

# **Constitutional Law and Public Administration in India**

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**Lecture-03**

**Citizenship – I**

The Constitution of India is a document that governs the citizens of this country. But a constitution can govern persons living in a country also. So, the distinction is between persons who live or who are residents of one country, where they come for work or for temporary shelter purposes, as against those who are citizens of the nation. Sometimes the Constitution makes important and significant demarcations about the kind of rights, duties and responsibilities, citizens and non-citizens can have. Every modern state does define citizenship. It also defines the distinction between a citizen and an alien. An alien is supposedly someone who is not from the same land or from the same city, but from some other state. Aliens may not enjoy some of the civil and political rights. For example, aliens may not have the right to vote or decide who is their elected representative and take part in the democratic process as it were. So, if you cannot vote, you cannot also contest elections or hold public offices because these are exclusively held for citizens.

The controversy regarding the citizenship of Mrs. Sonia Gandhi was on the ground, she not being an Indian citizen and therefore, she should not hold the highest office of the Prime Minister of India. Sonia Gandhi has the citizenship of India now, though she is, born in another country, where she got married to an Indian. Likewise, these are issues that may arise. The point is, aliens have lesser rights, but when we talk of aliens who are non-citizens, aliens can be distinguished between friendly aliens and aliens that are enemies. For instance, in the case of China or Pakistan, India has had suspicion on citizenship arriving from these two countries. There have been at times sanctions or embargoes on the nation. There have been diplomatic expulsions even, as it were. Alien enemies are subjects of a country which is considered not so very friendly with India or subjects of the state to which India is at war with. Friendly aliens are anyone from any other jurisdiction where India has bilateral and multilateral treaties and has friendly relationships. But since aliens are considered different from citizens, the Constitution of India in Article 5 under Part II of the Constitution talks about citizenship at the commencement of the Constitution.

Article 6 which is a special provision talks of the rights of citizens who have migrated to India from Pakistan. Article 7, lays down rights of citizens of certain migrants to Pakistan

and Article 8, talks about the rights of citizens of certain persons of Indian origin, residing outside India. Article 9 talks about persons voluntarily acquiring citizenship of a foreign state not to be citizens. The Article speaks in the negative saying that if a person has taken the citizenship of foreign state, he loses the citizenship of this country. Article 10 mentions the continuity of the rights of citizenship. Finally, Article 11 in Part II, talks about the rights of parliament to regulate the right of citizenship by law. It is noteworthy that, while the parliament can regulate the right of citizenship by law, the Citizenship Act of 1955 becomes the most important law to determine and govern the issues of citizenship and public administration.

The Constitution of India, entitles citizens with certain kinds of rights and privileges as against aliens or against persons who are residents in another country. In India, some of the privileges and rights that citizenship confers, or citizens have over any other person are mentioned in Articles 15, 16, 19, 29, 30 etc. Citizens have better rights, better fundamental rights, and better protections. But citizens have duties as well, like to pay taxes, the duty to respect the national flag, national anthem, and a duty to defend the country too. Thus, citizens have duties as well as rights and privileges laid down in the Constitution. There are some public offices in India, which citizens alone can hold. These include the offices of the President of India, the Vice President, the Chief Justice of India and a judge of the Supreme Court or the High Court. Only a citizen of India can be the governor of a state if you are a citizen of India or hold the office of the Attorney General or advocate general in different states. These are Constitutional positions which only citizens can occupy.

The Constitution also says, how can you acquire citizenship? The Constitution deals not only with matters regarding acquisition of citizenship, but also aspects relating to loss of citizenship. While the country was divided between Pakistan on the west and east and India as the major land, the issue of people from Pakistan and in Pakistan became very important. Hence, the parliament was empowered to enact the citizenship act. And the Constitution provides the guidance about how citizenship ought to be given in case of persons who have migrated from Pakistan Article 6

Two documents, the Citizenship Act of India and the Constitution, when read together, will show that there are four categories of persons who can become citizens in India. First category consists of a person who has domicile in India and has fulfilled any of the following three conditions of which the first condition is that such a person must be born in India, second, either of his parents were born in India; and third, he has been the ordinary resident for five years, immediately preceding the commencement of the Constitution of India. If a person satisfies any of the above three conditions he becomes a citizen of India. This is the first method by which citizenship can be granted.

Another way is that a person who migrated to India from Pakistan becomes an Indian citizen if he or either of his parents or any of his grandparents were born in the undivided

India and fulfilled any one of the two conditions. In case such a person migrated to India before 19 July 1948, he has been ordinarily resident in the territory of India since the date of his migration. In case where such person has so migrated on or after 19 July, 1948, he must have been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him before the commencement of this Constitution, and in either case such a person shall not be registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application. The same conditions apply in the third instance to a person who migrated to Pakistan. An Indian who goes to Pakistan after March 1st, 1947, but later, returns to India and decides to settle in India, and has been a resident of India for six months preceding the date of his application for citizenship, will also be entitled to citizenship. So, an Indian who goes to Pakistan and then comes back once he is resident of India for six months, he can apply for citizenship.

Then there is the instance of a person who or either of whose parents or grandparents' parents were born in undivided India, but who is an ordinary resident outside India. Such person shall become an Indian citizen if he has been registered as a citizen of India by the diplomatic or the council representative of India in that country upon an application made by such person to the Indian diplomatic mission or to the councilor office. So, if a person is domiciled in India, or has migrated from Pakistan, or has migrated to Pakistan but later returned to India or a person of India originally residing overseas or abroad can apply for citizenship In India.

There are methods for acquisition of Indian citizenship. Firstly, you can acquire citizenship by birth, that is if you are born in India. But just by birth, you automatically do not become a citizen of India. Your parents also should be Indian citizens. In this context, it needs to be mentioned that surrogacy has become very popular in India. And a lot of the surrogate children will be born and claim citizenship even though their biological parents are from some other country. The additional condition is that by birth plus both parents of a person must be citizens of India and they should not be illegal immigrants at that point of time, for a person to get citizenship by birth.

Secondly, if a person is born outside India, before December 10, 1992, is a citizen of India by descent, if his father was a citizen of India at the time of his birth. In these cases, a minor who is a citizen by virtue of his descent can also apply for citizenship if he does not renounce the citizenship of the nationality of India. This came by way of an amendment in 1992.

The third important process of acquiring citizenship is by registration. The central government can call for applications and a person can apply to claim citizenship. To acquire citizenship in this manner, a person must be a resident in India for the previous seven years before an application for registration can be made. Since this is in case of a

person of Indian origin, who ordinarily resides in India, the rule applicable to him is the seven-year period. A person who is married to a citizen of India and is an ordinary resident in India for seven years, can also make an application for registration. There is the instance of a minor child of persons who are citizens of India where the minor child was not born in India, but in some other jurisdiction. They can also make an application if their parents are Indians. A person of full age and capacity whose parents are registered as citizens of India can also make an application.

The fourth method in which citizenship can be obtained is through a grant of certificate of naturalization by the central government. For citizenship to be granted through naturalization, the concerned person should not be a subject or citizen of any other country and that country has not objected to his citizenship or rejected his citizenship. A person can decide to renounce the citizenship of some other country and make an application for Indian citizenship, which has been accepted.

If a person has resided in India or have been in service of the government of India, through various means and have stayed in India for a preceding 12 months before the date of application, naturalization is something that is applicable in terms of an immediate preceding 14 years. If a person has resided in India or been in the service of the government of India, then the aggregate of the time resided is taken into consideration and this is also one of the methods in which a person can acquire citizenship by naturalization. Also, such person must be of good character, have adequate knowledge of English or any other language that is there in the language schedule of the Constitution and then certificate of naturalization can be granted if the person shows that he intends to stay in India, enter into and continue to serve in a national or an international organization in India or in some kind of a society company or a body corporate as well. So, citizenship by naturalization is granted to distinguished persons in service who have made India their home. It may include people who come from different talented backgrounds, maybe science, philosophy, art, culture, cinema, literature, movies, voluntary services and so on and so forth. There are many individuals who decided to stay back in India, continue in India, serve in India, they may be part of Christian institutions and some of them have continued to hold a lot of property, land, business, and other philanthropic matters in India. Hence, by naturalization what you do is you show allegiance to the Constitution of India, and this makes one entitled to be given citizenship. These are some important aspects regarding citizenship.

Sometimes citizenship can be granted by annexation of a territory of the nation as well. Though India has never had an expansion policy, India has never been an aggressor nor taken over any land or territory, though it could have done so if it wanted to. However, even after the Citizenship Act of 1955 there were certain territories like in Pondicherry and others or even Goa for that matter where the government of India had to take over after a certain duration of time without any conflict or violence. Whenever these territories are actually annexed to mainland India and the Constitution tends to apply in those places by

annexation or incorporation of a territory to the Constitution of India, citizenship will be granted to the people who are residents in those territories as well. The Citizenship Act has been amended a couple of times.

There is also a question as to how one loses citizenship. This is not something that is going to be forced in a democratic process or a society. A citizen can decide to renounce your citizenship, or citizenship can be terminated, or a person can be deprived of his citizenship. It is important to mention the process of deprivation because it is the process of snatching away the citizenship of India. Deprivation of citizenship can be done by the Central government when they come to know that the citizenship has been acquired by fraud, by falsification of documents or any other illegal mischievous criminal breach of papers. Then citizenship can be cancelled. Second, the Act very clearly says that if you are not loyal to the Constitution of India, citizenship will be deprived. Patriotism and citizenship sometimes are used synonymously; your loyalty to the country, to the nation and to the oath to the Constitution are very paramount and important.

A citizen who has shown disloyalty to the Constitution of India can also be deprived of the aspect of citizenship. A citizen who has unlawfully traded or communicated with an enemy during war, can also be deprived of his citizenship. If a citizen has, within 5 years after registration or naturalization, been imprisoned in any country for 2 years or more, then also he will be deprived of his citizenship. This is to try and dissuade criminals from continuing to hold citizenship of the country. Any person who has been resident outside India for 7 years continuously can also be deprived of his citizenship. The law says so, but again exceptions and discretionary power of the central government is always there especially in current circumstances where there is so much globalization. The 7 years must be continuous. Even if you have entered India once within the 7 years you can continue to hold the citizenship of the country.

The next aspect is termination. Termination is by a choice. Here is where the Indian citizen voluntarily, means without endurance, without any undue influence, he does it without any compulsion, out of his own choice. He will voluntarily, consciously, look at acquiring citizenship of some other country. There are a lot of non-resident Indians who are now acquiring citizenship of various countries including the United States, UK, Australia and so on and so forth. Then automatically, his citizenship of India gets terminated. A person can hold citizenship of only one nation or one country at a time. If the citizenship of the UK is automatically acquired, then Indian citizenship shall be terminated. Thus, termination leads to loss of citizenship.

By renunciation a citizen of India has the capacity to declare that he no longer wants to hold the citizenship of this country. It is possible for a citizen of India to declare that he is no longer a citizen of India, and this declaration usually happens during war when India is engaged. Then you know there is a hostile government military that takes place, and you

have to show allegiance to that new government military and hence this is possible that you can just make a declaration that you renounce the previous citizenship for whatever purpose to save life, to save property, and oneself from any kind of torture. This kind of right to renounce is there with every citizen like they have the right to make a choice about which citizenship they need to acquire. Renunciation can be resumed immediately. Renunciation is only a temporary declaration because that is not by submitting an application to the government. The Indian citizenship can be resumed on your wish, and people of age as well as minors have given this choice to make the declaration of renunciation. In India there are no two kinds of citizenship, that is citizenship of a state and citizenship of the central government or the union territory or the union government. There is only a single citizenship policy, or we can say, there is no dual quality citizenship.

Some nations have adopted the dual citizenship policy. Switzerland is an example of the same but most countries across the world have single citizenship. The USA is another nation which has allegiance not only to the state but also to the center. They have unions of states, that is the United States. That is where the allegiance between center and state can also happen. In India the advantages of single citizenship are very clear that a citizen will not be discriminated against in public employment or in attaining privileges and grants from the central government just because he is from one state.

The rule of public administration is to take citizens of all states equally and that makes the parliamentary responsible for ensuring that no citizen of any state whether it is in the heartland of India or in the hinterland of India are actually neglected for any kind of schemes, policies or welfare measures as the state would like to bring it. The single citizenship provision helps against any claim of discrimination. In a single citizenship there is the right to move across the country freely. But there are restricted areas sometimes because of the tribal population. They could be restricted due to military and defense purposes but otherwise generally there is freedom of movement across the country. At times, in Jammu and Kashmir that kind of freedom of movement was restricted. There was some special status to Jammu and Kashmir, and they could introduce some kind of restriction for Indians to move around in Jammu and Kashmir. By abolition of the article 370 of the Constitution that kind of a special status to Jammu and Kashmir also has been taken away and hence you have the right to claim the freedom of movement across the country.

There is a concept called the overseas citizen of India. To a larger extent, a lot of people think that this has introduced dual citizenship. The whole idea of bringing the OCI card holder started off quite some time back. The L.M. Singhvi's report wanted to bring in harmony between non-resident Indians, citizens abroad and the Constitution of India. So, to hold those who have gone outside India back with their roots in India, the whole idea was of giving them some kind of card, some kind of identity status, giving them some amount of freedom or privilege to come back and stay back in the country or to hold on to

their ancestral home. There was a lot of debate on the citizenship act being amended to bring in some kind of privilege to persons of Indian origin. The Citizenship Act was amended in 2003, then 2005 and then 2015 as well.

The 2015 Amendment Act is currently the law that defines overseas citizens of India. Before 2015 the people abroad and who were connected to India had what is known as the PIO card, or the Person of Indian Origin card. At present, they are given the overseas citizen of India card. Person of Indian origin, Overseas Citizenship of India card. Such persons continue to be a citizen in some form but are overseas. That is the idea that comes from the 2015 Amendment and scheme that was introduced for people from abroad.

Who is entitled to OCI? Any citizen of any other country is eligible to become a citizen of India under the OCI status. The only thing is he can be of foreign origin having some connection with India. There are a lot of conditions about how India will apply for the overseas citizen of India card, or he can hold dual citizenship in some form or some manner. There are a lot of conditions about OCI but there are certain rights to an OCI person. The central government can decide what these rights are from time to time. An OCI person is not considered a full citizen. He is considered a quasi-citizen of this nation. He cannot hold any public office, or the president, vice president, attorney general, judge or hold any other public office because he does not have the right to work. OCI people are not entitled to vote. They cannot also stand for elections in either of the state or the central legislature. OCI citizenship can also be cancelled due to the same reasons like fraud and other false representations as well.

However, OCI citizens are given some benefits. First, they have the chance of multiple entry lifelong visas for visiting India for any purpose. However, for doing research they require special permission. So, there is no need to apply for a visa each and every time. This is one major advantage for OCI card holders. Second, they are exempted from registration with the Foreigners Regional Registration Office which applies to any foreigner who is going to stay for a long period of time in India. Foreigners must make that registration and they must report to the local police station, but OCI are exempted from this. OCI card holders are in parity with NRIs. NRIs are non-resident Indians. They are still Indians but not resident in India. In respect of all economic, financial, and educational facilities, you can also look at acquisition of agricultural plantation property depending upon the state regulation that applies to such agricultural plantation property. Which means if an NRI can hold immovable property an OCI person can also hold immovable property. Another one important thing about NRIs and OCIs is that an NRI can also undertake adoption in India. An OCI person can also adopt a child.

OCI people shall be also treated in part with a citizen in some cases. For example, in many of these tourist visiting places like Archeological Survey of India or any other monument in India or even national parks and sanctuaries foreigners have a different fee, citizens have

a different fee. An OCI card holder can claim the same fee that is charged to a citizen when he visits such monuments and national parks. That is also a privilege granted to OCI people. From PIO we have gone to an OCI status in terms of citizenship.

Several amendments of the Citizenship Act have been undertaken. The first amendment happened in 1985, called the Assam Accord, to bring in peace in the Northeast. India granted Bangladeshi migrants citizenship status and that was the first amendment that happened in 1985. In 2003, a major amendment was brought in bringing the notion of citizenship vis-a-vis illegal immigrants or whom we call as refugees. The National Registry of Citizens was developed to make this kind of a clear distinction. However, the most controversial in recent times was the amendment that was brought in the year 2019. This resulted in the infamous protest that lasted for a very long period called the Shaheen Bagh protest. So, what was the Citizenship Amendment Act of 2019? What did this act bring into light? This law empowered the central government to provide citizenship to people belonging to the Hindu, Sikh, Buddhist, Jain, Parsi or Christian community who came from, Afghanistan, Bangladesh or Pakistan who entered India on or before 31<sup>st</sup> December 2014. This was the real reason why this amendment became a controversy. In a sense, this amendment decided that under the Foreigners Amendment Order of 2015, the exemption would be given to minority communities from Bangladesh, Pakistan and to a larger extent, it would be applicable to the minority communities like Hindu, Sikhs, Buddhist, Jain, Parsis and Christian. And this did not involve or include Muslims. That is probably the reason this amendment act became the most controversial part in 2019. Now, this amendment was brought by the BJP government, and it was considered that it was a right wing or Hindu majority opinion, and the amendment was criticized heavily as being discriminatory based on religion leading to a lot of controversy.

The protests were quite violent at times and lasted long. The immigrants, especially from Bangladesh and other places, thought that their political right was infringed by these. There were protests in universities like Aligarh Muslim University, Jamia Millia, etc. Lot of damage to public and private property took place during this time. This was a volatile amendment that was challenged on the streets of the country. While India has suffered the issues of immigration, especially from having a porous border with Bangladesh, and especially in Northeast, India also has been a country that has accorded refugee status to people who have come and sought shelter. The Tibetan refugees, the Chakma refugees, the Tamil refugees all have been granted shelter or asylum in this country. India has had a great history of asylum seekers who have been given shelter and protection. And many of these refugees have been given the process of naturalization in this country. However, the mass influx of refugees started creating a lot of problems in urban areas and in urban planning, because it is at a state cost that you must incur the necessities of protecting life for the refugees. This impacted state policy to a larger extent and has been a matter of public

debate. It has been a problem for public administration as well about how to deal with these refugees, how to, not allow them to squatter around or create camps in places that can actually create a lot of public order and public morality issues.

In India, this has been a major challenge. The Assam government has always had a problem with this kind of a migration. Though migration results in cheap labor, it also results in a lot of administrative challenges, especially the law-and-order problems because the locals feel threatened, they do not feel safe. So, this is a conflict of public order as well as of state policy. It is more important because citizenship is only one single citizenship that is granted by the central government. Therein, it becomes a national issue and a national problem as well. Places like Arunachal Pradesh, Mizoram, and Nagaland have been able to defend some kind of illegal immigration, because they have something called the inner line permit. That is, a special permit is needed because there are scheduled areas. Hence, it is not easy for immigrants to move to these three northeastern states. The aspect about who can create such a kind of special privilege or special permit, which kind of states can do it is also a matter of public concern as well.

When the Citizenship Amendment Act of 2019 was being discussed, debated, or brought about, the central government was concerned about the refugees that were coming from Myanmar. These refugees were Rohingya Muslims. And hence, the justification of the central government was that if this Citizenship Act provided for minority sections of Myanmar, especially Muslims, also to acquire citizenship, then that would create a new issue of public administration. And the Indian government was firm that it wanted to deport the Rohingya Muslims and refugees back to Myanmar, even though they were given temporary refugee status, because they moved from Bangladesh to India. That is the reason the central government justified not including Muslims in the Citizenship Amendment Act of 2019. Some of the protests against CAA were peaceful, like the Shaheen Bagh protest, but the Shaheen Bagh protest occupied a major highway entering Delhi. So, the court had to intervene and close this protest. Several protests revolving around the CAA seemed to have the latest controversy about who should be allowed to acquire citizenship, especially if a person is a migrant, a refugee. Some special statuses have been granted to only non-Muslims under the Citizenship Act of 2019. Religious minorities from Afghanistan, Bangladesh and Pakistan, had been accorded this kind of a special exception.

The identity card of citizenship happens to be the passport that a person holds. But mere proof of passport alone is not going to determine citizenship, because the passport is only the permit to go abroad. Citizenship can be proved through various other documents as well. One of the methods of showing that you are a citizen or not is by holding your Aadhaar card. Sometimes holding your voter ID card is also the basis on which citizenship can be proved, in case you need to prove the same.

Also, any kind of deprivation of citizenship can only be done through procedure established by law, because holding citizenship is like a right to life. This was held in the most famous case of *Menaka Gandhi versus Union of India*, decided in the year 1978 by the Supreme Court of India. In this case, the impounding passport was held to be invalid, because the procedure established by law was not followed in that case. The denial of citizenship and retrieval of citizenship can only be done by procedure established by law. The citizens have the protection of the Constitution. And being a citizen is an integral part of one's identity and one's life. And that is what the Supreme Court held in the *Maneka Gandhi v. Union of India* case.