

Constitutional Studies
Professor Sudhir Krishnaswamy
Vice Chancellor
National Law School of India University
Lecture 08

Citizenship: Basic concepts

Welcome back to the week 4 of the course of constitutional studies. This week, we turn to the questions of citizenship. Central questions to the interpretation and purpose of the constitution and continuing from last week, and entry to the core texts of the constitution.

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GNPTL

Review of the Course

Week 1	Week 2	Week 3
Why have a constitution?	How should we make a constitution?	What is role of the Preamble in a Constitution?
How does a constitution help in a democracy?	Who should make the constitution?	What does the Preamble to the Indian constitution settle?
	How did India make a Constitution?	How is the Preamble enforced?

The slide also features a small video inset in the bottom right corner showing Professor Sudhir Krishnaswamy speaking.

Let us begin though the quick recap on the course so far. In week 1, we asked very broad questions in political theory and constitutional ideas. Why do we have constitution? What purpose does it seek? Do you need a constitution even when you have a democracy? Is there any tension between the political principles of Democracy and constitutionalism?

In other words, when we have electoral democracy that is fully functioning, do you need a constitution at all? Those were the questions we asked in the rest in week 1. I will come back and post further lectures and materials in week 1 as we move along into week 5. In week 2, we asked how should we make a constitution.

Do you mean the constitution is useful? How should we make it? Should make it simply by adopting the best format we find in the world or do we make a constitution that specifically

suited to the society in which we live in? Who should make it? Should it be made by experts? Should it be made by representatives? Should it just be made by parliament. This the question that is particular relevance when we think about the Indian constitution, because Indian constitution was made by the special representative assembly which is diverse and quite uniquely representative of the Indian people at large.

We also saw the process by which that constitution was made which is both deliberated and a consensual at large. In week 3, we focused on the role of Preamble in a constitution. We stress that the Preamble is neither a simple introduction nor a prefix. Some might say the Preamble is the spirit or the soul of the constitution. While not resorting to that kind of metaphoric description, we explore the purpose that the Preamble played in the constitution.

We notice that the Preamble has the long history going way back 50 years before Independence. We looked at the Karachi resolution and we notice there might be even older antecedents to the Preamble of the constitution. But most importantly, the Preamble to the constitution settles some very core questions about the design of the Indian polity as well as some questions about the course and purpose of the Indian polity and the constitution. We explored these ideas at length.

What does it mean to create a sovereign democratic public, socialist, secular? What does it mean to pursue justice, liberty, fraternity and so on. So, these are questions we spent as core. This is where we spend some time exploring in the last week. And we conclude it with brief overview of preamble might be enforced? Can it be enforced by the courts? Can it be enforced directly? Or indirectly? What role does it play beyond the courts? How does it help us in our interpretation of the constitution? Helps public at large, we know that the constant invocation of preamble in public, we protest in public meetings.

It can help legislators as well as bureaucrats. While interpreting the constitution and ordinary laws to recognize what is the place of the preamble in the interpretation of those laws. So, that is weeks one to three of this course. And I trust you had the opportunity to see the lecture, look at the assignments and attempt them as well as to use the discussion for them to clarify any doubts that you have.

In the weeks ahead, we will intensify our engagement through this various forum and we look forward to hearing back from you as to what as to questions you might have, what is working, what is not, send some feedback. So that we can all work together make this course the best it can be for the purposes we have been set out.

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Part I

How should a political society decide who belongs?

- Jus Soli
- Jus Sanguinis
- Aliens
- Immigrants
- Refugees

In week 4, we going to turn to questions of citizenship. The broadest questions that one might ask with citizenship is – how should political society decide who belongs to that political society? The question of membership in the political society may at first blush seem to be an easy not so important question. Political society includes all those people who live in that political society in organics, small communities, these may not be difficult question to determine. After all we might know why neighbors are in a in a relatively easy sense, we might be able to name the those who are residents in two, three, four streets allowed out homes.

But do we know who resides in the city or the town that any of us are living in. Is there any accurate way in which we can count and name, identify the members who belong to that town, city or residential on clave or any kind. How do we know that all those who resides are permanent members of that society, does it even matter, are they members of that society they take burdens and privileges. Is there some requirement that we have before a person belongs to a political society?

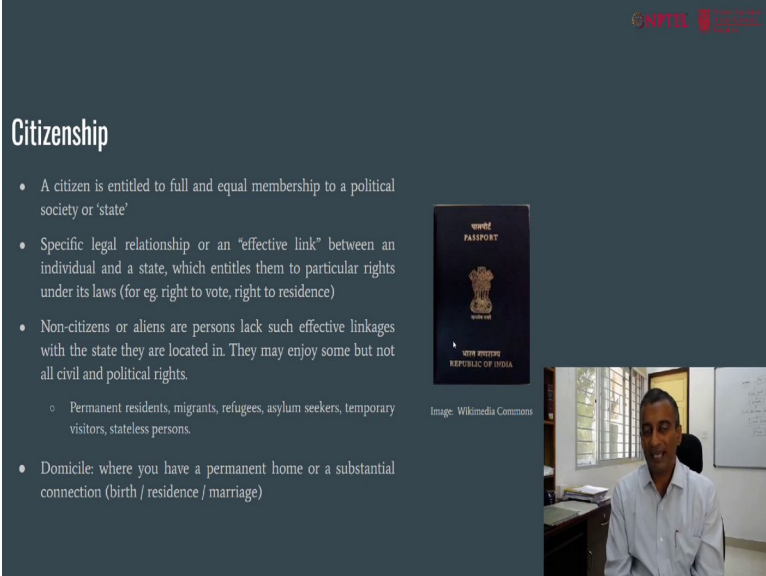
These are questions that are old questions in political theory, in political philosophy and many answers have been offered to this old problem. Citizenship is not simply the category of people who resides, category of proof who have special rights and privileges and duties in political society. So, this is the core question that we address.

In part one, we will focus on the broad outlines of response to this question by looking at concepts like *Jus soli*, *Jus sanguinis*, who are aliens, immigrants, refugees? Let us get our vocabulary going so that we have the basic concepts that will allow us to think about broader questions to citizenship.

In part two of this lecture, I will focus on question around Indian both constitutional and statutory provisions around citizenship. These are the two parts, I have been focusing. Lecture one for week four, in lecture two, I will be going to broader controversies around these issues and conclude with the brief overview of the international law and approach to these questions.

Come back to broader conceptual questions in part four. So, lecture 2 of which is this lecture, we will focus on part one and part two sections thinking about citizenship. Let us get started with basic conceptual vocabulary to think about citizenship.

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Citizenship

- A citizen is entitled to full and equal membership to a political society or 'state'
- Specific legal relationship or an "effective link" between an individual and a state, which entitles them to particular rights under its laws (for eg. right to vote, right to residence)
- Non-citizens or aliens are persons lack such effective linkages with the state they are located in. They may enjoy some but not all civil and political rights.
 - Permanent residents, migrants, refugees, asylum seekers, temporary visitors, stateless persons.
- Domicile: where you have a permanent home or a substantial connection (birth / residence / marriage)

Image: Wikimedia Commons

Whenever we think about citizenship, we think that the key identifying document might be a passport. And you might notice that passports have come to stand for so many things for both

material and symbolic. They actually allow us to cross nation state boundaries. But above all they also are emotional symbols of attachment. Much like other national symbols, like national anthem, passport seems to be that symbolic totem that citizens may carry to signify where they come from.

Who is a citizen? First and foremost, a citizen is often defined as a person who belongs to political society has full and equal membership to a political society. When we used the word political society here, it bears clarification what we mean the state, the republic of India, as the passport suggests. One is the citizenship is a citizen of the republic of India. So, it is the connection between a person and a political entity of the state or the republic that citizenship signifies.

When we say citizenship, we often carry with it the requirement that it is a full and equal membership. Not enough that some parties might have category one citizenship. And other parties make category two citizenship and so on and so forth. These kinds of models differentiate the citizenship. That was common in medieval and ancient societies across the world including India. The requirement that we have full and equal membership is a requirement in modern political societies and one that our constitution embraces.

Hence, citizenship is the connection to the state. How do we decide who should have citizenship? Usually, all legal regimes in modern political societies in modern political states will insist on specific legal relationship and effective link between the individual and the state. What you established is that effective link, then you can be entitled to some body of political rights including the right to vote, the right to residence. What kind of link should be treated as an effective link?

At the lowest level, one might say that residence is enough. At a much higher level, one may insist that someone might need to pay taxes or someone might need to have property in order to be citizen. Modern political societies set lower requirements for achieving citizenship as we will see when we discussed more controversial questions that it is not always obvious or settled.

Who are non citizens then? Non-citizens or aliens you know is the converse definition of citizenship. We might treat non-citizens as persons who lack those very effective linkages with the state that they are located. So, we might be located or resided in one particular geographical

state. But we might not have that effective link to that state in order to claim that citizenship. For example, we may not be belonging that state or secondly we may not be live long enough in that state.

Or actually we might live in one state but might enjoy the privileges of citizenship of another state and so on and so forth. So, these kinds of persons who live in a geographical territory but not have this necessary effective link are thought of as non-citizens or aliens. Now, non-citizens or aliens are not devoid of all political rights.

We should not make mistake of thinking that if someone who is non citizen or alien that they are somehow are non human being, they have no rights at all, they cannot enjoy any legal rights and privileges. And can be treated as the state wishes that is not the case. They usually enjoy civil and political and legal rights. But they will not enjoy the entire basket of civil, political and legal rights enjoyed by citizens.

Non-citizens or aliens are sometimes called by various legal terms. They may be called permanent residents, they may be called migrants, may be called refugees, or asylum seekers, temporary visitors, stateless persons. Each one of these legal categories of non-citizens have particular way in which they have either entered or become a part of that political society. And while this this particular lecture will not deal into each of the categories at length. For those who are curious you must explore these questions this in greater detail.

Often citizenship laws across the world are have a reference to the concept of domicile and it helps at this very early stage clarifying vocabulary in the constitution of citizenship to be clear that domicile is a reference to relationship between a person in a geographical area where one has permanent home or a substantial connection birth residents or marriage so social connection, or a physical connection.

Domicile often get confused with concepts of citizenship. In the history of legal language around this question questions of domicile emerged earlier, at the later stage the idea of citizenship emerges which absorbs some concepts of domicile to craft a new constitutional idea of citizenship which is the primary idea we are working in. So, citizenship is that full and equal membership in political society that is conferred on someone who shows an effective connection with that political society.

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The slide is titled "Citizenship vs. Nationality?" and features three colored boxes: "Identity" (white), "Membership Status" (yellow), and "Rights" (orange). Below these, it lists "Ordinarily, citizenship is determined or acquired either exclusively or a combination of these approaches:" followed by three bullet points: "By birth or *Jus soli*", "By descent or *Jus sanguinis*", and "Naturalisation". The slide includes three images: a woman at a podium with an American flag (captioned "Image: Reuters"), a news headline "Sena Gandhi is an Indian citizen. Allahabad HC puts the matter to rest" (captioned "Image: Catch News"), and a man in a white shirt in a classroom setting.

Very often we confuse ideas of citizenship and nationality as well. Nationality is about the connection between individual and the nation whereas the citizenship is the legal category of membership. So, let us let us explain with a few examples. We might for example, think that the primary political identity is connected to our states. We might think of ourselves as first belongings as in my case in the state of Karnataka, this might be primary political and social identity and then I might say I am Indian as well.

So, these are ideas belonging to a community and ideas of a political society and this national idea or this this affinity emotive connection to a social and national identity is not relevant to the questions of citizenship in any direct sense because we might have multiple affinity or senses of belongings. But we might have one legal identity which is citizenship.

So, citizenship is about legal membership status in the political society. It is not a nationality test. It is a legal status that emerges out a particular connection to a political society. So, national so what is striking about social scientific data we have about national identity of India is that Indians are very comfortable assuming and affirming two identities or more identities related to their region or language and identities related to the nation that is India.

We can equally passionate about both these identities and fully belong to the Indian nation. Membership status though are legal citizenship. The membership status is one we remain that no regional citizenship in India so one is not the citizen of Karnataka. The one might be the resident

of Karnataka or one might feel that one has an affinity to Karnataka state identity. One remains the citizen of India as only one national citizenship in India. So, keeping this concept apart is very important. Citizenship is about legal membership; nationality is about our sense of collective identity.

The conferral of rights is not on the basis of your national and legal identity. The conferral of rights is based on the legal membership status. So, even if one will not most passionately about national identity whereas that he is invested in a cricket team or hockey team. One still retains all the rights the bundle of rights that is associated with our citizenship. Let us move on to consider how citizenship is either conferred and what are the kinds of criteria are models of citizenship that different nations follow.

Ordinarily citizenship can be termed either exclusively or by a combination of these factors by birth or *Jus soli* and we are just using the Latin maxims for these ideas of citizenship, by descent *Jus sanguinis* or by naturalization. Let me explain each of these at some length and then we can take note how Indian citizenship are (20:49).

We may become citizens of a particular political society just by virtue of being born in that society. There might be further conditions attached that we may have to be born as well as have parents who were citizens of the country. But in some countries around the world birth is enough is a sufficient to confirm citizenship in that country. The second criteria is by descent. I may not be born in particular country but my parents may originate from that country. And on the basis of my origin, the nation origin of my parents, I might be able to claim citizenship in that country.

This kind of claim is called (21:49) claim. It is by it is by descent that one claims the membership in that society. The third process the third mode by which citizenship may be acquired is through the process of naturalization. Naturalization often requires a certain number of years of residence and then the adoption of citizenship of that political society. These three modes of citizenship give us a significant idea about the nature of the political society which we have may issue.

Some political societies exclusively rely on one model of this while other political societies are comfortable using a combination of these models. India is one of the societies that uses a

combination of these models by conferring citizenship on its on its membership, on its residents. You may recall that that there may have been recent debates citizenship and political office.

A few years ago there was a debate in India whether the leader the president of the Indian National Congress, Sonia Gandhi who was born in Italy, grew up there and acquired Indian citizenship by through marriage was enough of Indian citizenship occupying high political office. Conversely, there is now debate in the United States about whether the vice-presidential candidate Kamala Harris who has Indian and west Indian parentage so not by descent of an American citizen but was born in the United States.

She would be able to claim the second highest political office in that country as we know the debate on the nature of citizenship around Sonia Gandhi meant that she did not take up the leadership position when the early UPA government won majority in parliament.

Now, for Kamala Harris the question is not as significant as Barrack Obama who became the president of the United States. He had one parent who whose place of origin was not the United States. So, one might take the issue as relatively more settled in the United States. Though these questions continue to boil up in all political societies, specially in loud political societies where these modes of expressions are more common. So, one is acutely aware that questions of birth, descent or naturalization remain questions of politically sallied questions in many democracies.

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The slide features a dark blue background. On the left, the text 'Part II' is written in a large, white, serif font, with 'Citizenship in the Indian Constitution' in a smaller, white, sans-serif font below it. In the top right corner, there is a small red logo for NPTEL. A white rectangular box in the center contains a list of five topics in a black, sans-serif font: 'Core Provisions', 'Power to Parliament', 'Non-Discrimination', 'Rule of Law', and 'Fundamental Rights Claims'. A small mouse cursor is visible over the text 'Fundamental Rights Claims'. In the bottom right corner of the slide, there is a small video inset showing a man with short dark hair, wearing a white shirt, sitting at a desk and speaking. The background of the video inset shows a classroom or office setting with a whiteboard and windows.

With that, I move on to part 2 of this lecture. In part 2 of this lecture I am going to focus on the nature of citizenship in the Indian constitution. We will briefly go over the core provision of the constitution and notice very quickly that the constitution covers the power on parliament to legislate on the area of citizenship. We want to look at the requirements of non-discrimination in citizenship as well as the nature of fundamental rights claims that can be made by citizens or non citizens. We will close with the broad overview of the Citizenship Act and what it allows. So, let me begin by turning to the core provisions of the constitution.

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Core Provisions

Constitution of India 1950 (Arts. 5 to 11)

- Does not lay down a comprehensive law on citizenship.
- Arts. 5 to 10 bear relevance to the Partition and describe the categories of persons who became Indian citizens *at the commencement* of the Constitution on November 26, 1949
- Art. 11 confers the power on the Parliament to make laws relating to citizenship

Citizenship Act, 1955

- Governs the law relating to acquisition, determination and termination of citizenship
- Only 'natural' persons can be citizens

Mapping
Citizenship
in India
ANUPAMA ROY
OXFORD

Image: Oxford University Press

One might imagine the Indian constitution settles the matters for once and for all that there is the categorical commitment to particular model of citizenship Jus soli, Jus sanguinis or naturalization and the that the constitution might settle the relationship between citizenship and national identity conclusive. However, a close reading of part 2 of the constitution articles 5 to 11 confirms that the constitution does sketch out some general principles of citizenship.

But does not settle all these questions in a decisive manner. Article 5 for example, makes it clear that at that time of the commencement of the constitution of India that is 1950, all those who had domicile in the territory, who were either born in the territory of India, born to the parents who are born in the territory of India or with ordinarily resident or not less than 5 years would be treated as citizens of India. But this only settles the question of who was a citizen in 1950.

Notice that all three criteria are used - born in the territory of India, descent from the parent who are born in the territory of India, and ordinary residents kind of a domicile criteria along with the process of naturalization might confirm citizenship. So, these questions are settled as 1950 as far as we open the broad model of citizenship. But article 6 to 10 then go on to really clarify for us what are the peculiar political context that was occurring at the time when the Indian constitution came into force in 1950 and namely the partition of India.

The article 6 to 10 were committed to sorting out who is a citizen of India given that large population were moving across the national boundaries. At what presents at that time a common

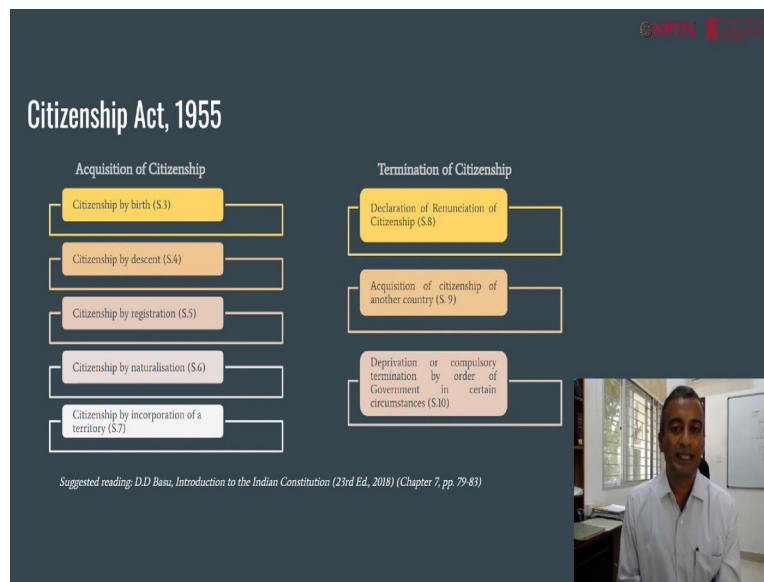
political territory of South Asia which was partitioned into Pakistan and India. So, 6 to 10 do not settle the questions of citizenship in a sharp sense relevant to our contemporary questions. Article 11 on the other hand, confirms the rather wide power on parliament to make laws relating to citizenship.

And what is striking is that the article 11 power allows parliament to devise the model of citizenship that may even go that did not even comply to part 2 of the constitution. So very bright and broad power of citizenship. And parliament exercise that power to create the Citizenship Act of 1955. This power of creating the citizenship at allow parliament to sketch out its own models of citizenship which deserves the little bit of attention.

What is the Citizenship Act of 1952? It tells us how we acquire citizenship and how we might lose citizenship and if there are controversies about citizenship how those controversies may be settled. It also makes clear that as the Citizenship Act of 1955 that only natural person can be citizens. It does not allow corporations. And other legal entities are non human beings to claim citizenship in India.

For a broad overview of the history and debates around citizenship, I recommend to you the book that is featured on the slide titled mapping citizenship in India - Anupama Roy, which gives you the broad sweep analytical take on the evolution of these questions across the last 70 years of the republic. There are some other books which I will also refer to as we go along.

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Let us turn our attention to Citizenship Act of 1955, as I mention the article 5 of the citizenship allowed for the rather broad range of a modes of acquiring citizenship. The Citizenship Act of 1955 continues in the similar way. It allows citizenship by birth which is section 3. This is simple enough it is a determination of material fact either one is born in the country or not.

Do remember that birth by itself exclusively does not confer citizenship in India. There are some accompanying conditions including places of origin. Let me brief that for you. Every person born in India on or after the 26 January 1950 but before the commencement of Citizenship Act amendment Act of 1986 shall be citizens of India by birth. Now if either of your parents is a citizen of India the time of once birth and you are born in India you get citizenship in India.

The amendment Act 1986 is relevant because of all the issues around illegal migration that is exercised political attention over a period of time that now citizens that birth by itself even if parents have Indian origin is insufficient for questions of citizenship. And I think if some of the debates that we will discuss in part 3 of this lecture or in lecture 4 we deal with some of the current controversies on these questions.

The second requirements the second possibilities more by which might secure citizenship by descent, now this citizenship by descent is for those people who are born outside India. but who have parents who are who are of Indian origin and Indian citizens. It is very important that

anyone who seeks to claim citizenship by descent registers at the Indian counselor within a year of birth to claim this this particular model mode of citizenship Indian citizenship.

Section 5 allows citizenship by registration; this is for parties who are not Indian citizenship Indian citizens by birth or by descent. Usually, they are citizens who are of common wealth origin who after the certain number of years of residence in India or persons of Indian origin who after 5 years of residents in India may claim citizenship. One tends to forget that commonwealth citizens have special status because India is the member of commonwealth but section 5 allow for these categories commonwealth citizens as well as persons of Indian origin to make a claim by going through the common process of registration.

Section 6 allows for a process of citizenship by naturalization. Naturalization requires far longer period of registration, you might have no connection you might not be the person in origin, you might not be a commonwealth citizen but if you if you are able to reside in India for 9 to 12 preceding years and for the preceding 12 months before you make your application. And then proclaim an oath of religions the constitution the laws of country usually you might become the citizens of India.

Now, naturalization is usually reserved for those parties who might enter in India in peculiar conditions and then claim the citizenship. The last category that you want to look at is the process by which we might acquire the citizenship due to the incorporation of the territory. Let me use two quick examples to illustrate this. The inclusion of Goa, Pondicherry Puducherry this now called into the territory of India gives the residence of Puducherry and Goa the ability to claim the citizenship through section 7 of the Citizenship Act.

Now, when you look on the slide, look at the various modalities by which citizenship may be acquired, you notice that the citizenship is acquired on a sliding scale of difficulty. Citizenship by birth almost automatic provided that you satisfied section 3. Citizenship by descent would require some further action by parties who want to claim, some registration. Then there is citizenship by registration which had more honorees condition that one must satisfy. Naturalization is a 12 year process or more and incorporation of territory is rather exceptional political event that occurs rarely in the history of nation.

So, one understands that primary model by which citizenship is acquired in in in India s by birth. Most of us who claim citizenship today claim citizenship on the basis of birth and there is a receding scale as we go down that called. How can we lose citizenship? Let us turn to that briefly and consider it. We might lose citizenship very simply by giving it up.

There is a model by which we can declare that we give up the citizenship of India and as long as you place the declaration in requisite form one gives up citizenship. You might lose it by default, if you acquire citizenship in another country. So, now India could have adopted a model of US citizenship who could buy citizenship at one time we citizens of India and the citizens of another country. However, that model has not been adopted.

And hence the citizenship just by virtue of acquiring the citizenship of another country, you are automatically deprived of the citizenship of India. The Citizenship Act also permits the government under some special circumstances to deprive you of your citizenship of Indian citizenship. These are special circumstances and specific procedure needs to be followed but as you can tell with the ongoing controversies around citizenship in India these provisions like section 10 may come to have significant influence in the years to come.

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The slide features a dark blue background with white text. At the top right, there is a logo for GNPTIL (Gujarat National Law University) and the text 'Gujarat National Law University'. The main title is 'Rule of Law | International Human Rights Law'. Below the title is a bulleted list of general principles of equality and non-discrimination, including references to the International Covenant on Civil and Political Rights, General Comment 15, and Art. 2 (1) and (3) of the International Covenant on Economic, Social and Cultural Rights. A video inset in the bottom right corner shows a man in a white shirt speaking in a classroom setting.

GNPTIL Gujarat National Law University

Rule of Law | International Human Rights Law

- General principles of equality and non-discrimination
 - International Covenant on Civil and Political Rights
"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law" (Art. 26)
 - General Comment 15, Human Rights Committee
"In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness. [...] the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens"
 - Art. 2 (1) and (3), International Covenant on Economic, Social and Cultural Rights
Non-discrimination in respect of social and cultural rights. Exception to developing countries vis-a-vis economic rights of non-citizens
- Other relevant international human rights standards for non-citizens include convention on elimination of all forms of racial discrimination, conventions and protocols relating to status of refugees, migrant workers, stateless persons etc.

International Human Rights Law has a significant investment on questions of citizenship. Why are we not going to focus on International citizens International Human Rights Law at great length. I want to capture the main ideas that we might ask we familiar with when we think about

the citizenship in Indian constitution. First, the general principle for citizenship in India is that citizenship must be citizenship in International norm is that citizenship must be granted on equal and non-discriminatory basis.

That that states must not make it so difficult to acquire citizenship that they render to any people stateless. So, the International covenant on civil and political rights makes it clear that all persons not just citizens are equal before the law and are entitled without any discrimination to the equal protection of the law. Now, this requirement would mean that that asylum seekers, migrants, refugees would also be able to claim the protection for an equal treatment requirement.

This is even clear when the Human Rights committee in general comment 15, makes it clear that irrespective of one's nationality, statelessness and without discrimination between citizens and aliens, these covenants must be applied. So, the Universal Declaration of Human Rights, International covenant on civil and political rights call for this kind of broad treatment. The international covenant on economic, social and cultural rights also does not make a distinction on who might claim social and cultural rights.

Non citizens may also claim these social and economic rights and cultural rights and social and cultural rights, not economic rights. May be clean by non citizens and it is important to note that we do not lapse into the kind of binary thinking where citizenship is all or nothing bundle. Citizens have all kind of protection, moment you lose citizenship you have no protection. That is not how law is figured on this question. One has significant rights and protection irrespective of one's citizenship status.

Now, the International law in this field very well developed and very complicated on questions of migration, refugees. India's position with respect to migration and refugees has been very accommodating. In fact India has been reluctant to sign up to all of the conventions at International law and this field. In any event for the purposes of this course, I am going to dive into the international law on these questions.

But just alert you that the office of the United States high commissioner on Human rights has produced a very useful document on the rights of non citizen in the International law that you might want to refer, if you want to explore these questions at greater length. As Indians have a long tradition of my outward migration in to seek work whether that may be in West Asia or on

Europe, Canada and Australia or increasingly East Asia, it is very useful for us to have an open and you know vital connection to thinking about problems of the protection of non citizens.

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The slide is titled "Fundamental Rights : Non-citizens" and features the CNPTL logo in the top right corner. It contains several text boxes detailing constitutional provisions:

- Right to Equality**
 - Equality before law:** 14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
 - *Permits reasonable classification for legitimate purposes**
- Protection against arrest and detention in certain cases (Art. 22) (except in case of enemy aliens)**
- Religious freedoms (Arts. 25, 27, 28)**
 - Freedom of conscience and free profession, practice and propagation of religion.
 - Freedom from payment of taxes for promotion of any particular religion
 - Freedom to not attend or participate in religious instructions imparted in certain educational institutions
- Right to Constitutional Remedies (Art. 32)**
- Protection of life and personal liberty:** 21. No person shall be deprived of his life or personal liberty except according to procedure established by law.
- 8.** It is clear on consideration of the provisions of Part III of the Constitution that the makers of the Constitution deliberately and advisedly made a clear distinction between fundamental rights available to 'any person' and those guaranteed to 'all citizens'. In other words, all citizens are persons but all persons are not citizens, under the Constitution.
- State Trading Corporation of India v. Commercial Tax Officer, AIR 1963 SC 1811 (97B)**

A video inset in the bottom right corner shows a man in a white shirt speaking.

What kind of right do citizens have and what kind of rights do non citizens have? We often assume that citizens would have full protection and non citizens will have no fundamental rights but on the closest we know that it says in Article 14 the right to equality in the constitution provides the equality before the law and equal protection of the law chose all person not only citizens. So someone who is not a citizen of India can claim the protection of Article 14 equality of protections.

Articles 21 and 22 which protect life and personal liberty and 22 which deals arrest and detention also applies to non citizens to someone who is who is refugee or a migrant to India can claim the protection of 21 and 22 in the course. Religious freedoms are these 25, 27, 28 significant freedoms, right to practice and profess. We will look at some of these religions at greater detail later in this course.

As well the right to constitutional remedies are guaranteed to non citizens. So, non citizens have the way in which they can activate the constitution and activate the legal and core protection to sustain themselves in the country. And this is a very important way in which the constitution protects them. There are the questions of whether legal entities which are not natural persons and there are commercial entities as in the case sighted at the bottom of this slide the State trading

corporation in case, whether they could claim these right of non citizens rights in the fundamental rights, provisions and courts have to certain extent allowed these kind of private entities to claim fundamental rights protection.

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The slide is titled "Rights Exclusive to Citizens" and is presented in a dark blue theme. It features three main categories of rights, each with a small image and a text box:

- Right to be registered as a voter for elections to the Lok Sabha and State Legislative Assemblies (Art. 326)**: Accompanied by an image of a ballot box.
- Membership of Lok Sabha (Art. 84) and State Legislative Assemblies (Art. 191 (d))**: Accompanied by an image of a legislative assembly.
- Eligibility for certain offices such as office of President of India, Vice President, Judges of the Supreme Court and High Court etc.**: Accompanied by an image of the Indian Parliament building.

Below these categories, it lists "Certain Fundamental Rights":

- Art. 15:** Non-discrimination by State only on the grounds of religion, race, caste, sex or place of birth
- Art. 16:** Non-discrimination by State in matters of public employment
- Art. 19:** Freedom of speech, peaceful assembly, association, profession or business, free movement and residence within the territory of India.

Source: Business Standard, Government of India

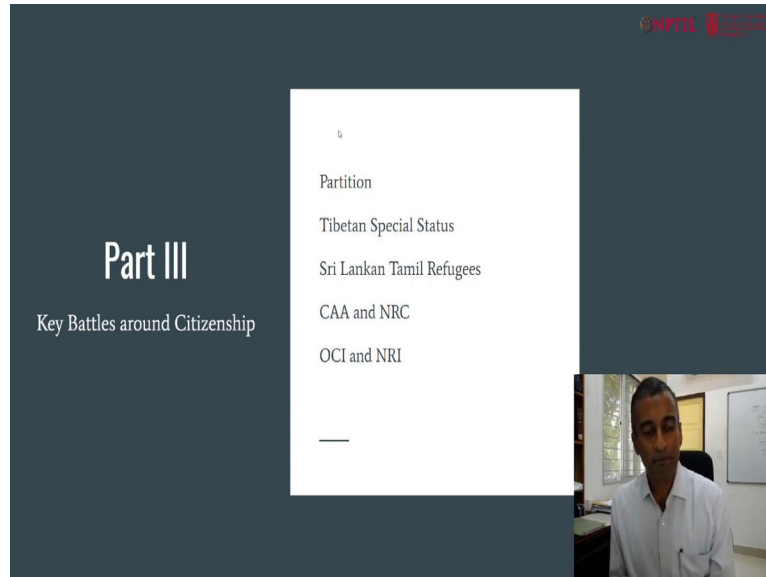
What are the rights exclusive to citizens? Some fundamental rights for example, the Article 15 and 16 non –discrimination rights on the basis of religions, caste, sex or place of birth are guarantee to citizens only. Similarly, the article 19 freedom of speech, peaceful assembly, association and so on are guarantee only to citizens. So, the fundamental rights chapter is divided up into those kinds of provisions that guarantee to non citizens and certain kind of protection guaranteed only to citizens.

But besides are fundamental rights, there are other constitutional rights that are guaranteed exclusively to citizens. These include the right to be registered to vote as we noted in the very first slide of this lecture. The membership in a political society, one of its components core components is the right to vote. And that right to vote he is he is exclusively tied up to citizenship.

Membership of the Lok Sabha and state legislative state assembly as well as the membership of the key public offices are connected to citizenship. You cannot be become the president of India or a judge of the Supreme Court or high court unless you are an Indian citizen. But that

citizenship is not tied to the place of birth as we have noted in the earlier controversies on this question.

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We that we finish the part 1 and part 2 of this lecture and we take a break here before we turn to part 3. Let me recap, let me focus on two broad lines of discussion. First, we looked at the main concepts of citizenship *jus soli*, *jus sanguinis* and as well as the related concept of citizen, domicile and nationality or national identity. In part 2, we focused on the place of citizenship in the Indian constitution. We notice that article 5 did confer citizenship on those who are residing in India or born in India or born to people who were Indian origin and who have been residing in India for certain period of time but that was for 1950.

Article 11 gives the parliament the power to make laws of citizenship and that is the Citizenship Act. We noticed that the International Human Rights law gives the broad sway of protections to non citizens and then when we think about the problems of citizenship. We should not think in either or in binary sense as fundamental rights at some fundamental rights are guarantee to non citizens and where some are exclusively guarantees to citizens and finally that are political rights are very closely tied to citizenship. Both the right to vote as well as the right to be member of legislative assembly in a high public offices are tied to us being citizens in India.

So, let me conclude that when I come back for lecture 2, I will talk about part 3 and part 4 of the ideas of citizenship and begin with the key battles around citizenship. So, much look forward to see you in lecture 2 shortly.