

Acquisition Of Citizenship

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Different modes of acquisition of citizenship in India have been prescribed various provisions of the Indian Citizenship Act, 1955. A person may acquire citizenship by birth provided he is born in India after 26th January, 1950. Anybody shall instantly conclude that every person born in India after the above date; irrespective of his parent being or not Indian citizen, is Indian citizen. It is quite natural because reading Section 3(1) of the Act, one may feel all persons, who are born in India after the above date shall be Indian citizen, although his or her father may be foreign national. But the intention of the Law is not that and such intention is clear when we notice Section 3(2)(a) which says if at the time of birth of the person, his father is not an Indian citizen and he enjoys immunity from legal proceeding as enjoyed by an envoy he will not be an Indian citizen. Therefore, when status of Indian citizenship is not granted to the son or daughter of a foreigner enjoying immunity from legal proceeding such offspring from a father who is not enjoying such immunity cannot be an Indian citizen. There cannot be two opinions that an offspring of a foreigner born after 26th January, 1950 cannot acquire citizenship by birth. Citizenship by descent and their mode of acquisition is conferred on a person, if he is born outside India and his father is a citizen of India. But difficulty arises if the father of such a person was a citizen by descent. In that event, the birth of the person is required to be registered in the Indian consulate within one year from such birth. But, such registration is unnecessary, if the person concerned; at the time of birth; is in service under the Government of India because service under the Government of India presupposes that the person serving must be a

Indian citizen as no foreigner has any right of employment under the Government of India.

At this stage, it is interesting to note that the Act has made separate provision for acquisition of citizenship by the citizens of the Commonwealth countries. The names of such countries are included in the First Schedule appended to the Act and there are 12 countries in the Schedule at present. The term 'First Schedule' has been referred to in a number of places in the Act. For instance, the term 'Citizen' has been defined as a person who satisfies the requirements of 'Citizenship or nationality Law' of the particular Commonwealth country. But, the Indian Act lays down a clearer term that such 'Citizenship or nationality Law' of the particular country must be recognised by the Indian Government. Because, under Section 2(1) (c)—the Law regarding citizenship or nationality must be a valid piece of legislation and that particular country must make a request to the Government of India for recognising such law as such. Then the Government of India, acting on such request if accedes to such request, must declare its intention by publishing a notice in the official Gazette. Only when such declaration is made in the manner as laid down, such citizenship or nationality law for that particular country has become a law for the purpose of determination of 'citizenship' of that particular person. The purpose and intention of making such provision is clear. Because in the country of Commonwealth nations—all nations are equal partners and this provision has been made as a measure of reciprocity, as no person in the matter of acquisition of citizenship of a particular country should be placed at a

disadvantageous position than a person of that country in respect of acquisition of citizenship. For example, if there is no recognition by the Government of India, as contemplated under Section 2(1), (c) in regard to Pakistan's 'citizenship or nationality Law'—there cannot be acquisition of citizenship by a Pakistani national under the Indian Citizenship Act which, has been made clear in the subsequent provisions.

Placing of certain countries in the First Schedule as referred to above, has got special significance. These are all Commonwealth countries and persons living in those countries have been treated as Commonwealth citizens of India. By being Commonwealth citizens such persons are capable of enjoying certain rights on reciprocal basis. At this place, it is worthwhile to discuss another mode of acquisition of citizenship right, known as citizenship by way of Registration. For obtaining citizenship by Registration one must apply to the authorities concerned. Depending on the contingencies different authorities have been named for different purposes. For example, a person falling under Section 5(1) (a) must apply to the collector of the District, while a person under Section 5(1)(e) shall have to apply to the Central Government which shows that the two provisions are different and enacted with different purposes in view, concerning different categories of persons. Intention may be spelt out by closely analysing the provisions of the two Sections and it is clear that Section 5(1)(e) aims at the persons belonging to the First Schedule. When the law makers have made the said provision for a particular class of persons those person cannot be categorised as persons belonging to Section 5(1)(a). This will violate the provision of law and shall go against the intention of the law-makers. Though there are five categories

of persons who can apply for citizenship by Registration we are really concerned with two categories, namely under Section 5(1)(a) and 5(1)(e). Different High Courts, at different towns laid down that Sec. 5(1)(a) and 5(1)(e) are mutually exclusive. Section 5(1)(a) speaks of applying for registration by persons who are of Indian origin and residing in India for six months. It does not say regarding the First Schedule. But Section 5(1) (e) says of application for registration by persons of full age and capacity and who are citizens of a country in the First Schedule. Moreover, he must fulfil the condition and restriction prescribed by the Government of India. Such conditions and restrictions must be in conformity with the condition and restriction of the particular country prescribed for acquiring citizenship of that country by the Indian citizenship. Therefore, for a person in the countries of the First Schedule, he must first establish that he is a citizen of that country as per 'Citizenship or nationality Law' of that country. For that, as stated earlier, such law must be recognised by the Government of India. So, when such a person does apply for obtaining 'Citizenship in India' the first enquiry shall be whether he is a 'citizen' under the law recognised. If there is no existence of recognised law he cannot be a 'citizen' of that country in the eye of Indian law. For example, of a Pakistani citizen applies for Indian citizenship and if on enquiry it is found that there is no 'citizenship or nationality law' in the eye of Indian law he shall be barred to become an Indian citizen at the threshold. At this stage for our academic interest we may have a look into the Pakistan Citizenship Act, 1951 in order to see what types of conditions and restrictions can be imposed by the Government of India for the purpose of Section 5(1)(e). Also it will be worthwhile to see whether there is any reciprocity at all between the Indian law and Pakistani law. On close look on the Pakis-

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