination.



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About the Author



Ria Garg is a final year law student at Alliance University, Bangalore, pursuing BBA LL.B with honors in Finance and International Law. Her interest in law peaked at a very young age. Always been eager to learn new tasks, she has interned at a few law firms and with different practicing Advocates in the Bombay High Court where she was mainly engaged in legal research and drafting. She has developed reasonable skills in this position and aspires to develop her research experience and enhance knowledge. She believes that life is a learning journey and is always looking for more opportunities to take in.