



CITIZENSHIP (CONSTITUTIONAL IDENTITY AND DUAL CITIZENSHIP)

By *Shraddha Chirania*
From *O.P.Jindal Global University*

Citizenship is a key institution through which competing demands for the membership are made. It is also a mechanism for determining how prospective diverse groups should be delimited and what 'concrete action should result from such [their] solidarity'.¹ Citizenship is an axis in the terms of engagement between individuals, social groups, and the state. It is made up of a bundle of rights and obligations, which form the basis for attaining a full membership, the terms of participation and a sense of belonging in the social body.² Citizenship is a way nationhood is experienced in practice.³ In as diverse a social setting as India, citizenship is a 'mechanism of incorporation' for competing membership claims.⁴ The form of incorporation, or citizenship regime, is shaped by the institutional practices and their underpinning ideological conceptions, which define the paradigm for the allocation

of political, social, economic, cultural and symbolic resources, privileges and duties.⁵

The meaning of the word 'citizenship' continued to be a matter of discourse among the liberals, republicans and ethno-nationals.⁶ The liberal conception of citizenship views the individual as the bearer of a package of rights, designed to protect her personal liberties. On its face, the liberal concept of citizenship is the most inclusive and universalistic.⁷ A republican concept of citizenship, in turn, contains a notion of a common good that is prior to the individual citizen and her choices. Rights are granted in accordance with the contribution of citizens to the common good.⁸ The ethno-nationalist notion of citizenship anchors membership by a descent group. The nation is founded on blood-ties. This citizenship conception is the most exclusionary. It enables an almost unadulterated sense of belonging in the social body and the state for some groups.⁹ Citizenship becomes an end in the making of the state; the paradigmatic question becomes the extent to which the state

¹ H.H. Gerth and C. Wright Mills (eds.), *From Max Weber; Essays in Sociology*, London: Routledge, 1997, pp. 176.

² Shani, Ornit, "Conceptions of Citizenship in India and the 'Muslim Question.'" *Modern Asian Studies*, vol. 44, no. 1, 2010, pp. 145–173. *JSTOR*, [JSTOR, www.jstor.org/stable/27764650](http://www.jstor.org/stable/27764650).

³ Roger Brubaker, *Immigration, citizenship and the Nation-state in France and Germany*, University of Minnesota Press, 1998. P. 132.

⁴ Gershon Shafir and Yoav Peled, 'Citizenship and Stratification in an Ethnic Democracy', *Ethnic and Racial Studies* Vol. 21, No. 3, May 1998, p. 409.

⁵ Deborah J. Yashar, *Contesting citizenship in Latin America: The Rise of Indigenous Movements and the Postliberal Challenge*, Cambridge University press, Cambridge, 2005, p.47.

⁶ Yoav Peled and Gershon Shafir, *Being Israeli: The Dynamics of multiple Citizenship*, Cambridge University Press (March 11, 2002), pg 1-27.

⁷ Shani, Ornit, "Conceptions of Citizenship in India and the 'Muslim Question.'" *Modern Asian Studies*, vol. 44, no. 1, 2010, pp. 145–173. *JSTOR*, [JSTOR, www.jstor.org/stable/27764650](http://www.jstor.org/stable/27764650).

⁸ Ibid

⁹ Ibid (n-9)



protects the life of individuals.¹⁰ This concept of *non-statist* citizen exists in India which was introduced by Gandhi. In the *non-statist* citizenship conception, a citizen has an ‘inherent right’ to civil disobedience; in some circumstances it is the citizen’s ‘sacred duty’.¹¹ Gandhi played an important role in ethno-national conception.

When India gained Independence it was the moment ‘to make Indians’.¹² At independence, a tension between an ethno-nationalist and a liberal citizenship discourses was at play. An ethno-nationalist citizenship discourse gained currency in the context of partition. Many people asked: ‘Can a Muslim be an Indian?’¹³ These questions probed the drafters of the constitution as well as Nehru. Among the main concerns that preoccupied Jawaharlal Nehru after the independence was the question of how to safeguard the country’s national unity. In his fortnightly letter to the Union’s chief Ministers, Nehru repeatedly voiced his fear about what he saw as an inherent ‘tendency towards [the] disintegration of India’.¹⁴ A common proposition for the endurance of India’s

National integrity, of which Nehru was a proponent, suggests that ‘the consolidation of independent India was to occur around the concept of “unity in diversity”’.¹⁵ Many scholars and leaders agreed with him on this point and thus began pondering over how to establish a nation where this principle was followed without disturbing the peace of the nation and the tranquility also stays intact. Thus came about the concept of citizenship.

The question of citizenship became particularly became important at the time of the making of our constitution because the constitution sought to confer certain rights and privileges upon those who were entitled to Indian Citizenship.¹⁶ The constitution, however, did not intend to lay down a permanent or a comprehensive law relating to citizenship in India. It only talked about people who would be citizens of India *at the date of the commencement* of the constitution and then left the entire clause of citizenship for the further interpretation and regulation by the parliament. The parliament then enacted the Citizenship Act, 1955 making much more comprehensive provisions for the cancellation of the citizenship *subsequent to the commencement* of the constitution.¹⁷

¹⁰ Ibid (n 9)

¹¹ CWMG, Vol. 25, p. 391-392, (*Young India*), 5th January,

¹² 1922 Kenan malik, ‘*The meaning of race*’, (quoted *Massima d’Azeli*) London: Mavmillan, 1996, p. 138.

¹³ Gyanendra Pandey, ‘Can a Muslim be an Indian’, *Comparative Studies in Society and History*, Vol. 41 No. 4, 1999, pp. 608-629.

¹⁴ Jawaharlal Nehru, *Letters to chief ministers, 1947-1964*, Vol. 3, 1952-1954, Government of India, Jawaharlal Nehru Memorial Fund, Teen Murti House, New Delhi, 1985, 22 August, 1953, p. 367. Also see letter 16 July, 1953-p. 340; 28 September, 1953, p. 386.

¹⁵ Bipan Chandra, Mridula Mukherjee and Aditya Mukherjee, *India after Independence: 1947-2000*, New Delhi: Penguin Books, 2000, p. 84.

¹⁶ Durga Das Basu, ‘*Introduction to the constitution of India*’, 22nd Edition, LexisNexis, 2015.

¹⁷ Durga Das Basu, ‘*Commentary on the Constitution of India*’, 7th edition, Vol, A1 pp. 135.



Under Articles 5-8 on the Constitution¹⁸, people who became citizens on January 26, 1950 are being talked about. After the Citizenship Act, 1955, various modes of acquisition of citizenship were prescribed: Citizenship by birth, Citizenship by descent, Citizenship by registration, Citizenship by naturalization, citizenship by incorporation of territory. Then came the demands by the overseas Diaspora. Diaspora means a group of people who spread from one original country to other countries.¹⁹ In response to their growing demand of Dual Citizenship India introduced the concept of the person of Indian Origin (a PIO) in 2002 and an overseas citizen of India (an OCI) in 2006 as categories of persons who enjoy certain legal rights in India.²⁰ People always mistakenly refer to the concept of dual citizenship. A PIO is simply defined to be a person registered as a PIO cardholder under the Ministry of Home Affairs scheme.²¹ An OCI is a person registered as an overseas citizen of India under section 7A of the Citizenship Act, 1955 (the "Act"). PIOs and

OCIs essentially enjoy certain rights in India, on par with Indian nationals. Basically, people of Indian origin of certain categories who migrated from India and acquired citizenship of a foreign country, other than Pakistan and Bangladesh, are eligible to be granted an Overseas Citizenship of India on an application made in this behalf to the central government as long as their home country allow dual citizenship in some firm or the other under their local laws.²² The Persons of Indian Origin enjoy fewer benefits than Overseas Citizenship of India. The Amendment Act (which amended the Act) was introduced in the Lok Sabha on 27 February 2015 and passed by the Lok Sabha on 2 March 2015. The bill was subsequently introduced in the Rajya Sabha and was cleared on 4 March 2015. The bill received the assent of the President of India on 10 March 2015 and is deemed to have come into force on 6 January 2015. The Amendment Act introduces the concept of an 'Overseas Citizen of India Cardholder' (an "OCC") that essentially replaces and merges together OCIs and PIOs.²³ The act provides the qualifications of registrations along with additional grounds. (1) a minor child whose parent(s) are Indian citizens; or (2) spouse of foreign origin of an Indian citizen or spouse of foreign origin of an overseas citizen India cardholder, subject to some conditions (3)

¹⁸ Article 5-8, The constitution of India, 1949. Bare text

¹⁹ Cambridge dictionary, <https://dictionary.cambridge.org/dictionary/english/diaspora>, accessed on 16 September, 2018

²⁰ Ran Chakrabarti and Sonu Varghese, 'India: Amendments To The Citizenship Act, 1955 And The Concept Of The Overseas Citizens Of India Cardholder' (IndusLaw, 20 January 2016), < <http://www.mondaq.com/india/x/459548/general+immigration/Amendments+to+the+Citizenship+Act+1955+and+the+concept+of+the+Overseas+Citizens+of+India>> accessed on 16 September, 2018.

²¹ Introduced pursuant to a notification dated 19 August 2002 (and subsequently amended on 30 September 2014)

²² Ibid (n 17)

²³ Ran Chakrabarti and Sonu Varghese, 'India: Amendments To The Citizenship Act, 1955 And The Concept Of The Overseas Citizens Of India Cardholder' (IndusLaw, 20 January 2016), < <http://www.mondaq.com/india/x/459548/general+immigration/Amendments+to+the+Citizenship+Act+1955+and+the+concept+of+the+Overseas+Citizens+of+India>> accessed on 16 September, 2018.



great-grandchild of a person who is a citizen of another country but meets several conditions.²⁴

An OCC are entitled to some rights and enjoyment. An OCC is entitled to a multiple entry multi-purpose lifelong visa to visit India and has no requirement to register with the authorities for the duration of stay, irrespective of how long it is. An OCC will not require a separate visa to visit India. They are treated very similar to NRI's in respect to economic, financial and educational rights. They are also treated with par in matters of international adoption of Indian children and pursue the professions of doctors, dentists, advocates, architects and chartered accountants in India, pursuant to the provisions contained in the relevant acts governing those professions.²⁵ In the context of the introduction of the concept of an OCC, the Department of Industrial Policy and Promotion recently amended the consolidated foreign direct investment policy circular of 2015²⁶ (the "FDI Policy") in relation to NRIs, PIOs and OCIs.²⁷ Pursuant to the amendment, for the purposes of the FDI Policy, 'NRI' shall also include an OCC.

Along with these rights comes the ones which are unavailable to them OCC's as well. Certain rights have been reserved exclusively for citizens. The reasoning behind this is that citizens are entitled to enjoy and exercise rights that are guaranteed by the Constitution compared to persons who are not the citizens of a country.²⁸ Section 7B (2) of the Amendment Act lays down several rights, conferred on a citizen of India, which are not available to an OCC. Such rights include: (1) the right to equality of opportunity in matters of public employment (based on Article 16 of the Constitution); (2) the election as President or Vice President (under Article 58 and Article 66 of the Constitution); (3) the appointment as a judge of the Supreme Court or the High Court (under Article 124 and 217 of the Constitution); (4) the right to registration as a voter (under section 16 of the Representation of the People Act, 1950); (5) eligibility for being a member of the House of People or of the Council of States (under sections 3 and 4 of the Representation of the People Act, 1950); (6) eligibility for being a member of the Legislative Assembly or the Legislative Council of a State (under section 5, 5A and 6 of the Representation of the People Act, 1950); and (7) Appointment to public services and posts in connection with affairs of the Union or of any State for appointment in such services and posts as the Central Government may specify.

Prime Minister Atal Bihari Vajpayee said in 2002, "*We are in favor of dual*

²⁴ Bureau of Immigration, ministry of home affairs, <<https://boi.gov.in/content/overseas-citizen-india-oci-cardholder>> accessed o 16 September, 2018

²⁵ Ibid (n 23)

²⁶ Press Note No. 7 (2015 series) dated 3 June 2015

²⁷ This came in effect from 18 June 2015

²⁸ Ko Swan Sik & T.M.C. Asser Instituut (1990), *Nationality and International Law in Asian Perspective*, <https://books.google.co.in/books?isbn=079230876X> (accessed on 16 September 2018)



citizenship. Not dual loyalty."²⁹ The concepts to Overseas Citizen of India Cardholder, person of Indian Origin (a PIO), Overseas citizen of India (an OCI) was introduced just to compensate for India's negation of dual citizenship. The reasons though justify as to why the government took such a stance. Dual citizenship will bring confusion in the state of minds of the people. For example, people having dual citizenship will have the right to vote and exercise their political rights in both the countries.³⁰ These citizens might have a bias or a prejudice in their mind regarding either of the country which in every way is not very healthy for the country whom the person has a bias against. The following paragraphs will justify why India denies the concept of Dual citizenship.

The dual obligation, As a dual citizen, the person will be bound by both the countries laws. For example, if you are a citizen of US and a country with mandatory military service, you can lose your U.S. Citizenship under certain circumstances, such as if you serve as an officer in a foreign military that us engages in a war against the US.³¹ **Double Taxation,** Paying taxes of

both the country can be pretty rough for the citizen who resides in only one place but has citizenship of both. These are just the personal problems, the following disadvantages relate to the state. First is the **constitutional issue**, the implication of the Parliament is that there are many constitutional issues to tackle before implementation of dual citizenship can be achieved, which is a very complicated process altogether. Owing to the first disadvantage comes the second which is **internal security**, The parliament is concerned with security implications in cases where the dual citizens can be in favor of or be working with sensitive organizations, armed or paramilitary forces. **Social divide**, It was also contemplated that guaranteeing dual nationalities to a community in the country would cause social divide.

Considering the advancement of the world now, the above reasons can easily be conquered. Most of the Indians who seek the citizenship of another country would be for employment or education matters. Like any other immigrants they would feel themselves being cut off from their ancestral roots when they are denied Indian Citizenship.³² In order of emotional respects, the persons of Indian origin should be given the certificate of dual citizenship and their Indian passports to feel more close to their

²⁹ Nasima H. Khan, 'PM Atal Bihari Vajpayee declares issue of dual citizenship for NRIs resolved', (India Today, January 21, 2002) Updated on September 7, 2012, <https://www.indiatoday.in/magazine/indiascope/story/20020121-pm-atal-bihari-vajpayee-declares-issue-of-dual-citizenship-for-nris-resolved-796112-2002-01-21>, accessed on 16 September, 2018

³⁰ Times law journal, "Dual Citizenship in India", August 27, 2017 < <http://lawtimesjournal.in/dual-citizenship-india/>> accessed on 16 september, 2018.

³¹ Jean Folger, 'Dual citizenship: The advantages and disadvantages', (Investopedia, November 27, 2017)

< <https://www.investopedia.com/articles/personal-finance/031315/advantages-disadvantages-dual-citizenship.asp> > , accessed on 16 September , 2018.

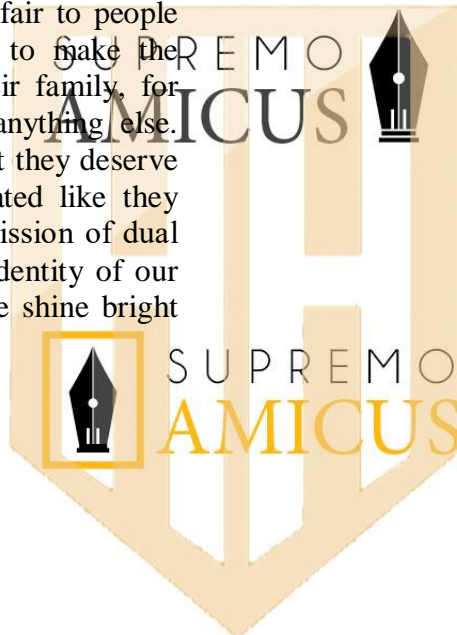
³² Reshma S.J., 'Single Citizenship Vs Dual Citizenship: A Debate Over the Indian Perspective', (International Journal of Science and Research (IJSR), 2015), <https://www.ijsr.net/archive/v6i7/ART20175249.pdf> , accessed on 16 september, 2018.

³³ Ibid



home country and culture. They can still be verified under Foreigners Act, Passport Act, 1920 and Passport Act, 1967 of India.³⁴ In addition the High Commission on the Indian Diaspora has endorsed the idea of dual citizenship for economic, technological, social, political and psychological reasons. Thus, dual citizenship can truly contribute to democratic transition in India and carry her forward in development.³⁵

The idea of our constitution, the very identity and the preamble talks about Justice, Liberty, Equality, Fraternity, secularism and socialism³⁶ etc, then why not grant dual citizenship and be fair to people who left the country maybe to make the country proud, or to feed their family, for employment purpose or for anything else. Why not give them the respect they deserve and why should they be treated like they aren't one of ours. The commission of dual citizenship wont change the identity of our constitution, but only make be shine bright and be stronger.



³⁴ Ibid (n 32)

³⁵ Ibid

³⁶ Indian constitution, 1949