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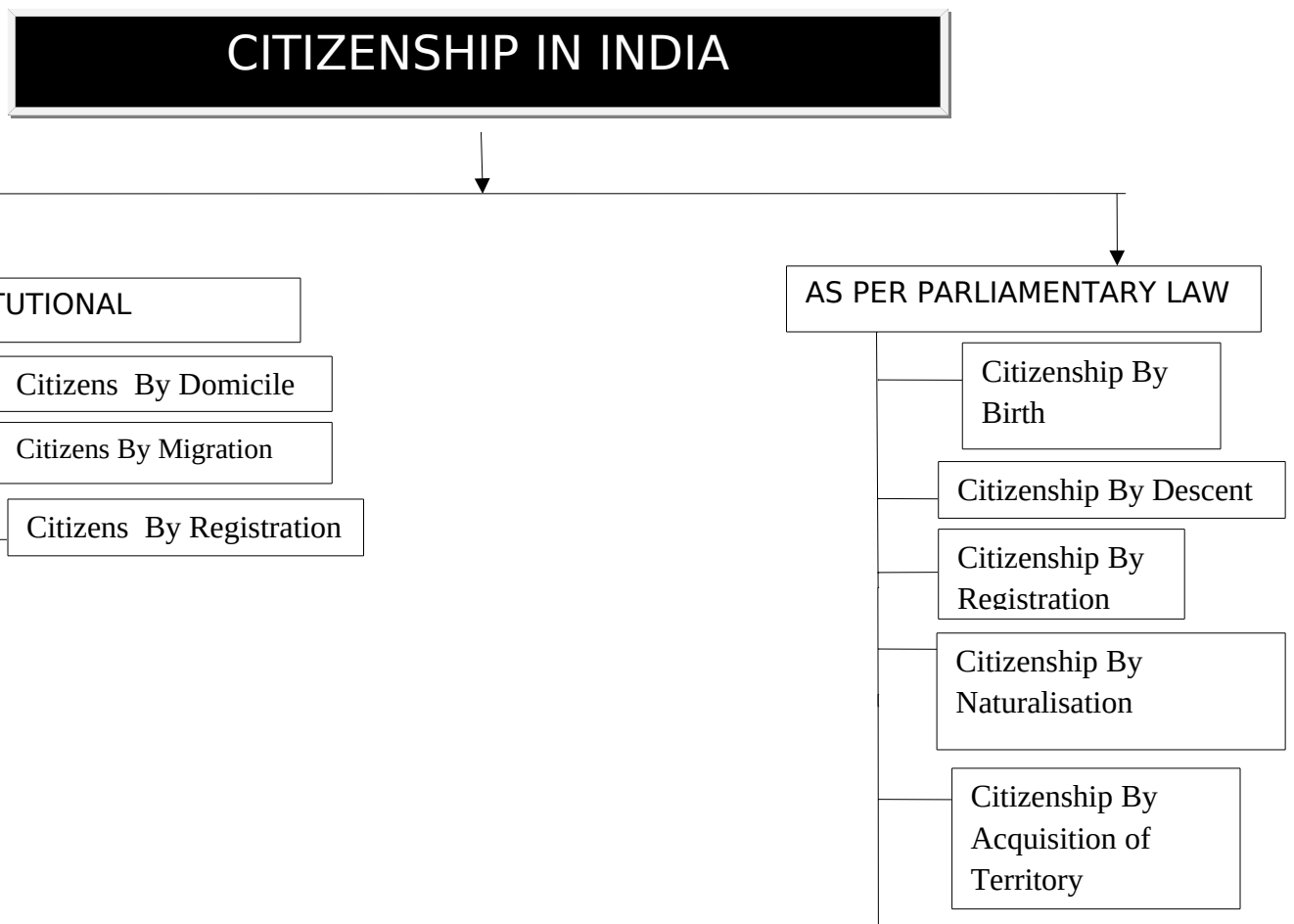
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# CITIZENSHIP

All persons living in a state are not its citizens. Only those among them who are recognized as its members are its citizens. In a democratic state, this recognition implies the enjoyment of certain rights and performance of duties on the part of the citizens. Thus in a democratic political system, citizens alone enjoy rights granted by the state. Further they are entitled to participate in the political process. India is no exception to that. In the Indian system, there is no dual citizenship. It recognizes only single citizenship for the whole country including all the constituent states.

In India, both the Constitution and parliamentary law have provided for necessary rules on citizenship.



## Citizenship as per constitutional provisions

Articles 5-11 in Part II of the Indian Constitution embody constitutional rules on Citizenship. These articles, however, only lay down who will be treated as an Indian Citizen at the time of commencement of the Constitution and do not provide a detailed account of rules regarding

citizenship. It was left for the Parliament to legislate on citizenship in a detailed manner in the future. Those who will be regarded as Indian citizens at the commencement of the Constitution have been brought under three categories.

- **Citizenship By Domicile:** Article 5 lays down that any person who at the commencement of the Constitution has his domicile in the Indian territory and
  - a) Who was born in the Indian territory; or
  - b) Either of whose parents was born in the Indian territory; or
  - c) Who has ordinarily resided in the Indian territory for at least five years immediately preceding the commencement of the Constitution shall be regarded as an Indian Citizen
- **Citizenship By Migration:** After independence of India, a huge number of people migrated from Pakistan to India. The territory from which they migrated was no longer a part of India. Naturally Article 5 of the Constitution was not applicable to them. Hence, **Article 6** of the Constitution made special arrangements for them. According to Article 6, those who have migrated from Pakistan to India shall be regarded as Indian citizens at the commencement of the Constitution, if -
  - a) They or either of their parents or any of their grandparents have been born in India prior to independence; and
  - b) They have migrated to India prior to July 1948 and since then have been ordinarily resident in the Indian territory; or
  - c) They have migrated to India on or after July 19, 1948 and have been registered as citizens of India. However, to be so registered, they have to make an application to the competent authority before the commencement of the Constitution and must have been resident in the Indian territory for at least six months immediately preceding the date of such application
- **Citizenship By Registration:** According to **Article 8** of the Constitution, if any person is ordinarily resident in a foreign country, but was born in India or either of his parents or any of his grandparents was born in India before independence, then he may register himself as a citizen of India in the office of the diplomatic or consular representative of India, functioning in the country where he is ordinarily resident.

Besides these three articles, there are some other articles in Part II of the Constitution which lay down rules on acquisition and termination of citizenship. These are as follows -

- According to **Article 7** of the Constitution,
  - a) If a person migrated from the territory of India to the territory included in Pakistan, after March 1, 1947, he shall not be regarded as a citizen of India.
  - b) However, if such a person, having migrated to Pakistan, returns to India under a permit for resettlement or permanent return, issued by or under the authority of any law, it will be presumed that he had migrated to India after July 19, 1948. However, in this case, he has to register himself as a citizen of India in the same way in which a person migrating to India from Pakistan after July 19, 1948 gets registered as an Indian citizen.
- According to **Article 9**, if a person voluntarily acquires the citizenship of any foreign state, he cannot claim to be a citizen of India by virtue of Articles 5, 6 and 8 of the Constitution.

- According to **Article 10**, every person who is a citizen of India, or is deemed to be a citizen of India under any provision of Part II of the Constitution, will continue to be a citizen of India, subject to the provisions of any law made by the Parliament.
- According to **Article 11**, Parliament alone is empowered to make any provision by law with regard to the acquisition and termination of citizenship and any other matter relating to citizenship. None of the provisions of Part II can hinder in any way, this power of the Parliament.

## **Citizenship as per Parliamentary law**

To lay down detailed rules on Indian citizenship as applicable after the commencement of the Constitution, Parliament, in accordance with the directives given in Article 11, enacted the Citizenship Act 1955 (which was later amended several times). According to the Citizenship Act, Indian citizenship may be acquired in five ways:

- **Citizenship By Birth:** According to Section 3 of the Citizenship Act, if any person is born in India on or after January 26, 1950, but before the day on which the Citizenship (Amendment) Act 1986 had come into effect and if any person is born in India on or after the commencement of the Citizenship (Amendment) Act 1986 and either of his parents was a citizen of India at the time of his birth, then he will be a citizen of India by birth.
- **Citizenship By Descent:** According to Section 4 of the Citizenship Act,
  - a) If a person is born outside India on or after January 26, 1950, but before the Citizenship (Amendment) Act 1992 had been effective and if at the time of his birth his father is an Indian citizen, then he will be recognized as a citizen of India by descent.
  - b) Again, if a person is born outside India on the day or after the Citizenship (Amendment) Act 1992, had been effective and if either of his parents is a citizen of India at the time of his birth, he shall be a citizen of India by descent.
  - c) If a person is born outside India on or after the commencement of the Citizenship (Amendment) Act 1992 and either of his parents is a citizen of India by descent, then he will not be a citizen of India unless his birth is registered at an Indian Consulate or either of his parents at the time of his birth, is in service under the Indian Government.
- **Citizenship By Registration:** Section 5 of the Citizenship Act provides for Indian citizenship by registration. The following categories of persons, after taking an oath of allegiance to the Indian state, may be registered as citizens of India:
  - a) Persons of Indian origin, ordinarily resident in India and residing in the territory of India for six months immediately prior to his application for registration
  - b) Persons of Indian origin, ordinarily resident outside undivided India
  - c) Women who are related to Indian citizens by virtue of marriage
  - d) Minor children of Indian citizens
  - e) Adult persons of full capacity, who are recognized as citizens of a commonwealth country
- **Citizenship By Naturalisation:** **Section 6** of the Citizenship Act, speaks of citizenship by naturalisation. According to this section, the Government of India may grant citizenship by naturalisation to a person of full age and capacity who is a citizen

of a country outside the Commonwealth, provided the latter satisfies the following conditions:

- a) He is not a subject or citizen of a country where Indian citizens are barred from acquiring citizenship by naturalisation.
- b) He gives up his citizenship of the other country.
- c) Immediately prior to the date of his application for citizenship, he has resided in India for twelve months and/or has been in Government service for this period.
- d) Prior to these 12 months, he has resided in India for seven years and/or has been in government service for at least four years.
- e) He must be of good character.
- f) He must have adequate knowledge of a language recognized by the eighth Schedule of the Constitution.
- g) After naturalisation, he must have the intention to reside in India or be in service in any international organisation of government or in any society or company in India.

However, if the Government of India is satisfied that the applicant has made important contributions in science, philosophy, art, literature, world peace or human progress, it may waive the above mentioned conditions for naturalisation in his/her case.

- **Citizenship By incorporation of Territory:** According to **Section 7** of the Citizenship Act, if any territory is included in the territory of India, the Government of India may declare by notification, that persons residing in the territory thus incorporated shall be citizens of India.

## **Recent development: Citizenship (amendment) act, 2019**

This Act was passed by the Parliament of India on 11 December 2019. It amended the Citizenship Act of 1955 by providing a path to Indian citizenship for illegal migrants of Hindu, Sikh, Buddhist, Jain, Parsi and Christian religious minorities who had fled persecution from Pakistan, Bangladesh and Afghanistan. Under the 2019 Amendment Act, migrants who had entered India by 31 December 2014 and had suffered "religious persecution or fear of religious persecution" in their country of origin were made eligible for Indian citizenship. This Act was highly criticised for overtly using religion as a criterion for citizenship under Indian law.

### **Some Other Important Issues:**

- **Avoidance Of Dual Citizenship:** The Citizenship Act has taken care to avoid dual citizenship. According to **Section 8** of the Citizenship Act, if an Indian citizen of full age and capacity is also a citizen or national of another country, then by making a declaration to that effect, he has to renounce his Indian citizenship after having this declaration registered. Whenever a male person renounces his Indian citizenship, his minor children will not be recognised as Indian citizens. However, when these children become adults, they may become Indian citizens after making appropriate declaration

- **Termination Of Citizenship:** Section 9 of the Citizenship Act lays down the rules on loss of Indian citizenship. According to this section, if an Indian citizen voluntarily acquires the citizenship of any other country by naturalisation, registration or any other valid process, he will cease to be a citizen of India. In case of any question arising as to whether, when or how an Indian citizen has acquired the citizenship of any other country, then as per Rule 30 of the Citizenship Rules, the Central Government will resolve the question by exercising quasi-judicial powers. Generally, voluntarily obtaining a passport if any foreign country will be treated as conclusive evidence that an Indian citizen has acquired the citizenship of the country issuing the passport.
- **Deprivation Of Citizenship:** Section 10 of the Citizenship Act deals with the , deprivation of citizenship. The Central Government may by order, deprive those of citizenship who have acquired Indian citizenship by naturalisation, marriage, registration, domicile or residence if it is satisfied that -
  - a) The person has acquired this registration or naturalisation by fraud or false representation or concealment of any material fact
  - b) By his act or speech, he has expressed disloyalty to the Indian Constitution
  - c) When India is at war with a country, he unlawfully continues trade or communication with the enemy country.
  - d) Within five years since his registration or naturalisation, he has been sentenced to imprisonment for at least two years
  - e) He has ordinarily resided outside India continuously for seven years
- **Expulsion Of A Foreigner:** As per the judgment given by the Supreme Court in David John Hopkins vs Union Of India, 1997, the Government enjoys unrestricted power to expel a foreigner without giving any reason. Further, a foreigner cannot claim any right to reside and settle in India as given to Indian citizens by Article 19(1) (e) of the Constitution.

In this connection, it may be noted that in India, any citizen of a Commonwealth country enjoys the status of a Commonwealth citizen. The Central Government may, by a notification in the official Gazette, confer on a Commonwealth citizen, all or any of the rights enjoyed by an Indian citizen. This, however, must be made on the basis of reciprocity.