

Indian Polity Notes Part 5 in English

5] Citizenship

- India has two kinds of people—citizens and aliens. Citizens are full members of the Indian State and owe allegiance to it. They enjoy all civil and political rights.
- Aliens, on the other hand, are the citizens of some other state and hence, do not enjoy all the civil and political rights.
- They are of two categories—friendly aliens or enemy aliens.
- Friendly aliens are the subjects of those countries that have cordial relations with India.
- Enemy aliens, on the other hand, are the subjects of that country that is at war with India.
- They enjoy lesser rights than the friendly aliens, eg, they do not enjoy protection against arrest and detention (Article 22).

The Constitution confers the following rights and privileges on the citizens of India (and denies the same to aliens):

- Right against discrimination on grounds of religion, race, caste, sex or place of birth (**Article 15**).
- Right to equality of opportunity in the matter of public employment (**Article 16**).
- Right to freedom of speech and expression, assembly, association, movement, residence and profession (**Article 19**).
- Cultural and educational rights (**Articles 29 and 30**).
- Right to vote in elections to the Lok Sabha and state legislative assembly.
- Right to contest for the membership of the Parliament and the state legislature.
- Eligibility to hold certain public offices, that is, President of India, Vice- President of India, judges of the Supreme Court and the high courts, governor of states, attorney general of India and advocate general of states.
- Along with the above rights, the citizens also owe certain duties towards the Indian State, as for example, paying taxes, respecting the national flag and national anthem, defending the country and so on.
- In India both citizens by birth as well as a naturalised citizen are eligible for the office of President while in USA, only a citizen by birth and not a naturalized citizen is eligible for the office of President.

The Constitution deals with the citizenship from Articles 5 to 11 under Part ii

Article 5:

- A person who had his domicile in India and also fulfilled any one of the three conditions, viz., if he was born in India or if either of his parents was born in India; or if he has been

ordinarily resident in India for five years immediately before the commencement of the Constitution, became a citizen of India.

Article 6:

- A person who migrated to India from Pakistan became an Indian citizen if he or either of his parents or any of his grandparents was born in undivided India and also fulfilled any one of the two conditions viz., in case he migrated to India before July 19, 1948.
- He had been ordinarily resident in India since the date of his migration; or in case he migrated to India on or after July 19, 1948, he had been registered as a citizen of India.
- But, a person could be so registered only if he had been resident in India for six months preceding the date of his application for registration.

Article 7:

- A person who migrated to Pakistan from India after March 1, 1947, but later returned to India for resettlement could become an Indian citizen.
- For this, he had to be resident in India for six months preceding the date of his application for registration.

Article 8:

- A person who, or any of whose parents or grandparents, was born in undivided India but who is ordinarily residing outside India shall become an Indian citizen if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country of his residence, whether before or after the commencement of the Constitution.
- Thus, this provision covers the overseas Indians who may want to acquire Indian citizenship.
- To sum up, these provisions deal with the citizenship of
 - persons domiciled in India
 - persons migrated from Pakistan
 - persons migrated to Pakistan but later returned; and (d) persons of Indian origin residing outside India.

The other constitutional provisions with respect to the citizenship are as follows:

Article 9:

- No person shall be a citizen of India or be deemed to be a citizen of India, if he has voluntarily acquired the citizenship of any foreign state .

Article 10:

- Every person who is or is deemed to be a citizen of India shall continue to be such citizen, subject to the provisions of any law made by Parliament .

Article 11:

- Parliament shall have the power to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship .

CITIZENSHIP ACT, 1955

- The Citizenship Act (1955) provides for acquisition and loss of citizenship after the commencement of the Constitution. **This Act has been amended so far eight times** by the following Acts:
 - 1) The Citizenship (Amendment) Act, 1957
 - 2) The Repealing and Amending Act, 1960
 - 3) The Citizenship (Amendment) Act, 1985
 - 4) The Citizenship (Amendment) Act, 1986
 - 5) The Citizenship (Amendment) Act, 1992
 - 6) The Citizenship (Amendment) Act, 2003
 - 7) The Citizenship (Amendment) Act, 2005
 - 8) The Citizenship (Amendment) Act, 2015
 - 9) The Citizenship (Amendment) Act, 2019
- Originally, the Citizenship Act (1955) also provided for the Commonwealth Citizenship. But, this provision was repealed by the Citizenship (Amendment) Act, 2003.

Acquisition of Citizenship:

By Birth

- A person born in India on or after 26th January 1950 but before 1st July 1987 is a citizen of India by birth irrespective of the nationality of his parents.
- A person born in India on or after 1st July 1987 is considered as a citizen of India only if either of his parents is a citizen of India at the time of his birth.
- Further, those born in India on or after 3rd December 2004 are considered citizens of India only if both of their parents are citizens of India or one of whose parents is a citizen of India and the other is not an illegal migrant at the time of their birth.
- The children of foreign diplomats posted in India and enemy aliens cannot acquire Indian citizenship by birth.

By Descent

- A person born outside India on or after 26th January 1950 but before 10th December 1992 is a citizen of India by descent, if his father was a citizen of India at the time of his birth.

By Registration

- The Central Government may, on an application, register as a citizen of India any person (not being an illegal migrant) if he belongs to any of the following categories, namely:-
 - ❖ a person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;
 - ❖ a person of Indian origin who is ordinarily resident in any country or place outside undivided India;
 - ❖ a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;
 - ❖ minor children of persons who are citizens of India;
 - ❖ a person of full age and capacity whose parents are registered as citizens of India;
 - ❖ 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 immediately 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.
 - ❖ A person shall be deemed to be of Indian origin if he, or either of his parents, was born in undivided India or in such other territory which became part of India after the 15th August, 1947.

By Naturalisation

- The Central Government may, on an application, grant a certificate of naturalisation to any person (not being an illegal migrant) if he possesses the following qualifications:
 - ❖ that he is not a subject or citizen of any country where citizens of India are prevented from becoming subjects or citizens of that country by naturalisation
 - ❖ that, if he is a citizen of any country, he undertakes to renounce the citizenship of that country in the event of his application for Indian citizenship being accepted
 - ❖ that he has either resided in India or been in the service of a Government in India or partly the one and partly the other, throughout the period of twelve months immediately preceding the date of the application;
 - ❖ that during the fourteen years immediately preceding the said period of twelve months, he has either resided in India or been in the service of a Government in India, or partly the one and partly the other, for periods amounting in the aggregate to not less than eleven years
 - ❖ that he is of good character
 - ❖ that he has an adequate knowledge of a language specified in the Eighth Schedule to the Constitution

- ❖ that in the event of a certificate of naturalisation being granted to him, he intends to reside in India, or to enter into or continue in, service under a Government in India or under an international organisation of which India is a member or under a society, company or body of persons established in India.

By Incorporation of Territory

- If any foreign territory becomes a part of India, the Government of India specifies the persons who among the people of the territory shall be the citizens of India. Such persons become the citizens of India from the notified date.
- For example, when Pondicherry became a part of India, the Government of India issued the Citizenship (Pondicherry) Order, 1962, under the Citizenship Act, 1955.

Loss of Citizenship

By Renunciation

- Any citizen of India of full age and capacity can make a declaration renouncing his Indian citizenship. Upon the registration of that declaration, that person ceases to be a citizen of India.
- However, if such a declaration is made during a war in which India is engaged, its registration shall be withheld by the Central Government.
- Further, when a person renounces his Indian citizenship, every minor child of that person also loses Indian citizenship.
- However, when such a child attains the age of eighteen, he may resume Indian citizenship.

By Termination

- When an Indian citizen voluntarily (consciously, knowingly and without duress, undue influence or compulsion) acquires the citizenship of another country, his Indian citizenship automatically terminates.
- This provision, however, does not apply during a war in which India is engaged.

By Deprivation

- The citizen has obtained the citizenship by fraud;
- The citizen has shown disloyalty to the Constitution of India;
- The citizen has unlawfully traded or communicated with the enemy during a war;
- The citizen has, within five years after registration or naturalisation, been imprisoned in any country for two years; and
- The citizen has been ordinarily resident out of India for seven years continuously.

The Citizenship (Amendment) Act, 2019

- The Citizenship (Amendment) Act, 2019 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 before December 2014.
- Muslims from those countries were not given such eligibility. The act was the first time religion had been overtly used as a criterion for citizenship under Indian law.
- The Hindu nationalist Bharatiya Janata Party (BJP), which leads the Indian government, had promised in previous election manifestos to offer Indian citizenship to persecuted religious minorities from neighbouring countries.
- Under the 2019 amendment, 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 citizenship.
- The amendment also relaxed the residence requirement for naturalisation of these migrants from twelve years to six. According to Intelligence Bureau records, there will be just over 30,000 immediate beneficiaries of the bill.