

RIGHTS OF OVERSEAS CITIZENS OF INDIA: THE ATTITUDE OF INDIAN LEGISLATORS

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INTRODUCTION

Whenever we refer to the rights of the overseas citizens of Indian Cardholder², what comes to our mind is who is regarded as a Citizen of any particular territory. The meaning of Citizenship may be ambiguous and cannot be defined in any single statement. For having clear understanding of the rights of the overseas citizen, for that firstly we have to be very much clear about the theoretical conception of the term “Citizenship”. As from time to time different philosopher and sociologist have tried to define the term Citizenship based on of their own theory, such as Citizenship according to sociologist T.H. Marshall is a **status**, given to **all full members** of a community³. That status is assuring rights and duties, though there is no universal principle what those should be; in general the idea of Citizenship goes in the direction of greater **equality**. Aristotle in his Book 3, “*Politics*” Aristotle reflects the history of the Athenian *polis* and of the institution of Citizenship over a time span of almost three centuries and gives the following definition: “*The good citizen should know and have the capacity both to rule and to be ruled, and this very thing is the virtue of a citizen*”⁴.

In other words, Citizenship established a relationship of mutual co-operation in which each had the capacities and moral qualities to rule and to be ruled in which all the people are equal. Similarly Jean Bodin has also tried to define Citizenship by his own understanding; he defines citizen as “*a free subject dependent on the authority of another*”⁵. He rebuffs the view held by Aristotle and other political thinkers that a citizen is defined by his access to public office, or by his right to have a voice in public affairs. Rather, it is “the mutual obligation between “subject and sovereign” which makes a man a citizen⁶. Time to time the idea and dimension of Citizenship has always changed whenever a new constitution is going to be framed

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² Citizenship (Amendment) Act, 2015.

³ Sharyn L Roach Anleu, *Law and Social Change*, (2nd edn, Sage Publication Ltd 2011)

⁴ Ulrich K. Preuss, ‘The Ambiguous Meaning of Citizenship’ (University of Chicago Law School to the Center for Comparative Constitutionalism December 1, 2003).

⁵ *ibid*

⁶ *ibid*

any were in the country. That is why the term citizen is always associated with either “good citizen” or “virtuous citizen” and the term in itself is very ambiguous in nature.

When we refer the term “Citizenship” in Indian context, no where it has been defined but Article 5 deals with the Citizenship at the commencement of the constitution but it does not define it. A citizen may be understood as one who owes allegiance to a government and who is entitled to protection by the government. But when we refer to overseas citizen of Indian Cardholder and their condition under Citizenship Act of 1955 then it has been defined as an Overseas Citizen of India Cardholder" means a person registered as an Overseas Citizen of India Cardholder by the Central Government under section 7A or is of Indian origin being a citizen of a specified country. When we see overseas citizens then it can be categorized into two forms: 1. overseas /PIO (Person of Indian Origin) 2. NRI (Non Resident Indians), and person of Indian origin are considered as entitled for the Citizenship of India but their rights are not equal with the rights of the citizen of India. Person of Indian origin (PIOs) of certain category as has been specified in section 7A of the Citizenship Act 1955 are eligible for being registered as an overseas citizen of India.

When we consider the rights of overseas citizen then they are equated with the rights of Indian citizen but they have number of rights provided but with some limitation which has been mentioned in sec 7B(2) of Citizenship Act, as held in *Satish Nambiar v. Union of India (UOI), through Ministry of Home Affairs, through its Secretary, Foreigners Division.*⁷ When we see the attitude of Indian legislators in the context of overseas citizens of India Cardholder then we find that time to time Indian legislators have tried their best to provide more rights to the overseas citizens in such a way that it helps in the development of the country. For attracting overseas citizen who are any how connected to India lots of things are being done, for instance different schemes are being started by the government by providing benefits to them so that they can return to their mother land. For instance Mr. Narendra Modi in speech has applied to all the overseas citizen of India (Now Overseas citizen of India Cardholder) in us to join in Make in India project or any how they should join India to make India a developed nation. They requested all PIO/NRI constituencies to return India and use their skilled in development of their mother country and announced several people friendly legislation to attract the overseas citizens.

⁷ AIR 2008 Bom 158.

CONCEPT OF CITIZENSHIP

By Citizenship, the author means the duties and rights which each member of the political society has towards its state. As citizenship is a very ambiguous word which cannot be defined in any single definition as time to time meaning of Citizenship has changed which depend on the political structure of that particular territory. Whenever a new constitution is going to be formed, a new definition of Citizenship came into the picture with having different rights and obligation towards the state. No other English word, so far as author knows, fully expresses these complex relations: "*patriotism*," "*nationality*," "*suffrage*," is all in different ways too narrow. If the word itself is a comparatively new one, the idea which it expresses is as old as civilized society. It reaches back to the time when men first began to group themselves together in societies for common life and government more comprehensive than the village and more concentrated and developed than the life of the horde or of the tribe⁸. Or we can say that Citizenship" (in Greek *politeia*) is a concept as old as politics itself and which has always marked two distinctions: it is bound to the existence of a state and therefore to a principle of public sovereignty, and it is bound to the acknowledged exercise of an individual "capacity" to participate in political decisions.⁹ Different philosophers and sociologists like T.H. Marshall, Plato, Aristotle; Bodin has tried to define Citizenship in their own words based on their own philosophy. Aristotle in the time span of almost three centuries has tried to define institution of Citizenship as the person who has the capacity to rule and to be ruled is considered as a good citizen. As with acquiring Citizenship of any particular territory, there comes rights and obligation towards that particular state. In similar way Bodin has tried to define Citizenship in his own way he said that Citizenship is the concept which explain or shows the mutual relationship between the citizens and sovereign authority. When we refer to the speeches of Demosthenes then he says that every citizen enjoys some of the important rights from his birth. But when he talks of Citizenship it is based on his three principles (1) freedom of person and speech; (2) equality before the law and in civic opportunity and service; (3) law as at once the expression and the safeguard of the ordered life of free citizens, these are the conditions of Citizenship¹⁰.

⁸ P. E. Matheson, '*Citizenship*' (Oct, 1897) Vol. 8, No. 1, IJE 22.

⁹ Etienne Balibar, '*Propositions on Citizenship*', (Jul, 1988) Vol. 98, No. 4, Ethics, 723

¹⁰ P. E. Matheson, '*Citizenship*' (Oct, 1897) Vol. 8, No. 1, IJE 22.

When we talk of Indian constitution it does not specifically talk of the Citizenship but Article 5 of the constitution deals with the Citizenship at the commencement of the constitution but it does not define it¹¹. A citizen may be understood as one who owes allegiance to a government and who is entitled to protection by the government¹². Every citizen of India enjoys full civil and political right which are not available to any foreigner. For example Article 15, 16, 19 is only enjoyed by the citizens of India and not by the foreigners. In India Citizenship has been categorised into different forms like, Citizenship by Domicile, Citizenship by migration etc. In India for dealing with the problem of Citizenship, a single legislation in the form of Citizenship Act 1955 was introduced so to tackle any problem related to Citizenship. Now by having clear theoretical conception, who is regarded as a citizen of any particular territory, now let us see the rights and condition for being considered as an overseas citizen of India.

ESSENTIALS FOR BEING CONSIDERED AS AN OVERSEAS CITIZEN

Before understanding that who is considered as an overseas citizen, firstly we have to understand who is regarded as an overseas citizen, as overseas citizen is very broad concept, as within its ambit both class of people whether it is PIO or NRI both come within its ambit. For being considered as an overseas citizen of India (now Overseas citizen of India Cardholder), firstly we have to understand which category of people of person of Indian origin is considered as an overseas citizen. As by the name of overseas citizen many people believe it means dual Citizenship but in reality it is very different from that. As it is not a dual Citizenship but a card which government issue for the benefit of overseas citizen, which is different from PIO in many aspect. There are some classes of people among PIO who are regarded as an overseas citizen of India for that government had laid down some provision which everybody should fulfill, to be called as an overseas citizen. overseas citizen of India Cardholder means a person who 1) is of Indian origin being a citizen of a specified country; or 2) was a citizen of India immediately before becoming a citizen of a specified country¹³, and is registered as an overseas citizen of

¹¹ Kailash Rai, The Constitutional Law of India,(10th edn ,Central Law Publication 2011.)

¹² Encyclopedia Americana.

¹³ Specified country in fourth schedule are: 1) Australia, Canada, Finland, , France, Greece, Ireland, Israel, Italy, Netherland, New Zealand, Portugal, Cyprus, Sweden, Switzerland, United Kingdom(UK), United State of America(USA).

India by the central Government under section 7-A¹⁴. As section 7A¹⁵ deals with the registration of Overseas citizen and laid down the condition for being considered as an overseas citizen of India 1) if central government may, subject to such condition and restrictions including the conditions and restrictions including the condition of reciprocity as may be prescribed on an application made in this behalf a) if that person is of Indian origin of full age and capacity who is a citizen of a specified country or b) that person is of full age and capacity who has obtained the Citizenship of a specified country on or after the commencement of the Citizenship (Amendment) Act, 2003 and who was a citizen of India immediately before such commencement: or c) that person is a minor of a person mentioned in clause (a) or clause (b).

2) The person registered as an overseas citizen of India Cardholder under sub-section (1) shall be an overseas citizen of India as from the date on which he is so registered. 3) No person who has been deprived of his Indian Citizenship under this act shall be registered as an overseas citizen of India under sub- section (1) except by an order of the central Government.

Explanation for “Person of India origin” for this section and respective other section means a citizen of another country-1) who was eligible to become citizen of India at the time of the commencement of the constitution;(ii) that belong to a territory that become part of India after the 15th day of the august 1947; and (iii) the children and grand children of a person covered under clause (I) and (ii), but does not include a person who is or had been at any time a citizen of Pakistan , Bangladesh or as such other country as the central Government , may by notification in the official gazette, specify.

RIGHTS OF OVERSEAS CITIZENS

When we talk of the rights of overseas Citizenship, then it is very much different from the rights of PIO, NRI and citizen of India. From the time when Government of India has decided to grant overseas Citizenship of India which most people mistakenly refer it as the Dual Citizenship. And thinking that whatever the rights enjoyed by them in the country in which they are living will be equal in India by acquiring the Citizenship of India. But the Dual Citizenship will be provided to only those people where the person is staying, and that country that follow

¹⁴ Citizenship (Amendment) Act, 2015.

¹⁵ *ibid*

the policy of dual Citizenship in some form or other under their local laws¹⁶. The concept of dual Citizenship was laid down for the people of overseas citizens for the people of Indian origin by the recommendation of Singhvi committee¹⁷,

The Singhvi Committee recommended that dual citizenship should be permitted within the rubric of the Citizenship Act 1955, suggesting also that sections 9, 10 and 12 of the Citizenship Act 1955 should be suitably amended. A bill to amend the existing Citizenship Act was introduced in the Rajya Sabha on May 9, 2003 and subsequently referred to the standing committee chaired by Pranab Mukherjee for examination and report. The standing committee report (December 12, 2003) endorsed the amendment of 1955, to make provisions for the grant of overseas citizenship of India. Significantly it also recommended the introduction of a scheme for compulsory registration of every citizen of India accompanied by the issue of national identity cards. To achieve these objectives the proposed amendment sought to provide for: (i) making acquisition of Indian citizenship by registration and naturalisation more stringent; (ii) preventing illegal migrants from becoming eligible for Indian citizenship; (iii) simplifying the procedure to facilitate the reacquisition of Indian citizenship by persons of full age who are children of Indian citizens and former citizens of independent India; (iv) providing for the grant of overseas citizenship of India to persons of Indian origin belonging to specified countries and Indian citizens who choose to acquire the citizenship of any of these countries at a later date; (v) providing for compulsory registration and issue of national identity card to all citizens of India; (vi) enhancing the penalty for violation of its provisions as well as rules framed under it; and (vii) omitting all provisions recognising or relating to the commonwealth citizenship from the act.

The Citizenship Amendment Act, 2003 made several amendments to existing sections and inserted sections 7A, 7B, 7C and 7D titled "overseas citizens" that dealt with the

¹⁶ OCI- Overseas Citizenship of India- (Not a dual Citizenship), <<http://www.immihelp.com/nri/overseascitizenshipindia/>> accessed 1st March 2015

¹⁷ Anupama Roy, *Overseas Indian Citizen: A New 'Setubandhan'?*, (Vol. 41, No. 15, Economic and Political Weekly 2006)

definition and registration of overseas citizens¹⁸ conferred specific rights to them, identified citizen's rights that did not belong to them and the conditions under which their registration could be cancelled¹⁹. Citizenship Amendment Act, 2003 and the Citizenship Amendment Ordinance and Act, 2005 provide for a variant of Indian Citizenship, which is not quite dual Citizenship, since it does not provide the overseas Indian with an Indian passport, but an overseas citizen card. At the fourth Pravasi Bharatiya Diwas at Hyderabad in January 2006, two Indians became the first to receive the coveted overseas Indian Citizenship cards²⁰.

THE ATTITUDE OF INDIAN LEGISLATORS TOWARDS OVERSEAS CITIZENS

When we see the attitude of Indian legislators towards overseas citizen, then we find that lots of things are being done by the government of India to attract overseas citizen or person of Indian origin who are staying outside India. In this regard one of the important steps which were taken by the government in this regard was in the form of the Overseas Citizenship of India (OCI) Scheme which was introduced by amending the Citizenship Act, 1955 in August 2005. It provided dual Citizenship to the people of India origin, which they were demanding from the long time period. This scheme was applicable to all the persons of Indian origin who were leaving in any parts of the world, except Bangladesh, Pakistan and other which has been specified by the central government in the official gazette. The registered Overseas Citizens of

¹⁸ The act provided that the central government could, on application, registers any person of Indian origin as an overseas citizen if that person was from a country which allowed dual citizenship. A 'Person of Indian Origin' (PIO) has been explained in the explanation of sec 7B of the act. The act authorised Indian missions to grant applications for overseas citizenship of India within 15 days to cases where there is no involvement in serious offences like drug trafficking, moral turpitude, terrorist activities or anything leading to imprisonment of more than a year. Overseas Indian Citizenship does not entitle people who have acquired, or are planning to acquire, foreign nationality, to retain their Indian passports. The law continues to require that Indian citizens who take foreign nationality must immediately surrender their Indian passports. Those who are eligible can then apply for registration as Overseas Indian Citizens as amended by citizenship act 2015.

¹⁹ While registration of an overseas Indian citizen was made subject to conditions and restrictions including the condition of reciprocity, the rights from which such a citizen was especially barred were the rights to equality of opportunity in matters of public employment, contesting elections for the post of president or vice president of India, appointment as judge of the Supreme Court and high courts, voting rights, contesting elections to the legislative assembly or legislative council and appointment to public services and posts in connection with the affairs of the union or any state.

²⁰ The card now allows a greater flexibility to overseas Indians in entry and registration with local police authorities. The Overseas Citizen of India can apply for a new type of visa called 'U' visa which is a multipurpose, multiple-entry, lifelong visa entitling them to visit the country at any time for any length of time and for any purpose. It also accords them parity with on-resident Indians in economic, financial and educational fields, except in acquisition of agricultural or plantation properties.

India shall not be entitled to the rights conferred on a citizen of India under Article 16 of the Constitution with regard to equality of opportunity in matters of public employment²¹. Similarly in this way under Article 7B of the Citizenship Act, 1955, overseas citizens are not to be elected as president and vice president under Article 58 and 66 of the Indian constitution. They are also not allowed to be elected as a judge of Supreme Court and High court under 124 and 217 of the Constitution, and they are also not eligible for voters and members for house of people as well as house of states. Overseas citizens are also not allowed to hold any administration post in India whether it is under central government or state government. It clearly shows that overseas citizen does not have equal right with the citizens of India. But many benefits has been given to the overseas citizens by the government of India like, The Ministry has issued notifications time to time granting registered OCIs further benefits as under²²:

- a. Parity with Non-Resident Indians in the matter of inter-country adoption of Indian children ;
- b. Parity with resident Indian nationals in matters of tariffs in domestic air fares ;
- c. Parity with domestic Indian visitors in respect of entry fee for visiting national parks and wildlife sanctuaries in India ;
- d. Parity with non-resident Indians in respect of:
 - i. Entry fees for visiting the national monuments, historical sites and museums in India;
 - ii. Practicing the following professions in India, in pursuance of the provisions contained in the relevant Acts, namely:
 - Doctors, dentists, nurses and pharmacists;
 - Advocates;
 - Architects; and
 - Chartered Accountants; and
- e. Entitlement to appear for the All India Pre-Medical Test or such other tests to make them eligible for admission in pursuance of the provisions contained in the relevant Acts.

²¹ <http://moia.gov.in/services.aspx?ID1=35&id=m3&idp=35&mainid=23>, accessed on 3rd March 2015

²² *ibid*

An on-line OCI miscellaneous service is now available for re-issuance /issuance of duplicate OCI documents, in case of issuance of new passport, change of personal particulars, viz, nationality, name, change of address/occupation, etc. and loss/damage of OCI registration certificate/visa, so that they do not have to go through hectic time taking process²³.

Even when we talk of the present NDA government we find that different steps are being taken by the government to attract overseas citizen for the development of their mother country. Recently the government had amended Citizenship Act, 1955 to do away with any loop hole and provide benefit to overseas citizens. Government is planning to merge the Persons of Indian Origin and Overseas Citizens of India schemes saying that the latter is more popular and provides for lifelong visa through a process which is more user- friendly, quick and simple²⁴.

The government's move came nearly a month after Prime Minister Narendra Modi had announced in his first visit to United States , that Persons of Indian Origin will get life-long visa to visit India and the PIO card holders will not required to go for police reporting during their period of stay in India. The holder of PIO card is entitled to visa free entry into India during the validity of the card period i.e. 15 years, provided they carry valid national passports. The holders of PIO card are also exempted from the requirement of registration if their continuous stay in India does not exceed 180 days²⁵.

Government is also planning to do away with the clause in the Citizenship Act under which an applicant for Indian Citizenship has to continuously stay for one year in the country before he or she becomes eligible to become an Indian national. Besides, OCI registration to minors will be granted if both parents or one of the parent is an Indian citizen as per the proposed amendment of the Citizenship Act²⁶. Even Narendra Modi in his speech had appeal from all the citizen to join the hand in the Make In Project so that India can also competent with another nation in the path of development. So at last we can say that Indian government is doing lots of thing for the overseas citizen from the optimistic point of view.

²³ ibid

²⁴ <http://www.dnaindia.com/india/report-government-plans-to-merge-pio-and-oci-schemes-seeks-suggestions-2030700>, accessed on 3rd March 2015

²⁵ ibid

²⁶ ibid

CONCLUSION AND SUGGESTION

After having clear understanding about the concept of Citizenship and the rights of overseas Citizen. We can clearly say that it is impossible to understand the rights of overseas citizen without understanding who is regarded as a citizen. As the term citizen itself is very ambiguous in nature and required an understanding from different perspective. As we have already seen that the how the term Citizenship has been defined time to time and in different circumstances but no one was able to give exact and precise meaning of Citizenship. Even in contemporary world we did not know any exact meaning or definition of Citizenship. As Citizenship is very important concept in any constitution because from citizenship only many rights and duties are included and divided. In this regard we can take the view of T.H Marshall who point out three element of Citizenship: **CIVIL** (freedom of speech, thought, faith, liberty of the person, the right to own property and to conclude valid contracts, right to justice), **POLITICAL** (right to participate, execute power) and **SOCIAL** (live the life according to the standards of society). As Citizenship is the only criteria through which it divide different rights among the people whether they are NRI, PIO or overseas citizen.

When we refers to the rights of overseas citizen of India then we find that there are lots of right has been provided to them in many forms like by starting of any scheme related to overseas citizen or by issuing any circular for providing benefit to the overseas citizens time to time. Whenever any new government came in the cabinet they know the importance of overseas citizen for their country. They are the only people who bring huge investment in the country which ultimately boost the Indian economy. As time to time Indian government has tried their best to attract the overseas citizen who are leaving abroad because of any reason. Lots of benefit scheme are being started by the government in the name of overseas citizen, for ex concept of dual Citizenship which was started by the congress government in the year 2005 to give dual Citizenship to the person of Indian origin to only those who are staying in any country which follow the policy of dual Citizenship in or under their local laws. Lots of benefits are given on their visa registration; it clearly shows how Indian government is concern about its citizen living abroad. In this regard different Indian consulate offices are open across different country to protect the right and interest of the overseas citizens.

Even in present scenario, we find that our recent government is doing lots of thing for attaching Indian citizen to their motherland who are living abroad. It can be clearly being also seen from the speech of Mr. Narendra Modi in USA who has offered and declared lots of benefit to the Indian citizen who are leaving abroad. So that they can join hand with the government of India in the development of their motherland either directly or indirectly. Even lots of concession are being given to the overseas who want to live in India for longer period and in the way want to contribute for the development of the country. Recently in March 2015 lots of amendments have been made for enhancing the rights of the overseas citizens. All the above observation clearly shows that lots of things are being doing for the overseas citizen but till now government has not reached to the expectation of the people of overseas citizens At last we can only that say little has been done and more required to be done for the rights of the overseas citizens by taking into the consideration situation and problem of the contemporary periods.