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Dual Citizenship: An Indian Perspective

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ABSTRACT

The purpose of this research paper is to study the legal status of dual citizenship in India. It delves into the issue whether dual citizenship is a feasible concept for Indian scenario or not.

The citizenship for a country is a very important subject as it entails rights and obligations for the citizens as well as the State. It is a legal choice for a nation to choose either single or dual citizenship, considering its peculiar social, economic and political characteristics. Dual citizenship is not a novel concept and has been adopted and recognized by various countries in the world. The expanding globalization has ripple effects on the citizenship laws worldwide.

The Constitution of India led to the proper development of citizenship law in India. Furthermore, the nationality law was expanded by the Citizenship Act 1955, which is a comprehensive national legislation dealing with the legal aspects of citizenship. Although dual citizenship has been endorsed by most of the countries in some form or the other, the Constitution framers have rejected this concept. Similarly, Section 9 of the Citizenship Act, 1955 terminates Indian citizenship if citizenship of any other country is acquired. Thus, the Indian legal position is clear that dual citizenship is not permitted according to the present legal framework. For India, the debated question has always been whether it should change its stand on dual citizenship or continue with its current framework of single citizenship. As a developing country, India is battling with issues like overpopulation, poverty, illiteracy and unemployment. Dual citizenship comes with a heavy cost of a grave threat to national security, massive economic burden and conflict of laws. The debate of whether dual citizenship should be endorsed by India or not, is incomplete without considering its political, legal, social and economic implications.

Keywords: *Dual citizenship, dual nationality, citizenship, nationality, Citizenship Act, 1955*

I. INTRODUCTION

In the landmark judgment of *Liechtenstein v. Guatemala*³ (popularly referred to as ‘Nottebohm Case’), the International Court of Justice gave a precise definition of ‘Nationality:

“Nationality is a legal bond having as its basis a social fact of attachment, a genuine connection

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³ Nottebohm Case (*Liechtenstein v. Guatemala*), Second Phase, I.C. J. Reports 1955, p. 4, at 23 (Apr. 6).

of existence, interests and sentiments, together with the existence of reciprocal rights and duties.” In legal parlance, ‘citizenship’ can be understood as the recognition of the legal status of a person by the State, which entails rights and duties for both the State and the citizens. There are different modes of acquiring the citizenship of a State. Broadly there are four routes of obtaining citizenship of a country- ‘*jus soli*’, i.e., citizenship by birth on the soil of a country, ‘*jus sanguinis*’, i.e., citizenship by descent or blood relationship, ‘*jus matrimonii*’ i.e., citizenship by marriage and citizenship by ‘Naturalization,’ which means citizenship on the basis of certain conditions such as long-term residence, good character, knowledge of language, culture or polity of a country, etc. Citizenship is an important legal subject, which is regulated by the domestic jurisdiction of the State.⁴ Therefore, the domain of citizenship exclusively lies with the Sovereign States, and they can make laws and rules for the regulation of the acquirement and termination of citizenship. Globally there is no uniformity in this regard and almost all countries have their own distinct citizenship framework.

With the advent of science and technology, there is a new era of globalization, which has led to tremendous global immigration. The barriers of geographical boundaries are becoming blurred and the concept of ‘one nation, one citizenship’ is becoming obsolete. The Black’s law Dictionary defines ‘dual citizenship’ as “*the status a person can have when he is claimed by two countries to be a citizen and can travel on two passports.*”⁵ The Collins Dictionary has also given a definition of dual citizenship, also known as ‘dual nationality’ as the “*the status of a person who is a legal citizen of two or more countries.*”⁶ “Dual nationality means that a person is a national of two countries, having legal rights and obligations in connection with both countries.”⁷

The recent report titled ‘*International Migration 2020 Highlights*’ released by the Population Division of the UN Department of Economic and Social Affairs reported that “India has the largest diaspora in the world with 18 million persons from India living outside of their country of birth.”⁸ This raises an important question: India should adopt dual citizenship or not?

⁴ *Id.* at 20.

⁵DUAL CITIZENSHIP DEFINITION & LEGAL MEANING- BLACK'S LAW DICTIONARY, <https://thelawdictionary.org/dual-citizenship/> (last visited Aug. 10, 2022).

⁶DUAL CITIZENSHIP DEFINITION AND MEANING: COLLINS ENGLISH DICTIONARY, <https://www.collinsdictionary.com/dictionary/english/dual-citizenship> (last visited Aug. 10, 2022).

⁷ TRAVEL.STATE.GOV, <https://travel.state.gov/content/travel/en/international-travel/before-you-go/travelers-with-special-considerations/Dual-Nationality-Travelers.html> (last visited Aug. 10, 2022).

⁸United Nations Department of Economic and Social Affairs, Population Division (2020), *International Migration 2020 Highlights*(ST/ESA/SER.A/452),https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/undesa_pd_2020_international_migration_highlights.pdf.

II. A GLOBAL PERSPECTIVE OF DUAL CITIZENSHIP

In international law, there is a lack of material on ‘dual citizenship.’ There is no convention which specifically deals with the legal framework for dual citizenship *per se*. Article 15 (1) of the Universal Declaration of Human Rights (1948) declares that “*everyone has the right to a nationality.*”⁹ Similarly, Article 4 (a) of the European Convention on Nationality (1997) states the principle of state nationality that “*everyone has the right to a nationality.*” Even Article 5(d) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination recognises “*the right to nationality.*” To prevent ‘statelessness’, the principle has also been carved out that nationality of a person shall not be deprived by the States ‘arbitrarily’.¹⁰ Thus, it is very clear that the right to nationality or citizenship is a recognized human right under the international law and it should not be curtailed from the citizens unless there are compelling reasons for doing so.

In 1930, the League of Nations came up with the Convention on certain questions relating to the Conflict of Nationality Law (1930), which became the first international convention in which “dual national status was implicitly recognized.”¹¹ Under this Convention, the States have been given the power to formulate its domestic law on nationality, provided that it conforms to the principles of the international law.¹² Article 3 of the Convention, “*a person having two or more nationalities may be regarded as its national by each of the States whose nationality he possesses.*” This provision implicitly permits dual nationality, but it is not made a mandatory rule as the word ‘may’ has been used, which means that it is up to the authority of the State to either allow or disallow dual nationality. Even if the State authorizes dual nationality, it “*may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses.*”¹³

Article 1 of the Protocol Relating to Military Obligations in Certain Cases of Double Nationality (1935)¹⁴ states that a dual national who “*habitually resides in one of the countries whose nationality he possesses, and who is in fact most closely connected with that country shall be*

⁹ Universal Declaration of Human Rights, Dec. 10, 1948, 217 A (III), art. 15, cl.1.

¹⁰ *Id.* art. 15, cl.2.

¹¹ Ruth Donner, *Dual Nationality in International Law*, 47, No. 1, Acta Juridica Hungarica 15, 19 (2006), <https://core.ac.uk/download/pdf/78477185.pdf>.

¹² The Convention on certain questions relating to the Conflict of Nationality Law, Apr. 13, 1930, 179 L.N.T.S. 89 (LoN-4137), art. 1.

¹³ *Id.* art. 4.

¹⁴ Protocol Relating to Military Obligations in Certain Cases of Double Nationality, Apr. 12, 1935, 178 L.T.S. 227, art. 1.

exempt from all military obligations in the other country or countries.” Also, such an exemption may lead to the “loss of the nationality of the other country or countries.”

In 1963, the Council of Europe signed the Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality. To reduce the issues arising due to multiple nationalities, Article 1 (1) of the Convention states that “*Nationals of the Contracting Parties who are of full age and who acquire of their own free will, by means of naturalisation, option or recovery, the nationality of another Party shall lose their former nationality. They shall not be authorised to retain their former nationality.*” Also, the military obligations of a person possessing multiple nationalities has been confined to only one of the nations.¹⁵ It has been ratified by 12 European countries like Italy, France and the United Kingdom¹⁶.

Overall, on a global level, there is lack of legal clarity on the subject of dual or multiple nationality. Nevertheless, two significant points can be identified. Firstly, on a global level, unlike the right to nationality, the ‘right to dual nationality’ is not a recognized human right. The duty is not imposed on the States to recognize such a right to its people. Secondly, dual citizenship is not an absolute entitlement as the States can impose various restrictions and obligations upon the dual citizens, like losing diplomatic protection from the countries.

Most of the countries allow dual nationality in some form of the other. But some of the countries, including India do not endorse dual citizenship in their domestic laws. In a brief manner, a lucid discussion on two important Asian countries and their stand on dual citizenship has been discussed below:

- **China:** The Nationality Law of the People's Republic of China (1980) comprehensively deals with the Chinese nationality law. Article 3 of the law expressly prohibits “dual nationality for any Chinese national.” According to Article 9, any Chinese national “who has settled abroad and who has been naturalized as a foreign national or has acquired foreign nationality of his own free will shall automatically lose Chinese nationality.” Thus, a Chinese national who acquires citizenship of another country automatically loses Chinese citizenship.

- **Japan:** The Nationality Law, 1950 of Japan does not allow the concept of dual nationality and the country adopts a single citizenship policy. Acquiring of a dual citizenship by a Japanese national would lead to the loss of his or Japanese citizenship. Article 11(1) of the

¹⁵ Convention on Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality, May 6, 1963, ETS 43, art. 5, cl. 1.

¹⁶ THE COUNCIL OF EUROPE, <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treaty=043> (last visited Aug. 10, 2022).

Law states that “A Japanese national shall lose Japanese nationality when he or she acquires a foreign nationality by his or her own choice.” Furthermore, under Article 14, a Japanese national having a foreign nationality has to make a choice of nationality before 22 years of age and if he chooses Japanese nationality, he or she would be deprived of his foreign nationality. In this regard, the person choosing Japanese nationality shall submit a ‘Declaration of Choice’ called “*kokuseki sentaku*” in order to “choose Japanese nationality and relinquish foreign citizenship to the municipal office, Japanese Embassy or Consulate.”¹⁷ Japan follows the principle of “One Citizenship for One Person¹⁸” and prescribes a procedure for dual nationals to renounce dual citizenship.

III. LEGAL FRAMEWORK REGARDING DUAL CITIZENSHIP IN INDIA

In India, there is no legal provision that specifically deals with dual citizenship. However, if any Indian citizen acquires citizenship of any other country, then he or she shall cease to be a Citizen of India. Thus, dual citizenship is impermissible in India. The following legal provisions explain the position of dual citizenship in India:

(A) The Constitution of India

The Constitution of India is a dynamic and comprehensive document, which not only establishes the Rule of Law in India, but also reflects the true aspirations of its citizens. The vision of Indian Constitution can be comprehended by reading the Preamble which aims to secure to “all its citizens” ‘Justice, Liberty, Equality and Fraternity.’ It is important to note that the word “citizens” has been used in the Preamble and makes it clear that the rights of the non-citizens are narrower than that of Indian citizens. This is in fact very true as some of the “Fundamental Rights”, enumerated in Part III of the Constitution are exclusively available to Indian citizens. These rights are dealt under Articles 15, 16, 19 and 29. Similarly, there are certain Directive Principles of State Policy, where a duty has been cast upon the State to frame policies to protect the interests of Indian citizens. These include policy to ensure Indian citizens have a ‘right to livelihood’¹⁹, equal justice and free legal aid²⁰ and a uniform civil code²¹. The eleven fundamental duties under Article 51A have been imposed only upon the “citizen of

¹⁷ CONSULATE GENERAL OF JAPAN IN LOS ANGELES, [https://www.la.us.emb-japan.go.jp/itpr_en/m03_04_38.htm#:~:text=The%20Japanese%20Nationality%20Law%20is,nationality%20with%20years%20\(Nationality](https://www.la.us.emb-japan.go.jp/itpr_en/m03_04_38.htm#:~:text=The%20Japanese%20Nationality%20Law%20is,nationality%20with%20years%20(Nationality) ((last visited Aug. 10, 2022).

¹⁸ CONSULATE GENERAL OF JAPAN IN LOS ANGELES, https://www.la.us.emb-japan.go.jp/itpr_en/m02_04_07.htm (last visited Aug. 10, 2022).

¹⁹ INDIA CONST. art. 39 (a).

²⁰ *Id.* art. 39A.

²¹ *Id.* art. 44.

India.” In India, the Constitution mandates a person to be a ‘citizen of India’ to hold certain posts. Some of these important positions are of the President of India²², Vice-President of India²³, member of Parliament²⁴, Judge of the Supreme Court²⁵, Governor of a State²⁶, member of State Legislature.²⁷ These mandatory eligibility qualifications are striking as a non-citizen is deprived of holding these positions.

Part II of the Indian Constitution (Article 5 to 11) exclusively deals with “CITIZENSHIP” It is noteworthy that according to the commencement clause of the Indian Constitution²⁸, articles 5, 6, 7, 8 and 9 came into force on 26th November, 1949, unlike most other Constitutional provisions which came into force on 26th January, 1950. The most viable reasoning for this was to address the imminent issue of citizenship after the partition of India in 1947, which involved massive migration.

The intention of the framers of Indian Constitution was crystal clear as they outrightly rejected the concept of ‘dual citizenship’ for India. During the Constitution Assembly debates, Prof. K. T. Shah was in favour of granting ‘dual citizenship’ to citizens “*in any other country whose Municipal Law permits the local citizenship of that country being acquired without prejudice to the nationality by birth of any of the citizens.*”²⁹ However, his proposal was rejected by the Assembly.

Article 9 of the Constitution of India expressly prohibits dual citizenship in India and states that “*no person shall be a citizen of India ... if he has voluntarily acquired the citizenship of any foreign State.*” It deals “with cases where citizenship of a foreign State had been acquired by an Indian citizen prior to the commencement of the Constitution.”³⁰ The scope of this provision is bound by two limitations. Firstly, it applies to persons at the commencement of the Constitution, i.e., 26th January, 1950. Secondly, the provision states that a person who had “voluntarily acquired the citizenship of any foreign State”, would lose his Indian citizenship, if he is a citizen of India and falls under the following two categories:

²² *Id.* art. 58, cl. (1) (a).

²³ *Id.* art. 66 cl. (3) (a).

²⁴ *Id.* art. 84 (a).

²⁵ *Id.* art. 124 cl. (3) (a).

²⁶ *Id.* art. 157.

²⁷ *Id.* art. 173 (a).

²⁸ *Id.* art. 394.

²⁹ CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS), IX, Aug. 11, 1949, <https://loksabhaph.nic.in/writereaddata/cadebatefiles/C11081949.pdf>.

³⁰ *Izhar Ahmad Khan v. Union of India*, AIR 1962 SC 1052.

1. Persons who are ‘citizens of India’ under Article 5:

Article 5 declares that every person who at the commencement of the Constitution, i.e., 26th January, 1950, has his ‘domicile in the territory of India’ and fulfils either of the 3 conditions shall be a ‘citizen of India.’ These three conditions are:

- (i) *“Was born in the territory of India*
- (ii) *Either of whose parents was born in the territory of India*
- (iii) *Who has been ordinarily resident in the territory of India for not less than 5 years immediately preceding such commencement.”*

In *Louis De Raedt v. Union of India*³¹ the Supreme Court explained the concept of ‘domicile’ under Article 5 and held that *“an intention to reside forever in a country where one has taken up his residence is an essential constituent element for the existence of domicile in that country.”*

2. Persons who are ‘deemed to be citizens of India’:

• Article 6:

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 he fulfils two conditions:

- (1) He or either of his parents or any of his grandparents was born in India and
- (2) If migration took place before 19th July 1948, he has been ordinarily resident in the territory of India since the date of his migration

or

If migration took place on or after 19th 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.

• Article 8:

Any person who or either of whose parents or any of whose grandparents was born in India and who is ordinarily residing in any country outside India shall be ‘deemed to be a citizen of India’ if he has been registered as a citizen of India by the diplomatic or consular representative of

³¹ (1991) 3 SCC 554.

India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative.

Reading these two categories together, it can be simplified that “if prior to the commencement of the Constitution, a person had voluntarily acquired the citizenship of any Foreign State, he is not entitled to claim the citizenship of India by virtue of Art. 5 or Art. 6 or Art. 8.”

(B) The Citizenship Act, 1955:

Under Article 11 of the Indian Constitution, the Parliament of India has been conferred the power to regulate the right of citizenship and make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship. Entry 17 of List I (Union List) of the Seventh Schedule of the Constitution deals with “Citizenship, naturalization and aliens” and gives the exclusive power to the Indian Parliament to make laws regarding it under Article 246 (1) of the Constitution of India. Exercising this legislative power, the Parliament passed the Citizenship Act, 1955. “In exercise of its legislative authority conferred by Entry 17 and in the pursuance of the provisions of the Article 11 of Part II, the Parliament passed the Act which came into force on December 30, 1955.”³² The Preamble of the Act explains the aim of the legislation to “provide for the acquisition and determination of Indian Citizenship.”³³ It is a comprehensive legislation on Indian citizenship; however, it does not define or mention dual citizenship. Nevertheless, Section 9 of the Act deals with the “termination of Indian Citizenship”, which reveals the implication of the Legislature to make ‘dual citizenship’ impermissible in India. To have a proper understanding of the subject, it is not suffice to read the Citizenship Act, 1955 in isolation. It has to be read together with the Citizenship Rules, 2009, framed by the Central Government by virtue of Section 18 of the Act. Section 9 of the Act deals with the termination of Indian citizenship. Some important principles laid down under this Section have been discussed below:

- Section 9 (1) states that any citizen of India who voluntarily acquires the citizenship of another country shall, upon such acquisition ceases to be a citizen of India. This means that an Indian citizen will lose Indian Citizenship if he voluntarily acquires citizenship of any other country. It also terminates the Indian citizenship of an Indian citizen who voluntarily acquired citizenship of another country between 26th January 1950, i.e., the date of commencement of the Constitution and 30th December 1955, i.e., the date of enactment of the Citizenship Act.

³² *Izhar Ahmad Khan v. Union of India*, AIR 1962 SC 1052.

³³ The Citizenship Act, 1955, pmb., No. 57, Acts of Parliament, 1955 (India).

- Section 9 (2) provides that “if any question arises as to whether, when or how any citizen of India has acquired the citizenship of another country, it shall be determined by such authority, as may be prescribed in this behalf.” Rule 40 (1) of the Citizenship Rules, 2009 provides that the ‘Authority’ under Section 9(2) shall be the Central Government.

- To address the issue of whether, when or how any Indian Citizen has acquired the citizenship of another Country, the Central Government has to follow rules of procedure or evidence, prescribed by it. Rule 40 (2) of the Citizenship Rules states that the Central Government shall have due regard to the rules of procedure specified in Schedule III. Some of the important rules specified under Schedule III are that the ‘burden of proof’ is on the person who denies that he has not acquired citizenship of another country and that the ‘conclusive proof’ of acquiring citizenship of another country shall be the fact that he has obtained the passport from the Government of any other country.

(C) OVERSEAS CITIZENSHIP OF INDIA (OCI):

In 2000, a High Level Committee on the Indian Diaspora under the Chairmanship of Dr. L M Singhvi was constituted to recommend suggestions for strengthening “forging stronger ties between the Indian Diaspora and India.”³⁴ In its Report submitted in 2001, it recommended “to provide for the grant of dual citizenship to persons of Indian origin belonging to certain specified countries,”³⁵ Thus, the Citizenship Act was amended in 2003 and new provisions regarding “Overseas Citizenship” were inserted. It granted Overseas Citizenship of India (OCI) to the Persons of Indian Origin (PIOs) of 16 specified countries other than Pakistan and Bangladesh. Later, by the Citizenship (Amendment) Act, 2005 the Central Government removed this restriction and extended the scope “to grant OCI to all overseas Indians who migrated from India after 26th January 1950 as long as their home countries allowed dual citizenship under their local laws”³⁶, with the exceptions of Pakistan and Bangladesh. The latest amendment, the Citizenship (Amendment) Act, 2015 has modified the provisions dealing with Overseas Citizenship by introducing the new concept of “Overseas Citizen of India Cardholder”. According to the Ministry of External Affairs (MEA), “there are about 31 million overseas Indians abroad.”³⁷

³⁴MINISTRY OF EXTERNAL AFFAIRS, GOVERNMENT OF INDIA, <https://www.mea.gov.in/press-releases.htm?dtl/12631/In+a+major+initiative+the+Government+of+India+had+set+up+a+High+Level+Committee+on+the+Indian+Diaspora+in+September+2000+under+the+Chairmanship+of+Dr+L+M+Singhvi+MP> (last visited Apr. 1, 2022).

³⁵ The Citizenship (Amendment) Bill, 2003, Statement of Objects and Reasons, Bill No. XXXIX, 2003 (India).

³⁶ The Citizenship (Amendment) Bill, 2005, Statement of Objects and Reason, Bill No. LXXV, 2005 (India).

³⁷ MINISTRY OF EXTERNAL AFFAIRS, GOVERNMENT OF INDIA, <https://www.mea.gov.in/rajya-sabha.htm?dtl/31625/question+no2885+number+of+overseas+indians+abroad> (last visited Jan. 5, 2022).

OCI should not “be misconstrued as dual citizenship.”³⁸The OCI status amounts to “partial citizenship”³⁹. OCI Cardholders have been granted rights like “lifelong visa to visit India at any time, for any length of time and for any purpose, all rights in the economic, financial and education fields in parity with NRIs except, the right to acquisition of agricultural or plantation properties.”⁴⁰ However, Section 7B (2) states that OCI Cardholders “shall not be entitled to the rights conferred on a citizen of India.” It means that these foreign nations are not conferred citizenship of India and are ineligible to avail rights which a citizen of India enjoys. They have been denied important rights⁴¹ like registration as a voter under Representation of the People Act, 1950, which only Indian citizens enjoy.

(D) THE LANDMARK JUDGMENT OF ‘Izhar Ahmad Khan v. Union of India’⁴²(1962):

Facts:

A batch of three petitions came before the Supreme Court, which challenged Rule 3 of Schedule III of the Citizenship Rules, 1956, which had laid down that obtaining the passport from the Government of any other country shall be “conclusive proof” of a person voluntarily acquiring the citizenship of that country. The petitioners challenged that this rule was not a rule of evidence but a substantive law and outside the purview of Section 9 (2) of the Citizenship Act, 1955. They also challenged Section 9(2) for violating Article 19 (1) (e) of the Constitution, which guarantees every citizen of India “to reside and settle in any part of the territory of India.”

Issue: The main issue before the Court was whether Rule 3 of Schedule III of the Citizenship Rules, 1956 and Section 9(2) of the Citizenship Act, 1955 are constitutionally valid or not.

Held:

By a majority of 3:2, the Supreme Court upheld the Constitutional validity of both the impugned provisions and dismissed the petitions.

Tracing down the history of the Indian Evidence Act, 1872, the majority held that “a conclusive presumption is a part of the law of evidence.” It cited Sections 41, 112 and 113 as illustrations of conclusive presumptions in India. Rule 3 of the Citizenship Rules was upheld to be *intra*

³⁸MINISTRY OF EXTERNAL AFFAIRS, GOVERNMENT OF INDIA, <https://www.mea.gov.in/overseas-citizenship-of-india-scheme.htm> (last visited Jan. 7, 2022).

³⁹Shivam Vij, *It's time for India to adopt dual citizenship*, THEPRINT (Oct.18, 2019, 1:36 pm), <https://theprint.in/opinion/its-time-for-india-to-adopt-dual-citizenship/307701/>.

⁴⁰MINISTRY OF EXTERNAL AFFAIRS, GOVERNMENT OF INDIA https://www.mea.gov.in/Portal/CountryQuickLink/703_PIO-OCI.pdf (last visited Jan. 7, 2022).

⁴¹ See The Citizenship Act, 1955, §7B, No. 57, Acts of Parliament, 1955 (India).

⁴² AIR 1962 SC 1052.

vires and valid. The fact that a person obtains a passport from a foreign country an “irrebuttable presumption” is drawn that he has acquired the citizenship of that foreign State and his Indian citizenship can be terminated.

The majority also upheld the validity of Section 9(2) of the Citizenship Act. The framers had placed citizenship under Part II, and not under Part III of the Constitution. Therefore, Indian citizenship is not a fundamental right. Article 19 (1) (e) is guaranteed to “all citizens of India.” If a person loses his citizenship status by the termination of his citizenship by a law made by the Parliament, he cannot invoke Article 19. Therefore, no rights of citizenship of the petitioners had been violated.

Justice Gajendragadkar, who delivered the majority judgment clarified the position of dual citizenship in India in the following way:

“... the Constitution does not favour plural or dual citizenship and just as in regard to the period prior to the Constitution, Article 9 prevents a person who had voluntarily acquired the citizenship of foreign country from claiming the status of an Indian citizen, so does Section 9(1) make a similar provision in regard to the period subsequent to the commencement of the Constitution.”

Reading Article 9 of the Constitution and Section 9 of the Citizenship Act, 1955 together, the Court came to the conclusion that *“the basic principle on which the Act proceeds and which has been recognised by Art.9 of the Constitution itself is that no Indian citizen can claim a dual or plural citizenship.”*⁴³

IV. SHOULD INDIA ADOPT DUAL CITIZENSHIP?

India is one among the few countries which do not allow dual citizenship. The authors are of the opinion that dual citizenship in India is not a feasible idea. In a developing country like India, the introduction of dual citizenship faces plethora of challenges. Granting dual citizenship has the following ramifications:

1. Political implication- ‘A Threat to National security’:

To protect a nation’s sovereignty, it is important to preserve the “unity and integrity” of the Country. This idea has been endorsed in the Indian Constitution, which under Article 51A (c) imposes a duty on Indian citizens “to uphold and protect the sovereignty, unity and integrity of India.” Dual citizenship is a concept which puts an individual’s national loyalty and allegiance at loggerheads. This conflict emerges as a dual citizen has multiple duties to perform in more

⁴³ *Id.*

than one country, and the issue arises when such dual loyalties contradict each other. In a situation when the countries are at war leads to threat to the national security of these countries. At that time, dual citizens are suspected as ‘spies’, who are involved in illegal activities. Asian countries like Japan and China have also disallowed dual citizenship to ensure that their nationals are “only giving undivided loyalty to the government.”⁴⁴ Allowing dual citizenship opens doors for such unwarranted threats to a country’s national security as the citizens would have conflicting prejudices regarding a particular country. This may lead to a political turmoil especially during the times of war. It will be a Catch-22 situation for India, as it will lead to chances of secessionist activities, illegal trade and drug trafficking.

2. Contradictory Legal Rights:

According to the ‘World Population Prospects 2022’, released by the United Nations Department of Economic and Social Affairs, Population Division “India is projected to surpass China as the world’s most populous country in 2023.”⁴⁵ Also it is the largest democracy in the world. With such a huge population, if dual citizenship is allowed, it will create chaos and contradictions as the citizens will possess dual legal rights. A legal turmoil is witnessed when various countries have different and conflicting legal rights and duties for its citizens.

The ‘right to bear arms,’ which is a recognized right in countries like the United States, Switzerland and Ukraine is not a fundamental right for Indian citizens⁴⁶. Similarly, the ‘right to asylum’ is not a recognized in India⁴⁷ as it has not ratified the Convention Relating to the Status of Refugees, 1950 and the Protocol Relating to the Status of Refugees, 1967. In the same line, sex determination which is banned in India by the Pre-Conception & Pre-Natal Diagnostic Techniques Act, 1994 but allowed in many countries like Dubai, Thailand, Singapore. India is also one of the countries which allows ‘death penalty’ as a punishment in “rarest of the rare cases.”⁴⁸ On the other hand, the large majority of Member States of the United Nations- about 150 out of 193 States have already abolished the death penalty.⁴⁹

These laws as they are not in consonance with each other can lead to ‘double jeopardy’, and a person can be charged of an act which may not be an offence in one jurisdiction, but punishable

⁴⁴ Jessie Yeung, *These Asian countries are giving dual citizens an ultimatum on nationality -- and loyalty*, CNN (Mar. 16, 2022), <https://edition.cnn.com/travel/article/asia-dual-citizenship-intl-hnk-dst/index.html>.

⁴⁵United Nations Department of Economic and Social Affairs, Population Division, *World Population Prospects 2022* (UN DESA/POP/2021/TR/NO.3), https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/wpp2022_summary_of_results.pdf.

⁴⁶ Kapildeo Singh v. State of Bihar, AIR 1987 Pat 122.

⁴⁷ State of Arunachal Pradesh v. Khudiram Chakma, AIR 1994 SC 1461.

⁴⁸ Bachan Singh v. State of Punjab, AIR 1982 SC 1325.

⁴⁹ United Nations Human Rights Office of the High Commissioner, *Moving away from the death penalty — Lessons from national experiences*, https://www.ohchr.org/sites/default/files/moving_away_from_death_penalty_web.pdf.

in other jurisdictions. Unless and until the global legal jurisdictions are on the same pedestal, legalizing dual citizenship in India would lead to multiple contradictory legal rights and obligations. There are high chances that Indian citizens, in order to escape from the strict legal punishments may seek the escape route to other countries. This would also lead to rise in unlawful activities like drug trafficking, illegal gambling and tax evasion.

There will be overlapping of jurisdictions in both the countries. It can be a very complicated legal process. As far as India is concerned there are almost 4.7 crore pending cases in the Courts of India.⁵⁰ Granting dual citizenship will increase the burden on the Indian Courts.

3. Economic issue regarding taxation:

From an economic point of view, dual citizenship will lead to a complicated double taxation system. A person would be required to pay double taxes in both the countries, even if income is earned in a single country.⁵¹ For instance, according to the United States law, it is compulsory for the U.S. citizens to pay taxes on worldwide income earned, even if it is earned in another country and taxed there.⁵² In India, this would lead to complex taxation laws and will overburden dual citizens.

4. Employment crisis:

India, being a developing country is suffering the wrath of poverty and unemployment. Opening the avenues for non-citizens to settle down in India and allow them to avail job opportunities can hamper the growth of the existing citizens. Indian citizens, who are already struggling with issues of lack of proper education, housing and employment would be facing a tough competition with non-citizens, who could be better skilled than them. Practically, this would be discriminatory in its application.

Also, dual citizenship would also constraint the employment of dual citizens in government posts, diplomatic positions and military services. These dual citizens will be subjected to strict scrutiny and be looked upon with suspicion due to their divided loyalties.

5. Difficult to implement

Dual citizenship will create lot of confusion among Indian citizens. As every country follows its own set of rules and regulations, dual obligation will only burden the people. The literacy

⁵⁰The Wire Staff, *Over 4.70 Crore Cases Pending Across Courts, Most Vacancies in Judges' Posts in UP: Govt*, THE WIRE, (Mar. 26, 2022), <https://thewire.in/law/over-4-70-crore-cases-pending-across-courts-most-vacancies-in-judges-posts-in-up-govt>.

⁵¹ See Jean Folger, *Dual Citizenship Advantages and Disadvantages*, INVESTOPEDIA (Jan. 25, 2021), <https://www.investopedia.com/articles/personal-finance/031315/advantages-disadvantages-dual-citizenship.asp>.

⁵² INTERNAL REVENUE SERVICE, <https://www.irs.gov/individuals/international-taxpayers/frequently-asked-questions-about-international-individual-tax-matters> (last visited Aug. 10, 2022).

rate in India is lower as compared to the developed countries which have much higher literacy rate and resources. Due to the uneven literacy parameters, it will be difficult for the Indian citizens to understand and conform to the norms of a different country.

V. CONCLUSION

Dual citizenship is a concept which is riddled with legal obstacles and dilemmas. The international law does not recognize 'dual citizenship' as a human right, and it left to the States to choose either single or domestic citizenship. "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."⁵³ Although most of the countries have recognized dual citizenship in their domestic laws, Asian countries like Japan and China have not given it a legal stamp. India is one of the few countries that follow 'one nation, one citizenship' policy and reject the concept of dual citizenship. The Indian position of 'dual citizenship' is very clear. Although the phrase has not been expressly mentioned or defined in the legislations, a careful analysis brings out Indian's stand. It is evident from the Indian Constitution and Citizenship Act, 1955, that Indian legal framework does not permit dual citizenship and if one acquires the same, he or she loses Indian citizenship. The Supreme Court in the landmark case of *Izhar Ahmad Khan v. Union of India*, has also clarified this position. However, considering the changing global scenario and development of globalization, a new concept of 'Overseas Citizenship of India' was introduced in India in 2003 by amending the Citizenship Act, 1955. But OCI Cardholders are not dual citizens as they are deprived of certain rights which only Indian citizens can avail, for instance voting rights.

India being a developing country faces plethora of challenges like overpopulation, poverty, unemployment and illiteracy. It is not pragmatic for the country to adopt dual citizenship as it has a potential of opening a Pandora's box. The country can face serious political, economic, and social repercussions if dual citizenship is legally permitted. It is a serious threat to national security as dual citizens can have contradictory national loyalties, especially during the time of wars. As there is no uniformity of laws in different countries, which may in fact be conflicting, there are high chances of conflict of laws. It can also lead to an escape route for committing acts, which are considered crimes in specific jurisdictions. This can ultimately result in various illegal activities like drug trafficking, gambling and tax evasion. Additionally, there are economic repercussions like double taxation, complex property laws and an employment crisis

⁵³ Department-Related Parliamentary Standing Committee on Home Affairs, *One Hundred And Fifty Ninth Report On The Citizenship (Amendment) Bill, 2011* (March, 2012).

for Indian citizens. These impediments do not make dual citizenship a feasible idea in India. Nevertheless, considering the recent transition to a ‘globalized world’, India has made a way out by granting Overseas Citizenship. Such a midway approach is appropriate as it not only guards the perils of dual citizenship, but also grants special benefits to the Overseas Citizen of India Cardholders.
