

TNPSC GROUP I / II - PRELIMINARY INDIAN POLITY - WORKSHEET CITIZENSHIP

Meaning and Significance

Like any other modern state, 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):

1. Right against discrimination on grounds of religion, race, caste, sex or place of birth (**Article 15**).
2. Right to equality of opportunity in the matter of public employment (**Article 16**).
3. Right to freedom of speech and expression, assembly, association, movement, residence and profession (**Article 19**).
4. Cultural and educational rights (**Articles 29 and 30**).
5. Right to vote in elections to the Lok Sabha and state legislative assembly. (**Article 326**)
6. Right to contest for the membership of the Parliament and the state legislature.
7. 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.

In India both a citizen 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 naturalised citizen is eligible for the office of President.

Constitutional Provisions

The Constitution deals with the citizenship from Articles 5 to 11 under Part II. It only identifies the persons who became citizens of India at its commencement (i.e., on January 26, 1950). It does not deal with the problem of acquisition or loss of citizenship subsequent to its commencement. It empowers the Parliament to enact a law to provide for such matters and any other matter relating to citizenship.

According to the Constitution, the following four categories of persons became the citizens of India at its commencement i.e., on 26 January, 1950:

1. **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
2. **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
3. **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.
4. **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 (a) persons domiciled in India; (b) persons migrated from Pakistan; (c) 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:

1. **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.
2. **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.
3. **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 four times by the following Acts:

1. The Citizenship (Amendment) Act, 1986.
2. The Citizenship (Amendment) Act, 1992.
3. The Citizenship (Amendment) Act, 2003.
4. The Citizenship (Amendment) Act, 2005.

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

The Citizenship Act of 1955 prescribes five ways of acquiring citizenship, viz,

1. 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.

2. 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.

A person born outside India on or after 10th December 1992 is considered as a citizen of India if either of his parents is a citizen of India at the time of his birth.

From 3rd December 2004 onwards, a person born outside India shall not be a citizen of India by descent, unless his birth is registered at an Indian consulate within one year of the date of birth or with the permission of the Central Government, after the expiry of the said period.

3. 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. a person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;
- b. a person of Indian origin who is ordinarily resident in any country or place outside undivided India;
- c. 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

4. By Naturalisation

The Central Government may, **on an application**, grant a certificate of naturalisation to any person (not being an illegal migrant)

The Government of India may waive all or any of the above conditions for naturalisation in the case of a person who has rendered distinguished service to the science, philosophy, art, literature, world peace or human progress. Every naturalised citizen must take an oath of allegiance to the Constitution of India.

5. 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

The Citizenship Act, 1955, prescribes three ways of losing citizenship whether acquired under the Act or prior to it under the Constitution, viz, renunciation, termination and deprivation:

1. **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.

2. **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.

3. **By Deprivation:** It is a **compulsory termination of** Indian citizenship by the Central government, if:

(a) the citizen has obtained the citizenship by fraud:

(b) the citizen has shown disloyalty to the Constitution of India:

(c) the citizen has unlawfully traded or communicated with the enemy during a war;

(d) the citizen has, within five years after registration or naturalisation, been imprisoned in any country for two years; and

(e) the citizen has been ordinarily resident out of India for seven years continuously.

SINGLE CITIZENSHIP

The Constitution of India, like that of Canada, has introduced the system of single citizenship and provided uniform rights (except in few cases) for the people of India to promote the feeling of fraternity and unity among them and to build an integrated Indian nation.

Overseas Citizenship of India

In September 2000, the Government of India (Ministry of External Affairs) had set-up a High Level Committee on the Indian Diaspora under the **Chairmanship of L.M. Singhvi**.

The committee submitted its report in January 2002. It recommended the amendment of the Citizenship Act, 1955, to provide for grant of dual citizenship to the Persons of Indian Origin (PIOs) belonging to certain specified countries.

Accordingly, the citizenship (Amendment) Act, 2003, made provision for acquisition of Overseas Citizenship of India (OCI) by the PIOs of 16 specified countries other than Pakistan and Bangladesh. It also omitted all provisions recognizing, or relating to the Commonwealth Citizenship from the Principal Act.

The Citizenship (Amendment) Act, 2005, expanded the scope of grant of OCI for PIOs of all countries except Pakistan and Bangladesh as long as their home countries all dual citizenship under their local laws.

It must be noted here that the OCI is not actually a dual citizenships as the Indian Constitution forbids dual citizenship or dual nationality (Article 9).

Again, the Citizenship (Amendment) Act, 2015, has modified the provisions pertaining to the OCI in the Principal Act. It has introduced a new scheme called “Overseas Citizen of India Cardholder” by merging the PIO card scheme and the OCI card scheme.

The PIO card scheme was introduced on 19-08-2002 and thereafter the OCI card scheme was introduced w.e.f. 01-12-2005.

Keeping in view some problems being faced by applicants and to provide enhanced facilities to them, the Government of India decided to formulate one single scheme after merging the PIO and OCI schemes,

Hence, for achieving this objective, the Citizenship (Amendment) Act, 2015, was enacted. The PIO scheme was rescinded w.e.f. 09-01-2015 and it was also notified that all existing PIO cardholders shall be deemed to be OCI cardholders w.e.f. 09-01-2015.

The Citizenship (Amendment) Act, 2015, replaced the nomenclature of “Overseas Citizen of India” with that of “Overseas Citizen of India Cardholder.

Citizenship Amendment Act 2019

- The Citizenship (Amendment) Act, 2019 seeks to amend the Citizenship Act 1955.

Provisions of the amendment Act

- The Bill amends the Act to provide that the Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, who entered India on or before Dec 31, 2014, will not be treated as illegal migrants.

- In order to get this benefit, they must have also been exempted from the Foreigners Act, 1946 and the Passport (Entry into India) Act, 1920 by the central government.
- The 1920 Act mandates foreigners to carry passport, while the 1946 Act regulates the entry and departure of foreigners in India.

Citizenship by registration or naturalization

- The Act allows a person to apply for citizenship by registration or naturalization if the person meets certain qualifications.
- For instance, if a person resides in India for a year and if one of his parents is a former Indian citizen, he may apply for citizenship by registration.
- To obtain citizenship by naturalization, one of the qualifications is that the person must have resided in India or have been in the service of the central government for at least 11 years before applying for citizenship.
- The Bill creates an exception for Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan with regard to this qualification.
- For these groups of persons, the 11 years' requirement will be reduced to five years.

On acquiring citizenship

- i. Such persons will be deemed to be citizens of India from the date of their entry into India
- ii. All legal proceedings against them in respect of their illegal migration or citizenship will be closed.

Applicability of the Amended Act

- These provisions on citizenship for illegal migrants will not apply to the tribal areas of Assam, Meghalaya, Mizoram and Tripura, included in the Sixth Schedule to the Constitution.
- These tribal areas include Karbi Anglong (in Assam), Garo Hills (in Meghalaya), Chakma District (in Mizoram), and Tripura Tribal Areas District.
- Further, it will not apply to the "Inner Line" areas notified under the Bengal Eastern Frontier Regulation, 1873. In these areas, visits by Indians are regulated through the Inner Line Permit.

- Currently, this permit system is applicable to Arunachal Pradesh, Mizoram and Nagaland. Manipur has also been brought under the Inner Line Permit (ILP) regime through a Gazette Notification on the same day the bill was passed in the Parliament.

Cancellation of registration of OCIs

- The Act provides that the central government may cancel the registration of OCIs on certain grounds.

These include

- If the OCI has registered through fraud.
 - If within five years of registration, the OCI has been sentenced to imprisonment for two years or more.
 - If it becomes necessary in the interest of sovereignty and security of India.
- The Bill adds one more ground for cancelling the registration that is if the OCI has violated the provisions of the Act or of any other law as notified by the central government.
 - The orders for cancellation of OCI should not be passed till the OCI cardholder is given an opportunity to be heard.

NRI / PIO / OCI

| NON-RESIDENT INDIAN (NRI) | PERSON OF INDIAN ORIGIN (PIO) | OVERSEAS CITIZEN OF INDIA (OCI) CARDHOLDER |
|---|--|---|
| An Indian citizen who is ordinarily residing outside India and holds an Indian Passport | A person who or whose any of ancestors was an Indian national and who is presently holding another country's citizenship / nationality i.e. he/she is holding foreign Passport | A person registered as Overseas Citizen of India (OCI) Cardholder under the Citizenship Act, 1955 |