

Citizenship in India: An Overview



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The Constitution does not deal with all aspects related to citizenship. Part II of the Constitution deals with the law relating to citizenship of India at the commencement of the Constitution. For subsequent issues, it empowers the Parliament to enact the law. The Citizenship Act, 1955 was enacted using this power.

Citizenship is the status of a person known under the custom or law of a sovereign state as a member of or belonging to the state. A citizen is a person who enjoys full civil and political rights in the state. He enjoys full membership in the political community. Citizenship hence also means the membership of the political community or the state. Citizenship entails several advantages:-

- Certain Fundamental Rights are available only to Citizens,
- Certain offices such as those of President, Prime Minister, Minister, Judges etc. are open to citizens;
- Only citizens have right to vote;
- Only citizen can contest elections to legislative bodies or to local self-government bodies;
- The Fundamental duties are imposed only on Indian Citizens;

Citizenship and nationality are often used interchangeably, but are in fact different. Citizenship refers to the relationship of an individual with the state from an internal aspect, while nationality refers to similar relationship from the international aspect.

The basic rights normally regarded as arising from citizenship are the right to a passport, the right to leave and return to the country or countries of citizenship, the right to live in that country and to work there. Some countries allow their citizens to have multiple citizenships, while others insist on exclusive commitment. A person who does not have citizenship of any state is said to be stateless, while one who lives on state borders whose provincial status is uncertain is a borderlander.

The status of a person as a citizen of India is governed by the Part II of the Constitution of India (Articles 5 to 11). According to Article 5, all the people that were resident in India at the commencement of the Constitution were citizens of India as well as people born in India. The President of India is termed the First Citizen of India.

The Indian legislation related to this matter is The Citizenship Act, 1955, which has been amended by the Citizenship (Amendment) Acts of 1986, 1992, 2003, 2005, 2015 and 2019.

Acquisition and Determination of Indian Citizenship

There are four ways in which Indian citizenship can be acquired: birth, descent, registration and naturalisation. The provisions are listed under the Citizenship Act, 1955.

1. By Birth:

- Every person born in India on or after 26.01.1950 but before 01.07.1987 is an Indian citizen irrespective of the nationality of his/her parents.
- Every person born in India between 01.07.1987 and 02.12.2004 is a citizen of India given either of his/her parents is a citizen of the country at the time of his/her birth.
- Every person born in India on or after 3.12.2004 is a citizen of the country given both his/her parents are Indians or at least one parent is a citizen and the other is not an illegal migrant at the time of birth.

2. By Registration: Citizenship can also be acquired by registration. Some of the mandatory rules are:

- A person of Indian origin who has been a resident of India for 7 years before applying for registration.
- A person of Indian origin who is a resident of any country outside undivided India.
- A person who is married to an Indian citizen and is ordinarily resident for 7 years before applying for registration.
- Minor children of persons who are citizens of India.

3. By Descent:

- A person born outside India on or after January 26, 1950 is a citizen of India by descent if his/her father was a citizen of India by birth.
- A person born outside India on or after December 10, 1992, but before December 3, 2004 if either of his/her parent was a citizen of India by birth.
- If a person born outside India on or after December 3, 2004 has to acquire citizenship, his/her parents have to 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. By Naturalisation:

- A person can acquire citizenship by naturalisation 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.

Renunciation and Termination of Indian Citizenship:-

Renunciation is covered in Section 8 of the Citizenship Act 1955. If an adult makes an assertion/declaration of renunciation of Indian citizenship, s/he loses Indian citizenship. In addition, any minor child of that person also loses Indian citizenship from the date of renunciation.

Termination is covered in Section 9 of the Citizenship Act, 1955. The provisions for termination are separate and distinct from the provisions for making a declaration of renunciation.

Section 9(1) of the act provides that any citizen of India who by naturalisation or registration acquires the citizenship of another country shall cease to be a citizen of India.

Notably, the termination provision differs from the renunciation provision because it applies to "any citizen of India" and is not restricted to adults. Indian children therefore also automatically lose their claim to Indian citizenship if at any time after birth they acquire a citizenship of another country by, for example, naturalisation or registration — even if the acquisition of another citizenship was done as a result of actions by the child's parents.

The acquisition of another country's passport is also deemed under the Citizenship Rules, 1956 to be a voluntary acquisition of another country's nationality.

Rule 3 of Schedule III of the Citizenship Rules, 1956 states that "**the fact that a citizen of India has obtained on any date a passport from the Government of any other country shall be conclusive proof of his/her having voluntarily acquired the citizenship of that country before that date**".

Again, this rule applies even if the foreign passport was obtained for the child by his or her parents, and even if possession of such a passport is required by the laws of a foreign country which considers the child to be one of its citizens (e.g., a US-born child of Indian parents who is automatically deemed to be a US citizen according to US law, and who is therefore required by US law to have a US passport in order to enter and leave the US).

It does not matter that a person continues to hold an Indian passport. This rule seemingly even applies if the foreign nationality was automatically had from birth, and thus not voluntarily acquired after birth. Persons who acquire another citizenship lose Indian citizenship from the date on which they acquire that citizenship or another country's passport.

The Act does not provide for dual citizenship or dual nationality. It only allows citizenship for a person listed under the provisions above ie: by birth, descent, registration or naturalization.

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