

INDIAN CITIZENSHIP LAW

1. The following summary of the main provisions of Indian citizenship law reflects the provisions of Indian citizenship law and statements made by the Ministry of Home Affairs, India by letter to the Foreign and Commonwealth Office on 27 January 2006. It does not aim to be, nor should be taken as, definitive. Only the Indian authorities can provide definitive advice on their citizenship law. However, the information should normally be sufficient to determine an applicant's eligibility for British nationality where this turns on his/her possession, or not, of Indian citizenship.
2. The principal legislation is the **Citizenship Act 1955**, as amended by the **Citizenship (Amendment) Act 1986**, the **Citizenship (Amendment) Act 1992** and the **Citizenship (Amendment) Act 2003**.

3. **Indian citizenship by birth**

Birth in India prior to 3 December 2004

- 3.1 Under the **1955 Act**, and prior to the commencement of the **1986 Act** on 1 July 1987, any person born in India was a citizen of India by birth. A person born in India on or after 1 July 1987 was a citizen of India if either of the parents was a citizen of India at the time of the birth.

Birth in India on or after 3 December 2004

- 3.2 From 3 December 2004 any child born in India will only be an Indian citizen if either of the parents is a citizen of India and the other parent is not:
 - a. an illegal immigrant; or
 - b. a foreign diplomat or envoy (who is not a citizen of India); or
 - c. an enemy alien and the birth occurs in a place then under enemy occupation

4. **Indian citizenship by descent**

Birth outside India prior to 3 December 2004

4.1 Prior to the commencement of the **1992 Act** on 10 December 1992, a person born outside India could normally only be a citizen of India by descent if the father was a citizen of India otherwise than by descent at the time of the birth. A person born outside India on or after 10 December 1992 but before 3 December 2004 is normally a citizen of India if either parent was a citizen of India otherwise than by descent at the time of the birth. Citizenship of India acquired in this way is citizenship by descent.

4.2 However, a person born outside India to a parent who was a citizen of India by descent at the time of the birth (as described in paragraph 4.1) is also a citizen of India by descent if:

- the birth is registered at an Indian Consulate or High Commission abroad; or
- the parent was in Indian Government service

Birth outside India on or after 3 December 2004

4.3 Any child born outside India to an Indian parent on or after 3 December 2004 will continue to be eligible for Indian citizenship on the same basis as 4.1 & 4.2 above.

4.4 **However acquisition of Indian citizenship will not be automatic.** These children will not become Indian citizens unless and until the child's birth is registered at an Indian Consulate (by virtue of **S.4 of the Citizenship (Amendment) Act 2003**, which came into force on 3 December 2004).

4.5 When considering cases where a child potentially has a route to Indian citizenship via registration we should ask for evidence that the child has not been registered.

5. Renunciation

5.1 If an adult makes a declaration of renunciation of Indian citizenship, any minor child of that person also loses Indian citizenship from the date of renunciation.

6. Dual nationality

6.1 Our understanding is that Indian citizenship cannot normally be held in combination with any other citizenship. **Section 9** of the **1955 Act** provides that

"Any citizen of India who by naturalisation, registration or otherwise voluntarily acquires.....the citizenship of another country..... shall, upon such acquisition,..... cease to be a citizen of India".

6.2 This means that no adult (18 and over) can hold Indian citizenship in conjunction with any other nationality or citizenship - but see 6.6 below.

6.3 Further, if an Indian minor obtains another nationality or citizenship (for example by registration as a BN(O)) the child will automatically lose its Indian citizenship. This applies even where the registration is made by the parents/guardian on behalf of the child.

6.4 The only exception to this general ban on dual citizenship is where a child is a dual national by birth. In such cases that child can remain a dual citizen until either:

- a. they obtain a passport in their other citizenship (while under the age of 18); or
- b. they reach the age of majority (18)

6.5 If a child who is a dual national by birth fails to renounce their other citizenship prior to reaching the age of majority or acquires a passport in their other nationality before reaching the age of 18 they will lose Indian citizenship.

6.6 If, despite the prohibition on dual nationality, an applicant has been issued with a passport or other formal document describing him as an Indian citizen, it should not be assumed that it has been issued incorrectly. In such cases, we should write to the applicant/agent along the lines explained in paragraph 4.5 of Annex D

7. **Indian Overseas Citizenship**

7.1 The **Citizenship (Amendment) Act 2003** introduced a new status, Overseas Citizenship of India (OCI), which can be held in

combination with any other citizenship (excluding Pakistani and Bangladeshi citizenship)

7.2 The scheme was formally launched on 2 December 2005 and acquisition is by application only. (The Citizenship (Amendment) Act 2003 introduced the necessary legislation.)

7.3 OCI will only be granted if the laws of the country of the applicant "home country" also permit dual citizenship.

Eligibility for OCI

7.4 Any foreign national (except those who are or have been citizens of Pakistan and Bangladesh) who:

- a. Was eligible to become or was a citizen of India on, or at anytime after 26 January 1950 (see paragraph 3 above and Indian MHA website - <http://www.mha.nic.in/oci-faq.pdf>); or
- b. Belonged to a territory that became part of India after 15 August 1947; or
- c. Is the child or grandchild of a person described at a. or b. above.

7.5 For the purposes of British nationality law, OCI is considered to be citizenship of another State. This will be relevant where British law requires the person to be stateless (as, for example, in **Schedule 2** to the British Nationality Act 1981) or to have no citizenship or nationality apart from a qualifying form of British nationality (as, for example, in **s.4B** to the 1981 Act). In these cases, confirmation of non-acquisition of OCI should be sought where the applicant appears to satisfy the criteria in paragraph 7.4 above.