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**PARLIAMENT OF INDIA
RAJYA SABHA**

**DEPARTMENT-RELATED PARLIAMENTARY STANDING
COMMITTEE ON HOME AFFAIRS**

ONE HUNDRED AND FIFTY NINTH REPORT

ON

THE CITIZENSHIP (AMENDMENT) BILL, 2011

**(PRESENTED TO RAJYA SABHA ON 28 MARCH, 2012)
(LAID ON THE TABLE OF LOK SABHA ON 28 MARCH, 2012)**

**RAJYA SABHA SECRETARIAT
NEW DELHI
..MARCH, 2012/ CHAITRA, 1933 (SAKA)**

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**Composition of the
Department-related Parliamentary Standing
Committee on Home Affairs
(re-constituted w.e.f. 31st August, 2011)**

Rajya Sabha

1. Shri M. Venkaiah Naidu - Chairman
2. Shri Rishang Keishing
3. Dr. N. Janardhana Reddy
4. Shri S.S. Ahluwalia
5. Vacant*
6. Shri Prasanta Chatterjee
7. Shri Tariq Anwar
8. Dr. V. Maitreyan
9. Shri D. Raja
10. Shri Javed Akhtar

Lok Sabha

11. Shri L.K. Advani
12. Shri Sansuma Khunggur Bwiswmuthiary
13. Shri Khagen Das
14. Dr. Kakali Ghosh Dastidar
15. Shri Ramen Deka
16. Shri Lagadapati Raja Gopal
17. Shri Mohammad Asrarul Haque
18. Shri Naveen Jindal
19. Shri Jitender Singh Malik
20. Shri Babulal Marandi
21. Shri Baijayant Panda
22. Shri Lalubhai B. Patel
23. Shri Natubhai Gomanbhai Patel
24. Dr. Nilesh N. Rane
25. Shri Navjot Singh Siddhu[#]
26. Shri Adhi Sankar
27. Shri Hamdullah Sayeed
28. Shri Neeraj Shekhar
29. Shri Ravneet Singh
30. Shri Harsh Vardhan
31. Shri Dinesh Chandra Yadav

SECRETARIAT

Shri P.P.K. Ramacharyulu, Joint Secretary
Shri A.K. Gandhi, Director
Shri D.K. Mishra, Joint Director
Shri Bhupendra Bhaskar, Assistant Director
Shri Sanjeev Khokhar, Committee Officer
Shri Anurag Ranjan, Committee Officer

(i)

* Consequent upon resignation of Shri Naresh Chandra Agrawal from the membership of Rajya Sabha w.e.f. 13th March, 2012.

Shri Navjot Singh Siddhu nominated w.e.f. 3 January 2012 *vice* Shri Bishnu Pada Ray who was nominated to the Committee on Rural Development.

PREFACE

I, the Chairman of the Department-related Parliamentary Standing Committee on Home Affairs, having been authorized by the Committee to submit the Report on its behalf, do hereby present this One Hundred and Fifty Ninth Report on the Citizenship (Amendment) Bill, 2011 (**Annexure I**).

2.0 In pursuance of the rules relating to the Department-related Parliamentary Standing Committees, the Chairman, Rajya Sabha, referred* the Citizenship (Amendment) Bill, 2011 as introduced in the Rajya Sabha on 8th December, 2011, and pending therein, to the Committee on 9th December, 2011, for examination and report within three months i.e. by 8th March, 2012. The Committee took extension of time for presentation of the Report on the Bill upto 30th March, 2012.

3.0 The Citizenship (Amendment) Bill, 2011 seeks to amend certain sections of the Citizenship Act, 1955 which provide for the acquisition of citizenship, after the commencement of the Constitution, by birth, descent, registration, naturalization and incorporation of territory and for termination and deprivation of citizenship under certain circumstances.

4.0 The Committee heard the official presentation of Additional Secretary, Ministry of Home Affairs on 20th December, 2011 oral evidence of Home Secretary on 6th February, 2012. Since the provisions of the Citizenship (Amendment) Bill, 2011 have far reaching consequences, the Committee in its sitting held on 20th December, 2011 decided to seek written Memoranda from public/stakeholders interested in the subject matter of the Bill. Following this decision, a Press Communiqué (**Annexure II**) was issued seeking written memoranda from public/stakeholders, latest by 27th January, 2012. In response thereto thirteen relevant memoranda were received and were forwarded to the Ministry of Home Affairs for their comments. The Committee in its sitting held on 21st February, 2012 considered the suggestions made in the memoranda and comments received from the the Ministry of Home Affairs thereon. The list of persons/organizations relevant memoranda received is at **Annexure-III**

* vide Rajya Sabha Parliamentary Bulletin Part II No. 49124 dated 9th December, 2011.

5.0 The Committee in its sitting held on 1st and 13th March, 2012 took up clause-by-clause consideration of the Bill.

6.0 The Committee in its sitting held on 26 March, 2012 considered and adopted this Report.

7.0 As per practice, the Secretaries and senior officers of the Legislative Department and the Department of Legal Affairs were also present in all the sittings to respond to the queries of the Members.

8.0 The Committee has made use of the following documents in finalizing the Report:-

1. The Citizenship (Amendment) Bill, 2011;
2. Background Note on the Bill;
3. The Citizenship Act, 1955 (57 of 1955);
4. Suggestions/views made in memoranda received from public/stakeholders;
5. Oral evidence tendered before the Committee; and
6. Comments of the Ministries of Home Affairs/Law & Justice on suggestions made by Members and others.

9.0 For facility of reference and convenience, observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

March, 2012/New Delhi

M. Venkaiah Naidu
Chairman
Department-related Parliamentary
Standing Committee on Home Affairs

REPORT
Chapter-1
Background of the Bill

Introduction

1.1 The Citizenship (Amendment) Bill, 2011, seeks to amend certain Sections of the Citizenship Act, 1955. According to the Statement of Objects and Reasons of the Bill, the proposed Amendments to the Citizenship Act are necessary due to certain lacunae that were noticed during its implementation and review of the provisions relating to overseas citizens of India. The Citizenship Act, 1955 came into force on 30th December 1955.

1.2 The Ministry of Home Affairs, in its background note stated that the proposed Bill seeks to:

- facilitate the re-acquisition of Indian citizenship by erstwhile citizens of Independent India (clause (a),(c),(f) and (g) of sub-Section (1) of Section 5, and Section 6);
- to enable acquisition of Overseas Citizen of India (OCI) registration by a minor, whose parents are Indian citizens or one parent is an Indian citizen (Section 7A);
- to merge the Persons of Indian Origin (PIO) Card Scheme and the OCI Scheme(section 7A);
- to re-designate the nomenclature of “Overseas Citizen of India” as “Overseas Indian Cardholder” by amending Section 7A to 7D.
- To cancel the registration of a person who has obtained overseas Indian card on the basis of marriage, on dissolution of his/her marriage
- make consequential changes in clause (ee) of section 2.

1.3 The Ministry of Home Affairs informed that the requirement of one year’s continuous stay before making an application for Indian citizenship is necessary under clauses (a),(c),(f) and (g) of sub-section (1) of section 5 and section 6. Clause (a) of sub-section (1) of section 5 provides for acquisition of Indian citizenship by a person of Indian origin. Clause (c) of sub-section (1) of section 5 provides for acquisition of Indian citizenship on grounds of marriage to an Indian citizen. Clause (f) of sub-section (1) of section 5 provides for re-acquisition of Indian citizenship by erstwhile citizen of independent India, who has been residing in India for one year immediately before making an application. Clause (g) of sub-section (1) of section 5 provides for acquisition of Indian citizenship by an OCI card holder of five years.

1.4 Section 6 provides Indian citizenship to a foreigner who qualifies for naturalization under the provisions of the Third Schedule to the Act. A proviso to clause (c) of the Third Schedule to the Citizenship Act is proposed to be inserted to empower the Central Government to relax the period of twelve months as resident in India or in the service of a Government in India specified as one of the qualifications for grant of certificate of naturalization by a period not exceeding thirty days in special circumstances.

1.5 Explaining about the amendments proposed in the Bill, the Ministry of Home Affairs stated that representations had been received about the difficulties in fulfilling the criteria of one year’s continuous stay in India before making an application for the grant of Indian citizenship due to increased globalization and imperative need for some people to visit foreign countries due to economic, social, medical and other such needs. The stipulation of one-year’s continuous stay also causes genuine hardship in some personal situations where personal travel abroad has an unavoidable/inevitable context and in the case of skilled professionals who are required to travel abroad on account of professional commitments. The Ministry of Home Affairs, therefore, proposed that clause (a), (c), (f) and (g) of sub-section(1) of section 5 and

section 6 may be suitably amended to allow for relaxation for a total period not exceeding thirty days during the prescribed period of one year immediately before making an application.

1.6 The Ministry of Home Affairs apprised the Committee that Section 7A as amended by the Citizenship (Amendment) Act, 2005 provides for registration as an OCI to persons of Indian origin of all countries (except Pakistan and Bangladesh) subject to such conditions and restrictions as may be prescribed. As per the provisions of section 7A, the following categories of persons are eligible for OCI registration:

- (a) A foreign national of full age and capacity:
 - who was a citizen of India on or at any time after the commencement of the Constitution; or
 - who was eligible to become a citizen of India at the time of commencement of the Constitution; or
 - who belonged to a territory that became part of India after 15th August, 1947; or
 - who is a child or grandchild of such a foreign national.
- (b) A minor child of the foreign national mentioned in (a) above.

1.7 The Ministry of Home Affairs further stated that during the course of implementation of the OCI scheme, it had been seen that the formulation of section 7A does not allow grant of OCI registration to a minor, whose parents are Indian citizens or one parent is an Indian citizen and other is not. In fact, such minors should have the first claim for the grant of OCI registration as their parent(s) have still retained their Indian citizenship. Representations were received by the Ministry of Home Affairs from the Indian diaspora and Indian Missions/Posts abroad regarding this anomaly, whereupon, the Ministry of Law & Justice opined that such category of minors was not eligible for the grant of OCI registration as per the existing provisions of section 7A. The Ministry of Law & Justice suggested that a new provision was required in section 7A to provide for the grant of OCI registration to minors, whose parents are Indian citizens or one parent is an Indian citizen.

1.8 The Ministry of Home Affairs further stated that the Persons of Indian Origin Card (PIO Card) Scheme for foreigners of Indian origin having foreign passport was introduced by the Government of India on March, 30, 1999. The holder of PIO Card is entitled to visa free entry into India during the validity of the Card, i.e. 20 years (Now 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 days. Subsequently, the scheme was revamped to be known as “Persons of Indian origin Card (PIO Card) Scheme, 2002”, which came into effect from September 15, 2002. The validity of such cards can be extendable for a further period of ten years (i.e. total 30 years), if desired, by the cardholder, without any extra cost. A total 52,264 persons, till 2010 have obtained PIO cards.

1.9 The Committee was further informed that the OCI scheme was operationalised on 2nd December, 2005 by receiving online applications through Ministry of Home Affairs’ website. OCI card holders are entitled to the following benefits:

- grant of multiple entry, multi-purpose lifelong visa to visit India;
- exemption from registration with the FRRO/FRO for any length of stay in India; and
- parity with Non resident Indians in economic, financial and educational fields except in matters relating to acquisition of agricultural/plantation properties.

1.10 The Ministry of Home Affairs stated that OCI scheme was more popular because it provided lifelong visa and the process for obtaining the OCI card was more user-friendly, quick and simple. After the launch of the OCI scheme, a large number of eligible PIO cardholders had obtained OCI registration. Till 15th December, 2011, a total of 9,97,443 persons had been granted OCI registration. The Ministry also stated that the matter of having one card for Indian origin persons, instead of having two cards viz. OCI and PIO, has been examined in depth and the following major differences are noticeable in the two schemes:

- While the PIO card is valid for 15 years, OCI registration entitles for lifelong visa.
- While PIO is granted to foreigners married to Indian citizens or a person of Indian origin, such foreigners are not eligible for OCI registration.
- Minors whose parents are Indian citizens or one parent is an Indian citizen and the other is not, are not covered under OCI scheme whereas they are eligible under PIO card scheme.
- while the fee for PIO is Rs.15,000/- or equivalent in local foreign currency (Rs.7,500/- for minors), fee for OCI registration is US \$ 275/- or equivalent in local currency and US \$ 25/- for a PIO card holder.
- PIO card is not allowed to the nationals of Pakistan, Bangladesh, Afghanistan, Sri Lanka, Bhutan, Nepal and China. OCI is not allowed at present to the nationals of Bangladesh and Pakistan.
- while PIO card is granted to the PIOs whose parents/grandparents/great grandparents are or had been of Indian origin, OCI registration is granted to PIOs who were Indian citizens on or after 26th January,1950 or eligible to be Indian citizen on 26th January,1950 and also to children/grand children of such persons.

1.121 Thus, under PIO Card scheme, PIO link of the applicant is determined based on the linear relationship of the applicant up to great grandparents level, whereas under the OCI scheme, PIO link of the applicant is determined based on the linear relationship of the applicant up to grandparents level.

1.12 The Ministry further stated that the Hon'ble Prime Minister, while inaugurating 9th Pravasi Bhartiya Divas on 8th January, 2011 stated in this regard as under:

“Our Government had introduced the Overseas Citizen of India card and the People (Person's) of Indian Origin card to facilitate visa-free travel to India as well as to provide the rights of residency and participation in business and educational activities in India. We have recently reviewed the functioning of these schemes, and have decided to merge the OCI and PIO cards into a single facility. We hope to iron out some of the problems that have arisen in the implementation of these schemes.”

1.13 The Ministry of Home Affairs stated that it was accordingly proposed that in section 7A to 7D, the words “Overseas citizens of India”, wherever occur, may be replaced as “Overseas Indian Card holder”.

Financial Implication

1.14 The Committee was further informed that while the fee for PIO is Rs.15,000/- or equivalent in local foreign currency (Rs.7,500/- for minors), fee for OCI registration is US \$ 275/- or equivalent in local currency and US \$ 25/- for a PIO card holder. After amendment,

there will be uniform fee of US \$ 275/- or equivalent in local currency for all applicants seeking Overseas Indian Card.

CHAPTER- II

PRESENTATION OF THE MINISTRY OF HOME AFFAIRS

2.1 The Committee in its meeting held on 20th December, 2011, heard the presentation of the Additional Secretary of the Ministry of Home Affairs on the Citizenship Amendment Bill, 2011. The Committee in its sitting held on 6th February 2012 further heard the Home Secretary and Secretary, Ministry of Overseas Indian Affairs on the Bill and sought further clarifications thereon. The representatives of the Ministry of Law and Justice (Department of Legal Affairs and Legislative Department) also attended the meetings to clarify the legal and Legislative queries of the Members.

Presentation of the Additional Secretary

2.2 The additional Secretary, Ministry of Home Affairs, gave a brief back ground on the Citizenship Act, 1955:-

- (1) The Citizenship Act, 1955, which came into force on 30th December, 1955 provides for the acquisition of citizenship by birth, descent, registration, naturalization and incorporation of territory and for termination and deprivation of citizenship under certain conditions;
- (2) Amendments to the Citizen Act, 1955 have been made eight times from time to time, the latest being in 2003 and 2005 to make acquisition of Indian citizenship and naturalization more stringent and to simplify the procedure for re-acquisition of citizenship and to insert certain new provisions regarding grant of registration as Overseas Citizen of India (OCI);
- (3) The scheme of Overseas Citizen of India became operational from 2nd December, 2005 and powers to grant registration have been delegated to Indian Missions/Posts/ 7 FRROs. More than 9.97 Lakh persons have been registered as OCI;

2.3 The Additional Secretary then, reiterating the deficiencies in the PIO and OCI cards gave brief account of the salient features of the amendments proposed in the Bill. The Salient features of the amendments have already been discussed in Chapter-I. Explaining about the fate of the PIO card on account of the proposed amendment, the Additional Secretary, Ministry of Home Affairs stated as under:-

“... the PIO card and the OCI card will be merged into one, by carrying out the amendment in section 7A to D. The present section 7A to D will be replaced by the new section. We are extending the benefits available under the PIO card scheme to the OCI card so that the people of Indian origin who are living outside will get the benefit of this. The difficulty was that the OCI card and the PIO card were two different things, they had two different sets of rules governing them. So, people who wanted the cards were generally confused about the two. They made the request on the Pravasi Bharatiya Divas on a number of occasions. So, it is in response to that request from those people that these amendments were worked out and they have been proposed for your consideration.”

2.4 The Additional Secretary further clarified as under:-

“...In the case of a PIO card, you had to first submit yourself to a check by the security agency before you were declared eligible for the card. In the case of OCI card, this security vetting was done after the issuance of the card. Therefore, most people were preferring the OCI card and those who had already obtained the PIO card were also applying to opt for the OCI card. Now, whatever benefits are available under these two, are being merged into the OIC card. The card is being given a different name. We are not going to call it Overseas Citizen of India henceforth because it gives a wrong impression that these are people who are citizens of India. Since under article 9 of Indian Constitution we do not allow dual citizenship in India, we henceforth, if the Parliament approves, will call them Overseas Indian Cardholder.”

2.5 Clarifying the status of OCI cards already issued, the Additional Secretary stated that since 10 lakh cards of OCI had already been issued, they would continue with these and deem them as OIC cards. He further stated that the Ministry did not want to create problems for the people. Henceforth, after the Parliament enacts this law, then the new cards will be designated as Overseas Indian Cards and these Overseas Citizens of India card will be deemed to read as OIC cards.

2.6 Briefing on the amendment proposed for re-acquisition of Indian Citizenship by the erstwhile citizens of independent India, the Additional Secretary apprised the Committee as under:-

“...presently the rule is, if there is a person of Indian origin who has surrendered his/her citizenship wishes to reacquire it, then it is a mandatory requirement that that person must stay in India for the last 365 days. Even if there is a break of one day in between, the 365 days is deemed to be declared null and void and a fresh 365 days have to be completed. What is happening these days is that because of the globalization and other things, people sometimes find it extremely difficult to continuously stay in India for 365 days. They have business interests. And, in some cases, parents are staying outside. So, this request also came from the pravasi bhartiyas that the condition of 365 days is very difficult to fulfill. So, they requested to consider some relaxation in that. So, what we have, now, proposed... is that in the last 365 days, which are to be deemed for a final decision, if there is a break of up to 30 days, and if the circumstances, which are presented before the Ministry, are accepted by the Ministry, then, a reasoned order will be issued saying why we accept that break of 3 days or 5 days or 10 days or 30 days in those 365 days and we will consider the concerned eligible for being granted citizenship. That is what is being proposed there.

Oral evidence of Home Secretary and Secretary, Ministry of Overseas Indian Affairs on 6th February 2012

2.7 The Committee heard the Home Secretary on 6th February, 2012 on the Bill. Since, Ministry of Overseas Indian Affairs is the Nodal Ministry dealing with the matters of overseas Indians and had been instrumental in suggesting amendments to the Act, the Committee also heard the Secretary Ministry of Overseas Indian Affairs alongwith the Home Secretary on 6th February 2012.

2.8 Explaining the need for introduction of the Bill, the Secretary, Ministry of Overseas Indian Affairs, made the following submissions:

- Merging the PIO Card Scheme and OCI Schemes, by amending Section 7A, and re-designating the nomenclature of the overseas citizens of India to Overseas Indian Card holders, is as per the Prime Minister's Statement made at Pravasi Bhartiya Divas in 2011 and the Ministry supported the view; and
- The proposed Overseas Indian Card should include another category of persons whose parents or grandparents or great grandparents were born and permanently resident in India as defined in the Government of India Act, 1935 and other territories that became part of India thereafter, provided neither was, at any time, a citizen of any of these specified countries i.e., Pakistan, Bangladesh, Sri Lanka Afghanistan, Bhutan, Nepal, China or Iran.

2.9 Replying to the Chairman's pointed queries regarding the suggestions which emerged during the "Pravasi Bhartiya Diwas", the Secretary, Ministry of Overseas Indian Affairs stated as under:-

"..... these keep coming from time to time. These two parts, in particular, where both parents are Indian citizens or one parent is, the minors should also be given OCI registration and the foreigner spouse of a citizen of India or a person of Indian origin should also be able to get OCI registration. Sir, these two demands keep coming from time to time."

2.10 When enquired about definition of 'ordinarily resident' as mentioned in the Citizenship Act, 1955, the Home Secretary, stated as follows:

"....'ordinarily resident' has been defined to mean resident for at least one year, that is, continuous stay for one year. Now, it is that which is causing us difficulties. Even if a person has been living in India for seven years, but if he does not stay for full 365 days in the last year, then, he does not become eligible to become a citizen. That is a huge handicap. For explanation, I quote, "For the purposes of clauses (a) and (c) an applicant shall be deemed to be 'ordinarily resident' in India, if he has resided in India throughout the period of twelve months, immediately before making an application for registration."

2.11 Further, giving a Comparative Analysis of the definition of "ordinarily resident" in the Citizenship Act, 1955 vis-a-vis 'Non Resident Indian' in the Income Tax Act, 1961 and FEMA, 1999, the Ministry in the written note made the following submissions.

"The requirement of one year continuous stay before making an application for Indian Citizenship is necessary under clause (a),(c),(f) and (g) of sub-section 1 of section 5, and section 6. Clause (a) of sub-section (1) of section 5 provides for acquisition of Indian citizenship by person of Indian origin. Clause (c) of sub-section (1) of section 5 provides for acquisition of Indian citizenship on grounds of marriage to an Indian citizen. Clause (g) of sub-section (1) of section 5 provides for acquisition of Indian citizenship by an OCI card holder of five years. Section 6 provides Indian citizenship

to a foreigner who qualifies for naturalization under the provisions of the Third Schedule of the Act. It may be mentioned that representations were received about the difficulties experienced in fulfilling the criteria of one year's continuous stay in India before making an application for the grant of Indian citizenship on the ground that due to increased globalization, there is imperative need for people to visit abroad due to their economic, social, medical needs etc. It has, therefore, been proposed in the present amendment that the relevant clauses of sub section (1) of section 5 and section 6 of the Citizenship Act, 1955 may be amended to allow for breaks for a total period not exceeding thirty days during the prescribed period of one year immediately before making an application. The amendment proposed is as under:-

“Provided that if the Central Government is satisfied that special circumstances exist, it may after recording such circumstances in writing, relax the period of twelve months specified in clause (i) for a period not exceeding thirty days.”

2.11.1 Thus, as per the proposed Citizenship (Amendment) Bill, 2011, the definition of ‘Ordinarily resident’ will be as below:-

Explanation 1 below Section 5: an applicant shall be deemed to be ordinarily resident in India if-

- (i) he has resided in India throughout the period of twelve months immediately before making an application for registration; and
- (ii) he has resided in India during the eight years immediately preceding the said period of twelve months for a period of not less than six years.

“Provided that if the Central Government is satisfied that special circumstances exist, it may after recording such circumstances in writing, relax the period of twelve months specified in clause (i) for a period not exceeding thirty days.”

2.11.2 The definitions of ‘Resident’ and ‘Non Resident Indian’ are also available in Section 2(v) and 2(w) of the Foreign Exchange Management Act, 1999 and Section 6 of the Income Tax Act, 1961 which are discussed below:

Definition of ‘Resident’ and ‘ Non Resident Indian’ under FEMA

"person resident in India" means-

- (i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include-
 - (A) a person who has gone out of India or who stays outside India, in either case-
 - (a) for or on taking up employment outside India, or
 - (b) for carrying on outside India a business or vocation outside India, or
 - (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;
 - (B) a person who has come to or stays in India, in either case, otherwise than-
 - (a) for or on taking up employment in India, or
 - (b) for carrying on in India a business or vocation in India, or

- (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;
- (ii) any person or body corporate registered or incorporated in India,
- (iii) an office, branch or agency in India owned or controlled by a person resident outside India,
- (iv) an office, branch or agency outside India owned or controlled by a person resident in India;

"person resident outside India" means a person who is not resident in India;
Definition of 'Resident' and ' Non Resident Indian' under the Income Tax Act,1961 is as below:-

Under Section 6 of the Income Tax Act, 1961,

“ An individual is said to be resident in India in any previous year, if he

- (i) Is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more; or
- (ii) Having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or periods amounting in all to sixty days or more in that year.

Explanation : In the case of an individual, - (a) Being a citizen of India, who leaves India in any previous year as a member of the crew of an Indian ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958, (44 of 1958) or for the purposes of employment outside India, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and eighty-two days" had been substituted;

(b) Being a citizen of India, or a person of Indian origin within the meaning of Explanation to clause (e) of section 115C, who, being outside India, comes on a visit to India in any previous year, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred eighty-two days" had been substituted.

(2) A Hindu undivided family, firm or other association of persons is said to be resident in India in any previous year in every case except where during that year the control and management of its affairs is situated wholly outside India.

(3) A company is said to be resident in India in any previous year, if - (i) It is an Indian company; or
(ii) During that year, the control and management of its affairs is situated wholly in India.

(4) Every other person is said to be resident in India in any previous year in every case, except where during that year the control and management of his affairs is situated wholly outside India.

(5) If a person is resident in India in a previous year relevant to an assessment year in respect of any source of income, he shall be deemed to be resident in India in the

previous year relevant to the assessment year in respect of each of his other sources of income.

(6) A person is said to be "not ordinarily resident" in India in any previous year if such person is - (a) An individual who has not been resident in India in nine out of the ten previous years preceding that year, or has not during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and thirty days or more, or

(b) A Hindu undivided family whose manager has not been resident in India in nine out of the ten previous years preceding that year, or has not during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and thirty days or more."

2.11.3 According to the Ministry of Home Affairs, an individual is said to be a resident of India under the Income Tax Act if

- He is in India in the previous year for a period of 182 days or more (60 days if the person is a member of the crew of an Indian ship) or
- He is in India for a period of 365 days or more within 4 years preceding the assessment year AND periods amounting to all to 60 days or more in that year.

2.11.4 An exception is made in the case of a member of the crew of an Indian ship because such people work for months together on duty on the seas.

2.11.5 The Ministry of Home Affairs further opined that the definition of "ordinarily resident" as proposed under the Citizenship (Amendment) Bill, 2011 is more conservative when compared with the definition of 'Resident' as provided under the Foreign Exchange Management Act, 1999 and the Income Tax Act 1961. The definition is stringent as compared to above mentioned Acts, because it is felt that before taking Indian Citizenship, the foreigner must demonstrate his/her keenness to reside in India and sever his/her ties with the Country of his/her earlier nationality."

2.12 During the course of discussions, with the representatives of Home Ministry, Ministry of Overseas Affairs, the Members raised some issues. The issues raised and comments of Ministry of Home Affairs thereon are discussed in the succeeding paragraphs:-

Issue Raised

2.13 Why dual citizenship is not being given by the Indian Government

Response of the Ministry

2.13.1 Dual citizenship in some form or other exists in some countries. However, dual citizenship is not defined in any country's statute as it takes different form in different countries. Full dual citizenship is usually not granted by any country since it has serious security, social, economic and political ramifications.

2.13.2 The Part II (Articles 5 to 11) of the Constitution of India deals with the subject of Citizenship. Article 9 of the Constitution provides that "no person shall be a citizen of India by virtue of Article 5 or be deemed to be a citizen of India by virtue of article 6 or article 8, if he

has voluntarily acquired the citizenship of any foreign State”. Further, Section 9 of the Citizenship Act provides that “ Any citizen of India who by naturalization, registration otherwise voluntarily acquires, or has at any time between the 26th January, 1950 and the commencement of this Act, voluntarily acquired the citizenship of another country shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India”. Therefore, dual citizenship is not provided to the foreign citizens. The only exception is the category of minor children, who cannot voluntarily acquire the citizenship of another country. Section 4 (1-A) of the citizenship Act, 1955 provides a period of within in 6 months after attaining full age for such persons to renounce the citizenship of another country.

Issue raised

2.14 Measures taken by Ministry of Home Affairs to ensure that foreign citizens who are granted Indian citizenship renounce their foreign citizenship before acquisition of Indian citizenship.

Response of the Ministry

2.14.1 As per rule 11 and 12 of the Citizenship Rules, 2009, an application for grant of Indian citizenship is to be submitted by the applicant to the Collector/DM/DC within whose jurisdiction the applicant is ordinarily a resident. The Collector/DM/DC after satisfying himself regarding eligibility of the applicant to become a citizen of India, forwards the application to the State Government/UT administration within 60 days. The application along with the recommendation of the State Government is forwarded to the Ministry of Home Affairs within 30 days. Thereafter, each application is examined in terms of the provisions of the Citizenship Act, 1955 and rules made there under after obtaining security clearance from the security agency. Each applicant whose case is found to be fully complete with the prescribed requirement is informed about the acceptance of his application through the State Government. The applicant is then required to furnish through the State Government a certificate of the renunciation of his foreign citizenship issued by the Mission of the concerned country and proof of payment of the requisite fee prescribed for such registration. Thereafter, a certificate of Indian citizenship is issued to the applicant through the State Government.

Issue raised

2.15 Steps taken for improving the administrative mechanism for streamlining issuance of Indian visas abroad

Response of the Ministry

2.24 The Ministry of Home Affairs is implementing Mission Mode Project (MMP) titled “Immigration, Visa and Foreigners’ Registration & Tracking (IVFRT) under the National e-Governance Plan (NeGP). The core objective of this project is to develop and implement a secure and integrated service delivery framework that facilitates legitimate travelers while strengthening security.

2.15.1 This MMP has global outreach since the scope of the project includes 169 Missions, 77 ICPs (Immigration Check Posts), 7 FRROs (Foreigners Regional Registration Offices), and FROs (Foreigners Registration Offices) in the State/District Headquarters. The Project envisages facilitation services to the travelers including availability of relevant information through website, facility of 24X7 submission of on-line application forms for Visa and foreigner’s registration, on-line appointment scheduling, phone and e-mail support for

grievance redressal, and e-mail/SMS support for dissemination of information about application status.

2.15.2 Envisaged outcomes from this MMP *interalia* include availability of a centralized system for sharing of information across the concerned agencies about foreign travelers and improved tracking of foreigners by integrating and sharing information captured during visa issuance at Missions, during immigration check at ICPs, and during registration at FRRO/FROs. The Project will lead to following major changes/benefits to the stake-holders.

- Uniform and time bound visa issuance process across all the missions with a transparent and simple system for information dissemination and grievance redressal;
- Prior appointment scheduling for the visa applicants with defined service levels for all categories of travellers;
- Fast and convenient immigration clearance system for the travellers at the Immigration Check Posts without compromising security concerns;
- Accurate person identification and document verification by use of Biometrics, intelligent document scanners and Centralized watch list checking at Missions as well as ICPs;
- Access to the unique case file of visa applicants/ foreigner travellers for quick and informed decision making; and
- Ease in sharing the visa application/ visa issuance details with the security agencies and the Immigration Check Posts (ICPs).

Issue raised

2.16 Rationale for permitting foreigners of certain countries to get OCI Card when they are not eligible for a PIO Card and the reason for Afghanistan figuring in the list of countries whose nationals are being granted OCI Card.

Response of the Ministry

2.16.1 The Persons of Indian Origin (PIO) Card Scheme for foreigners of Indian origin was introduced by the Government of India on March 30, 1999. PIO card is not allowed to the nationals of Pakistan, Bangladesh, Afghanistan, Sri Lanka, Bhutan, Nepal and China. The OCI scheme was operationalised on 2nd December, 2005. OCI Card is not allowed at present to the nationals of Bangladesh and Pakistan only. The Section 7A provides that no person, who is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify, shall be eligible for registration as an overseas citizen of India. The Government of India can based on inputs received from the concerned stakeholders and security agency, specify any country including Afghanistan in the list of countries whose nationals are ineligible to get OCI cards. So far, only four Afghanistan nationals have obtained OCI card. Therefore, this Ministry is of the view that OCI card may continue to be given to the nationals of Afghanistan if otherwise eligible. However, the position can always be reviewed and additions can be made to the 'excluded' category of nations if the security considerations so require.

Issue raised

2.17 In the sitting of the Department-related Parliamentary Standing Committee on Home Affairs held on 01.03.2012, the issue of Sri Lankan Tamil was raised. Some Members The Committee pointed out that the Sri Lankan Tamils have been living in India for many years whose number could be above one lakh. The committee wanted to know whether they have applied for citizenship.

Response of the Ministry

2.17.1 In terms of the Citizenship Act, 1955 which provides for the acquisition of Indian Citizenship by birth, descent, registration and naturalization and the Citizenship Rules, 2009, the following documents are essentially required to be attached by the applicant with the application.

- (i) A copy of Valid Foreign Passport.
- (ii) A copy of the Valid Long Term Visa/Residential Permit.

2.17.2 In order to discuss the issues relating to stay of Sri Lankan Nationals in the country, a meeting was held in this Ministry in August, 1998. In the said meeting, it was inter-alia decided that the Sri Lankan Tamils who have come after 1983 would not be considered eligible for grant of Indian Citizenship merely on the grounds of stay in the country for more than 10 years. Special cases meriting grant of Indian citizenship on grounds such as marriage to an Indian, either parent being Indian etc. would be considered within the provisions of the Indian Citizenship Act, 1955 on a case to case basis.

2.17.3 The matter has been reviewed again in May, 2011 by the Ministry of Home Affairs in consultation with the other concerned stakeholders and the following decision was taken:

“Whereas in general the Srilankan Tamils, who have come after 1983 would not be considered eligible for grant of Indian citizenship merely on the ground of stay in India for more than 12 years. Special cases meriting grant of Indian citizenship on grounds such as marriage to an Indian, either parent being Indian etc. would be considered as per the provisions of the Indian Citizenship Act and the rules on a case-to-case basis.”

2.17.4 During last three years i.e. 2009, 2010 and 2011, this Ministry has received 90 applications for the grant of Indian citizenship from such Srilankan nationals and 24 such foreign nationals have been granted Indian citizenship.”

2.17.5 The Committee notes the views of the Ministry of Home Affairs on the Srilankan Tamil Refugees. The Committee desires that the Government may give due consideration to the problems of Srilankan Tamils and take appropriate steps to resolve the issue at the earliest.

Issues raised

2.18 What is the Status of children born out of surrogacy.

Response of the Ministry

2.18.1 The term Surrogacy and its various forms have been described by the Supreme Court of India in its Judgement in the Writ Petition (c) No. 369 of 2008 in the matter of Baby Manji Yamada versus Union of India.

2.18.2 “Surrogacy is a method of reproduction whereby a woman agrees to become pregnant for the purpose of gestating and giving birth to a child she will not raise but hand over to a contracted party. She may be the child’s genetic mother (the more traditional form for surrogacy) or she may, as a gestational carrier, carry the pregnancy to delivery after having been implanted with an embryo. In some cases surrogacy is the only available option for parents who wish to have a child that is biologically related to them. The word “surrogate”, from Latin “subrogare”, means “appointed to act in the place of”. The intended parent(s) is the individual or couple who intends to rear the child after its birth.

2.18.3 In “**traditional surrogacy**” (also known as the Straight method) the surrogate is pregnant with her own biological child, but this child was conceived with the intention of relinquishing the child to be raised by others; by the biological father and possibly his spouse or partner, either male or female. The child may be conceived via artificial insemination using fresh or frozen sperm or impregnated via IUI (intrauterine insemination), or ICI (intra cervical insemination) which is performed at a fertility clinic.

2.18.4 In “**gestational surrogacy**” (also known as the Host method) the surrogate becomes pregnant via embryo transfer with a child of which she is not the biological mother. She may have made an arrangement to relinquish it to the biological mother or father to raise, or to parents who are themselves unrelated to the child (e.g. because the child was conceived using egg donation, sperm donation or is the result of a donated embryo). The surrogate mother may be called the gestational carrier.

2.18.5 **Altruistic surrogacy**” is a situation where the surrogate receives no financial reward for her pregnancy or the relinquishment of the child (although usually all expenses related to the pregnancy and birth are paid by the intended parents such as medical expenses, maternity clothing, and other related expenses).

2.18.6 **Commercial surrogacy**” is a form of surrogacy in which a gestational carrier is paid to carry a child to maturity in her womb and is usually resorted to by well off infertile couples who can afford the cost involved or people who save and borrow in order to complete their dream of being parents. This medical procedure is legal in several countries including in India where due to excellent medical infrastructure, high international demand and ready availability of poor surrogates it is reaching industry proportions.

2.18.7 Intended parents may arrange a surrogate pregnancy because a woman who intends to parent is infertile in such a way that she cannot carry a pregnancy to term. Examples include a woman who has had a hysterectomy, has a uterine malformation, has had recurrent pregnancy loss or has a health condition that makes it dangerous for her to be pregnant. A female intending parent may also be fertile and healthy, but unwilling to undergo pregnancy. Alternatively, the intended parent may be a single male or a male homosexual couple. Further, the Surrogates may be relatives, friends, or previous strangers. Many surrogate arrangements are made through agencies that help match up intended parents with women who want to be surrogates for a fee. The agencies often help manage the complex medical and legal aspects involved. Surrogacy arrangements can also be made independently.

2.18.8 Guidelines framed by the Ministry of Health and Family Welfare for Assisted Reproductive Technology (ART)

2.18.9 A surrogate mother carrying a child biologically unrelated to her must register as a patient in her own name. While registering she must mention that she is a surrogate mother and provide the necessary information about the genetic parents such as names, addresses, etc. She must not use/register in the name of the person for whom she is carrying the child, as this would pose legal issues, particularly in the untoward event of death of either the surrogate mother or the child (in whose names will the hospital certify this death?). The birth certificate of children so born shall be in the name of the genetic parents. The clinic, however, must also provide a certificate to the genetic parents giving the name and address of the surrogate mother. Therefore, the actual parents of the children born out of the surrogacy agreement are the biological/genetic parents and that the surrogate mother cannot be treated as a parent. Thus, if a foreigner or a foreign couple seeks sperm or surrogacy in India, and a child is born as a consequence, the child, even though born in India, shall not be an Indian citizen if both the genetic parents are foreigners.

2.18.10 Section 3 of the Citizenship Act, 1955, which is re-produced below, provides for Indian Citizenship by birth:

- (a) Every person born in India on or after the 26.01.1950 but before 01.07.1987, is a citizen of India by birth irrespective of the nationality of their parents.
- (b) Every person born in India between 01.07.1987 to 02.12.2004, is a citizen of India provided either of his parents is a citizen of India at the time of his birth.
- (c) Every person born in India on or after 03.12.2004, shall be citizen of India provided both of his parents are citizens of India or one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth.

2.18.11 Thus, it is clear that if a foreigner or a foreign couple seeks sperm or surrogacy in India, and a child is born as a consequence, the child, even though born in India, shall not be an Indian citizen if both the genetic parents are foreigners. In such cases, “an identity certificate” can be issued to such children born out of the surrogacy, to facilitate his/her travel abroad. However, if the sperms of an Indian national are used, the child born will be Indian if the other parent is not an illegal migrant.

2.18.12 The Ministry of Home Affairs further informed that they had understood that the Department of Health Research under the Ministry of Health and Family Welfare is taking steps to bring a comprehensive Bill before Parliament on all aspects of surrogacy.

CHAPTER- III

Views/suggestions made in the Memoranda received on the Bill

3.0 The Committee issued a Press Release inviting the written memoranda from the public/stakeholders, on the Bill. In response to that the Committee received about 19 memoranda on the Bill, out of which, 13 memoranda were found to be relevant and were forwarded to the Ministry of Home Affairs for furnishing their comments thereon. The Committee in its sitting held on 21st February, 2012 considered the views/suggestions expressed in the memoranda and the response of the Ministry of Home Affairs thereon. Some important suggestions received and the comments of the Ministry thereon are discussed in the succeeding paragraphs:

Suggestion received

3.1 “Bangladeshi Refugees” living in India for 4-5 decades could not preserve the registration documents due to their illiteracy and the circumstances. The Citizenship (Amendment) Act 2003 requires all such documents to prove these teeming millions as Indians; the older generation has passed away and the generation that has been born in India is now suffering for these unsolicited provisions of the said Act. The Act be amended suitably so that millions of people who have become victims of partition and the generation that was born in India can live a happy life in their home-country.

Response of the Ministry

3.1.1 Section 2(1)(b) of Citizenship Act, 1955 regarding definition of ‘illegal migrant’ reads as under:

“Illegal migrant” means a foreigner who has entered into India-

- (i) without a valid passport or other travel documents and such other document or authority may be prescribed by or under any law in that behalf; or
- (ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time;”

3.1.2 The Committee was given to understand that immediately aftermath of Partition in 1947, a large number of Bangla Speaking people, some with Identity documents and some without Identity documents, migrated to India from East Pakistan which continued almost upto liberation of Bangladesh in 1971. A large number of them are actually born in India. The Committee desired to know specifically about the government's evaluation of the issue regarding portion of the population who are born in India irrespective of the fact whether their parents migrated legally or illegally.

3.1.3 Commenting on the issue, the Home Secretary stated as under:-

“This is actually the problem the size of which is huge. It is something which we have to think very carefully before we decide on any step regarding grant of citizenship to people coming across neighbouring countries. So, this is something which I cannot really address in a hurry. And, this is something which has major implications. There are practical aspects and there are also aspects of demographic changes in some areas. There are also aspects of the feelings of the original inhabitants of the State in which these people have come.”

3.1.4 When the Committee wanted to know whether they would become the natural citizens of the country by birth, the Home Secretary stated as under:

“Section 3, Citizenship by birth, says, “Except as provided in sub-section (2) every person born in India,- (a) on or after the 26th day of January,1950, but before the 1st day of July, 1987; (b) on or after the 1st day of July, 1987, but before the commencement of the Citizenship (Amendment) Act, 2003 and either of whose parents is a citizen of India at the time of his birth.” That is the key.”

3.1.5 In a further query of a Member of the Committee as to whether any census of Bangladeshi refugees has been done, the Home Secretary replied as under:-

“We have not carried out any such census separately for people who are illegal migrants and illegal migrants are spread not only in Bengal, Assam and other North-Eastern States but also in the hinterland -- outside Delhi and outside Mumbai. The difficulty in carrying out such a census is that most of these people, after some lapse of time, have succeeded in getting documents like ration card, etc., and they claim to be Indian citizens.”

3.1.6 Further clarifying on the issue the Home Secretary stated as under:-

“The provisions regarding grant of citizenship are enshrined in the Citizenship Act. The provision of grant of citizenship is either by birth or naturalization. Now, in this case, where refugees have come from across the border, they will have to follow the path of naturalization which is given in section 6.”

3.1.7 The Committee is of the view that the issue of “Bangladeshi refugees” may be suitably resolved by the Government within a stipulated time as these people are the victims of partition of the country. It is understood that the Citizenship Act requires certain documents to prove their valid migration. However, their lives being at sixes and sevens, it could have been difficult to preserve their requisite documents. Therefore, the Committee desires that the Government, without compromising the national interest, may consider the problems of Bangladeshi Refugees to ensure that the generation that is born in India can at least lead a happy life. Saying that the issue is very complex cannot be an excuse to procrastinate a decision on the issue. The Committee recommends that the issue may be studied in depth, if necessary by appointing a special committee, and a solution may be found soon.

Suggestions received

3.2 The expression “Overseas Citizen of India” as per existing provision may be retained.

Response of the Ministry

3.2.1 The nomenclature “overseas citizens of India” is a misnomer since they are not citizens of India but actually foreign citizens of Indian origin. It was, therefore proposed that when the Citizenship Act, 1955 is amended, the Overseas Citizens of India card Scheme may be re-designated as “Overseas Indian Cardholder Scheme”. Accordingly, it is proposed that in section 7A to 7D, the words “Overseas citizens of India”, wherever they occur, may be replaced as “Overseas Indian Card holder”.

3.2.2 Rejecting the proposal for retaining the nomenclature as “overseas citizen of India”, and reiterating the view of the Ministry mentioned above”, the Home Secretary stated as under:-

“.....the reason for this is that full citizenship rights are not granted to the OIC-holders. Therefore, they cannot be called citizens. They are not entitled to work or to hold the cards.”

3.2.3 The Committee is in agreement with the views of the Ministry of Home Affairs. The Committee, therefore, approves the proposed re-designation of the words “Overseas citizens of India” in section 7A to 7D as “Overseas Indian Cardholder”.

Suggestions received

3.3. Dual citizenship and voting right should not be given to Foreign citizens of Indian origin i.e. Overseas citizens of India.

Response of the Ministry

3.3.1 As per Indian Law, dual citizenship is not allowed except for a minor who is a citizen of India by virtue of acquiring citizenship by descent under section 4 of the Citizenship act, 1955. Under section 7B of Citizenship Act, 1955, among others, an overseas citizen of India is not entitled to following rights:

- (i) Right to vote
- (ii) Right to contest elections to be a member of Legislative Assembly or Legislative Council or Parliament,
- (iii) To hold constitutional posts such as President, Vice President, Judge of Supreme Court or High Court etc.
- (iv) Hold employment in the Government

Suggestions received

3.4 The following new provision may be inserted in the respective provisions of the Citizenship Act, 1955:-

“ Whenever any individual having original Citizenship by birth of any other Country apply for or get Indian Citizenship, after 1947 shall satisfy by filing an affidavit that under the law of respective original country, after getting Indian Citizenship his allegiance to such original country will prevail or not.”

Response of the Ministry

3.4.1 The Indian Citizenship is granted to a foreign national only after he renounces his foreign citizenship.

Suggestions received

3.5 Citizenship should be given by blood and not by birth on proper justification. Creation of Naturalization Ministry under Prime Minister or Union Cabinet Minister may be created. Further he has also suggested creation of a merit category for meritorious citizens who have excelled in the field of Science, Art, Literature, Sports, Philanthropy and Politics etc.

Response of the Ministry

3.5.1 The present framework of law meets the concerns expressed by the individual.

Suggestions received

3.6 Problems of Refugees

- i. All West Pakistani Hindus migrated from Pakistan in 1947 after partition of India, who are residing in Jammu & Kashmir State since then should be granted the National citizenship of India according to this proposal bill. These West Pakistani Hindu Refugees till today have no right to vote in J&K Assembly Elections, nor they can serve as Govt. Employee. Smt. India Gandhi (PM) after 1980 once proposed and assured for such action but it is not done till today.

ii. Chakma Refugees (in Tripura) migrated from Bangla Desh should also be registered as Indian citizen.

iii. Reang Tribals from Mizoram when returned to their Home State after migration for some years were not given voting rights. Reangs have every right to vote as Indian citizen.

Response of the Ministry

3.6.1 "Article 6 of the constitution of India deals with the Right of citizenship of certain persons who have migrated to India from Pakistan. This Article provides,

“Notwithstanding anything in article 5, 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 grand-parents 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 before 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 nineteenth 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 therefor to such officer before the commencement of this Constitution in the form and manner prescribed by that Government.

3.6.2 Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.”

3.6.3 Further, Article 9 of the Constitution provides that no person shall be a citizen of India or deemed to be a citizen of India if he has voluntarily acquired citizenship of any foreign nation. Therefore, each case for grant of Indian Citizenship is to be examined separately on an application made by the applicant.

3.6.4 The West Pakistan Refugees who migrated from Pakistan in 1947, and settled in Jammu & Kashmir, are citizens of India and are allowed to exercise their right to franchise in the Parliamentary Elections. As far as, registration as a voter for elections to the Legislative Assembly of J&K is concerned, as per Section-140 of the Constitution of Jammu & Kashmir, 1957, **only a person who is a permanent resident of the State** (subject to fulfilment of conditions prescribed in that Section) **is entitled to be registered as a voter in the electoral roll for the Legislative Assembly and subsequently, vote in J &K Assembly Elections.** Further, as per Section-6 of the Constitution of Jammu & Kashmir, 1957, only a “State Subject” **can be a permanent resident of the State.** In view of the existing provisions of the J&K Constitution, “the West Pakistani Refugees are not State subjects”, and hence are not entitled to vote in the J&K Assembly Elections and also cannot apply for employment in the

State Government. In so far as the issue of granting them State Subject status is concerned, the State Government (J&K Government) has not been able to meet their demand as it has legal implications.

3.6.5 It is submitted that the Citizenship Act, 1955 came into force on 30th December, 1955. It provides for the acquisition of Indian citizenship, after the commencement of the Constitution, by birth, by descent, by registration, by naturalization and incorporation of territory. The Act also provides for termination and deprivation of Indian citizenship under certain circumstances. There is a prescribed procedure for acquisition of Indian citizenship. The legal provisions and the procedure for seeking Indian citizenship are briefly discussed below:-

By Birth (section 3)

(i) Every person born in India on or after the 26.01.1950 but before 01.07.1987, is a citizen of India by birth irrespective of the nationality of their parents.

(ii) Every person born in India between 01.07.1987 to 02.12.2004, is a citizen of India provided either of his parents is a citizen of India at the time of his birth.

(iii) Every person born in India on or after 03.12.2004, shall be citizen of India provided both of his parents are citizens of India or one of whose parents is a citizen of India and the other is **not an illegal migrant** at the time of his birth.

By Descent (section 4)

Those born outside India on or after 26th January 1950 but before 10th December 1992 are citizens of India by descent, if their father was a citizen of India at the time of their birth. Those born outside India on or after 10th December 1992, are considered citizens of India if either of their parents is a citizen of India at the time of their birth. Those born outside India on or after 03.12.2004 are considered citizens of India if either of their parents is a citizen of India at the time of their birth and their birth is registered with the Indian Mission abroad within a period of one year of his birth or with the permission of the Central Government after the expiry of one year.

By Registration (section 5)

Citizenship of India by registration can be acquired by-

- (a) Persons of Indian origin, who or either of whose parents were born in undivided India and who are ordinarily resident in India for seven years.
- (b) Persons of Indian origin who are ordinarily residents in any country or place outside undivided India.
- (c) Persons who are or have been married to a citizen of India and who are ordinarily resident in India for seven years.
- (d) Minor children both whose parents are Indian citizens.
- (e) Persons of full age and capacity whose parents are registered as citizens of Indian under clause (a) of this sub-section or sub-section (1) of section 6.

- (f) Persons of full age and capacity who, or either of his parents, was earlier citizens of independent India, and has been residing in India for one year immediately before making an application for registration.
- (g) Persons of full age and capacity who has been registered as an overseas citizen of India for five years, and who has been residing in India for one year before making an application for registration.

By Naturalisation (section 6)

3.6.6 Section 6 of the Citizenship Act,1955 read with the Third Schedule to the Act provides for grant of Citizenship by naturalization to a foreigner who has completed 12 years (continuously for the twelve months preceding the date of application and for 11 years in the aggregate in the 14 years preceding the twelve months) and has acquired proficiency in one of the Indian languages specified in the Eighth Schedule to the Constitution. It also provides that if, in the opinion of the Central Government, the applicant is a person who has rendered distinguished service to the cause of science, philosophy, art, literature, world peace or human progress generally, it may waive all or any of the conditions specified in the Third Schedule.

3.6.7 The above provisions are applicable to all the foreigners (including those who migrated from neighboring countries). It is pertinent to mention that the Citizenship Act,1955 was amended by the Citizenship (Amendment) Act, 2003 which came into force on 03.12.2004 and the reasons for the amendment *inter alia* were as under:-

- (i) To make acquisition of Indian Citizenship by registration or naturalization more stringent.
- (ii) To prevent refugees and illegal migrants from becoming eligible for Indian Citizenship.

3.6.8 The aforesaid amended Act has defined 'illegal migrant' under section 2(b) of the Act as under:-

“illegal migrant means a foreigner who has entered into India-

- (i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or
- (ii) with a valid passport or other travel documents and such document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time.”

3.6.9 The above provisions have clearly laid down that illegal migrants are ineligible for grant of Indian Citizenship. The foreigners/ migrants who fulfil the residential requirements as per law, are granted Indian Citizenship, provided they are not 'illegal migrants' as stated above."

3.6.10 The Committee was given to understand that about 40 thousand Riang refugees had taken shelter in Tripura and it has been reported that their houses were ransacked, and even they were physically assaulted. However after that, at the initiative of the Central Government, a lot of discussions had taken place but without any result and the refugees are living an inhuman life. On the issue of Riang refugees from Mizoram who had taken shelter in Tripura the Home Secretary commented as under:-

“I have had discussions with the Home Minister and the Home Secretary of Mizoram. After that, a meeting was held with the officers of Mizoram and Tripura and officers of the Government of India. We are pursuing

the matter. Both the Governments of Tripura and Mizoram are willing to resolve this problem, and this problem will be resolved.”

3.6.11 As regards the issue of West Pakistani refugees, the Home Secretary during the course of his oral evidence reiterating the stand of the Ministry, as expressed in the written reply, stated that they are Indian citizens and they are competent to vote in Parliamentary elections. He further reiterated that as regards the voting for J&K Assembly is concerned, Article 4 of the J&K Constitution says that only the State subjects will be entitled to vote. According to Article 140, only a person, who is permanent resident of the State, subject to fulfillment of certain prescribed conditions, is entitled to be registered as a voter in the electoral rolls for the Legislative Assembly elections. He further submitted that the issue requires discussions with the J&K State Government. He further contended that the issue is slightly delicate and has to be approached accordingly.

3.6.12 The Committee is concerned to note that the West Pakistani refugees, who came to India, could become citizens of the country but without any rights to vote to the State Legislative Assembly elections. Their children cannot get admission in certain Government educational institutions and they also cannot get any employment in the State Government. This is a very unfortunate status. The Committee is given to understand that assurances had been given by the then Prime Minister to solve the issue. But nothing has emerged till now. The Committee recommends that the Government may take up the matter with J&K Government and a permanent solution may be found at the earliest.

3.6.13 The Committee also recommends that the issue of Chakma refugees, who migrated from Bangladesh to Tripura, may also be examined and an early solution may be found.

3.6.14 The Committee also desires that the issue of Riang tribal may also be examined. Further discussions may be held with the Governments of Mizoram and Tripura, and the problem be resolved at the earliest.

Suggestions received

3.7 Overseas Indian Cardholders

- (i) Eminent Overseas Indian Cardholders may be granted a short duration honorary membership of various legislative bodies including local self government institutions, in India. Their interaction with resident Indians may lead to acceleration of development and improve our work culture.
- (ii) Government may consider appointing, for a brief period, highly acclaimed overseas Indian academics, professionals, scientists, experts and similar persons to suitable posts in India to inculcate values of punctuality, commitment, professionalism, dedication, hard work and excellence among our fellow resident citizens.

Response of the Ministry

3.7.1 The OCI are not eligible to contest in elections and the Ministry is not in favour of this suggestion.

3.7.2 The Committee agrees with the views of the Ministry of Home Affairs.

Suggestions received

3.8 Foreign Spouse

Alternative 1 :

(d) such spouse of a citizen of India or an overseas Indian card holder who is a citizen of another country where his or her marriage has been registered and subsisted for a continuous

period of not less than two years immediately preceding the presentation of the application under this section.

Alternative 2 :

(d) such spouse of a citizen of India or an overseas Indian card holder who has obtained such card clause under clause (a) subsections (i)-(iii) who is a citizen of another country where his or her marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application under this section :

3.8.1 Provided that for the eligibility for registration as an overseas Indian cardholder, such spouse shall be subjected to prior security clearance from a competent authority in India:

3.8.2 Provided further that no person, who is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify, shall be eligible for registration as an overseas Indian cardholder.”

3.8.3 This suggestion is being dealt separately in Chapter IV-under Clause-by-clause consideration, under clause 4 of the Bill.

CHAPTER-IV
CLAUSE-BY-CLAUSE CONSIDERATION OF THE BILL AND
RECOMMENDATIONS OF THE COMMITTEE

4.0 The Committee in its sitting held on 1st March 2012 took up the clause-by-clause consideration of the Bill and in its next meeting held on 13th March 2012 concluded its discussion on the same. The Home Secretary, Secretary, Department of Legal Affairs and Joint Secretary, Legislative Department were present in both the sittings of the Committee during the course of clause-by-clause consideration of the Bill. The details of the deliberations of the Committee on the clause-by-clause consideration of the Bill are enumerated below:-

Clause 2

4.1 Clause 2 proposes amendment in section 2 (ee) of the Citizenship Act 1955 which pertains to the interpretations. The amendment provides for definition to "Overseas Indian Cardholder" as "a person registered as an Overseas Indian Cardholder by the Central Government under section 7A." This definition replaces the existing definition to Overseas Citizen of India.

4.1.2 Since the proposed amendment in clause 2 is of consequential nature, the clause 2 is adopted without any change.

Clause 3

4.2 Clause 3 proposes amendment in Clauses (f) and (g) of Sub-Section (1) of Section 5 by replacing the words 'has been residing' with the words 'is ordinarily resident'. The amendment, proposes to bring the clauses at par with clauses (a) and (c) of sub-section (1) of Section 5. Further, following proviso is also proposed to be inserted after Clause (ii) in explanation 1 to sub-section (1) of Section 5 of the Act:-

"Provided that if the Central Government is satisfied that special circumstances exist, it may after recording such circumstances in writing, relax the period of twelve months specified in clause (i) for a period not exceeding thirty days."

4.2.1 The Committee considered the above proviso in detail and noted that the explanation 1 and the above proviso covers clauses (a) and (c) only of the Sub-Section 1 of Section 5 while clauses (f) and (g) of sub-section (1) are proposed to be brought at par with clauses (a) and (c) by the Amendment. Some Members felt that the proviso should also cover clauses (f) and (g) as well. The Home Secretary during clause-by-clause consideration of the Bill agreed to the suggestion of the Members.

4.2.3 The Committee decided that sub-clause (c) of clause 3 of the Bill may be substituted by the following:-

" (c) explanation 1 may be read as under:

"An applicant shall be deemed to be ordinarily resident in India for the purposes of:-

- (i) *Clauses (a), (c), (f) and (g), if he has resided in India throughout the period of twelve months immediately before making an application for registration: provided that if the Central Government is satisfied that special circumstances exist, it may, after recording such circumstances in writing,***

relax the period of twelve months specified above for a period not exceeding thirty days.

- (ii) *Clauses (a) and (c), if the applicant has also resided in India during the eight years immediately preceding the said period of twelve months for a period of not less than six years."*

4.2.4 Subject to the above, the clause is adopted as amended.

Clause 4

4.3 Clause 4 of the Bill seeks to substitute Section 7 A, 7 B, 7 C and 7 D of the Principal Act. The amendments proposed provide for the following:-

- (i) To enable acquisition of OCI registration by minors, both parents of whom are Indian citizens or one parent is an Indian citizen by amending section 7A;
- (ii) To merge the PIO Card Scheme with OCI Scheme by amending section 7A.
- (iii) To re-designate the nomenclature of "Overseas Citizen of India" as "Overseas Indian Cardholder" by amending Section 7A to 7D;
- (iv) To cancel the registration of a person who has obtained overseas Indian card on the basis of marriage to an Indian Citizen, on dissolution of his/her marriage;

4.3.1 In the proposed Section 7A, as proposed to be amended in the Bill, clause (d) provides for eligibility to the foreign spouse of an Indian citizen to get an Overseas Indian Card (OIC). The Committee has received a suggestion in this regard to further amend and provide that the foreign spouse of an OIC holder shall also be eligible for getting an OIC. The Home Secretary, initially, informed the Committee that they were examining the implication of the suggestion and would come back to the Committee after its examination. The Home Secretary, however, in the next two sittings could only tell the Committee that the proposal was sent by the Ministry to PM Office and it was finally decided to send the proposal to the Cabinet. The Home Secretary, however, mentioned that the Ministry was in agreement to the suggestion and the proposal would be sent to the Cabinet for approval.

4.3.2 Since the Home Secretary has agreed to the suggestion of providing OIC card to the foreign spouse of an OIC card holder and the Ministry is already in the process of approaching Cabinet for approval, the Committee recommends that an early decision may be taken in the matter and the final amendment may be brought before the Parliament at the time of the consideration of the Bill by the House.

4.3.3 Subject to the above observation, the clause is adopted.

Clause 5

4.4 This clause seeks to amend the Third Schedule of the Principle Act by inserting the following proviso in Clause C of the Schedule.

“Provided that if the Central Government is satisfied that special circumstances exist, it may, after recording such circumstances in writing, relax such period by a period not exceeding thirty days.”

4.4.1 The Third Schedule of the Principle Act stipulates qualifications for naturalization of a person which relates to Section 6(1) of the Principal Act dealing with citizenship by naturalization.

4.4.2 The clause is adopted without any change.

Enacting Formula and the Title

4.5 Clause 1, the Enacting Formula and the Title are adopted with some changes which are of consequential/drafting nature, namely “2011” and ‘Sixty-Second’ to be substituted by ‘2012’ and ‘Sixty-third’ year, respectively.

4.6 The Committee Adopts the Bill as amended and commends that the Bill as amended may be passed subject to other observations made by it.
