Paper: ADVANCED CONSTITUTIONAL LAW
Module: CITIZENSHIP
Component - I - Personal Details

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Component - I (B) Description of Module

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<tr>
<td>Paper Name</td>
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<td>Pre-requisites</td>
<td>Basic Knowledge of the concepts of Citizenship, nationality, residence, domicile etc.</td>
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Objectives

To understand the concept of citizenship and types of citizenship

Keywords

Citizenship, Non-resident Indian, Overseas Indian, Citizenship Act 1955.

Component - II

Module II: Citizenship

Structure:

1. Introduction
2. Learning Outcome
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5. Points to Ponder
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1. Introduction

A citizen enjoys fundamental rights including right to work, right to vote, right to return, etc. in his or her country. At the same time, the citizen is also bound to observe duties of citizenship. It reflects that the right to citizenship is not an absolute one, and the legislature may impose reasonable restrictions on the enjoyment of one’s citizenship. Every country has its own immigration laws which regulate the entry and stay of immigrants. Right to participate in the government is also being regulated by the immigration laws. For this, the countries differentiate between ‘nationality’ and ‘citizenship’. However, it has also been seen that the countries sometimes make strict immigration laws, and exclude foreigners on the discriminatory basis. That’s why the International Conventions and other instruments have a check on such immigration laws.

There are many ways of acquiring citizenship of a country. A citizenship can be acquired by birth, marriage, honorary basis, etc. is automatic. But immigration laws nowadays are strict in order to regulate false marriages, where people marry each other for money or other benefits. States also grant honorary citizenship. For example, Canada offered honorary citizenship to Pakistani teenage activist Malala Yousafzai. Ms. Malala has become just the sixth person to be granted honorary Canadian citizenship after South African anti-apartheid hero Nelson Mandela, Nobel Peace Prize laureate Aung San Suu Kyi, Tibetan spiritual leader Dalai Lama, British business magnate Aga Khan and Swedish diplomat Raoul Wallenberg.¹

Citizens are full members of the state. These citizens enjoy full civil and political rights. Aliens are not entitled to all constitutional and other rights because they are not citizens. For example, in India, aliens have right to life and personal liberty but not the freedoms guaranteed under Article 19 of the Indian Constitution. Furthermore, enemy aliens suffer many more difficulties. In India, enemy aliens cannot enforce Article 22 of the Constitution which protects the rights of accused persons detained under preventive detention laws. Stateless Persons’ are persons who are not citizens of any country. Their status is similar to aliens.²

In the present module, the Indian Constitutional Provisions relating to the subject of ‘citizenship’ have been discussed in the detailed manner. Rights of the Indian citizens, Non-Resident Indians, and Overseas Indians have also been analyzed and it has focused on the

¹ ‘Canada offers Malala honorary citizenship’ The Hindu October 17, 2013. Also see, https://en.wikipedia.org/wiki/Honorary_Canadian_citizenship#cite_note-9 (accessed on 15.3.2015 at 4 pm.)
² Brij Kishore Sharma, Introduction to the Constitution of India (Prentice Hall of India 2005) 51
issue that how Indian citizens enjoy more rights than non-resident or overseas Indians. Recent issue of voting rights of Non-resident Indians has also been discussed in the module.

2. Learning Outcome

2.1 Learners would be able to understand the concept of citizenship in India.

2.2 Learners would get to know that the Indian citizenship can be acquired through various ways like citizenship by birth, citizenship by domicile, citizenship by migration, citizenship by registration, being son or daughter of parent/s of Indian Origin, citizenship by marriage, etc.

3. Citizenship in India

In India, citizens enjoy full civil and political rights. There are certain fundamental rights which are available only to the Indian citizens. An Indian citizen has the right not to be discriminated against any citizen on ground of religion, race, caste, sex or place of birth (Article 15 of the Indian Constitution); the right to equality of opportunity in the matter of public appointment (Article 16 of the Indian Constitution); the right to six freedoms enumerated in Article 19 of the Constitution; Cultural and educational rights (Articles 29 and 30 of the Indian Constitution). Furthermore, there are certain constitutional positions which belong to Indian citizens only like the office of the President (Article 58 of the Indian Constitution); Vice President (Article 67 of the Indian Constitution); Judges of the Supreme Court (Article 124(3)) or of High Court (Article 217); Attorney-General (Article 76(1)); Governor of a State (Article 157); Advocate General of a State (Article 165). Again, an Indian Citizen has political rights including the right to vote, right to contest elections, etc.

The matter of citizenship was discussed in detail at the time of the making of the Indian Constitution. The Constitution makers considered the willingness and unwillingness of all people regarding their stay in India. It was strictly determined whether they want to settle permanently in India or not. However, Dr. B.R. Ambedkar recommended that the Parliament should make a law over the matter of citizenship. But he further emphasized on one of the fact that such law should not be permanent.

Currently, despite the fact of its federal structure, India does not provide dual citizenship. There is only single citizenship i.e. the Indian citizenship. The Indian Constitution does not define citizenship. It describes classes of person, who became automatically the citizens of India at the time of the commencement of the Constitution. It is the Parliament who has an authority to make law on citizenship. In exercise of its power the

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Parliament has enacted the India Citizenship Act, 1955. Articles 5 to 11 of the Indian Constitution lays down as to who are the citizens of India at the Commencement of the Constitution.

In India, the citizenship can be acquired through various ways like citizenship by birth, citizenship by domicile, citizenship by migration, citizenship by registration, being son or daughter of parent/s of Indian Origin, citizenship by marriage, etc.

3.1 Citizenship under Indian Constitution

Article 5 made certain persons as Indian citizens at the time of the commencement of Indian Constitution. The first condition to be an Indian Citizen is of ‘domicile’ i.e. a person has domicile in the territory of India.

The Constitution of India, 1950, Art. 5.

It provides: “Citizenship at the commencement of the Constitution: At the commencement of this Constitution every person who has his domicile in the territory of India and

(a) who was born in the territory of India; or

(b) either of whose parents was born in the territory of India; or

(c) who has been ordinarily resident in the territory of India for not less than five years preceding such commencement, shall be a citizen of India.”

The term ‘domicile’ has not been defined in the Indian Constitution. ‘Domicile’ means the place where a person’s habitation is fixed without any present intention of moving there from. Every person has a domicile at his birth called the domicile of origin. The domicile of origin remains unchanged until the person acquires a new domicile, i.e. by actually settling in another country with the intention of permanently residing there. Till then the domicile of origin continues even if he has left the country with an intention of never returning again.6 The onus to prove that a person has changed his domicile of origin lies upon him.7 It has been held by the Supreme Court that there must be factum and animus to constitute the existence of domicile in India.8 Similarly, the Supreme Court said in Louis

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6 Central Bank of India v Ram Narain AIR 1955 SC 36.
Raedt v Union of India\(^9\), that the person should show his appropriate state of mind required for acquisition of domicile by choice.

In Pradeep Jain v Union of India\(^10\), the Supreme Court held that there is only one domicile in India. The court said that the domicile does not change with the change of residence within India.

A minor or married person does not have the legal capacity to make a change of domicile. Therefore, a minor carries the domicile of his father\(^11\) and a married woman gets the domicile of her husband.\(^12\)

Article 6 provides for the rights of citizenship of certain persons who have migrated to India from Pakistan. Article 7 provides for rights of citizenship of certain migrants to Pakistan.

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<td>It provides:</td>
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<td>“Rights of citizenship of certain persons who have migrated to India from Pakistan. Notwithstanding anything in Article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if</td>
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<td>(a) he or either of his parents or any of his grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and</td>
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<td>(b)</td>
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<td>(i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or</td>
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<td>(ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has 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 therefore to such officer before the commencement of this Constitution in the form and manner prescribed by that Government: Provided that no person shall be so registered unless he has been resident in the territory of India or at least six months immediately preceding the date of his application.”</td>
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\(^9\) AIR 1991 SC 1886.  
\(^10\) AIR 1984 SC 142.  
\(^12\) Karimunissa v State of M.P. AIR 1955 Nag.6.
Art. 7 of the Constitution of India

It provides:

“Rights of citizenship of certain migrants to Pakistan Notwithstanding anything in Articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India: Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of Article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.”

Both Articles 6 and 7 use the term ‘migrated’. The meaning of the term ‘migrated’ came into consideration of Supreme Court in Kulathi v State of Kerala\textsuperscript{13}. The majority held that the word ‘migrate’ was used in a wider sense of moving from one country to another with the qualification that such movement was not for a short visit or for a special purpose.


It provides:

“Rights of citizenship of certain persons of India origin residing outside India:

Notwithstanding anything in Article 5, any person who or either of whose parents or any of whose grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefore to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India.”

\textsuperscript{13} AIR 1967 SC 1614.
Article 8 provides for the Rights of citizenship of certain persons of Indian origin residing outside India. Article 9 provides that no person shall be a citizen of India by virtue of Article 5, or be deemed to be a citizen of India by virtue of Article 6 or Article 8, if he has voluntarily acquired the citizenship of any foreign State. It deals only with voluntary acquisition of citizenship of a foreign state before the Constitution came into force. Under Article 10 Parliament may take away the right of citizenship of any person.

The Constitution of India, 1950, Art. 11.

It provides:

“Parliament to regulate the right of citizenship by law:

Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.”

Article 11 gives a proper way to the Parliament for making any law relating to Citizenship. While exercising the authority, the Parliament enacted the Citizenship Act, 1955 for the acquisition and termination of the citizenship in India.

3.2 Citizenship under the Citizenship Act, 1955

Parliament has enacted the Citizenship Act, 1955, to provide for the acquisition and determination of Indian Citizenship. The Act provides for acquisition of Indian citizenship after the commencement of the Constitution in five ways, i.e., birth, descent, registration, naturalization and incorporation of territory.

3.2.1 Citizenship by Birth

A person acquires citizenship by birth if he is born on or after 26th January 1950 but before 1st July, 1987. In this case, there is no need to determine the nationality of his parents. But in case where he born on or after 1st July, 1987 but before 3rd December, 2004, it is necessary that either of his parents is a citizen of India at the time of his birth. After 3rd December, 2004, he acquires citizenship by birth if both the parents are citizens of India or one of the parents is a citizen of India and the other is not an illegal migrant at the time of his birth. An ‘illegal migrant’ means a foreigner who entered India without a valid passport or documents or remains in India beyond the permitted period of time.

3.2.2 Citizenship by Descent

Section 4 of the Citizenship Act, 1955 provides that 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 by birth at the time of his birth. A person born outside India on or after 10th December 1992 but before 3rd December, 2004, is considered to be a citizen of India if either of his parents was a citizen of India by birth at the time of his birth. A person born outside India on or after 3rd December, 2004 shall not be a citizen of India, unless the parents declare that the minor does not hold passport of another country and 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.

3.2.3 Citizenship by Registration

Under Section 5 of the Citizenship Act, 1955, a person who has been ordinarily residing in India for seven years before making the application or who has been ordinarily residing in any other country outside undivided India, would acquire Indian citizenship by registration. A person can also register himself or herself as Indian citizen if he or she gets married to an Indian citizen who has been ordinarily residing India for seven years before making application. Both minor and major children of Indian citizens could also acquire citizenship by registration. A registered overseas citizen of India (OCI) for five years and who has been residing in India for one year before making application, would also get citizenship by registration.

3.2.4 Citizenship by Naturalization

Citizenship of India by naturalization can be acquired by a foreigner (not illegal migrant) who is ordinarily resident in India for twelve years.

3.2.5 Overseas Citizenship

The Citizenship Amendment Act of 2003, provided for acquisition of overseas citizenship of India by persons of Indian origin of 16 specified countries other than Pakistan and Bangladesh. In 2005, the Act was further amended in order to grant more and more overseas citizenship of India to persons of Indian origin of all Countries except Pakistan and Bangladesh. By this amendment, the earlier requirement of period of residence in India was also reduced from two years to one year for persons registered as overseas citizens of India to acquire Indian citizenship.

The Overseas Citizenship of India (OCI) Scheme was introduced by amending the Citizenship Act, 1955 in August 2005. The Scheme was launched in 2006. The Scheme provides for registration as Overseas Citizen of India (OCI) of all Persons of Indian Origin (PIOs) who were citizens of India on 26th January, 1950 or thereafter or were eligible to

Overseas Citizen of India (OCI) does not mean ‘dual citizenship’. Overseas Citizen of India (OCI) does not confer any political right on the concerned persons. The registered Overseas Citizens of India cannot enjoy the same status as that of Indian citizens in case of equal opportunities in public employment. It means Overseas Citizen of India (OCI) cannot enforce Article 16 of the Indian Constitution.\footnote{ibid.} Furthermore, Overseas citizens of India cannot enjoy voting rights. Overseas Citizen of India (OCI) cannot enjoy the right to hold offices like President, Vice-President, Judge of Supreme Court and High Court, Member of Lok Sabha, Rajya Sabha, Legislative Assembly or Council. Overseas Citizen of India (OCI) cannot be appointed to the Public Services.

However, Overseas Citizen of India (OCI) enjoys some other rights. A registered Overseas Citizen of India gets Indian visa for his whole life. He or she enjoys the same status as that of Non-Resident Indians in matters of inter-country adoption, tariffs in domestic air fares, entry fee for visiting national parks, the national monuments, museums, etc. in India. Overseas citizen is eligible to practice professions of doctors, dentists, nurses and pharmacists, Advocates, Architects, Chartered Accountants in India. But Overseas Citizen of India (OCI) does not enjoy the same parity with Non-Resident Indians in matters of agricultural properties.

**3.2.6 Renunciation, Termination and Deprivation of Citizenship**

Section 8 of the Citizenship Act 1955 provides that a major and capable person can renounce his or her Indian citizenship. On renunciation, his minor child also loses citizenship. But the minor child can resume the Indian citizenship after attaining the age of majority.

Section 9(1) of the Citizenship Act 1955 provides that an Indian citizen loses his Indian citizenship if he or she acquires the citizenship of another country. It has also been held by the Hon’ble Supreme Court that section 9 is a complete code regarding the termination of Indian Citizenship on the acquisition of the citizenship of a foreign country.\footnote{Bhagwati Prasad Dixit v Rajeev Gandhi AIR 1986 SC 1534.}

On renunciation or termination, the concerned person has to surrender his or her Indian passport to the authorities under the Passport Act. If he or she fails to do so, he or she is liable to receive prescribed punishment.

Deprivation of citizenship means compulsory termination of citizenship in India. Section 10 provides that the Central Government may terminate a person’s citizenship on certain
grounds like the person commits fraud in registration, the person is not loyal towards the Constitution of India, the person is trading or communicating with enemy when India is at war, the person’s citizenship is not in favour of public good, etc.

Increasingly, in the case of Hari Shankar Jain v Sonia Gandhi, the Supreme Court opined that a petition to challenge one’s citizenship can be filed before the High Court or election judge.

3.3 Non-Resident Indian’s Voting Rights

Parliament has approved voting rights to Non-Resident Indians in elections with the Lok Sabha adopting the Representation of the People (Amendment) Bill, 2010. However, the Non-Resident Indian has to be present in the constituency on the date of polling. The new law would allow an Indian citizen residing abroad to get himself enrolled in voter’s list even if he or she was not in India for more than six months because of employment, education or otherwise. In the present busy world, however, it seems unreasonable when Non-Resident Indians have to come back to India from abroad just for casting their votes. Therefore, there is need to computerize the voting rights of Non-Resident Indians.

3.4 Is Corporation a Citizen?

The Supreme Court in State Trading Corporation v Commercial Tax Officer held that company or corporation is not a citizen of India and cannot claim fundamental rights. The court said that citizenship is concerned with natural persons only. The court said that citizenship cannot be conferred upon the juristic persons.

However, the Supreme Court in Cooper v Union of India, also known as Bank Nationalization case, held that a shareholder of a company should be considered as an Indian citizen and is entitled to the protection given under Article 19 of the Indian Constitution. The Fundamental rights of the shareholders as citizens should not be violated by any state action.

In Bennett Coleman Case, the Supreme Court again said that the State Action not only affects the right of newspapers companies but also of the editors, readers and shareholders. These individuals do have freedom of speech and expression which should be protected against any unreasonable State action.

In Godhra Electric Co. Ltd v State of Gujarat the court held that a managing director of a company had right to carry on business through agency of company. The court said that he had right to challenge the constitutional validity of the concerned enactment.

17 AIR 2001 SC 3689.
18 AIR 1963 SC 184.
19 AIR 1970 SC 564.
20 Bennett Coleman & Co. v Union of India, AIR 1973 SC 106.
21 AIR 1975 SC 32.
Following Bank Nationalization and Bennet Coleman cases the Supreme Court in *D.C. & G.M. v Union of India*\(^{22}\), has held that writ petition filed by a company complaining denial of fundamental rights guaranteed under Article 19 is maintainable.

### 4. Interesting Facts

- Parliament had in 2010 passed the Representation of People (Amendment) Bill, 2010 to allow Non-Resident Indians i.e. NRIs to vote in Indian elections. Election Commission is now planning to give voting rights to NRIs in all future elections.

- Indian government has given some relaxation in the procedure of applying Indian citizenship to number of Hindu and Sikh refugees from Pakistan and Afghanistan. The eligible applicants who were facing difficulties in submitting online applications can now submit the same manually along with their passports. An affidavit filed before the authority prescribed under Rule 38 of the Citizenship Rules, 2009, will be considered in lieu of renunciation certificate. The children of such refugees, who entered India on the basis of their parents’ passport, can apply without passport for the grant of Indian citizenship after the regularisation of their stay in India. In case of children of such persons born in India, they can also apply without passport for grant of Indian citizenship after regularisation of their stay in the country. These children will have to register with the Foreigners Registration Office (FRO) in the district concerned for the regularisation.


### 5. Points to Ponder:

- Whether the election commission of India would be able to redress all practical difficulties of NRIs’ voting rights?

- Whether rights of Hindu and Sikh refugees from Pakistan and Afghanistan be ensured.

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\(^{22}\) AIR 1983 SC937.
5. Summary

Article 11 gives a proper way to the Parliament for making any law relating to Citizenship. While exercising the authority, the Parliament enacted the Citizenship Act, 1955 for the acquisition and termination of the citizenship in India. Overseas Citizen of India (OCI) does not mean ‘dual citizenship’. Overseas Citizen of India (OCI) does not confer any political right on the concerned persons. The registered Overseas Citizens of India cannot enjoy the same status as that of Indian citizens in case of equal opportunities in public employment. In conclusion, an Indian citizen enjoys full civil and political rights in India. Certain fundamental freedoms and rights under Indian Constitution are available to the Indian citizens only. Overseas Indians have less privilege than the Indian citizens. Currently, voting rights of overseas Citizens, Non-Resident Indians and Persons of Indian Origin, are being debated. Parliament of India is the sole repository body of making legislation on Citizenship. The legislature is authorized to introduce and regulate the conditions of citizenship.