

**Citizenship under the Indian Constitution: Historical Perspective****Surendra Yadav<sup>1</sup>**

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**Abstract**

The provision of citizenship has been made in Part II (Articles 5 to 11) of the Constitution. It starts with the picture of Gurukul. Articles 5 to 9 were implemented on 26 November 1949. Using the power of Article 11, Parliament has enacted the Citizenship Act 1955 on citizenship, which is the subject of Entry 17 of the Union List of the Seventh Schedule of the Constitution. After the implementation of the Citizenship Act, all disputes related to citizenship will be resolved by the Citizenship Act 1955, and before it, all disputes will be resolved by the Constitutional provisions. The Citizenship Act 1955 has been amended in 1986, 1992, 2003, 2005, 2015 and 2019. The Citizenship Act 1955 was recently amended in 2019, and through this amendment, provision has been made to grant citizenship to persons of six communities - Hindu, Buddhist, Jain, Sikh, Parsi, Christian, coming from three countries Bangladesh, Pakistan and Afghanistan. There are two important principles related to citizenship - Jus Soli and Jus Sanguinis. The Constituent Assembly has accepted the jus soli principle, which means the place of birth.

**KEY WORDS:** Citizenship, Constitution, Citizenship Act, Article, Amendment, Citizens.

**1. Preface**

The provisions related to citizenship in India came into force on 26 November 1949. The importance of these provisions can be seen from the fact that before the implementation of the entire Constitution, some provisions of the Constitution were implemented on 26 November 1949, along with them, the provision related to citizenship (Articles 5 to 9) was implemented on 26 November 1949 too<sup>2</sup>. Although the entire Constitution came into force on 26 January 1950. The question that arises is how the dispute related to citizenship between 26 November 1949 to 26 January 1950 will be resolved. So, in this regard, the provisions of Part II, Articles 5 to 11 of the Constitution will be applicable, and the disputes related to citizenship will be resolved only through the constitutional provisions. To resolve the disputes arising after 26 January 1950, Parliament has used the power of Article 11 to enact the Citizenship Act 1955, through which those disputes related to citizenship which arise after 26 January 1950 will be resolved.

The history of citizenship is very ancient in India, but when we feel the need to study in the context of the history of citizenship under the Indian Constitution, then we can say that it is the history of the time of the making of the Constitution and after that there have been revolutionary changes in it.

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<sup>2</sup> Dr. Subhash C Kashyap and B. Shiva Rao (eds), V2: 2, *The Framing of India's Constitution: A Study* 167 (Law & Justice Publishing Co, Delhi, 2021).

## **2. Part II of the Constitution starts with the picture of Gurukul, whose name is Citizenship.**

This part starts with the picture of Gurukul and whose name is Citizenship. It took 2 years, 11 months and 18 days to create the Indian Constitution, and then we were able to create our Constitution. Sir Ivor Jennings' calculation about this Constitution is – “This is a unique Constitution in itself. This is the largest Constitution in the world. While commenting on this Constitution, Jennings even called it “Lawyers’ Heaven”.

There are many challenges in addressing a complex issue like citizenship. Some of the primary challenges include the following -

- (1) In which part of the constitution should it be included, or should it be maintained as an independent Part?
- (2) What should be the main provisions regarding citizenship?
- (3) Should Citizenship be either by birth or by descent, or by both?
- (4) What should be the provision for a person who is a foreigner?
- (5) What should be the provision for such foreigners who want to stay in India?
- (6) What should be the provisions for such Indians who want to stay abroad?
- (7) Should citizenship be single or dual?
- (8) What should be the provision for such persons who have been ceded to different regions and countries?
- (9) What should be the provisions for such persons who have gone to other countries after being ceded by them and want to come back again?
- (10) What should be the provisions for such persons who came to India after the Nehru-Liaquat Pact?
- (11) What should be the provisions for such persons who have already come to India from Pakistan and have gone to Pakistan and then come to India?
- (12) What should be the provisions for citizenship of persons who came after the provisions of citizenship came into force?
- (13) What should be the provisions for the termination of the citizenship of such displaced people who are being granted citizenship?
- (14) Should citizenship be granted only to people of a particular caste, community or religion?

The provision related to citizenship was so complicated that the chairman of the drafting committee, Dr. B.R. Ambedkar, himself said, “Who knows how many drafts related to citizenship were prepared and destroyed. Who knows how many committees were formed in this regard, how many ad hoc committees were formed and destroyed?” Initially, it was considered to include the provision of citizenship in the part containing fundamental rights. Still, after the idea of Pandit Jawaharlal Nehru and on his suggestion, a separate part related to citizenship was created, and citizenship was kept in Part II of the Constitution.

The second Constituent Assembly met to resolve the issue of citizenship. The problem was presented to the Constituent Assembly on 13<sup>th</sup> December 1946, but it took 2 years, 11 months, and 18 days to solve.

In this way, many problems came before the Constituent Assembly, and it took the Assembly 2 years, 11 months, and 18 days to solve these complex problems. This provision was so important that some provisions of the Constitution were implemented on 26 November 1949, and the remaining provisions were implemented on 26 January 1950. The provision related to citizenship was also implemented on 26 November 1949.

After a long debate in the Constituent Assembly, a draft which contained the following Articles - 5, 5A, 5AA, 5B, 5C and 6 was accepted by Dr. Ambedkar and was again arranged in the form of Articles 5, 6, 7, 8, 9 and 10. These articles had provisions regarding citizenship at the time of the enactment of the Constitution. After the enactment of the Constitution, after a long debate in the Constituent Assembly, Parliament was empowered to grant citizenship, and by adding Article 11, Parliament was given this power. Using this power, Parliament has made the Citizenship Act, 1955. Under this Act, there are provisions regarding citizenship after 26 January 1950.

How was the dispute related to citizenship resolved between 26 November 1949 - 26 January 1950? There are two solutions to this question: the first is the Nehru-Liaquat Agreement, and the second is the articles of the Constitution, which came into force on 26 November 1949. Finally, all disputes related to citizenship before 26<sup>th</sup> January 1950 will be resolved by Constitutional provisions.

There are two main principles related to citizenship -  
“Jus sanguinis” and “Jus soli”.

Jus soli = Place of birth, and Jus sanguinis = recognition of blood ties.

Motilal Nehru had advocated Jus soli (enlightenment) under his leadership in 1928. The Constituent Assembly also abolished/rejected the principle of Jus sanguinis. And mainly adopted the principle of Jus soli.

So, it is clear that citizenship under the Indian Constitution: In historical perspective, we have read about the history before the implementation of the Constitution of India on 26 January 1950, which also includes the Nehru-Liaquat Pact. As a result of this pact, people who went to Pakistan got the opportunity to come to India, and those who came to India who wanted to go to Pakistan got the opportunity to go to Pakistan. According to that pact, they got citizenship easily. But those people who neither got the citizenship of Pakistan nor India, went to such a situation where all their rights were snatched away because citizenship is a right. Such people were not even deported. They did not get a home, they should get their human rights, but from 1950 it has come to 2025 and till now we do not have any specific information about such people and we brought the Citizenship Act 1955 which was amended in 2019 to give citizenship to 6 communities - Hindu, Sikh, Christian, Buddhist, Jain and Parsi who came from three countries Pakistan, Bangladesh and Afghanistan and apart from these, all those who have entered India have been called illegal immigrants. And there has been talk of keeping them in detention centers, but there has been no talk of their human rights.

### **3. Why is citizenship known as the most Important right and also a bundle of rights**

Part II of the Constitution of India defines several categories of Indian citizens at the commencement of the Constitution. A citizen of a given state is a person who enjoys full membership of a political community or state. Aliens are different from citizens or mere residents who do not have all the rights which go to make full membership of a state. Thus, in India, aliens do not enjoy all the fundamental rights secured to citizens.<sup>3</sup> Again, citizens alone have the right to hold certain high offices, such as those of President<sup>4</sup>, Vice President<sup>5</sup>, Governor of a state<sup>6</sup>, judge of the Supreme Court<sup>7</sup> or the High Court<sup>8</sup>, or the Attorney General<sup>9</sup> and the Advocate General<sup>10</sup>. The right to vote in elections to the Union or State Legislature or to become their member is confined only to citizens.<sup>11</sup>

#### **4. Framing the Constitution and Constitutional Provisions on Citizenship**

The Constitution of India came into effect on 26 January 1950. It is important to note, however, that the provisions on citizenship came into force on the day the Constitution was adopted, i.e., 26 November 1949. These provisions applied to all of India except the State of Jammu and Kashmir. Now it applies to the whole of India, i.e. 31.10.2019. The Constitution provided for a singular mode of citizenship – national citizenship. There was no concept of separate state-based citizenship existing alongside the national citizenship. To comprehend the import of the constitutional provisions relating to citizenship, it is important to supplement a textual reading of the provisions reading of the debates surrounding these provisions to glean the framers’ intent. While the term citizenship is not defined in the Constitution, Part II of the Constitution – specifically Articles 5 to 11- provides the framework for citizenship at the time of commencement of the Constitution. The relevant provisions detail the modes of acquiring citizenship – birth, domicile and descent, circumstances that bar a person from acquiring Indian citizenship, plenary powers of Parliament, and the status of those displaced on account of the Partition. Article 5 deals with the issue of ‘citizenship at the commencement of the Constitution’. It stipulates a two-fold requirement for conferring citizenship. The requirement of being ‘domiciled’ in India was the first criterion. In addition, anyone who fulfilled one of the following three criteria would also be a citizen of India: -

- “(a) who was born in the territory of India; or
- (b) either of whose parents were born in the territory of India; or

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<sup>3</sup> The Constitution of India, Articles 15, 16, 18(2), 19, and 29 declare fundamental rights belonging to citizens alone.

<sup>4</sup> The Constitution of India, Art. 58.

<sup>5</sup> The Constitution of India, Art. 66(3).

<sup>6</sup> Constitution of India, Art. 157.

<sup>7</sup> Constitution of India, Art. 124(3).

<sup>8</sup> Constitution of India, Art. 217.

<sup>9</sup> Constitution of India, Art. 76.

<sup>10</sup> Constitution of India, Art. 165.

<sup>11</sup> For more details on the position of citizens vis-à-vis non-citizens, see M.P. Singh, “Position of Aliens in Indian Law” in J.A. Frowein and T. Stein (eds.), *The Legal Position of Aliens in National and International Law* (1987) 569.

(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement”<sup>12</sup>.

Although this reflects a combination of factors, the criteria of descent and domicile are meant to be complementary, while the primary character is closer to the *jus soli* conception since the emphasis was on physical presence in the territory of India<sup>13</sup>. This provision reflects the intention of the framers to move towards a modernist understanding of citizenship<sup>14</sup>.

Article 6 focused on the “Rights of citizenship of certain persons who have migrated to India from Pakistan”<sup>15</sup>. It provided that “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 “(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

(b) (i) In the case where such person has so migrated the nineteenth day of July 1948, he has been ordinarily resident in the territory of India since the date of his migration, or (ii) In the case where such person has so migrated on or after the 19<sup>th</sup> 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”<sup>16</sup>.

A precondition for the registration was that he or she should have been resident in India for at least six months before the date of the application<sup>17</sup>.

Article 7 deals with “Rights of citizenship of certain migrants to Pakistan”.<sup>18</sup> It provides that “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”.<sup>19</sup>

A plain reading of the text of Articles 6 & 7 gives the impression of a homogenous intent on the part of framers to commit to *jus soli* as the governing principle of citizenship. However, the secular wording should not detract from the religious undercurrents that informed the debates surrounding these provisions. Much like the British colonizers whose modernist understanding of subject-hood was influenced by the race factor, the framers of the Constitution of India, too, were influenced by communal factors in their conceptualization of the category of ‘citizen’. The debates among the framers tell of the

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<sup>12</sup> The Constitution of India, Art. 5.

<sup>13</sup> Niraj Gopal Jayal, *Democracy and the State: Welfare, Secularism and Development, Contemporary India* 57 (Oxford University Press, 2013).

<sup>14</sup> *Ibid.*

<sup>15</sup> The Constitution of India, Art. 6.

<sup>16</sup> The Constitution of India, Art. 6.

<sup>17</sup> *Ibid.*

<sup>18</sup> The Constitution of India, Art. 7.

<sup>19</sup> *Ibid.*

polarizing differences that existed among them. Articles 6 & 7 were drafted with two specific target groups in mind. Article 6 spoke to the Hindus who fled Pakistan and sought refuge in India<sup>20</sup>. Article 7, on the other hand, was drafted in the context of Muslims who had fled to Pakistan and may want to return to India at a future date<sup>21</sup>. It is interesting to note that in debates within the Assembly, the terms for the Hindu groups were refugees, reflecting certain sympathy for their plight<sup>22</sup>. The Muslims, though, were characterized as migrants, imputing a certain internationality to their action of leaving India during the chaos of the Partition<sup>23</sup>. The implication of this difference in narrative, as can be witnessed in the debates and Jurisprudence that subsequently evolved, was that for the ‘migrant’ Muslims, there was an invisible prerequisite of loyalty that had to be determined before they could be entitled to citizenship<sup>24</sup>. Similar lines of questioning about motives and allegiance were not imposed on their Hindu counterparts.

Article 8 details the right of citizenship of persons who reside outside India but are of Indian descent<sup>25</sup>. This category of people, unlike those referred to in Article 5, are required to register to become citizens. Article 9 imposes a limitation on people who have voluntarily become citizens of another state and bars them from acquiring Indian Citizenship<sup>26</sup>. Article 10, titled “Continuance of the rights of citizenship”, is a provision detailing the power of the parliament as a limitation to the right of citizenship, rather than a provision that confirms a right<sup>27</sup>.

Article 11 is a significant provision in that it vests in Parliament plenary power to enact legislation on citizenship and its related aspects<sup>28</sup>. It specifically empowers Parliament to enact provisions on the acquisition, loss and other matters related to citizenship without being constrained by the constitutional provision and the principles that underlie them<sup>29</sup>. As we shall see, Parliament has exercised its powers of legislation and amendment to such legislation with precisely such a self-understanding.

The constitutional requirements were crafted only at the time the Constitution was initiated to establish citizenship. In compliance with the powers detailed in Article 11, the fundamental basis for citizenship was defined by the Citizenship Act 1955. This Act was complemented by the 1956 rules of citizenship, which were abrogated by the 2009 rules of citizenship. The Act and the 2009 citizenship laws have also become the new legal

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<sup>20</sup> Niraj Gopal Jayal, *Democracy and the State: Welfare, Secularism and Development in Contemporary India* 58 (Oxford University Press, 2013).

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> Niraj Gopal Jayal, *Democracy and the State: Welfare, Secularism and Development in Contemporary India* 59 (Oxford University Press, 2013).

<sup>25</sup> The Constitution of India, Art. 8.

<sup>26</sup> The Constitution of India, Art. 9.

<sup>27</sup> *Id.*, Art. 10.

<sup>28</sup> *Id.*, Art. 11.

<sup>29</sup> The Constitution of India, 1950, Art. 11.

citizenship the new legal citizenship in India.<sup>30</sup> The Citizenship Act, 1955, attempted to define the concrete edges of citizenship following the Constitution's beginning, when the Constitution dealt with citizenship. The conferment of a person as a citizen of India. The legislation related to this matter is the Citizenship Act 1955, which has been amended by the Citizenship (Amendment) Acts of 1986, 1992, 2003, 2005, 2015 & 2019.

## **(5) Conclusion**

The provision of citizenship in the Indian Constitution was accepted after a long debate in the Constituent Assembly. According to Dr. B.R. Ambedkar, many committees related to citizenship were formed and dissolved, yet this issue was so complicated that it could not be resolved easily. Ultimately, in the second meeting of the Constituent Assembly, which was held on 13<sup>th</sup> December 1946, after the idea of Pt. Jawaharlal Nehru and his suggestion, Dr. B.R. Ambedkar and the Constituent Assembly agreed to include an important provision that citizenship was placed in Part-II of the Constitution.

The provision of citizenship has been made in Part II (Articles 5 to 11) of the Constitution. It starts with the picture of Gurukul that denotes its importance. Articles 5 to 9 were implemented on 26 November 1949. Using the power of Article 11, Parliament has enacted the Citizenship Act 1955 on citizenship, which is the subject of Entry 17 of the Union List of the Seventh Schedule of the Constitution. After the implementation of the Citizenship Act, all disputes related to citizenship will be resolved by the Citizenship Act 1955, and before it, all disputes will be resolved by the Constitutional provisions. The Citizenship Act 1955 has been amended in 1986, 1992, 2003, 2005, 2015 and 2019. The Citizenship Act 1955 was recently amended in 2019, and through this amendment, provision has been made to grant citizenship to persons of 6 communities - Hindu, Buddhist, Jain, Sikh, Parsi, Christian, coming from three countries Bangladesh, Pakistan and Afghanistan.

There are two important principles related to citizenship - Jus Soli and Jus Sanguinis. The Constituent Assembly has accepted the jus soli principle, which means the place of birth. Expressly, this principle has been incorporated in Article 5. In historical perspective, after the Nehru-Liaquat Agreement, people came to India from Pakistan and went to Pakistan from India. Such people acquired citizenship in India under Articles 6 and 7 of the Constitution. And those who could neither get citizenship in India nor Pakistan, their civil rights ended, and human rights arose. Civil rights are a set of rights. Therefore, it is clear that the provisions related to citizenship are inadequate.

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<sup>30</sup> M.P. Jain, *Constitution of India*, 839-847 (Lexis Nexis, 8th Edition, 2018).