



THE INDIAN CITIZENSHIP ACT, 1955: AN OVERVIEW

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ABSTRACT

The historical partition of the Indian subcontinent and the subsequent social, legal, and political transformations have been mirrored in the country's citizenship issue. Even though the Indian Constitution was drafted with individualist, liberal, and universal ideas at its core, competing nationalist ideologies that surfaced following the division gave rise to different forms of ethnic particularism in public discourse. Citizenship is the legal status of an individual as a valid citizen of a state or a member of a nation. Articles 5 through 11 of the Indian Constitution address the idea of citizenship. One must be a citizen of the state in which they are able to exercise their civil and political rights in order to fully enjoy such rights.

The Citizenship Act of 1955 contains procedures for gaining and relinquishing citizenship, which are explained in detail and clarified in this article. The following article will discuss citizenship-related constitutional clauses and recent modifications, mostly from the year 2019.

The protests lasting 101 days lay the highlights of the conduct of legislation and decision-making of the government towards the minorities of the country, showcasing the discriminatory image in some citizens' minds and a matter of pride in others. This overview of the Citizenship Act clarifies the meaning of citizenship and illuminates numerous ideas associated with it.

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AN OVERVIEW

Individuals born in India from January 26, 1950, to July 1, 1987, were automatically conferred citizenship by birth, irrespective of their parents' nationality, provided that at least one parent was a citizen. Subsequently, everyone born between July 1, 1987, and December 3, 2004, was also granted citizenship by birth. After this period, the criteria for acquiring Indian citizenship by birth changed, requiring that both parents be citizens or that one parent be a citizen while the other was not considered an illegal immigrant.

“**Articles 5 to 11 under Part II** of the Constitution deal with citizenship:

- **Article 5** - Citizenship at the commencement of the Constitution.
- **Article 6** - Rights of citizenship of certain persons who have migrated to India from Pakistan.
- **Article 7** - Rights of citizenship of certain migrants to Pakistan.
- **Article 8** - Rights of citizenship of certain persons of Indian origin residing outside India.
- **Article 10** - Continuance of the rights of citizenship.
- **Article 11** - Parliament to regulate the right of citizenship by law.”

Other Constitutional Provisions concerning Citizenship:

- If a person voluntarily acquires citizenship of another country, they are not considered to be an Indian citizen.
- Every individual who is or is regarded to be an Indian citizen must continue to be one, despite any laws passed by Parliament.
- The power to regulate the granting and revocation of citizenship, as well as all other aspects of citizenship, rests with the parliament.

WHY IS INDIAN CITIZENSHIP IMPORTANT?

- It denotes that a person is a resident of one or more states.
- Elections are only open to citizens.
- Election contestants must be citizens.
- Any constitutional office in the nation, such as that of the President, Vice-President, Governor, Minister, Judge, etc., may only be held by citizens.
- Government programs intended for Indian citizens are only open to citizens, who can profit from them.
- To acquire the rights, and exercise the facilities by the constitution and the government meant specifically for the citizens.

- Certain fundamental rights are only available to citizens:

FUNDAMENTAL RIGHTS	
Citizens & Foreigners	Citizens
Article 14: "Equality before Law".	Article 15: 'Prohibition of Discrimination'.
Article 20: Protection in respect of conviction for offenses.	Article 16: Equality of Opportunity in Public Employment.
Article 21: Protection of life and personal liberty.	Article 19: Protection of 6 Rights ²
Article 21-A: Right to Education	Article 29: Protection of Interests of Minorities.
Article 22: Protection against Arrest and Detention	Article 30: The Right of Minorities to Establish and Administer Educational Institutions

CONSTITUTIONAL PROVISIONS DEALING WITH CITIZENSHIP

- **Article 5** - A person born in Indian Territory will be an Indian citizen, according to the first of three clauses on citizenship that were present at the time the Constitution was ratified. The second clause states that anyone whose parents were born in India will likewise be an Indian citizen, and the third clause states that anyone who had lived in India continuously for five years before the inception of the Indian Constitution shall be an Indian citizen.
- **Article 6** - Citizenship rights of some people who immigrated to India from Pakistan. The second clause of the article is separated into two subsections, and the second clause is further divided into two different clauses.
 - Any person who has emigrated from Pakistan to India is granted citizenship under the first clause if any of his parents or grandparents were Indian nationals under the Government of India Act, 1935.

² "Protection of 6 Rights:

- Right to freedom of speech and expression.
- Right to assemble peaceably and without arms.
- Right to form associations or unions or co-operative societies.
- Right to move freely throughout the territory of India.
- Right to reside and settle in any part of the territory of India.
- Right to practice any profession or to carry on any occupation, trade or business."

- The second clause discusses how to record a person's citizenship in a registered document if they immigrated before or after July 19, 1948.
- **Article 7** - Provided as long as the emigrant didn't return to India with a visa for resettlement, someone who relocated from India to Pakistan is no longer regarded as an Indian citizen.
- **Article 8** - The section that addresses the citizenship of people of Indian descent who reside outside of India but whose parents or grandparents were born there and who have registered as Indian citizens with an Indian consular or diplomatic agent.
- **Article 9** - Allows for the automatic suspension of an Indian citizen who willingly applies for citizenship in any other nation.
- **Article 10** - Ensures that everyone who satisfies part II's definition of a citizen will remain so unless the definition is changed by the legislature and they are removed from it.
- **Article 11** - Without restriction from the constitution, gives the government the authority to decide who will and won't be a citizen.

These articles define citizenship at the outset of the constitution; following this, the parliament passed the Citizenship Act of 1955, which defines how citizenship in India is acquired and terminated.

WAYS OF ACQUIRING INDIAN CITIZENSHIP

1. By Birth

- A person is considered to be an Indian citizen if they are born on Indian soil.
- A person who was born on or after January 26, 1950, but before July 1, 1987, regardless of their parent's nationality. It is known as *jus soli* (right of soil).
- A person who was born before 3 December 2004, but on or after 1 July 1987. At the moment of birth, either parent of the child should be an Indian citizen. It's known as *jus sanguinis* (right of blood or descent).
- Regardless of where the child was born, citizenship is awarded to a person based on the nationality of either of their parents, whether they are Indian or not.
- Someone who was born on or after December 3, 2004. At the moment of birth, the child's parents must both be citizens of India.
- A person cannot become an Indian citizen if either of his parents is an enemy alien, foreign diplomat, or illegal immigrant³.

³ "An illegal immigrant is defined in the Citizenship Amendment Act, 2016, as any person who enters the territory of India without a valid passport, fake passport, or stays beyond a Visa permit."

2. By Descent

- A person shall be regarded as an Indian citizen if they were born outside of India on or before 26 January 1950 but before 10 December 1992. But only on the condition that at the time of his birth, his father must be an Indian citizen.
- Any parent (mother or father) of a child born on or after December 10, 1992, but before December 3, 2004, must be an Indian citizen.
- Following the Citizenship Amendment Act of 2003, the government issued a decree saying that a kid should not be considered Indian by his ancestry alone. Within one year after birth, registration was required by law. The government may prolong it for whatever length is necessary.

3. By Registration

- If the applicant is of Indian descent and was typically a resident of India for seven years before submitting their registration application.
- If the applicant has lived regularly in India for seven years before submitting the registration application and is married to an Indian citizen.
- If the individual is a minor and their parents are Indian citizens.
- A person who has lived in India for a year before applying for registration and whose parents were earlier Indian nationals following the country's independence.
- If a person has lived abroad for a year before applying for registration and is registered as an overseas citizen of India.

4. By Acquisition or Incorporation of the Territory

- If any territory or state joins India, the national government must publish an official gazette announcing its inclusion in the Union of India.
- Goa, Sikkim, Pondicherry, Daman, and Diu are just a few of the regions that joined India, giving their residents Indian citizenship.

5. By Naturalization

- By applying to the central government, one can become a citizen.
- An individual must meet the requirements of the 3rd schedule of this act to be granted citizenship.

- The applicant for a “citizenship certificate” must be of high moral character, be fluent in one of the languages listed in the eighth schedule of the Constitution of India, be a resident of India legally, and have given up any prior citizenship.
- The applicant must have spent 11 of the preceding 14 years of their life in India, in addition to the year just before submitting their application⁴.
- The government may waive the requirements listed in the third schedule of this act if the individual has significantly advanced science, the arts, literature, or human advancement.

Ways by which one can lose Indian Citizenship

1. By Renunciation

One may willingly give up their Indian citizenship.

2. By Termination

When someone gains citizenship in another nation, their Indian citizenship expires.

3. By Deprivation

If an individual has been naturalized after five years, has served two years in prison, is disloyal to the Constitution, has falsely earned citizenship, or has lived outside for seven years.

CITIZENSHIP (AMENDMENT) ACT, 2019

Early on December 10, 2019, the Lok Sabha, the lower house of the Indian parliament, adopted the Citizenship (Amendment) Act (CAA). Within two days, the measure received approval from the Rajya Sabha, the upper house of the Indian parliament. Ram Nath Kovind then quickly signed the bill into law. Under the CAA, non-Muslim immigrants from Bangladesh, Pakistan, and Afghanistan—all of which have a majority of Muslims—can apply for and obtain Indian citizenship more quickly. In the 2014 and 2019 legislative elections, the ruling Bharatiya Janata Party (BJP) made this commitment. The law essentially confers "refugee status" within India to members of specific non-Muslim groups in different countries, while only designating Muslims as "illegal migrants."

⁴ After the Citizenship Amendment Act 2019, the number of years from eleven has been decreased to five years and one year immediately before making the application. This makes a total of 6 years.

CAA – NRC RELATIONSHIP

The 2003 Citizenship Act revision required the creation and upkeep of the National Register of Citizens, a database of all legitimate citizens. Although the BJP vowed to implement it for all of India in its 2019 election program, as of January 2020, only the state of Assam had done so. To identify those who are left out as illegal immigrants, the NRC records all of the lawful citizens (often called "foreigners"). The Assam NRC experience demonstrates that many individuals were labeled "foreigners" because their documentation was deemed insufficient.

In this regard, there are worries that the current Citizenship Act modification gives non-Muslims a "shield" by allowing them to claim that they were migrants who fled persecution in Afghanistan, Pakistan, or Bangladesh, but denying Muslims the same protection. Such a claim could only be valid for border state residents who share some racial characteristics with those of Afghanistan, Pakistan, or Bangladesh, but not with residents of interior states. Muslim leaders have understood the CAA-NRC package in precisely these terms, namely that all non-Muslims would be excluded while only the Muslims in the nation would be targeted (by deeming papers as inadequate).

CAA PROTESTS

Opposition parties expressed worry that the move will be used to disenfranchise a significant segment of India's Muslim population and condemned it as a violation of India's secular ideals. Amit Shah who is the Union Home Minister, and the bill's author, claimed that the CAA is only meant to protect those who have been persecuted for their religious beliefs in neighboring states and has nothing to do with religious minorities in India. Nonetheless, the CAA does not necessitate the individuals from the specified non-Muslim religious communities provide proof of persecution, and it does not encompass minority Muslim groups like Shi'a and Ahmadi Muslims who have endured severe persecution in Afghanistan and Pakistan based on their religious beliefs.

The passing of the law generated widespread protests across the nation, which led to a brutal and lethal response by the police. Numerous political parties, NGOs, and religious organizations also filed petitions with the Supreme Court contesting the validity of the CAA, claiming that it specifically contravenes Section fourteen (equality before the law) of the Constitution of India. Several chief ministers, including those in Kerala, Punjab, and West Bengal, said that their states would not enforce the law, and the Kerala government also filed a Supreme Court petition to have the statute struck down.

PROVISIONS OF THE CITIZENSHIP (AMENDMENT) ACT, 2019

- Any Hindu, Sikh, Buddhist, Jain, Parsi, or Christian migrant from Afghanistan, Bangladesh, or Pakistan who arrived in India on or before December 31, 2014, will not be treated as an "illegal migrant" under the Citizenship Act of 1955 (CAA), allowing the migrant to obtain Indian citizenship. The Citizenship Act of 1955 bars individuals who have entered India without proper travel documents or have entered with valid documentation but exceeded the authorized stay duration.
- The CAA provides previously stated immigrants with immunity for Afghanistan, Bangladesh, and Pakistan from any legal actions brought by them because of their state of immigration.
- The CAA lowers the required period of residency in India from "not less than eleven years" to "not less than five years" for immigrants who are members of the Hindu, Sikh, Buddhist, Jain, Parsi, or Christian communities of Afghanistan, Bangladesh, or Pakistan.
- NRC AND CAA don't directly interact, but they do feed off of one another. According to Assam's citizenship rules, Hindus who were not included in the NRC will automatically become citizens, leaving Muslims without a legal avenue to pursue.
- A clause in the CAA allows the government to revoke someone's Overseas Citizens of India (OCI)⁵ cards, which are an immigration status that allows foreigners of Indian descent to live and work in India without limitation, if they break any laws, whether they are serious infractions or not.

THE CONCLUSION

The idea of citizenship and the idea of democracy are intertwined. In countries that are not democratic, there are subjects but no citizens. Citizenship is the active involvement of the populace in the political process and decision-making. Citizenship legislation of 1955 goes into great depth regarding several ways one might become an Indian citizen. It also discusses many instruments available to the government of the country to regulate its population. This Act is fundamental to the national spirit. Without it, the whole foundation of who we are could crumble. The Act is also responsible for giving us the natural feeling of who we are as Indians and as citizens of a nation.

⁵ "Overseas Citizenship of India (OCI) is a form of permanent residency available to people of Indian origin and their spouses, which allows them to live and work in India indefinitely."

After the Citizenship (Amendment) Act, 2019, since the Hon'ble Supreme Court is the guardian of the Constitution, it is now up to it to interpret the Act's provisions and determine whether or not its "classification" of things under Article 14 is "reasonable."

India owes it to its neighbors who are being persecuted to defend them. However, the procedures must adhere to the Constitution's spirit.

To persuade the people of the Northeast that their linguistic, cultural, and social identities would be preserved, greater positive engagement with them is also necessary.

This Act is one of the most integral parts of the country and would have had fewer consequences than the ones that occurred due to its latest amendment if the above points would have been taken into consideration.