

SYNOPSIS

This Petition has been filed under Article 32 of the Constitution of India, by the Petitioners herein, among whom are:

- a) Overseas citizens of India (“OCIs”) [Resident and Non-Resident in India],
- b) Non-Resident Indian Citizens (“NRIs”),
- c) Resident Indian Citizens.

The Petitioners herein seek to assail Sections 7B(1), 7D, 8(2), and 9(1) of the Citizenship Act, 1955 (“**Citizenship Act**”) as being ultra-vires Articles 14, 19, 21 and 25 of the Constitution of India and violating their fundamental right to *life, equality, freedom of expression, and dignity*. Section 7B(1) of the Act reads as follows:

“7B. Conferment of rights on Overseas Citizen of India Cardholder.—(1) Notwithstanding anything contained in any other law for the time being in force, an Overseas Citizen of India Cardholder shall be entitled to such rights, other than the rights specified under sub-section (2), as the Central Government may, by notification in the Official Gazette, specify in this behalf.”

The Petitioners’ case is that Section 7B(1) of the Citizenship Act by virtue of severely curtailing the rights granted to OCIs abrogates the object of its enactment, *which unequivocally and explicitly guaranteed dual citizenship to Indian citizens*. The Petitioners herein are further aggrieved by Section 7B(1) of the Citizenship Act as it is violative of Articles 14 and 21 of the Constitution in so far as the Central Government is given un-canalized and unbridled

discretionary powers to decide which fundamental rights overseas citizens can enjoy, when the Constitution only recognizes one class of citizens for all purposes, including for the guarantee of fundamental rights. *Thus, the Petitioners submit that overseas citizens are entitled to all rights and privileges, and bound by all duties, that are enjoyed by or bind other citizens of India, including the right to suffrage.*

The Petitioners are also aggrieved by the provisions of Section 7D of the Citizenship Act, which reads as follows:

“7D. Cancellation of registration as Overseas Citizen of India Cardholder.—*The Central Government may, by order, cancel the registration granted under sub-section (1) of section 7A, if it is satisfied that—*

(a) the registration as an Overseas Citizen of India Cardholder was obtained by means of fraud, false representation or the concealment of any material fact; or

(b) the Overseas Citizen of India Cardholder has shown disaffection towards the Constitution, as by law established; or

(c) the Overseas Citizen of India Cardholder has, during any war in which India may be engaged, unlawfully traded or communicated with an enemy or been engaged in, or associated with, any business or commercial activity that was to his knowledge carried on in such manner as to assist an enemy in that war; or

(d) the Overseas Citizen of India Cardholder has, within five years after registration under sub-section (1) of section 7A, been sentenced to imprisonment for a term of not less than two years; or

(e) it is necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public; or

(f) the marriage of an Overseas Citizen of India Cardholder, who has obtained such Card under clause (d) of sub-section (1) of section 7A,—

(i) has been dissolved by a competent court of law or otherwise; or

(ii) has not been dissolved but, during the subsistence of such marriage, he has solemnised marriage with any other person.”

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The stringent provisions in Section 7D of the Citizenship Act and its excessive discretionary powers by which the Central Government may cancel the registration of OCIs, subjects them to constant fear and uncertainty in being unable to freely exercise basic human rights. This severe curtailment of the rights of Overseas Citizens of India, coupled with the unbridled and uncanalized discretionary powers granted to the Central Government to terminate the citizenship of OCIs, wholly defeats the very purpose of the OCI scheme, which was clearly and unequivocally to grant “*dual citizenship*” to eligible persons. The existing state of affairs also reduces OCIs to second class citizens, thereby violating Article 14 of the Constitution.

The Petitioners also seek to challenge Section 8(2) of the Citizenship Act, which compulsorily divests of citizenship all minor children whose parent(s) renounced their Indian citizenship and thereby ceased to be a citizen of India.

It reads as follows:

Where a person ceases to be a citizen of India under sub-section (1) every minor child of that person shall thereupon cease to be a citizen of India: Provided that any such child may, within one year after attaining full age, make a declaration in the prescribed form and manner that he wishes to resume Indian citizenship and shall thereupon again become a citizen of India.

Moreover, the Petitioners seek to read down Section 9(1) of the Citizenship Act to the extent that it provides for the involuntary divestment of citizenship of any Indian citizen who has acquired the citizenship of another country:

“9. Termination of citizenship.—(1) *Any citizen of India who by naturalisation, registration otherwise voluntarily acquires, or has at any*

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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:

Provided that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires the citizenship of another country, until the Central Government otherwise directs.

(2) 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, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf."

The Petitioners submit that the present legal regime, created by Sections 7B(1) and 7D read with Sections 8(2) and 9(1) of the Citizenship Act, is also violative of Article 21 of the Constitution since it prevents a group of individuals (the OCIs) from freely exercising their right to participate in the religious, social and cultural life of India. This right to cultural participation is guaranteed to them, by virtue of Article 21 of the Constitution. Section 7B(1) also poses an unreasonable restriction on the Petitioners' fundamental right to freedom of expression and profession guaranteed under Article 19 of the Constitution, as well as freedom of religion under Article 25 of the Constitution, since the OCIs face several hurdles in freely exercising these rights due to the lacunae in the OCI regime. The Petitioners have approached this Hon'ble Court under Article 32 of the Constitution as they belong to different parts of the country and have family settled in different States of India, and as the issue transcends State boundaries.

The questions of law proposed to be raised by the Writ Petition:

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- a. Whether Overseas Citizens of India are entitled to all the rights and privileges of citizens under the Constitution of India, since the objective of the enactment of the OCI scheme was explicitly and unequivocally to grant "*dual citizenship*" to eligible individuals?
- b. Whether Section 7B(1) creates two classes of citizenship under the Constitution, when the Constitution only recognizes one class?
- c. Whether this classification under Section 7B(1) violates the principle of reasonable classification under Article 14 of the Constitution?
- d. Whether Section 7B(1) of the Citizenship Act, 1955 violates Article 14 and 21 of the Constitution of India, in so far that it grants unbridled, excessive and un-canalized discretionary powers to the Central Government to decide what rights and privileges ought to be granted to Overseas Citizens of India?
- e. Whether Section 7B(1) is an unreasonable restriction on the Petitioners' fundamental right to freedom of expression and profession guaranteed under Article 19 of the Constitution to all citizens alike?
- f. Whether Section 7D of the Citizenship Act violates Article 21 of the Constitution, since the stringent procedure envisaged in it, which gives a carte blanche to the Central Government to terminate the OCI status of an Overseas Citizen of India on the slightest of infractions, is a violation of the requirements of due process?

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- g. Whether Section 8(2) of the Citizenship Act, in involuntarily divesting minor children of their Indian citizenship in certain circumstances, violates the rights of such minor members of the Indian diaspora to participate in the national, social, cultural, political and religious life of the country, thereby violating their rights under Articles 14, 21 and 25 of the Constitution?
- h. Whether Section 9(1) of the Citizenship Act, in barring dual citizenship, violates the rights of the Indian diaspora to participate in the national, social, cultural, political and religious life of the country, thereby violating their rights under Articles 14, 21 and 25 of the Constitution?
- i. Whether the power conferred by Article 11 of the Constitution of India on the Parliament has implied limitations that proscribe Parliament from enacting laws which involuntarily divest citizens of their citizenship?
- j. Whether Sections 8(2) and 9(1) of the Citizenship Act in allowing the involuntary divestment of citizenship without their express renunciation, transgress implied limitations on the legislative powers of Parliament under Article 11 of the Constitution of India?

Hardship and discrimination suffered by OCIs

The basic rights of OCIs that are curtailed by the Citizenship Act include the right to residency in India, the right to employment in India and the right to

participate in Indian cultural, religious and social life. These hardships, as suffered by the Petitioners, are illustrated as under:

1. **Hindered access to entry and residence in India:** An OCI card holder is allowed entry into India only on parity with a life-long multiple entry visa holder and the OCI status is only valid during the period of validity of a foreign passport. Further, Section 7D of the Citizenship Act allows the Central Government to cancel the registration of OCIs and prohibit them from residing in India over the violation of any law or for showing disaffection to the Constitution of India. During the national lockdown, several OCIs across the world were cut off from family members residing in India causing much anxiety and distress to such families.
2. **Restrictions on the freedom of expression in India:** Section 7D(b) of the Citizenship Act allows the Central Government to cancel a person's OCI registration if they show disaffection to the Constitution of India and Section 7D(da) allows cancellation of OCI registration for the violation of any law. Both these provisions under Section 7D are arbitrary and have a chilling effect on the freedom of expression of OCIs, several of whom in spite of being permanently resident in India cannot express peaceful dissent against the state for fear that such dissent will amount to either disaffection to the Constitution of India or the violation of any law so prescribed.

3. **Restrictions on the freedom of occupation and profession:** While the MHA notification dated 15 November 2019 at para 6 (vii) (B) allows OCIs to practice the professions of doctors, architects, advocates and chartered accountants as per the relevant acts, there are a whole list of other provisions that are arbitrarily left out of such a list without sufficient reasons. By limiting the number of professions that OCIs can have parity with NRIs in pursuing, several OCIs practicing other non-enumerated professions are hindered from meaningfully participating in and contributing to their professional streams in India.
4. **Prohibition on participating in the civic and political life of India:** Although several OCIs reside and pay taxes in India, such persons are unable to meaningfully voice their grievance with local government authorities over civic infrastructure out of fear that their overseas citizenship may be cancelled for expressing their right to peacefully raise public grievances by virtue of Section 7D of the Citizenship Act.
5. **Restrictions on seeking information:** Even while OCIs work and reside permanently in India, they are often disentitled to seek information from state authorities under the Right to Information Act.
6. **Issues with adoption:** Para 6 (iv) of the MHA notification dated 15 November 2019 grants parity in adoption to OCIs on par with NRIs. However, where an OCI or NRI living abroad adopts a child from India following the inter-country adoption regulations, then the host foreign

J country often automatically grants foreign citizenship to the adopted child who has at least one parent as a citizen of that host country. As per Section 9(1) of the Citizenship Act, this results in the child automatically losing his or her Indian citizenship without granting any opportunity to the child to retain his or her Indian citizenship on attaining majority.

This severe curtailment of the basic rights of OCIs coupled with the unbridled and un-canalized discretionary powers granted to the Respondents to terminate their citizenship under Section 7D subjects OCIs to a constant state of hardship, fear and uncertainty. Further, this wholly defeats the very purpose of the OCI scheme which was unequivocally to grant “*dual citizenship*”.

Pertinently, the OCI scheme as it presently stands, creates two classes of citizens in India while the Constitution recognizes only one class of citizens. This dichotomy has no place in the *Indian Constitution which does not recognize a superior class of ordinary citizens and an inferior class of overseas citizens of India*.

Citizenship before the Constituent Assembly and under the Constitution

In the context of Partition, Article 5 of the Constitution eventually laid down who would be eligible to become citizens at the time of the commencement of the Constitution. Further, Article 9 of the Constitution barred dual citizenship at the time of the commencement of the Constitution. Article 9 reads as under:

“Person voluntarily acquiring citizenship of a foreign State not to be citizens: 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”.

Article 11 of the Constitution however conferred Parliament with the power “to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship”.

A few members of the constituent assembly tried to moot the idea of dual citizenship in the Constitution, but the amendments did not pass, and the adopted Constitution left undecided issues concerning dual citizenship after its commencement.

The demand for dual citizenship by Indians

With rapid globalization in the 1990s and the early 2000s, there was a growing demand among certain Indian diaspora for India to grant dual citizenship, including NRIs, OCIs, Goan resident citizens, highly qualified Indian professionals, and their parents and relatives. To explore the demands of the Indian diaspora that sought dual citizenship, the Central Government set up a High Level Committee (“HLC”) under the chairmanship of Dr. LM Singhvi, to make recommendations on the aspect of dual citizenship. The committee submitted a report in 2002 that concluded that Dual Citizenship ought to be granted to persons of Indian origin or Non-Resident Indians who were nationals of a specified list of countries. The HLC was cognizant of the desire of the Indian diaspora to participate in the cultural and social life of India and in this light observed as under:

“36.6. Dual citizenship would also help to perpetuate and cement the links of the younger generation of the Diaspora with India as they will be keen to keep in touch with their elders in India as well as relate to their roots. There is much to be gained by the introduction of dual nationality. The Diaspora in North America, Europe, Australia, New Zealand and Singapore yearns and longs for it. It will create a climate conducive to Diaspora’s fuller participation in philanthropy, economic developments, technology transfer, cultural dissemination and overseas political advocacy on behalf of India.”

The observations of the HLC hold even more relevance in today’s day and age, where ease of travel has reduced the difficulties in doing business and visiting family in one’s country of origin. More persons of Indian origin continue to hope for a connection with their homeland.

With these considerations in mind, Parliament enacted the Citizenship Amendment Act, 2003 whose object and reasons were to explicitly “*provide for the grant of dual citizenship*”. The specific objective of “Overseas Citizenship” being to grant dual Citizenship and the recommendations of the HLC to grant dual citizenship was again affirmed by the Citizenship Amendment Act, 2005 which sought to extend OCI eligibility to all Persons of Indian Origin (“PIOs”) other than PIOs from Pakistan and Bangladesh. However, Section 7B(1) of the Citizenship Act, which only entitles OCIs to those rights or privileges, including fundamental rights, granted by the Central Government at its pleasure, abrogates the very object of granting dual citizenship to Indians. This very provision not only lies contrary to the recommendations of the HLC on which the OCI scheme was enacted but also treats all OCIs as second-class

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citizens under the Constitution which only recognises one equal class of citizens. Further, the Citizenship Amendment Act, 2015 and the Citizenship Amendment Act, 2019 have only expanded the excessive powers of the Central Government to cancel the registration of OCIs for the violation of any law or for vague reasons with unfettered discretion.

In the United States, however there is neither statutory recognition of dual citizenship nor a statutory bar to dual citizenship. However, the US Supreme Court in *Afroyim v. Rusk* [387 US 253] held that the US Congress has no legislative power under the Constitution to divest a person of his United States citizenship absent his voluntary renunciation thereof. The Petitioners submit that although dual citizenship is not universally adopted, increased globalization has resulted in an ever-growing list of countries granting dual citizenship. Today, over 60 countries from across Europe, the Americas, Africa and Asia permit dual citizenship. It is unfortunate that contrary to the stated objective of the OCI scheme in the Citizenship Act and recommendations of the HLC, the Petitioners continue to face hardships and be denied dual citizenship due to India's arbitrary and restrictive provisions of overseas citizenship.

Unconstitutionality of Sections 8(2) and 9(1) of the Citizenship Act, 1955

The Petitioners acknowledge that Article 11 of the Constitution confers Parliament with the power to enact laws that govern the acquisition and termination of Citizenship, but respectfully submit that Article 11 places implied limitations on the power of Parliament to divest citizens of citizenship

without their express consent to such divestment. This implied limitation flows from the concept of popular sovereignty which vests in the body of citizens. Citizenship forms a vital link between an individual and the State, and if the Parliament is afforded unbridled powers to terminate citizenship, this vital link can be destroyed in an arbitrary or unjust manner. Accordingly, it is submitted that Sections 8(2) and 9(1) of the Citizenship Act in so far as they involuntarily divest Indian citizens of their citizenship on acquiring foreign citizenship transgress the implied limitations of Article 11 on the power of Parliament to terminate citizenship.

The Petition seeks the following reliefs from the Hon'ble Court:

- a. A writ/order or direction to declare Section 9(1) of the Citizenship Act, 1955, ultra-vires Articles 11, 14, 19, 21 and 25 of the Constitution of India, and ultra-vires the Citizenship Act, 1955 in so far as it disentitles the grant of dual citizenship to Indian Citizens after the commencement of the Constitution of India.
- b. A writ/order or direction reading down Section 9(1) of the Citizenship Act insofar as it involuntarily divests a person of their Indian citizenship upon the acquisition of citizenship of another country.
- c. A writ/order or direction to declare Section 8(2) of the Citizenship Act, 1955, ultra-vires Articles 11, 14, 19, 21 and 25 of the Constitution of India, and ultra-vires the Citizenship Act, 1955 in so far as it disentitles

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the grant of dual citizenship to minor Indian Citizens after the commencement of the Constitution of India.

- d. A writ/order or direction to declare Section 7B(1) of the Citizenship Act, 1955 as ultra-vires Articles 14, 19 and 21 of the Constitution and declare that Overseas Citizens of India are entitled to all statutory and fundamental rights granted to citizens of India.
- e. A writ/order or direction to declare Section 7D of the Citizenship Act, 1955 as ultra-vires Article 21 of the Constitution.
- f. Any such order, direction or remedy as the Hon'ble Court may deem fit in the present case and in the interest of justice, equity and good conscience.

Hence, this Petition.

LIST OF DATES

Date	Particulars
1955	The Citizenship Act, 1955 came into force.
2002	A High Level Committee under the chairmanship of Dr. LM Singhvi recommended <i>inter alia</i> the feasibility of dual citizenship.
2003	The Citizenship Amendment Act, 2003 allowed for the registration of OCIs. Its Statements of Objects and Reasons expressly stated that the Central Government had decided to make provisions for the grant of <i>dual citizenship</i> by the said Amendment Act.
2005	The Citizenship Amendment Act, 2005 was enacted, whose statement of objects and reasons again expressly held that the purpose of the OCI scheme was to provide <i>dual citizenship</i> to persons of Indian origin abroad.
2015	Parliament enacted the Citizenship Amendment Act, 2015 by which PIO card holders were also deemed to be OCI.
2019	The Citizenship Amendment Act, 2019 inserted Section 7D(da) into the Citizenship Act which allowed the cancellation of OCI

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	status for the violation of any law as may be specified by the Central Government in the notification published in the Official Gazette.
March 2020	Due to the COVID-19 pandemic, the Government of India began to consider restrictions on travel and movement.
11 March 2020	The Government of India issued an advisory that kept in abeyance the visa free travel facility to OCIs between 13 March and 15 April 2020.
19 March 2020	The Government of India issued another advisory stating that no international flights were allowed on Indian soil since 23 March 2020.
25 March 2020	A nation-wide lockdown was imposed upon the country that continues to this day with various restrictions.
October 2020	The ban on entry of OCIs was eventually lifted.
	Hence, this Writ Petition

3. UNION OF INDIA**THROUGH****The Ministry of Home Affairs,**

Government of India,

Through its Secretary

North Block,

New Delhi - 110001

...Respondent No. 3

ALL ARE CONTESTING RESPONDENTS

**WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF
INDIA**

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA
AND OTHER COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIATHE HUMBLE PETITION OF THE
PETITIONERS ABOVENAMED**MOST RESPECTFULLY SHEWETH:**

1. The Petitioners herein include overseas citizens of India ("OCIs"), Non-Resident Indian Citizens ("NRIs") and Resident Indian Citizens,

all of whom are constrained to approach this Hon'ble Court, under Article 32 of the Constitution of India, in order to *inter alia* challenge Sections 7B(1), 7D, 8(2), and 9(1) of the Citizenship Act, 1955 as *ultra-vires* Articles 11, 14, 19, 21, and 25 of the Constitution of India.

Array of parties

2. The Petitioners herein belong to 5 classes of individuals:
 - a. **OCIs who wish to reside in India for a substantial duration if not for the rest of their lives;**

There are 66 such Petitioners to this Petition. They have studied at reputable institutions in India and abroad, and contributed for several years to the Indian economy. They work with the top Multi-National Corporations, laboratories and hospitals, teach at the best educational institutions in the country, and even advise the Government of India in their capacity as experts in their fields. Many of them are at the forefront of efforts to increase India's scientific and technological advancement. They engage in charitable work for the people of India and the environment, while also actively contributing to the creation of hundreds of thousands of jobs in the

Indian economy. All of them identify strongly with Indian culture as well as the culture of the countries that they are citizens of. Many of these OCI Petitioners found themselves in the teeth of the travel restrictions imposed by the Respondents during COVID-19 as they could not travel back to their homes in India. They are members of the Indian community and pay taxes to the Government, having left behind lucrative opportunities abroad. They wish to participate fully in the cultural and political life of India.

- b. NRIs who wish to be citizens of the foreign country they presently reside in for any unspecified duration because they wish to engage politically with the administration of laws locally (e.g., school district elections, water boards) in the foreign places of residence;**
- There are 4 such Petitioners to the Petition. They have been living and working for a number of years in foreign countries. Despite living abroad, they maintain strong social and economic links with India and visit several times a year. Moreover, they feel a strong emotional connection to India as their parents and extended family continue to be settled in India. Through their residence and employment in various countries around the world, they represent India to the world and act as the cultural ambassadors of the

country. However, as they are not citizens of the country they reside in, they are unable to participate in the local electoral process or safeguard their other rights without relinquishing their Indian citizenship completely. Many a times, their children and grandchildren are born citizens of the foreign country they reside in.

c. Goan resident Citizens who would like to avail the benefits of European laws by being citizens under Portuguese laws;

There are 2 such Petitioners to the Petition. They are Indian citizens whose ancestry is Goan. Goa was part of the erstwhile Portuguese State of India. Many residents of Goa have Portuguese ancestry, and retain strong cultural ties with present-day Portugal. According to Portuguese nationality law, Goans are eligible to obtain Portuguese citizenship if they are born in Goa before 1964, or if they are descendants of persons born in Goa before 1964. The said Petitioners are such Goan residents who maintain a unique connection with both India and Portugal. However, they do not want to lose their Indian citizenship should they take up citizenship of Portugal.

d. Highly qualified Indian professionals who wish to be competitive for global opportunities in a global knowledge economy over their life-time;

There are 3 such Petitioners to the Petition. They are highly educated, highly qualified Indian citizens with expertise and experience spanning several countries across many years. They have studied abroad, they manage global teams of employees, and possess skill sets suited to opportunities on a global scale. The said opportunities involve travel and stay in the foreign countries where they are located. These Petitioners wish to be competitive for such opportunities by also holding the citizenship of the foreign country in which the opportunity is sought. At the same time, they do not wish to lose their ties to India by relinquishing Indian citizenship, as their families are based in India.

e. The parents/ relatives of all of the categories (a)-(d).

There are 5 such Petitioners to the Petition. They have spouses and children or even grandchildren who are foreign citizens or OCI citizens. They hold natural love and affection for the Petitioners in categories (a) to (d) and are emotionally connected to them. As such, they seek flexibility in travel for themselves as well as their family members in categories (a) to (d) hereto. They are also concerned that their family members do not have Constitutional protection at par with them within India.

A brief biographical write-up of each of the 80 Petitioners dated 31 October 2020 has been annexed herewith and marked as **Annexure P-1 [Pages 88 to 101]**, for the convenience of this Hon'ble Court.

3. Respondent No. 1 is the Union of India through the Ministry of Law and Justice which is concerned with advising the various Ministries of the Central Government on legal matters and drafting of principal legislation for the Central Government. Respondent No. 2 is the Ministry of External Affairs which inter-alia governs the grant of Overseas Citizenship of India registrations. Respondent No. 3 is the Ministry of Home Affairs which is responsible for matters related to national security and the registration of foreign nationals in India.
4. The Petitioners' case is that Section 7B(1) of the Citizenship Act severely curtails the fundamental rights of Overseas Citizens of India and abrogates the very object of introducing overseas citizenship, which was unequivocally and explicitly to grant dual citizenship to Indian Citizens. The Petitioners are further aggrieved by Section 7B(1) of the Citizenship Act for violating Articles 14 and 21 of the Constitution in so far as it grants the Central Government un-canalized and unbridled discretionary powers to decide what fundamental rights overseas citizens can enjoy, when the Constitution only

recognizes one class of citizens for all purposes, including the guarantee of fundamental rights. The Petitioners also seek to challenge the stringent provisions in Section 7D of the Citizenship Act and its excessive discretionary powers by which the Central Government may cancel the registration of Overseas Citizens of India, subject them to constant fear and uncertainty in being unable to freely exercise basic human rights in the country and also reduces OCIs to second class citizens, thereby violating Article 14 of the Constitution.

5. The Petitioners also seek to challenge Section 8(2) of the Citizenship Act since it provides that upon the renunciation of citizenship by an Indian citizen, his/her minor children are involuntary divested of their citizenship without their express consent and at an age they are unable to legally consent. The Petitioners also proceed to challenge the Constitutionality of Section 9(1) of the Citizenship in so far as it violates the objective of Sections 7A to 7D of the Citizenship Act which was to grant dual citizenship to Indian citizens and for arbitrarily creating two classes of citizens under the Constitution, which only recognizes one common class of citizens. Also, Section 9(1) transgresses the implied limitations of Article 11 of the Constitution in so far as it involuntarily divests persons of their Indian citizenship upon their acquisition of

foreign citizenship sans their express or voluntary renunciation of Indian citizenship thereof.

6. Article 11 of the Constitution left matters of citizenship to be decided by Parliament. However, there are implied limitations that ought to govern the powers conferred on Parliament under Article 11. It is submitted that if Article 11 of the Constitution is interpreted to include no implied limitations, the sovereignty that vests in the citizenry, a basic feature of the Constitution, stands jeopardized.
7. The Petitioners therefore submit that the present legal regime, created by Section 7B(1), 7D and 8(2) read with Section 9(1) of the Citizenship Act, violates Articles 14, 21 and 25 of the Constitution since it prevents a group of individuals (the OCIs) from freely exercising their constitutional rights to participate in the social, cultural and religious life of India.
8. The Petitioners have approached this Hon'ble Court under Article 32 of the Constitution as they belong to different parts of the country and have family settled in different States of India. They reside or have their roots in, *inter alia*, Karnataka, Goa, Telangana, Gujarat, New Delhi, and Kerala. Some reside in the USA, Canada, and the UK. All the Petitioners have a common cause that transcends State boundaries.

The issue will not only affect persons across the country, but will also affect persons from all over the world. Thus, the Petitioners have filed the present petition before this Hon'ble Court under Article 32 of the Constitution.

9. It is therefore submitted that this Petition raises the following substantial questions of law:
 - a. Whether Overseas Citizens of India are entitled to all the rights and privileges of citizens under the Constitution of India, since the objective of the enactment of the OCI scheme was explicitly and unequivocally to grant "*dual citizenship*" to eligible individuals?
 - b. Whether Section 7B(1) creates two classes of citizenship under the Constitution, when the Constitution only recognizes one class?
 - c. Whether this classification under Section 7B(1) violates the principle of reasonable classification under Article 14 of the Constitution?
 - d. Whether Section 7B(1) of the Citizenship Act, 1955 violates Articles 14 and 21 of the Constitution of India, in so far that it grants unbridled, excessive and un-canalized discretionary powers to the Central Government to decide what rights and privileges ought to be granted to Overseas Citizens of India?

- e. Whether Section 7B(1) is an unreasonable restriction on the Petitioners' fundamental rights to freedom of expression and profession guaranteed under Article 19 of the Constitution to all citizens alike?
- f. Whether Section 7D of the Citizenship Act violates Article 21 of the Constitution, since the stringent procedure envisaged in it, which gives a carte blanche to the Central Government to terminate the OCI status of an Overseas Citizen of India on the slightest of infractions, is a violation of the requirements of due process?
- g. Whether Section 8(2) of the Citizenship Act, in involuntarily divesting minor children of their Indian citizenship in certain circumstances, violates the rights of such minor members of the Indian diaspora to participate in the national, social, cultural, political and religious life of the country, thereby violating their rights under Articles 14, 21 and 25 of the Constitution?
- h. Whether Section 9(1) of the Citizenship Act, in barring dual citizenship, violates the rights of the Indian diaspora to participate in the national, social, cultural, political and religious life of the country, thereby violating their rights under Articles 14, 21 and 25 of the Constitution?

- i. Whether the power conferred by Article 11 of the Constitution on the Parliament has implied limitations that proscribe the Parliament from enacting laws which involuntarily divest citizens of their citizenship?
- j. Whether Sections 8(2) and 9(1) of the Citizenship Act in allowing the involuntary divestment of citizenship without their express renunciation, transgress implied limitations on the legislative powers of Parliament under Article 11 of the Constitution of India?

FACTS OF THE CASE

10. The Petitioners include Overseas Citizens of India [both resident and non-resident in India], Non-Resident Indian Citizens and Resident Indian Citizens, all of whom are fettered from a full enjoyment of their fundamental rights by virtue of Sections 7B(1), 7D, 8(2), and 9(1) of the Indian Citizenship Act, that bar dual citizenship and accompanying rights and freedoms. The Petitioners have either formerly been or are still citizens of India by virtue of both their birth and descent as per Sections 3 and 4 respectively of the Citizenship Act.

11. Those Petitioners herein who are overseas citizens of India had for various professional and other reasons resided for extended periods in

foreign countries where they were placed in severely disadvantageous positions for not having the citizenship in their foreign country of residence. This position of disadvantage stemmed from non-citizens lacking the residency status required for work, being unable to participate in the local democratic processes that shape issues such as water, schools and roads, lacking access to state welfare and social security benefits etc. Left with little choice but to acquire foreign citizenship, the Petitioners were all involuntarily divested of their Indian Citizenship by virtue of Section 9 of the Citizenship Act which states as under:

Termination of citizenship. –

(1) *Any citizen of India who by naturalisation, registration or 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: Provided that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires, the citizenship of another country, until the Central Government otherwise directs.*

(2) 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, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf.

(emphasis supplied)

12. The Petitioners herein who are Non-Resident Indian (NRI) Citizens are desirous of acquiring foreign citizenship for the same reasons that have

forced Overseas Citizens of India to acquire foreign citizenship. However, these Petitioners are unable to acquire foreign citizenship because they cannot afford to be divested of their Indian Citizenship by virtue of Section 9(1) of the Citizenship Act, due to the possibility they may return to India and because they have their familial ties in India.

13. Those amongst the Petitioners who are OCIs ordinarily resident in India face hindrances in participating in democratic governance in India. Their predicament is very similar to NRIs living abroad. Although such OCIs pay taxes and contribute to the social life of India, they cannot engage in governance issues pertaining to India or Indian legislative processes. This is similar to the manner in which NRIs are precluded from participating in the democratic process of the countries where they are resident, as they are not citizens of those countries. Therefore, a dual citizenship regime that gives meaningful rights to OCIs will be beneficial to both sets of people: NRIs, as well as OCIs resident in India. In this way, both will be able to continue centering their lives around knowledge industries and globalization.

14. The Petitioners herein who are Goan Resident Indian Citizens, are those that are in unique circumstances for that although they have been

residing in Goa and are entirely Indian in culture, their heritage entitles them to acquire the Citizenship of Portugal by birth and from Indian shores. These Indian citizens are hindered from acquiring Portuguese Citizenship and enjoying ties with their familial heritage for reasons that as soon as they acquire Portuguese Citizenship from Indian shores, they lose their Indian Citizenship by virtue of Section 9(1) of the Citizenship Act and are reduced to the status of illegal immigrants or persons resident in India without legal status. Among the Petitioners, there are also highly qualified Indian professionals who wish to be competitive for global opportunities in a global knowledge economy over their life-time, as well as the parents/relatives of OCI and NRI individuals.

15. In essence, all the Petitioners are aggrieved by the scheme of Overseas Citizenship in India created under Sections 7B(1) and 7D of the Citizenship Act and the ensuing bar on dual citizenship afforded by Section 9(1) of the Citizenship Act which run completely contrary to the objective of the OCI scheme to grant dual citizenship to Indian Citizens. The Petitioners are also aggrieved by the involuntary divestment of citizenship that Sections 8(2) and 9(1) of the Citizenship Act allow and respectfully submit that this transgresses upon the implied limitations under Article 11 of the Constitution that bars Parliament from enacting a law that involuntarily divests or involuntarily terminates citizenship.

Origin and evolution of the Overseas Citizenship of India

16. The enactment of the Citizenship Amendment Act, 2003 ushered in significant change that allowed for the registration of OCIs. The very object of the OCI scheme as described by the Citizenship Amendment Act, 2003 is stated as under:

*“the High-Level Committee on Indian Diaspora constituted by the Central Government, inter alia, recommended the amendment of this Act to provide for the grant of dual citizenship to persons of Indian origin, belonging to certain specified countries. The Central Government has accordingly decided to make provisions for the grant of **dual citizenship** and has taken the opportunity of introducing a scheme for the compulsory registration of every citizen of India, and for this purpose to issue national identity cards”*
(emphasis supplied)

A copy of the Citizenship Amendment Act, 2003 is hereto annexed and marked as **Annexure P-2 [Pages 102 to 109]**.

17. The Citizenship Amendment Act, 2003, provided for Overseas Citizenship of India by enacting Sections 7A to 7D to the Citizenship Act under the title of “Overseas Citizenship”. Section 7A (1), inserted by the Amendment Act, 2003, allowed the Central Government, subject to conditions that it may prescribe, to “register any person as an overseas citizen of India” if:

*“(a) that person is of Indian origin of full age and capacity who is a citizen of a specified country; or
(b) that person is of full age and capacity who has obtained the citizenship of a foreign country on or after the Commencement of the*

*Citizenship (Amendment) Act, 2003 and who was a citizen of India immediately before such commencement; or
(c) that person is a minor person mentioned under clause (a) or clause (b)."*

Section 7A(2) inserted by the Citizenship Amendment Act, 2003 provided that a person registered as an overseas citizen of India "*shall be an overseas citizen of India as from the date on which he is so registered*".

The specified countries that Section 7A(1)(a) extend OCI eligibility to, were enumerated at the fourth schedule inserted by way of the Citizenship Amendment Act, 2003 (the list of countries in the fourth schedule included only those countries that reciprocated dual citizenship and are not enemies of India).

18. Thereafter, the Citizenship Amendment Act, 2005 was enacted, whose statement of objects and reasons again expressly held that the purpose of the OCI scheme was to provide *dual citizenship* to persons of Indian origin abroad. Notably, the Citizenship Amendment Act, 2005 extended the OCI scheme to all eligible persons who were citizens of any country, except those of Bangladesh and Pakistan, or any other country as specified by the Central Government. Accordingly, schedule 4 in the Citizenship Act that contained a list of countries that reciprocated dual citizenship and whose citizens of Indian origin were eligible for OCI was repealed. A copy of the Citizenship Amendment

Act, 2005 is hereto annexed and marked as **Annexure P-3 [Pages 110 to 111]**.

19. In the year 2015, Parliament enacted the Citizenship Amendment Act, 2015 by which PIO card holders were also deemed to be OCI. The Citizenship Amendment Act, 2015 also inserted a provision at Section 7A (3) of the Citizenship Act, by which the Central Government may, if special circumstances exist, grant OCI status to persons who were not otherwise eligible for OCI under the Citizenship Act. A copy of the Citizenship Amendment Act, 2015 is hereto annexed and marked as **Annexure P-4 [Pages 112 to 116]**.

20. Significantly, the Citizenship Amendment Act, 2015 appears to have diluted the provisions of the Act in so far as the erstwhile term "*overseas citizen of India*" were now replaced with the term "*overseas citizen of India cardholder*". Albeit a small change, the addition of the term "*cardholder*" effectively reduced all overseas citizens of India to those holding a special category visa card. This was destructive of the very objective for which overseas citizenship was formulated, which was to grant dual citizenship. It is further submitted that the statement of objects and reasons of Citizenship Amendment Act, 2015 were misleading in so far as they stated that "*The Citizenship Act has been*

amended, from time to time, inter alia, making enabling provisions for registration of Overseas Citizen of India Cardholder". This runs contrary to the fact that the term "Overseas Citizen of India Cardholder" was nowhere in use previously and any erstwhile reference to an identity card was only to recognize the status of an "Overseas Citizen of India", which the title over the concerned sections continues to suggest. Finally, the 2015 amendment repealed Section 7A(2) of the Citizenship Act which stated that all persons shall be OCIs from the date of their registration and the validity of OCI status was simply made co-extensive with the validity of an OCI card.

21. Subsequently, the enactment of the Citizenship Amendment Act, 2019 only further diluted the status of Overseas Citizens of India by inserting Section 7D(da) into the Citizenship Act. Section 7D(da) allows the cancellation of registration of an Overseas Citizen of India Cardholder if the person *"has violated any of the provisions of this Act or provisions of any other law for time being in force as may be specified by the Central Government in the notification published in the official gazette"*. This excessive and unbridled discretionary powers granted to the Central Government to cancel the OCI cards of persons for the violation of any law, has further prejudiced the status of OCIs in India.

22. The Petitioners submit that while the OCI scheme allows Indians to undertake foreign citizenship and remain as permanent residents in India, the OCI scheme is a far cry from its explicitly specific objective of providing *dual citizenship* to Indians as evidenced in the introductory statement of objects and reasons of the Citizenship Act. It is also respectfully submitted that the very word “citizen” in the term “overseas citizens of India” promises OCIs the full guarantee of citizenship, but by virtue of Section 7B(1) they are treated as second class citizens who are conferred only those rights granted at the pleasure of the Central Government. Section 7B (1), of the Citizenship Act, reads as under:

*“7B. Conferment of rights on overseas citizens of India –
 (1) Not with-standing anything contained in any other law for the time being in force, an overseas citizen of India shall be entitled to such rights [other than the rights specified under sub-section (2)] as the Central Government may, by notification in the Official Gazette, specify in this behalf.”*

23. Further, section 7B (2), disentitles OCI to various rights and states as under:

*(2) An overseas citizen of India shall not be entitled to the rights conferred on a citizen of India –
 (a) under article 16 of the Constitution with regard to equality of opportunity in matters of public employment;
 (b) under article 58 of the Constitution for election as President;
 (c) under article 66 of the Constitution for election of Vice-President;*

- (d) under article 124 of the Constitution for appointment as a Judge of the Supreme Court;*
- (e) under article 217 of the Constitution for appointment as a Judge of the High Court;*
- (f) under section 16 of the Representation of the People Act, 1950 (43 of 1950) in regard to registration as a voter;*
- (g) under sections 3 and 4 of the Representation of the People Act, 1951 (43 of 1951) with regard to the eligibility for being a member of the House of the People or of the Council of States, as the case may be;*
- (h) under sections 5, 5A and 6 of the Representation of the People Act, 1951 (43 of 1951) with regard to the eligibility for being a member of the Legislative Assembly or a Legislative Council, as the case may be, of a State;*
- (i) for appointment to public services and posts in connection with the affairs of the Union or of any State except for appointment in such services and posts as the Central Government may by special order in that behalf specify."*

Hardship and discrimination suffered by OCIs

24. The Petitioners submit that Section 7B(1) in allowing OCIs only those rights and privileges granted to Indian Citizens that the Central Government "*may specify*", severely impedes their full enjoyment of the most basic human rights in India. The basic rights of OCIs that are curtailed include the right to residency in India, the right to employment in India and the right to participate in Indian cultural, religious and social life. These hardships, as suffered by the Petitioners, are illustrated in an unexhaustive manner as under:

1. Hindered access to entry and residence in India: An OCI card holder is allowed entry into India only on parity with a life-long multiple entry visa holder and the OCI status is only valid during the period of validity of a foreign passport. Any OCI card holder whose foreign passport expires while resident in India is immediately deemed to be illegally resident in India, even in the case of minor OCIs whose parents are Indian Citizens. Further, OCIs are required to renew their OCI cards every time a new passport is issued up to the age of 20 years and once after an applicant turns 50 years of age. These rules are borne out by a copy of the MHA notification bearing No.-26011/Misc./47/2019-OCI dated 15 November 2019, hereto annexed and marked as **Annexure P-5 [Pages 117 to 132]**. Further, Section 7D of the Citizenship Act allows the Central Government to cancel the registration of OCIs and prohibit them from residing in India over the violation of any law or for showing disaffection to the Constitution of India. While most often OCIs are persons of Indian origin with parents and immediate family members who are Indian citizens, the OCI scheme offers extremely tenuous access to permanently reside and stay in India. These restrictions on freely residing and entering India

are borne out by the recent COVID-19 related travel restrictions imposed by the government of India which completely barred OCIs from entering India both prior to and during the lock down period. The Government of India issued an advisory that kept in abeyance the visa free travel facility to OCIs between 13 March and 15 April 2020. Moreover, no international flights were allowed on Indian soil since 23 March 2020. Therefore, between 13 March and 23 March 2020, the Government of India most arbitrarily allowed the entry into India of foreign nationals holding Indian employment visas holders but denied entry to OCIs despite them having immediate family members and elderly parents living in India. The ban on entry of OCIs was eventually lifted, and as of October 2020 all OCIs were permitted to enter India. A copy of the notification of the Press Information Bureau of India that bears out this arbitrary measure of the government, dated 11 March 2020 is hereto annexed and marked as **Annexure P-6 [Pages 133 to 135]**. A copy of the Additional Travel Advisory of the Ministry of Health and Family Welfare imposing a travel ban from 23 March, dated 19 March 2020 is hereto annexed and marked as **Annexure P-7 [Page 136]**. Further, as soon as the lock down went into effect, several minor and adult

OCIs across the world were cut off from family members residing in India causing much anxiety and distress to such families. OCIs also require restricted and protected area permits on par with foreign nationals to visit restricted or protected areas as per para 6 (i) of the MHA notification dated 15 November 2019. These restrictions only go to show that OCIs are not even allowed resident status on par with Indian Citizens despite them being persons of Indian origin with strong familial ties in India.

2. Fetters on participating in the cultural and religious life of India:

While the notification of the MHA dated 15 November 2019 at para 6 (iii) allows for economic and financial parity of OCIs with NRIs, OCIs are prevented under the FCRA from donating any of their personal earnings from India or abroad to non-FCRA registered charitable or religious organizations in India, although NRIs are allowed to do so. This goes to show that severe restrictions are placed on OCIs from engaging in religious or social or cultural activities in India, in gross violation of Article 25 of the Constitution.

3. Restrictions on the freedom of expression in India: Section 7D(b)

of the Citizenship Act allows the Central Government to cancel a person's OCI registration if they show disaffection to the

Constitution of India and Section 7 D(da) allows cancellation of OCI registration for the violation of any law. Both these provisions under Section 7D are arbitrary and have a chilling effect on the freedom of expression of OCIs, several of whom in spite of being permanently resident in India cannot express peaceful dissent against the state for fear that such dissent will amount to either disaffection to the Constitution of India or the violation of any law so prescribed. Further, as per para 6 (i) of the MHA notification dated 15 November 2019, OCIs are proscribed from engaging in journalistic activity without the prior approval of the External Publicity Division of the MEA. These fetters contravene the right to life and dignity guaranteed to OCIs under Article 21 of the Constitution.

- 4. Restrictions on the freedom of occupation and profession:** While the MHA notification dated 15 November 2019 at para 6 (vii) (B) allows OCIs to practice the professions of doctors, architects, advocates and chartered accountants as per the relevant acts, there are a whole list of other provisions that are arbitrarily left out of such a list without sufficient reasons. By limiting the number of professions that OCIs can have parity with NRIs in pursuing,

several OCIs practicing other non-enumerated professions are hindered from meaningfully participating in and contributing to their professional streams in India.

5. Prohibition on participating in the civic and political life of India:

Although several OCIs reside and pay taxes in India, such persons are unable to meaningfully voice their grievance with local government authorities over civic infrastructure out of fear that their overseas citizenship may be cancelled for expressing their right to peacefully raise public grievances by virtue of Section 7D of the Citizenship Act. While Article 326 of the Constitution grants voting rights to Indian Citizens, Overseas Citizens of India are completely excluded from voting rights in India even when permanently residing in India and contributing to the life of the nation. The bar on dual citizenship under Section 9(1) of the Indian Citizenship Act not only affects the voting rights of OCIs but also keeps Non-Resident Indians from acquiring foreign citizenship thereby preventing them from political participation both in their foreign country of residence and in India.

6. Restrictions on seeking information: Even while OCIs work and reside permanently in India, they are often disentitled to seek

information from state authorities under the Right to Information Act. A copy of a news report in the Indian Express titled "*Fundamental rights not for OCI card holders: Govt to Delhi HC*", which bears out the denial of right to information to OCIs, dated 1 February 2020, is hereto marked and annexed as **Annexure P-8 [Pages 137 to 138]**.

7. **Issues with adoption:** Para 6 (iv) of the MHA notification dated 15 November 2019 grants parity in adoption to OCIs on par with NRIs. However, where an OCI or NRI living abroad adopts a child from India following the inter-country adoption regulations, then the host foreign country often automatically grants foreign citizenship to the adopted child who has at least one parent as a citizen of that host country. As per Section 9(1) of the Citizenship Act, this results in the child automatically losing his or her Indian citizenship without granting any opportunity to the child to retain his or her Indian citizenship on attaining majority. Aside from being procedurally unclear as to how a child can explicitly renounce their Indian Citizenship, this also alienates the adopted child from their country of birth and involuntarily divests them of their citizenship. Adopted children are helped in their growth by maintaining ties

with their cultures of birth, and Indian adoption law recognizes this by giving preference to NRIs and OCIs over non-Indian origin foreigners. The bar on dual citizenship and the OCI scheme under the Citizenship Act sadly prevents these children from retaining their cultural ties and rediscovering their Indian heritage in the future.

25. This severe curtailment of the basic rights of OCIs coupled with the unbridled and un-canalized discretionary powers granted to the Respondents to terminate their citizenship under Section 7D subjects OCIs to a constant state of hardship, fear and uncertainty. Further, this wholly defeats the very purpose of the OCI scheme which was unequivocally to grant “*dual citizenship*”.

26. Pertinently, the Petitioners humbly submit that the Overseas Citizenship of India scheme as it presently stands, creates two classes of citizens in India while the Constitution recognizes only one class of citizens. This dichotomy has no place in the *Indian Constitution which does not recognize a superior class of ordinary citizens and an inferior class of overseas citizens of India*. It is further submitted that the Constitution left open the issue of the grant of dual citizenship while only placing a bar on dual citizenship at the time of the commencement of the

Constitution, under Article 9. The Constitutional position of there being only one class of citizens also implies that all fundamental rights cannot be guaranteed to one class of citizens and denied in totality to another class of lesser citizens.

Citizenship before the Constituent Assembly and under the Constitution

27. The Constituent Assembly did not deliberate in great detail over the issue of dual citizenship. When draft Articles related to Citizenship were being debated (presently Articles 5 to 11), Dr, Ambedkar in the debate on 11 August, 1949 drew attention to two important limitations which he described as under:

“The first was that this Draft dealt with the limited question of citizenship on the day the Constitution comes into force. And the other point was that all other matters including those which are dealt with by the present Draft, are left to be dealt with by parliament as it considers fit”.

28. Apropos Citizenship, the Constitution framers were left to frame provisions that would immediately resolve the dual challenges of partition and providing citizenship to Indians residing abroad. This challenge was described in the words of Pandit Jawaharlal Nehru in the debates, as under:

“One was of course the partition of the country. The other was the presence of a large number of Indians abroad, and it was difficult to decide about these Indians whether they should be considered as our citizens or not, and ultimately these Articles were drafted with a view to providing for these two difficulties”.

29. In the context of Partition, Article 5 of the Constitution eventually laid down who would be eligible to become citizens at the time of the commencement of the Constitution. Further, Article 9 of the Constitution barred dual citizenship at the time of the commencement of the Constitution. Article 9 reads as under:

“Person voluntarily acquiring citizenship of a foreign State not to be citizens: 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”.

Article 11 of the Constitution however conferred Parliament with the power *“to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship”.*

30. A few members of the constituent assembly like Mr. Mehboob Bahadur and Mr KT Shah tried to moot the idea of dual citizenship in the Constitution, with Mr. KT Shah even proposing the following dual-citizenship provisions through an amendment:

“Provided further that the nationality by birth of any citizen of India shall not be affected 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; and

Provided that where under the Municipal Law no citizen is compelled either to renounce his nationality by birth before acquiring the citizenship of that country, or where under the Municipal Law nationality by birth of any citizen does not cease automatically on the acquisition of the citizenship of that country”.

A copy of the Constituent Assembly Debates dated 11 August 1949 are hereto annexed and marked as **Annexure P-9 [Pages 139 to 182]**. A copy of the relevant extracts of the Constituent Assembly debates that concern citizenship dated 12 August 1949 are hereto annexed and marked as **Annexure P-10 [Pages 183 to 190]**.

31. However, the amendments did not pass and the adopted Constitution left undecided issues concerning dual citizenship after its commencement. Article 11 of the Constitution also conferred Parliament with the authority to decide on all matters of citizenship after the commencement of the Constitution which authority also extended to deciding on matters of dual citizenship.

Dual Citizenship under the Citizenship Act

32. The Citizenship Act barred the general applicability of dual citizenship after the commencement of the Constitution by way of Section 9 which states as under:

Termination of citizenship. –

(1) Any citizen of India who by naturalisation, 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: Provided that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires, the citizenship of another country, until the Central Government otherwise directs.

(2) If any question arises as to whether, when or how any 1[citizen of India] has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf.

(emphasis supplied)

33. Moreover, Section 8(2) compulsorily divests of citizenship all minor children whose parent(s) renounce their Indian citizenship and thereby cease to be a citizen of India. It reads as follows:

Where a person ceases to be a citizen of India under sub-section (1) every minor child of that person shall thereupon cease to be a citizen of India:

Provided that any such child may, within one year after attaining full age, make a declaration in the prescribed form and manner that he wishes to resume Indian citizenship and shall thereupon again become a citizen of India.

34. The principles of dual citizenship were not contrary to the provisions of the Citizenship Act. Notably, Parliament made provisions for and

allowed dual citizenship by virtue of Section 12(1) of the Citizenship Act, which stated that:

“by order notified in the official Gazette, make provisions on a basis of reciprocity for the conferment of all or any of the rights of a citizen of India on the citizens of any country specified in the First Schedule.”

As per Section 12 (2) of the Citizenship Act an order under Section (1) was to have effect *“notwithstanding anything inconsistent therewith contained in any law other than the Constitution of India or this Act”*.

It must be pointed out that that Section 12 was repealed contemporaneously with the Citizenship Amendment Act, 2003 (which introduced the OCI scheme) in keeping with object of the OCI scheme, which is to provide for dual citizenship.

35. Further, the very statement of objects and reasons behind the Citizenship Act held that it was also to *“formally recognise Commonwealth citizenship and permit the Central Government to extend on a reciprocal basis such rights of an Indian citizen as may be agreed upon to the citizens of other Commonwealth countries and the Republic of Ireland”*. Therefore, the statement of objects and reasons behind the Citizenship Act, 1955 and Section 12 of the Citizenship Act explicitly left room for the reciprocal grant of dual citizenship to which there is no constitutional bar. An extract from the Citizenship Act, 1955

showing the statement of objects and reasons thereto is hereto marked and annexed as **Annexure P-11 [Pages 191 to 193]**.

The demand for dual citizenship by Indians

36. With rapid globalization in the 1990s and the early 2000s, there was a growing demand among the following Indian diaspora for India to grant dual citizenship:

- a. NRIs who wish to be citizens of the country they will reside in for any unspecified duration because they wish to engage politically with the administration of laws locally (e.g., school district elections, water boards) in the foreign places they reside in;
- b. OCIs who wish to reside in India for a substantial duration if not for the rest of their lives (these numbers are only increasing);
- c. Goan resident Citizens who would like to avail the benefits of European laws by being citizens under Portuguese laws;
- d. Highly qualified Indian professionals who wish to be competitive for global opportunities in a global knowledge economy over their life-time; and
- e. the parents/ relatives of all of the categories (a)-(d).

37. To explore the demands of the Indian diaspora that sought dual citizenship, the Central Government set up a HLC under the chairmanship of Dr. LM Singhvi, to make recommendations on the aspect of dual citizenship. The terms of reference of the Committee were of the widest amplitude. Its mandate was to make a comprehensive study of the global Indian Diaspora and to recommend measures for a constructive relationship with them. The Committee after much deliberation submitted a report in 2002 that concluded that Dual Citizenship ought to be granted to persons of Indian origin or Non-Resident Indians who were nationals of a specified list of countries. The HLC specifically concluded as under:

“The committee has deliberated on the issue of Dual Nationality in all its ramifications and has given its anxious consideration to all the pros and cons of the issue. It has come to the conclusion that the demand for dual citizenship deserves to be considered in a positive and forward-looking spirit and without the conventional and stereotyped blinkers which have often obfuscated an objective consideration of the issue on the merits of the proposal”.

The HLC also concluded that dual citizenship could be offered by amending Section 9 of the Citizenship Act and that Article 9 of the Constitution did not bar dual citizenship after the commencement of the Constitution. A copy of the HLC report dated January 2002 is hereto annexed and marked as **Annexure P-12 [Pages 194 to 225]**.

38. The HLC was cognizant of the desire of the Indian diaspora to participate in the cultural and social life of India and in this light observed as under:

“36.5. The refrain of the song, especially so far as the Indian Diaspora in North America, Europe, Australia, New Zealand, Singapore and a few other countries is concerned, is the persistent demand and expectation of dual nationality. The first-generation Indians are keen to be allowed to retain or regain their Indian nationality. Many of them voluntarily acquired foreign nationality due to the pressure of circumstances. Many of them have kept their Indian citizenship despite those pressures. The demand of dual nationality stems from the practical convenience and advantages of the citizenship of the countries where they have made their homes on the one hand and their desire to maintain strong linkages with their country of origin as well as their desire to forge emotional and cultural bonds of their future generations with India on the other. Their love for India and their pride in their Indian heritage propels their consistent demand for dual nationality. It is believed that this measure would also facilitate the contribution of the Diaspora to India’s social, economic and technological transformation and national development. Persons of Indian origin settled in the economically more advanced countries of the world have skills and expertise in vital sectors including information technology, biotechnology, space, financial services, infrastructure, education and health care and management consultancy. Investments are induced principally by the logic of business considerations and the psychology of investment climate. We do not wish to advocate dual nationality only for Diaspora investments and remittances, important though they are to India’s development. The Committee is of the opinion that the grant of dual nationality will remove for those who have taken foreign passports the obstacles in travel to and from India, promote investments in business ventures and foster a greater sense of belonging. Many of the NRIs would also like to take foreign nationality without losing their Indian citizenship. Their citizenship of the western countries would make it easier for them to travel to different countries without the inconvenience of having to obtain innumerable visas on their Indian passports and at the same time their travels to and fro India. The principal rationale of the

demand of the Diaspora for dual citizenship, however, is sentimental and psychological, a consideration which commends itself to the Committee in the same measure as do social, economic and political factors.

36.6. Dual citizenship would also help to perpetuate and cement the links of the younger generation of the Diaspora with India as they will be keen to keep in touch with their elders in India as well as relate to their roots. There is much to be gained by the introduction of dual nationality. The Diaspora in North America, Europe, Australia, New Zealand and Singapore yearns and longs for it. It will create a climate conducive to Diaspora's fuller participation in philanthropy, economic developments, technology transfer, cultural dissemination and overseas political advocacy on behalf of India. On the other hand, why should this mark of fraternity and shared identity be denied to the first generation of the Diaspora and children and grandchildren of that generation? The Committee is of the view that India stands to benefit substantially by consolidating its bonds of solidarity with the Diaspora by granting dual citizenship to those who were Indian citizens or those who were eligible for Indian citizenship at the commencement of the Constitution of India as well as their children and grandchildren who migrated to certain countries, such as U.K., U.S.A., Canada, EU countries, Australia, New Zealand and Singapore."

(emphasis supplied)

39. The observations of the HLC hold even more relevance in today's day and age, where ease of travel has reduced the difficulties in doing business and visiting family in one's country of origin. More persons of Indian origin continue to hope for a connection with their homeland. This is borne out of the results of a study conducted by the Foundation for India and Indian Diaspora Studies dated September 2019, on the

occasion of the current Prime Minister's visit to the USA. The survey covered various topics ranging from immigration issues, investment, and dual citizenship, to double taxation and transfer of social security funds. Among the surveyed questions, a demand for dual citizenship received maximum support with a rating of 4.4 stars out of 5. It was noted in the survey that while citizens of many other countries have had the ability to apply for US citizenship without renouncing the citizenship of their home country, NRIs have been requesting the same opportunity from the Indian government for many years "without luck." It also referenced the report of the HLC chaired by Dr. Singhvi and the resultant developments that led to the creation of OCI status "which is short of a dual citizenship". A copy of the Survey by the Foundation for India and Indian Diaspora Studies dated September 2019 is hereto annexed and marked as **Annexure P-13 [Pages 226 to 228]**.

40. The Indian Government paid serious heed to the observations of the HLC. In response to a question asked on the floor of the Parliament ("Starred Question No 31" asked by Shri Jyotiraditya M. Scindia and Shri Ananta Nayak) on 19 February 2003, the then Minister of External Affairs stated as follows:

“Based on the recommendation made by the High Level Committee on the Indian Diaspora, the Government has decided to grant dual citizenship under the Citizenship Act, 1955 to persons of Indian origin who have acquired the citizenship of certain countries. The details and other modalities in this regard are being worked out.”

41. Moreover, while inaugurating the first Pravasi Bharatiya Divas in New Delhi on 9 January 2003, the then Prime Minister Atal Bihari Vajpayee said, *“We are working on the administrative regulations and procedures that govern dual citizenship. We will introduce the necessary legislation during the Budget session of Parliament”*.

42. The then Hon. Home Minister, while introducing the Citizenship Amendment Act of 2003 (then a Bill) on the floor of Parliament stated as follows:

“As such, this Bill has been presented by one such Committee, in which all major parties were a part. For years, Overseas Indians have been demanding that the provision for dual citizenship be made in the Constitution of India, which has been fulfilled by this. This Bill was introduced in the Rajya Sabha, then went to the Joint Standing Committee of the Parliament. All the amendments suggested by the Standing Committee were accepted by the Cabinet. The Bill, after recommendations made by the Standing Committee, was presented before the Rajya Sabha once again. It was passed unanimously by the Rajya Sabha last week. I request that the Lok Sabha also unanimously approve it.”

43. Sir P.H. Pandian, in the discussion on the Bill of 2003, noted that *“this Bill acknowledges the achievements of our sons of the soil who are settled*

abroad and it provides for dual citizenship rights to them. So, I support this Bill.”

44. With these recommendations of the HLC, statements in Parliament and at the Pravasi Bharatiya Divas, and the growing demands of the Indian diaspora for dual citizenship, Parliament enacted the Citizenship Amendment Act, 2003 whose objects and reasons were to explicitly “provide for the grant of dual citizenship”. All of these events prior to the enactment, along with the preamble/statement of objects and Reasons make it clear that the statutory intent was to provide dual citizenship.

45. The specific objective of “Overseas Citizenship” being to grant dual Citizenship and the recommendations of the HLC to grant dual citizenship was again affirmed by the Citizenship Amendment Act, 2005 which sought to extend OCI eligibility to all PIOs other than PIOs from Pakistan and Bangladesh. However, Section 7B(1) of the Citizenship Act, which only entitles OCIs to those rights or privileges, including fundamental rights, granted by the Central Government at its pleasure, abrogates the very object of granting dual citizenship to Indians. This very provision not only lies contrary to the recommendations of the HLC on which the OCI scheme was enacted

but also treats all OCIs as second-class citizens under the Constitution which only recognises one equal class of citizens. Further, the Citizenship Amendment Act, 2015 and the Citizenship Amendment Act, 2019 have only expanded the excessive powers of the Central Government to cancel the registration of OCIs for the violation of any law or for vague reasons with unfettered discretion.

Position in Foreign Jurisdictions that allow dual citizenship

46. Position in United States of America: In the United States, there is neither statutory recognition of dual citizenship nor a statutory bar to dual citizenship.

However, the US Supreme Court in *Afroyim v. Rusk* [387 US 253] held that the US Congress has no legislative power under the Constitution to divest a person of his United States citizenship absent his voluntary renunciation thereof. In *Afroyim*, a naturalized US Citizen was stripped of his citizenship for voting in an Israeli election under Section 401 (e) of the US Nationality Act, 1940. The constitutionality of Section 401 (e) of the Nationality Act was challenged on the ground that the equal protection clause of the US Constitution prohibited the US Congress from enacting a statute that stripped citizenship from persons who had

not voluntarily renounced it. The Court held that the equal protection clause of the US Constitution which confers citizenship on “*All persons born or naturalized in the United States*” impliedly prohibited Congress from enacting laws that divested citizenship without consent. The Court therefore struck down Section 401(e) of the Nationality Act and reinstated the Citizenship of the petitioner therein by holding that:

“Citizenship is no light trifle to be jeopardized any moment Congress decides to do so under the name of one of its general or implied grants of power. In some instances, loss of citizenship can mean that a man is left without the protection of citizenship in any country in the world -- as a man without a country. Citizenship in this Nation is a part of a cooperative affair. Its citizenry is the country, and the country is its citizenry.”

47. In this light, the present position on dual citizenship in the US is that under Section 349 of the Immigration and Nationality Act a US Citizen is subject to loss of nationality or citizenship if they perform certain *specified* acts *voluntarily* and *with the intention to relinquish* U.S. nationality. Under US law, the voluntary acquisition of foreign citizenship is not treated as an intention to relinquish US Nationality unless accompanied by certain acts and an explicit and affirmative intention to relinquish US Nationality. Under US law, the voluntary acquisition of foreign citizenship raises a presumption that there has

been no intention to relinquish citizenship and a person can retain US Citizenship along with the Citizenship of a foreign country.

48. Position in the United Kingdom: The British Nationality Act, 1981 does not bar British Citizens from holding dual citizenship and the acquisition of foreign citizenship does not terminate British citizenship in the absence of a specific renunciation as per the procedure laid down in the British Nationality Act. Dual Citizens in Britain are generally granted rights and privileges on par with those that exclusively hold British Citizenship, including voting rights.

49. Position in Australia: Section 17 of the erstwhile Australian Citizenship Act, 1948 was comparable to Section 9(1) of the Indian Citizenship Act, 1955 in so far as the acquisition of foreign citizenship by Australian Citizens automatically terminated their Australian Citizenship. However, in the year 2002, this position was reversed, and the present Australian Citizenship Act of 2007 permits dual citizenship of Australian Citizens. Australian Citizens who hold dual citizenship are even granted voting rights in Australia, although the Australian High Court in *Re Canavan; Re Ludlam; Re Waters* [2017] HCA 45 set aside the election of senators to the Australian Parliament on the

ground that dual citizens are legally barred from contesting Parliamentary elections.

50. The Petitioners submit that although dual citizenship is not universally adopted, increased globalization has resulted in an ever-growing list of countries granting dual citizenship. Today, over 60 countries from across Europe, the Americas, Africa and Asia permit dual citizenship. It is unfortunate that contrary to the stated objective of the OCI scheme and recommendations of the HLC, the Petitioners continue to face hardships and be denied dual citizenship due to India's arbitrary and restrictive provisions of overseas citizenship. A list prepared by the Petitioners of the countries that offer dual citizenship as of 31 October 2020 is hereto marked and annexed as **Annexure P-14 [Pages 229 to 230]**.

Unconstitutionality of Sections 8(2) and 9(1) of the Citizenship Act, 1955

51. It is pertinent to submit, that although several amendments have been made to the Citizenship Amendment Act, Section 9(1) still lies in direct conflict with the scheme of dual citizenship envisaged under Section 7A to Section 7D of the Act. This anomaly not to amend Section 9(1) of

the Act to allow dual citizenship, not only flies in the face of the recommendations of the HLC on which the OCI scheme was enacted but is also unconstitutional for creating two classes of citizens which is impermissible under the Constitution. It involuntarily divests persons of their Indian citizenship against their express intention to relinquish such Indian citizenship.

52. Much like the involuntary divestment of citizenship mandated by Section 9(1), Section 8(2) of the Citizenship Act involuntarily divests minor children of their Indian citizenship when their parent(s) renounce their Indian citizenship. Such children are thereby precluded from enjoying and participating in the national, social, cultural, political and religious life of India while growing up, thus creating a second class of citizens distinct from minor children who are Indian citizens.

53. The preamble to the Constitution affirms India to be a sovereign republic with its sovereignty vesting exclusively in its citizenry. Citizenship is therefore a sacrosanct link between the people of India and their Constitution which if severed against the will of a Citizen strikes at the very core of popular sovereignty. The Petitioners acknowledge that Article 11 of the Constitution confers Parliament

with the power to enact laws that govern the acquisition and termination of Citizenship, but respectfully submit that Article 11 places implied limitations on the power of Parliament to divest citizens of citizenship against their will. This implied limitation flows from the concept of popular sovereignty which vests in the body of citizens. Citizenship forms a vital link between an individual and the State, and if the Parliament is afforded unbridled powers to terminate citizenship, this vital link can be destroyed in an arbitrary or unjust manner. Accordingly, it is submitted that Sections 8(2) and 9(1) of the Citizenship Act in so far as they involuntarily divest Indian citizens of their citizenship on acquiring foreign citizenship transgress the implied limitations of Article 11 on the power of Parliament to terminate citizenship. A voluntary acquisition of foreign citizenship is distinct from voluntary renouncement of Indian Citizenship, which legal distinction has gained international recognition. Sections 8(2) and 9(1) are therefore unconstitutional in so far as they fail to make room for this distinction and terminate citizenship without a citizen's explicit intention and consent to relinquish citizenship.

54. The Petitioners being aggrieved by the unconstitutionality of Sections 8(2) and 9(1) of the Citizenship Act and the severe restrictions they face

in enjoying a full life by virtue of Section 7B (1) and 7D of the Citizenship Act, are forced to approach this Hon'ble Court under Article 32 of the Constitution, on the following grounds which are without prejudice to one another:

GROUND

THE OBJECT OF THE CITIZENSHIP ACT (WITH ITS AMENDMENTS) IS DUAL CITIZENSHIP

- a. **BECAUSE** the chief objective and purpose behind conferring Overseas Citizenship of India, was to grant **dual citizenship to Indians**. This objective was indisputably expressed by the government in its introductory statement of objects as under:

*The Central Government has accordingly decided to make provisions for the grant of **dual citizenship** and has taken the opportunity of introducing a scheme for the compulsory registration of every citizen of India, and for this purpose to issue national identity cards"*

(emphasis supplied)

- b. **BECAUSE** Overseas Citizenship of India was introduced to give effect to the recommendations of the High Level Committee on Indian Diaspora which unequivocally recommended that dual citizenship be given to Indians. This is evidenced from the statement

of objects and reasons of the Citizenship Amendment Acts of 2003 and 2005, an extract of which reads “*the High-Level Committee on Indian Diaspora constituted by the Central Government, inter-alia, recommended the amendment of this Act to provide for the grant of dual citizenship*”.

- c. **BECAUSE** the HLC constituted by the Central Government to make recommendations to Parliament on issues of Citizenship concluded that Dual Citizenship ought to be granted by India and implored as under:

“The committee has deliberated on the issue of Dual Nationality in all its ramifications and has given its anxious consideration to all the pros and cons of the issue. It has come to the conclusion that the demand for dual citizenship deserves to be considered in a positive and forward-looking spirit and without the conventional and stereotyped blinkers which have often obfuscated an objective consideration of the issue on the merits of the proposal”.

- d. **BECAUSE** the HLC, as early as in 2003, had called upon Parliament to grant dual citizenship to Indians who were grappling with the increased demands of globalization. In this regard, the HLC stated as under:

“The refrain of the song, especially so far as the Indian Diaspora in North America, Europe, Australia, New Zealand, Singapore and a few other countries is concerned, is the persistent demand and expectation of dual nationality. The first-generation Indians are keen to be allowed to retain or regain their Indian nationality. Many

of them voluntarily acquired foreign nationality due to the pressure of circumstances. Many of them have kept their Indian citizenship despite those pressures. The demand of dual nationality stems from the practical convenience and advantages of the citizenship of the countries where they have made their homes on the one hand and their desire to maintain strong linkages with their country of origin as well as their desire to forge emotional and cultural bonds of their future generations with India on the other... The Committee is of the view that India stands to benefit substantially by consolidating its bonds of solidarity with the Diaspora by granting dual citizenship to those who were Indian citizens or those who were eligible for Indian citizenship at the commencement of the Constitution of India as well as their children and grandchildren who migrated to certain countries, such as U.K., U.S.A., Canada, EU countries, Australia, New Zealand and Singapore”.

- e. **BECAUSE** the HLC had recommended that Section 9 of the Citizenship Act be amended to allow for dual citizenship. In enacting Sections 7A to 7D of the Citizenship Act without amending Section 9 of the Act, Parliament has acted on the recommendations of the HLC to introduce dual citizenship but failed to amend Section 9, which has resulted in a legal anomaly in the Act.
- f. **BECAUSE** a Constitution bench of this Hon’ble Court in *Kalpana Mehta v. Union of India, 2018 7 SCC 1* has affirmed the importance of parliamentary committees and their reports as under:

“Committees of Parliament attached to ministries/departments of the government perform the function of holding government accountable to implement its policies and its duties under legislation. The performance of governmental agencies may form the subject matter of such a report. In other cases, the deficiencies of the legislative framework in remedying social wrongs may be the subject of an evaluation by a parliamentary committee. The work of a

parliamentary committee may traverse the area of social welfare either in terms of the extent to which existing legislation is being effectively implemented or in highlighting the lacunae in its framework. There is no reason in principle why the wide jurisdiction of the High Courts Under Article 226 or of this Court Under Article 32 should be exercised in a manner oblivious to the enormous work which is carried out by parliamentary committees in the field. The work of the committee is to secure alacrity on the part of the government in alleviating deprivations of social justice and in securing efficient and accountable governance. When courts enter upon issues of public interest and adjudicate upon them, they do not discharge a function which is adversarial. The constitutional function of adjudication in matters of public interest is in step with the role of parliamentary committees which is to secure accountability, transparency and responsiveness in government. In such areas, the doctrine of separation does not militate against the court relying upon the report of a parliamentary committee.

Thus, the importance of the HLC in this case cannot be understated as it performs the function of holding the Government accountable.

- g. BECAUSE** an interpretation of the plain meaning of the Act, along with the statement of objects and reasons, statements made by Ministers, as well as the report of the HLC clearly indicate that the object of the Act has always been dual citizenship. The English case of *Maunsel v. Olins*, (1975) 2 All ER 16 held that there are primary and secondary canons of construction. The primary rule of construction is to consider the plain meaning. If there is no plain meaning, the mischief rule is the most important rule amongst the secondary canons of construction. There is no hierarchy amongst the

secondary canons and which rule will have paramountcy is likely to depend on all the circumstances of the particular case. The above finding was quoted with approval in *Utkal Contractors and Joinery Pvt. Ltd. v. State of Orissa*, (1987) 3 SCC 279, and is cited in G.P. Singh's Principles of Statutory Interpretation.

- h. BECAUSE** for ascertaining the purpose of a statute, one is not restricted to the internal aid furnished by the statute itself. The mischief against which the statute is directed as well as the surrounding circumstances may be considered as a “*secondary canon of interpretation*”. These external aids are also brought in by widening the concept of “context” as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes *in pari materia*, and the mischief which the statute was intended to remedy. The importance of context was highlighted by Justice O. Chinnappa Reddy in *Reserve Bank of India vs. Peerless General Finance and Investment Co. Ltd.*, (1987) 1 SCC 424 as follows:

“33. Interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge,

the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

Therefore, the context brought to the Citizenship Act by the Statement of Objects and Reasons of the Citizenship Amendment Act, 2003, as well as the recommendations of the HLC, statements in Parliament and at the Pravasi Bharatiya Divas, and the growing demands of the Indian diaspora for dual citizenship, cannot be ignored. The purpose of the Citizenship Act, as evidenced by its context, was clearly to grant dual citizenship.

- i. **BECAUSE** the Citizenship Amendment Act 2015, which replaced the term "Overseas Citizen of India" with the term "Overseas Citizen of India cardholder" dilutes the objective of introducing OCI registration which was to grant dual citizenship.
- j. **BECAUSE** Section 7B(1) of the Citizenship Act which entitles Overseas Citizens of India only to those rights that the Central Government may "notify in the official gazette" abrogates the

primary objective of the OCI scheme under Sections 7A to 7D of the Citizenship Act and the recommendations of the HLC which was to grant dual citizenship.

- k. BECAUSE** Section 9(1) of the Citizenship Act is ultra-vires the Citizenship Act's objective to grant dual citizenship in so far as it bars full-fledged dual citizenship and contravenes the purpose behind enacting provisions to grant Overseas Citizenship to Indians.

VIOLATION OF FUNDAMENTAL RIGHTS BY PROVISIONS OF THE CITIZENSHIP ACT

- 1. BECAUSE** Section 7B(1) of the Citizenship Act in so far as it grants excessive, unbridled and un-canalized power to the Central Government to decide what fundamental rights or benefits an OCI holder can enjoy, violates the right to equality and the right to life guaranteed under Articles 14 and Article 21 of the Constitution.
- m. BECAUSE** Section 7B(1) of the Citizenship Act violates the Petitioners' right to fully enjoy their cultural identity and participate in the cultural life of the nation guaranteed under Article 21 of the Constitution.
- n. BECAUSE** Section 7D(b) of the Citizenship Act which allows the Central Government to cancel a person's OCI registration on

showing disaffection to the Constitution of India is manifestly arbitrary and grants excessive powers to the executive. Section 7D (b) is also a wholly unreasonable restraint on very basic freedom of expression that OCI's are entitled to under Articles 19 and 21 of the Constitution.

- o. BECAUSE** Section 7D(da) of the Citizenship Act grants excessive and arbitrary discretionary powers to the Central Government to cancel the registration of Overseas Citizens of India for the violation of any law. This provision also subjects OCIs, who are permanent residents in India or have close familial ties in India, to live in an environment of fear of losing their OCI registration for peacefully expressing their grievances against the state or violating any law. It is submitted that this environment of fear and uncertainty is an assault on their right to human dignity under Article 21 of the Constitution.
- p. BECAUSE** Sections 7B(1) and 7D of the Citizenship Act, 1955, by imposing capricious and irrational restrictions upon the rights and entitlements of OCIs, as well as arbitrary cancellation of their OCI status, suffer from "*manifest arbitrariness*". The doctrine of "*manifest arbitrariness*" in terms of Article 14 of the Constitution has been

applied by this Hon'ble Court on various occasions to strike down provisions of statutes which were violative of Article 14. The test for what constitutes arbitrariness was laid down by this Hon'ble Court in *E.P. Royappa v. State of Tamil Nadu*, 1974 SCR (2) 348 as follows:

“85. ...Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose. J., “a way of life”, and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be “cribbed, cabined and confined” within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the

latter comprehends the former. Both are inhibited by Articles 14 and 16."

State action must therefore necessarily ensure fairness and equality of treatment in order to not be held arbitrary. In the recent case of ***Shayara Bano v. Union of India, (2017) 9 SCC 1***, this Hon'ble Court confirmed that even statutes may be judged by the "manifest arbitrariness" standard:

"101. It will be noticed that a Constitution Bench of this Court in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."

The applicability of manifest arbitrariness to the provisions of a statute was upheld by this Hon'ble Court in ***Navtej Singh Johar v. Union of India, (2018) 10 SCC 1***. One of the grounds on which this Hon'ble Court held Section 377 of the Indian Penal Code, 1860 to be

unconstitutional was the manifest arbitrariness of the said provision in penalising consensual homosexual intercourse. Thus, the doctrine of manifest arbitrariness holds applicability even in the present case, to the impugned provisions of the Citizenship Act. By imposing capricious and irrational restrictions upon the rights and entitlements of OCIs, the aforesaid provisions suffer from “*manifest arbitrariness*”.

q. **BECAUSE** this Hon’ble Court in *S.G. Jaisinghani v. Union of India and Ors.*, [1967] 2 SCR 703, elucidated upon what amounts to arbitrary discretionary powers of the executive as under:

*“In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey—“Law of the Constitution”—Tenth Edn., Introduction ex). “Law has reached its finest moments”, stated Douglas, J. in *United States v. Wunderlick* (1*), “when it has freed man from the unlimited discretion of some ruler ... Where discretion is absolute, man has always suffered”. It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of *John Wilker* (2*), “means sound discretion guided by law. It must be governed by rule, not humour: it must not be arbitrary, vague and fanciful...”*”

Evidently, the application of the rule of law means that known principles and rules should be applied, and as such, an OCI is entitled to know where he stands at law without uncertainty and fear of termination of his citizenship under Section 7D of the Citizenship Act.

- r. **BECAUSE** the notification issued by Respondent No. 3 on 15 November 2019 bearing No.-26011/Misc./47/2019-OCI which prohibits missionary, mountaineering and journalistic activities by OCIs without prior government approval amounts to an arbitrary exercise of the excessive discretionary powers afforded to the government under Section 7B(1) of the Citizenship Act. The said notification also grossly violates the right to life of OCIs under Article 21 of the Constitution and their freedom of religion under Article 25 of the Constitution effectively reducing them to the status of special category visa holders.
- s. **BECAUSE** the MHA notification dated 15 November 2019 at para 6 (vii) (B) which allows OCIs permission to engage only in a few professions on par with Indians is an arbitrary exercise of their uncanalized powers under Section 7B (1) of the Citizenship Act.

- t. **BECAUSE** the blanket ban on OCIs from entering India even prior to the lock down effected due to COVID-19 and the prior government permission required by them to travel to certain areas in India is a violation of their right to liberty and dignity under Article 21 of the Constitution.
- u. **BECAUSE** Section 7B(1) of the Citizenship Act which denies all fundamental rights and constitutional rights to Overseas Citizens of India not expressly granted by the Central Government, along with Section 7D which provides for cancellation of OCI registration on certain grounds, creates two classes of citizenship under the Constitution which only recognizes one class of Indian citizens. This classification is itself wholly impermissible and violates the principle of reasonable classification under Article 14 of the Constitution. In *State of West Bengal v. Anwar Ali Sarkar, 1952 SCR 284*, the erstwhile Chief Justice of this Hon'ble Court, Justice M. Patanjali Sastri, held that any classification made between persons must be founded on a reasonable basis:

“9. Thus, the general language of Article 14, as of its American counterpart, has been greatly qualified by the recognition of the State's regulative power to make laws operating differently on different classes of persons in the governance of its subjects, with the result that the principle of equality of civil rights and of equal

protection of the laws is only given effect to as a safeguard against arbitrary State action. It follows that in adjudging a given law as discriminatory and unconstitutional two aspects have to be considered. First, it has to be seen whether it observes equality between all the persons on whom it is to operate. An affirmative finding on the point may not, however, be decisive of the issue. If the impugned legislation is a special law applicable only to a certain class of persons, the court must further enquire whether the classification is founded on a reasonable basis having regard to the object to be attained, or is arbitrary. Thus, the reasonableness of classification comes into question only in those cases where special legislation affecting a class of persons is challenged as discriminatory. But there are other types of legislation, such as, for instance, the Land Acquisition Act, which do not rest on classification, and no question of reasonable classification could fairly arise in respect of such enactments. Nor, obviously, could it arise when executive orders or notifications directed against individual citizens are assailed as discriminatory.”

In the same decision, Justice MC Mahajan affirmed that the protection afforded by Article 14 is real:

*“It was suggested that good faith and knowledge of existing conditions on the part of a legislature has to be presumed. That is so; yet to carry that presumption to the extent of always holding that there must be some undisclosed intention or reason for subjecting certain individuals to a hostile and discriminatory legislation is to make the protection clause in the words of an American decision, a mere rope of sand, in no manner restraining State action. **The protection afford by the article is not a mere eye-wash but it is a real one and unless a just cause for discrimination on the basis of a reasonable classification is put forth as a defence, the statute has to be declared unconstitutional. No just cause has been shown in the present instance. The result is that the appeals fail and are dismissed.**”*

(emphasis supplied)

In the present case, there is no just cause for discrimination between

OCIs and other citizens of India. OCIs are Overseas “Citizens” of

India and any classification separating citizens into two categories for the purpose of conferral of rights is not justifiable. Thus, the classification created by Section 7B(1) read with Section 7D is wholly impermissible.

- v. **BECAUSE** Section 7B(1) of the Citizenship Act violates the Petitioners' right to enjoy their freedom of religion guaranteed under Article 25 of the Constitution of India, given that any financial contribution by an OCI holder to any religious organization without FCRA registration is hit by the provisions of the FCRA. This Act, inter alia, defines a 'foreign source' to mean citizens of Foreign Countries, in terms of Section 2(j) of the FCRA, without carving out any exceptions for Overseas Citizens. As a result of this, OCIs are precluded from even donating a rupee to a temple hundi or any religious place of their choice despite the MHA notification dated 15 November 2019 granting financial and economic parity between NRIs and OCIs. The same bar applies to any social or philanthropic activities of their choice. This is a violation of the social and cultural right of the Petitioners, which form a part of Article 21 of the Constitution.

- w. **BECAUSE** the State's denial of the right to information to OCIs who often permanently reside in India and pay taxes is a violation of their right to equality, right to freedom of information, and right to life under Articles 14, 19 and 21 of the Constitution.
- x. **BECAUSE** the State's denial of voting rights to Overseas Citizens of India at all levels, in spite of Article 326 of the Constitution only recognizing one class of citizens for the purposes of voting, is violative of their constitutional right to vote. Moreover, the denial of voting rights prevents OCIs from contributing to or engaging in the civic and political life of India even while residing in India, paying taxes, and contributing to nation building. This violates their basic civil and political rights under Article 21 of the Constitution.
- y. **BECAUSE** several Non-Resident Indian citizens who wish to acquire foreign citizenship so as to enjoy social welfare benefits and political rights abroad are unable to do so for fear of losing Indian Citizenship and their unfettered access to residence and familial ties in India.
- z. **BECAUSE** several resident Indian citizens from Goa who by virtue of their Portuguese heritage are desirous of having Dual Portuguese Citizenship and enjoying stronger cultural and familial ties with

Portugal, are unable to accept Portuguese Citizenship without losing Indian Citizenship.

aa.BECAUSE the right to participate in the social and cultural life of his/her community is a fundamental right and a basic human right recognized by international declarations and conventions. The Universal Declaration on Human Rights in Article 27.1 clearly lays out that *“Everyone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.”*

bb.BECAUSE the State has violated the principle of non-retrogression through the Citizenship Amendment Act, 2015. The principle of non-retrogression mandates that once rights are conferred upon the society, they cannot be taken back. However, through the Citizenship Amendment Act, 2015 the term ‘Overseas Citizen of India’ was reduced to the term ‘Overseas Citizen of India Cardholder’ and the citizenship of an OCI was significantly diluted. The principle of non-retrogression was positively emphasized by the Supreme Court in *Navtej Singh Johar v. Union of India, (2018) 10 SCC 1* at various portions of the judgment as follows:

“201. The doctrine of progressive realization of rights, as a natural corollary, gives birth to the doctrine of non-retrogression. As per this doctrine, there must not be any regression of rights. In a progressive and an ever-improving society, there is no place for retreat. The society has to march ahead.”

“202. The doctrine of non-retrogression sets forth that the State should not take measures or steps that deliberately lead to retrogression on the enjoyment of rights either under the Constitution or otherwise.”

“268.9 There is a manifest ascendance of rights under the Constitution which paves the way for the doctrine of progressive realization of rights as such rights evolve with the evolution of the society. This doctrine, as a natural corollary, gives birth to the doctrine of non-retrogression, as per which there must not be atavism of constitutional rights. In the light of the same, if we were to accept the view in Suresh Koushal v. Naz Foundation (2014) 1 SCC 1, it would tantamount to a retrograde step in the direction of the progressive interpretation of the Constitution and denial of progressive realization of rights.”
(emphasis supplied)

Thus, the State cannot by any means dilute the rights of an OCI by, *inter alia*, changing the term ‘Overseas Citizen of India’ to the term ‘Overseas Citizen of India Cardholder’ and making the rights of the OCI coextensive with the validity of the OCI card.

cc. BECAUSE Section 8(2) of the Citizenship Act involuntarily divests minor children of their Indian citizenship when one of their parents renounces their Indian citizenship. Such children are thereby precluded from enjoying and participating in the national, social, cultural, political and religious life of India under Articles 21 and 25 of the Constitution while growing up. The said Section also creates

a second class of citizens distinct from minor children who are Indian citizens, thus violating the mandate of equality under Article 14.

dd. BECAUSE Section 9(1) of the Citizenship Act, in barring dual citizenship, violates the rights of the Indian diaspora to participate in the national, social, cultural, political and religious life of the country, thereby violating their rights under Articles 14, 21 and 25 of the Constitution.

THE POWER OF PARLIAMENT TO DECIDE ON CITIZENSHIP AND IMPLIED LIMITATIONS THERETO

ee. BECAUSE the Constitution of India does not in any manner bar dual citizenship after the commencement of the Constitution and left such matters to be decided by Parliament within its constitutional limits. This position is affirmed by the now repealed Section 12 of the Citizenship Act, the report of the HLC and the statement of reasons in the Citizenship Amendment Act, 2003.

ff. BECAUSE Article 9 of the Constitution only barred dual citizenship at the time of the commencement of the Constitution due to the challenging context of partition. Article 9 only applied to situations *prior* to the commencement of the Constitution. In situations

thereafter, it was left to the Parliament to regulate matters of citizenship via Article 11. This Hon'ble Court in *State of U.P. v. Shah Mohd.*, (1969) 1 SCC 771 held as follows:

"5. It must be remembered that 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. This means that if prior to the commencement of the Constitution a person had voluntarily acquired the citizenship of any foreign State he was not entitled to claim the citizenship of India by virtue of Articles 5 and 6 or 8. This Article thus deals with cases where the citizenship of a foreign State had been acquired by an Indian citizen prior to the commencement of the Constitution (vide Ishar Ahmad Khan v. Union of India [(1962) 3 Supp SCR 235, 244, 245]). Article 11, however, makes it clear that Parliament has the power to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship. The Parliament could thus regulate the right of citizenship by law..."

(emphasis supplied)

Article 9 therefore envisages no bar on dual citizenship after the commencement of the Constitution. This is also borne out of the HLC report and the introduction of the Overseas Citizenship of India itself.

gg. BECAUSE "sovereignty" which vests in the citizenry has been held by this Hon'ble Court to be a basic feature of the Indian Constitution and "Citizenship" is the lifeblood between sovereign citizens and

their Constitution. In this light, neither Parliament nor the Executive has powers under the Constitution to enact laws that involuntarily divest citizens of their citizenship against their will.

- hh. BECAUSE** Article 11 of the Constitution grants Parliament the power to enact laws that govern the acquisition and termination of Citizenship, but the principle of sovereignty places implied limitations on the power of Parliament to enact laws that involuntarily divests citizenship sans a citizen's express consent.
- ii. BECAUSE** notwithstanding the powers of the Parliament under Article 11, it is bound by Article 13(2) of the Constitution of India which explicitly states that the State shall not make any law which takes away or abridges the rights conferred by Part III, and any law made in contravention of this clause shall, to the extent of the contravention, be void.
- jj. BECAUSE** Section 9(1) of the Citizenship Act is unconstitutional in so far as it transgresses the implied limitations on the powers of Parliament under Article 11 of the Constitution and involuntarily divests citizens of their citizenship on the acquisition of foreign citizenship.

- kk. BECAUSE** Section 9(1) of the Citizenship Act is unconstitutional in so far as it fails to recognize that the voluntary acquisition of foreign citizenship does not equal the voluntary divestment of Indian citizenship.
- ll. BECAUSE** in contrast to Section 8 which provides for the express relinquishment of Indian Citizenship, Section 9(1) unconstitutionally divests persons of Indian citizenship in the absence of voluntary and express relinquishment.
- mm. BECAUSE** a harmonious interpretation of the provisions of the Citizenship Act and its amendments mandate that Section 9(1) of the Citizenship Act be read down, insofar as it involuntarily divests a person of their Indian citizenship upon the acquisition of citizenship of another country. Section 8 of the Citizenship Act as it stands may thereafter govern the renunciation of citizenship, as it allows for the voluntary renunciation of citizenship.
- nn. BECAUSE** Section 8(2) of the Citizenship Act is unconstitutional in so far as it causes the involuntary divestment of citizenship of minor children whose parents renounce Indian citizenship. It transgresses the implied limitations on the powers of Parliament under Article 11 of the Constitution and involuntarily divests such minor citizens of

their citizenship on the renunciation of Indian citizenship by their *parents.*

POSITION IN THE UNITED STATES OF AMERICA ON DUAL CITIZENSHIP

oo. BECAUSE the principles qua the sacrosanct value of Citizenship laid down by the United Supreme Court in **Afroyim v. Rusk [387 US 253]** may be referred to in the present case. The US Supreme Court's words in Afroyim that "*Citizenship is no light trifle to be jeopardized any moment Congress decides to do so under the name of one of its general or implied grants of power. In some instances, loss of citizenship can mean that a man is left without the protection of citizenship in any country in the world -- as a man without a country. Citizenship in this Nation is a part of a cooperative affair. Its citizenry is the country, and the country is its citizenry*", ring true in the context of the Indian Constitution which also allows legislation over matters of Citizenship. The concept of implied limitations on the legislature's power over matters of citizenship cuts across jurisdictions and may be applied to the Indian context.

PRAYER

In the light of the aforementioned facts, circumstances, and cases cited, it is most humbly prayed that this Hon'ble Court may be pleased to:

- a. Pass any writ/order or direction to declare Section 9(1) of the Citizenship Act, 1955, ultra-vires Articles 11, 14, 19, 21 and 25 of the Constitution of India, and ultra-vires the Citizenship Act, 1955 in so far as it disentitles the grant of dual citizenship to Indian Citizens after the commencement of the Constitution of India.
- b. Pass any writ/order or direction reading down Section 9(1) of the Citizenship Act insofar as it involuntarily divests a person of their Indian citizenship upon the acquisition of citizenship of another country;
- c. Pass any writ/order or direction to declare Section 8(2) of the Citizenship Act, 1955, as ultra-vires Articles 11, 14, 19, 21 and 25 of the Constitution of India, and ultra-vires the Citizenship Act, 1955 in so far as it involuntarily divests minor Indian citizens of their Indian Citizenship;
- d. Pass any writ/order or direction to declare Section 7B(1) of the Citizenship Act, 1955 as ultra-vires Articles 14, 19 and 21 of the Constitution and declare that Overseas Citizens of India are entitled to all statutory and fundamental rights granted to citizens of India.

- e. Pass any writ/order or direction to declare Section 7D of the Citizenship Act, 1955 as ultra-vires Article 21 of the Constitution.
- f. Pass any such order, direction or remedy as the Hon'ble Court may deem fit in the present case and in the interest of justice, equity and good conscience.

DRAWN BY:

ABISHEK JEBARAJ AND
SRISHTI AGNIHOTRI
ADVOCATES

FILED BY:

SRISHTI AGNIHOTRI
ADVOCATE FOR THE PETITIONERS

PLACE: NEW DELHI

DATE: 23.11.2020