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COMPARATIVE STUDY OF CITIZENSHIP IN INDIA AND U.S.A

AUTHORED BY - PRADNYA P. DABHADE, LLM 1ST YEAR

INTRODUCTION

Citizenship in India and United States has evolved significantly over time, shaped by historical, legal and sociocultural factors. In India, the concept of citizenship is deeply rooted in the struggle for independence and the aspiration to build a democratic nation. The modern understanding of citizenship in India finds its roots in the struggle against colonial rule, where the quest for independence was inseparable from the aspiration to build an inclusive and democratic nation.

Meanwhile, the United States, Journey from the Founding Fathers to the present has been marked by the continuous evolution of citizenship concepts, influenced by the events such as the Civil War, the Civil Rights Movement, and shifts in immigration patterns.¹

In India, the Citizenship Act of 1955 defines Indian Citizenship and outlines the rights and duties of the citizens. The act also provides for the acquisition and termination of the citizenship.

In the United States, the 14th Amendment of the U.S. Constitution defines citizenship and outlines the rights and duties of citizens. The Naturalization Act of 1790 established the first federal naturalization law, which granted citizenship to “free white persons” who had resided in the United States for two years and declared their intention to become citizens.²

¹ <https://www.uscis.gov/citizenship-resource-center/naturalization-statistics>

² <https://www.pewresearch.org/short-reads/2018/01/18/naturalization-rate-among-u-s-immigrants-up-since-2005-with-india-among-the-biggest-gainers/>

HISTORICAL BACKGROUND

INDIA:

Though India is a Federation having two levels of Government, Central and State- there is only single citizenship, viz the Indian citizenship and no separate State Citizenship.

Article 5 to 11 in the Constitution lay down as to who are the citizens of India at the commencement of the Constitution, ie on 26 January 1950.

These citizens has been classified into:

1. citizens by domicile
2. citizens by migration, and
3. citizens by registration.

Colonial Legacy:

India's historical journey towards defining citizenship is deeply intertwined with its struggle against British colonial rule. The colonial period, characterized by the imposition of discriminatory policies and the denial of political rights, laid the groundwork for a reimagined citizenship in post-independence India.³

Independence Movement:

The Indian independence movement, led by iconic figures like Mahatma Gandhi and Jawaharlal Nehru, was not only a fight for political sovereignty but also a quest to establish an inclusive and egalitarian nation. The movement sowed the seeds for the principles of citizenship that would be enshrined in the Indian Constitution.⁴

Constitutional Framework:

The adoption of the Indian Constitution in 1950 was an important moment. Dr. B.R. Ambedkar, the architect of the Constitution, dreamed of a democratic and socially just society. The

³ M P Jain, Indian Constitutional Law, 839 (8th ed., 2018)

⁴ Kaviraj, S., & Khilnani, M. (Eds.). (2001). Civil Society: History and Possibilities. Cambridge University Press.

Constitution recognized the principles of jus soli and jus sanguinis, laying the foundation for citizenship based on birth and descent.

Partition and Citizenship Challenges:

The partition of British India in 1947 resulted in mass migrations and the reconfiguration of territorial boundaries. The Citizenship Act of 1955 addressed the citizenship status of those affected by the partition, reflecting the complexities of identity and migration.

Evolving Legislation:

Subsequent amendments and legislation, such as the Citizenship Amendment Act (CAA) in 2019, introduced new considerations, particularly concerning the citizenship status of individuals from neighbouring countries. This highlighted the ongoing evolution of citizenship laws in response to contemporary challenges.⁵

UNITED STATES:

1. Founding Principles:

The United States, born out of a revolutionary spirit in the late 18th century, established foundational principles that emphasized individual rights and liberties. The U.S. Constitution, ratified in 1787, set the stage for the nation's understanding of citizenship.

2. Constitutional Amendments:

The 14th Amendment, ratified in 1868 in the aftermath of the Civil War, played a pivotal role in shaping the modern concept of citizenship. It granted citizenship to all persons born or naturalized in the United States and underscored the notion of equal protection under the law.

3. Immigration and Nationality Act of 1952:

The Immigration and Nationality Act, also known as the McCarran-Walter Act, overhauled U.S. immigration policy in 1952. It introduced the concept of quotas, reflecting the changing dynamics of immigration and influencing citizenship criteria.

⁵ M P Jain, Indian Constitution Law, (8th ed., 2018)

4. Civil Rights Movement:

The Civil Rights Movement of the 1950s and 1960s sought to dismantle racial segregation and discrimination. This period led to legislative changes, reinforcing the principles of equality and non-discrimination in the application of citizenship rights.

5. Contemporary Challenges and Reforms:

Ongoing debates on immigration policy, Deferred Action for Childhood Arrivals (DACA), and calls for comprehensive immigration reform underscore the dynamic nature of U.S. citizenship. Legal developments and societal shifts continue to shape the contours of American citizenship.

Understanding the historical contexts of India and the United States is crucial for unravelling the complexities and nuances that define their respective citizenship frameworks. The trajectories of these nations reflect not only the struggles for independence and civil rights but also their ongoing efforts to build inclusive societies that accommodate diverse populations.

MODE OF ACQUISITION OF CITIZENSHIP

INDIA

Jus Soli (by birth):

According to Section 3, a person born in India on or after the 26th January, 1950 but before the citizenship (Amendment) Act, 1986, and those born in India on or after commencement and either of whose parents is a citizen of India except when they possess diplomatic immunity and his father is not an alien enemy.⁶

Jus Sanguinis (by descent):

Section 4 states provisions for citizenship by descent. A person born outside India before January 26, 1950, but after the commencement of the Indian Constitution, qualifies for Indian citizenship if their father is an Indian citizen at the time of their birth. Similarly, a person born outside India on or after January 26, 1950, is eligible for Indian citizenship if either parent is

⁶ M P Jain, Indian Constitution Law, 843 (8th ed., 2018)

an Indian citizen at the time of birth. However, if the person born on or after January 26, 1950, is only a citizen of India by descent, they will not be considered an Indian citizen if their birth occurs while either parent is serving under the Government of India.⁷

Registration:

Section 5 deals with citizenship by registration. It allows certain categories of people to become Indian citizens through registration. These categories include:

- a) People of Indian origin living in India for at least five years before applying.
- b) People of Indian origin residing outside of undivided India.
- c) Women married to Indian citizens.
- d) Minor children of Indian citizens.
- e) Adults from Commonwealth countries.

The provision ensures that people from Pakistan who couldn't become citizens under the Constitution can register. It clarifies that clauses (a) and (e) are separate, with (e) covering Commonwealth citizens.⁸

Naturalization:

Section 6 deals with Citizenship by naturalisation. Foreign nationals who have resided in India for a specified duration and meet other criteria may be eligible for naturalization, allowing them to acquire Indian citizenship.⁹ The Applicant for the citizenship must be communicated the grounds for refusing the grant and allowed to make a representation against the order.¹⁰

Overseas Citizenship of India (OCI):

While not full citizenship, the OCI status is available to foreign citizens of Indian origin. It provides certain privileges, including visa-free travel to India.

⁷ibid, at 844

⁸ Ibid

⁹ <https://lawbhoomi.com/methods-of-acquiring-citizenship-in-india/>

¹⁰ Hasan Ali Raihany v. UOI, (2006) 3 SCC 705

Citizenship Amendment Act (CAA):

The CAA, passed in 2019, introduced a specific pathway to Indian citizenship for non-Muslim migrants from neighbouring countries who entered India before December 31, 2014.¹¹

UNITED STATES

Jus Soli (Birth right Citizenship):

The U.S. follows the principle of jus soli, granting citizenship to individuals born on U.S. soil. This birth right citizenship is enshrined in the 14th Amendment to the U.S. Constitution.

Jus Sanguinis (Descent):

Citizenship in the U.S. can also be acquired through descent. Children born abroad to at least one U.S. citizen parent may be eligible for U.S. citizenship.

Naturalization:

Non-citizens can become U.S. citizens through a process of naturalization. This involves meeting residency requirements, demonstrating good moral character, and passing a citizenship test.¹²

Dual Citizenship:

The U.S. generally allows for dual citizenship. U.S. citizens can acquire citizenship in another country without automatically losing their U.S. citizenship.

Derivative Citizenship:

Certain individuals, such as adopted children or those born to U.S. citizens abroad, may acquire U.S. citizenship through derivative means.¹³

The United States does not officially recognize dual citizenship in the sense that some other countries do. However, it does not explicitly prohibit it either. This means that if you are a

¹¹ <https://www.writinglaw.com/methods-of-acquiring-citizenship-of-india/>

¹² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2613363/>

¹³ Schuck, P. S., & Smith, M. S. (2006). *Citizenship without Consensus: Perspectives on Conflicting Conceptions of Membership in Contemporary America*. Yale University Press.

citizen of the United States and acquire citizenship of another country, you may technically hold dual citizenship. However, the U.S. government expects its citizens to enter and exit the United States using their U.S. passport and to fulfill all obligations of U.S. citizenship, such as paying taxes. Additionally, acquiring another citizenship may have implications for things like security clearances or eligibility for certain government benefits. It's always advisable to consult legal experts or immigration authorities for specific advice on dual citizenship matters.

United States Supreme Court case in which the Court ruled that a dual U.S./Japanese citizen could be convicted of treason against the United States for acts performed in Japanduring World War II.¹⁴

Special Cases:

The U.S. has specific provisions for granting citizenship to individuals in special circumstances, such as military service or the conferment of honorary citizenship.

Both India and the U.S. employ a combination of jus soli and jus sanguinis, with additional provisions for registration, naturalization, and special circumstances, reflecting the complexities of contemporary migration and global dynamics.

¹⁴ Kawakita v. United States, 343 U.S. 717 (Supreme Court of the United Nations, 1952)

RIGHTS, PRIVILEGES, AND DUTIES OF CITIZENS

INDIA

Rights:

Right to Equality: Indian citizens are guaranteed equality before the law and equal protection of the laws (Article 14)

Right to Freedom: Includes freedom of speech and expression, assembly, association, movement, and residence (Article 19).

Right to Constitutional Remedies: The right to move the Supreme Court for the enforcement of fundamental rights (Article 32).¹⁵

Privileges:

Right to Vote: Citizens above the age of 18 have the right to participate in the democratic process by voting in elections.

Reservation Benefits: Certain provisions exist for affirmative action in education and employment for socially disadvantaged groups.¹⁶

Fundamental Duties: Citizens are expected to uphold the sovereignty, integrity, and unity of the nation. The Constitution of India includes a list of fundamental duties (Article 51A).

Civic Responsibility: Participation in civic processes, promoting harmony, and safeguarding public property are emphasized as civic duties.¹⁷

UNITED STATES:

Rights:

First Amendment Rights: Freedom of speech, religion, press, assembly, and petition. Second

Amendment Rights: Right to bear arms. Fourth Amendment Rights: Protection against unreasonable searches and seizures.

¹⁵ Article 14, 19 and 32, the Constitution of India

¹⁶ Article 15, 16 and 326, the Constitution of India

¹⁷ Article 51A, the Constitution of India

Privileges:

Right to Vote: U.S. citizens aged 18 and above have the right to vote in federal elections. Access to

Government Jobs: Certain government positions and elected offices are reserved for U.S. citizens.¹⁸

Duties:

Civic Duties: Citizens are expected to participate in the democratic process by voting and serving on juries.

Selective Service: Males aged 18 to 25 are required to register for selective service in case of a military draft.¹⁹

TERMINATION AND REVOCATION OF CITIZENSHIP

INDIA

Renunciation and Relinquishment:

An Indian citizen can renounce their citizenship by making a declaration of renunciation if they acquire the citizenship of another country. This is a voluntary act, and the individual loses their Indian citizenship.

Termination by the Government:

Citizenship in India is determined by domicile or migration. A person who migrated to Pakistan after March 1, 1947, loses Indian citizenship unless they return under resettlement or permanent return permits. Article 5 and 6, concerning those who migrated to Pakistan between March 1947 and January 26, 1950. The Indian Citizenship Act governs citizenship for those migrating to Pakistan after January 26, 1950. Despite marriage, a woman's citizenship isn't automatically determined by her husband's, and she retains her own domicile status.²⁰ Article 7 is pre-emptory

¹⁸ <https://www.justice.gov/sites/default/files/usao-mn/legacy/2011/09/16/MN%20Civil%20Rights%20FINAL.pdf>

¹⁹ <https://www.archives.gov/files/legislative/resources/education/bill-of-rights/images/handout-3.pdf>

²⁰ M P Jain, Indian Constitution Law, 842 (8th ed., 2018)

in its scope and makes no exception in favour of a wife who migrates to Pakistan leaving her husband in India.²¹

Deprivation of Citizenship:

Citizenship can be deprived if acquired by fraud, false representation, or concealment of material facts (Section 10 of the Citizenship Act).²²

UNITED STATES

Renunciation:

U.S. citizens have the option to renounce their citizenship voluntarily. This involves a formal process that includes renunciation before a U.S. diplomatic or consular officer in a foreign country.²³

Relinquishment through Acquisition of another Citizenship:

Similar to India, acquiring another citizenship voluntarily can lead to the relinquishment of U.S. citizenship. This occurs automatically when a U.S. citizen voluntarily and with the intention of relinquishing U.S. nationality takes on a foreign citizenship.

Revocation by the U.S. Government:

The U.S. government can revoke citizenship in cases where it was obtained through fraud, misrepresentation, or other unlawful means.

Loss of Citizenship for Dual Nationals:

While the U.S. generally allows for dual citizenship, engaging in certain acts, such as serving in a foreign military, may lead to the loss of U.S. citizenship for dual nationals

²¹ State of Bihar v. Amar Singh, AIR 1955 SC 282

²² <https://www.indiacode.nic.in/bitstream/123456789/1522/1/a1955-57.pdf>

²³ <https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/us-citizenship/Renunciator-USCitizenship-persons-claiming-right-residence.html>

CONCLUSION

Both India and the U.S. emphasize equality and non-discrimination as fundamental principles, ensuring that citizens are treated fairly and without prejudice. Citizens in both countries have the right to seek legal recourse if their fundamental rights are violated, reinforcing the importance of the rule of law. Both nations stress the importance of civic participation, whether through voting or other means, as a duty and privilege of citizenship. Citizenship entails allegiance to the nation, with citizens expected to contribute to the well-being and prosperity of the country.

Dual Citizenship is not allowed in India as per the provisions of Article 9 of the Constitution of India read with Section 9 of the Citizenship Act. However, the Government of India has enacted laws to grant Overseas Citizenship of India, commonly known as “Dual Citizenship,” to people of Indian origin who migrated from India and acquired citizenship of foreign country, other than Pakistan and Bangladesh, as long as their home country does not object to it under their respective laws.²⁴

Dual citizenship is followed in the American Constitution; that is, people need to have the citizenship of the state as well as the country. India’s Constitution works on single citizenship, which means the resident should be a citizen of the country, no matter the state they reside in. The Indian Constitution has picked the best features from various Constitutions across the world. It has taken its preamble from the US Constitution. India wrote its Constitution because it proved what Indian laws are all about.²⁵

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²⁴ https://www.immigrationlawadvisor.com/dual_citizenship.html

²⁵ <https://economictimes.indiatimes.com/nri/migrate/can-indians-have-dual-citizenship-heres-the-fine-print/articleshow/100406075.cms>