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## IMPLICATIONS OF RESTRICTIVE BIRTHRIGHT CITIZENSHIP POLICIES FOR INDIAN DIASPORA

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### BACKGROUND:

The Universal Declaration of Human Rights has fortified the right to citizenship or nationality but does not specify the procedure on whom should acquire the citizenship of which country, or on what basis<sup>1</sup>. This has allowed countries to independently formulate citizenship rules. With this, two main forms of citizenship determination have been formed since The French Civil Code of 1804<sup>2</sup>, namely Jus Sanguinis and Jus Soli. The former being the right of blood where citizenship was primarily determined by lineage, and the latter being the right of the soil where a person's allegiance is tied to the physical land they were born in.

Current global trends indicate that Jus Sanguinis is heavily prevalent. However, a clear contrast between continents can be observed. Europe, Asia, Africa and Oceania have some provisions for Jus Sanguinis abroad and almost all (with the exception of two states in Africa) for Jus Sanguinis in-country. In contrast, Jus Soli is predominant in the Americas, where it is provided for the second generation in all countries but one<sup>3</sup>.

### LEGAL AND POLICY CHANGES:

Recent years have witnessed a growing trend among several popular migration destinations, such as the United States and various European nations, to restrict birthright citizenship laws that traditionally granted citizenship to anyone born on their soil (jus soli). These changes are primarily driven by concerns over migration control, national security, and the integration of immigrants. For instance, the U.S. government has taken steps to limit automatic citizenship, especially for children born to parents without legal status, aiming to deter irregular migration and birth tourism. The rationale includes preventing exploitation of citizenship laws by non-residents, safeguarding national security, and promoting societal cohesion by ensuring stronger integration of immigrant populations. Such restrictions mark a shift from more liberal citizenship policies historically prevalent in the Americas and reflect a global move to tighten immigration frameworks to address complex socio-political challenges<sup>4</sup>.

<sup>1</sup> United Nations High Commissioner for Refugees, Stateless people, UNHCR, [<https://www.unhcr.org/about-unhcr/who-we-protect/stateless-people>] (visited 15<sup>th</sup> July).

<sup>2</sup> Code civil des Français, 1804, Art. 1382 (France)

<sup>3</sup> Iseult Honohan, *Global Birthright Citizenship Laws: How Inclusive?*, Netherlands International Law Review (Oct. 1, 2018), <https://link.springer.com/article/10.1007/s40802-018-0115-8>.

<sup>4</sup> *United Nations UNHRC Co*, (Nov. 22, 2017), [https://www.unhcr.org/ibelong/wp-content/uploads/EN\\_2015\\_IBELONGReport\\_ePub17.pdf](https://www.unhcr.org/ibelong/wp-content/uploads/EN_2015_IBELONGReport_ePub17.pdf).

The impact of these restrictive citizenship policies is particularly significant for Indian immigrants and their children. Many Indian migrants in countries like the U.S. work or study on temporary visas, and their children, if born abroad, face increased risk of being denied citizenship under new laws. This poses a heightened risk of statelessness or the ambiguous status of being second-generation immigrants without full legal rights. Compounding this issue is India's strict single citizenship policy; India does not allow full dual citizenship, so children born abroad with foreign citizenship may lose Indian citizenship or must choose between the two. Although the Overseas Citizen of India (OCI) card offers limited privileges, it does not confer full citizenship rights like voting or political participation. Consequently, Indian-origin children might encounter legal and social complications affecting their identity, rights, and access to services in both India and host countries.

From a diplomatic perspective, India upholds a sovereignty-based approach emphasizing exclusive national allegiance and legal clarity<sup>5</sup>. The government seeks to maintain consistent citizenship laws to uphold the integrity of national identity and avoid divided loyalties among its diasporas. India engages with its global counterparts through measures like the OCI scheme, which balances inclusion with constitutional constraints on citizenship. However, critics argue that India's inflexible stance may weaken its engagement with commuters and fail to protect children born to Indian immigrants abroad from statelessness or marginalisation. As global mobility and transnational families increase, India faces growing calls to reconsider its citizenship policies to better support integration and protect the rights of its younger generations

### **SOCIAL AND ECONOMIC IMPLICATIONS:**

For children of Indian origin born abroad, especially in countries tightening or restricting birthright citizenship, issues of identity and belonging are deeply complex. Indian law provides citizenship by descent provided at least one parent is an Indian citizen and the birth is registered at an Indian mission abroad within one year. However, delays or complications, such as late registration or parental acquisition of foreign citizenship can leave children in a grey zone, with ambiguous citizenship status<sup>6</sup>. If these children are not recognised as citizens in either their birth or parental countries, they may experience exclusion from formal nationality altogether and develop a sense of statelessness.

This uncertain legal footing impacts a child's ability to integrate into host societies. As highlighted by UNHCR's mission of addressing Childhood Statelessness<sup>7</sup>, children with precarious or delayed citizenship status may struggle with feelings of "in-betweenness," lacking a secure sense of cultural or national identity. The likelihood of feeling neither fully at home in their country of residence nor able to access the benefits of Indian citizenship can perpetuate a sense of alienation and marginalisation, affecting their social inclusion and psychological development.

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<sup>5</sup> Amit Ranjan & Devika Mittal, The Citizenship (Amendment) Act and the changing idea of Indian Citizenship, 2023 *Asian Ethnicity* 24, 463-481, <https://doi.org/10.1080/14631369.2023.2166460>

<sup>6</sup> Embassy of India, Asuncion, Paraguay, (Dec. 16, 2666), <https://eoiasuncion.gov.in/registration-of-birth-of-a-minor-child.php>.

<sup>7</sup> *Supra* note 4.

Moreover, access to healthcare is similarly compromised. Without recognised citizenship or the required identification, children may be denied preventive care, immunisation, and regular health services, or subjected to bureaucratic hurdles that discourage their parents from seeking help. In many instances, the stigma and suspicions arising during eligibility checks for public benefits compound the feeling of exclusion, and the resulting invisibility can have lifelong ramifications.

#### I- Community Impacts:

Adding on, business formation and upward mobility become particularly difficult without recognised citizenship, as many countries require local citizenship or permanent legal status for registering businesses, owning certain types of property, or obtaining business loans. Inheritance rights present another challenge: while NRIs can inherit property in India, the process can be complex, involving strict documentation and, in case the inheritor is a citizen of a foreign state, sometimes requiring approval from authorities like the Reserve Bank of India<sup>8</sup>. In some host countries, laws limit property ownership or inheritance rights for those in temporary or uncertain legal statuses, resulting in additional insecurity.

Indian diaspora communities have responded with advocacy for legal reforms, both in host countries to protect the rights of migrant children, and in India for more inclusive citizenship laws and streamlined procedures. Legal challenges in Indian courts have occasionally produced relief for stateless children, but the government generally maintains its cautious stance, resisting broad precedent that could dilute the intent of Indian citizenship law. Examples of these emerge in cases like *Rachita Francis Xavier v. Union of India (2024)*<sup>9</sup> as well as *P. Ulaganathan v. Govt of India (2019)*<sup>10</sup>. Civil society organisations offer support to affected families, including help with documentation, legal counselling, and policy advocacy.

#### II- Government Responses:

While India has introduced the Overseas Citizen of India (OCI) scheme to engage with its diaspora, it grants only partial rights; denying full political participation and placing limits on property ownership, especially agricultural land. Critics argue that these restrictions, along with India's firm stance against dual citizenship, have led to missed opportunities for deeper migration engagement, innovation, and economic growth, and have failed to safeguard the welfare of children with complex international ties.

Defenders of India's citizenship policy argue that restricting dual citizenship preserves national sovereignty, ensures undivided loyalty, and reduces the risk of external influence in Indian domestic affairs. They cite the dangers of divided allegiance, the potential for misuse in areas of national security, and the administrative complexity of managing dual citizens spread worldwide. From this perspective, the current model is seen as balancing the need for clear legal frameworks with avenues to maintain citizenship links (e.g., OCI), supporting economic ties without risking constitutional or security principles.

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<sup>8</sup> *Dual Citizenship in India: Benefits, Challenges, and Status*, Insights 2024 (Mar. 30, 2024), <https://legalhelpnri.com/validity-of-dual-citizenship-in-india/>.

<sup>9</sup> *Rachita Francis Xavier v. Union of India*, (Union of India, 2024).

<sup>10</sup> *P. Ulaganathan v. Govt of India* (2019)

Yet, global trends and the lived experiences of children and families affected by restrictive laws continue to highlight the human costs of such rigidity. The growing visibility of statelessness and the challenges of integration for Indian-origin children compel an ongoing debate on the need for reforms that reconcile national interests with human rights and the realities of transnational lives.

Recently, the debate over restrictive birthright citizenship policies acquires greater complexity with the enactment of India's Citizenship Amendment Act (CAA). Passed in 2019 and implemented in 2024, the CAA represents a significant departure from India's secular citizenship framework by explicitly providing a fast-tracked path to citizenship for non-Muslim minorities, namely, Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians from Afghanistan, Bangladesh, and Pakistan who arrived before December 31, 2014<sup>11</sup>. The Act reduces residence requirements and grants immunity from illegal immigrant status, fundamentally reshaping the naturalization process for these groups.

The CAA, however, has generated intense controversy domestically and among the Indian diaspora. Critics contend that the law undermines the secular ethos enshrined in India's Constitution by using religion as a criterion for citizenship, contravening the principle of legal equality (Article 14)<sup>12</sup>. The Act's exclusion of Muslim groups, such as the persecuted Ahmadiyyas from Pakistan or Rohingya from Myanmar, has fuelled accusations of discrimination and majoritarian bias, raising concerns about the politicisation of citizenship.

Beyond legal and ethical questions, the CAA's intersection with projects like the National Register of Citizens (NRC) has triggered anxieties over statelessness among minorities unable to provide documentation, especially in regions like Assam. The selective regularisation also poses challenges for migrant Indians, as it signals a move towards a more exclusive, religion-based approach to citizenship - an approach that could complicate their own engagements with identity, return, and property rights. Internationally, human rights organizations and foreign governments have criticized the Act for contravening universal principles on non-discrimination and refugee protection.

The passage and operationalisation of the CAA have cast a long shadow over the discourse on citizenship for both Indians at home and those abroad. While the law claims to remedy historical injustices and offer sanctuary to persecuted minorities, its religious filtering has drawn strong counterarguments regarding constitutional equality, secularism, and the perils of exclusion. In the context of restrictive birthright policies worldwide, the CAA complicates the path to citizenship for many and imposes new dilemmas on diaspora families, challenging India to reconcile national interests, humanitarian commitments, and the realities of an increasingly interconnected world.

## **POLICY RECOMMENDATIONS AND CONCLUSION:**

A reimagined approach to citizenship policy in India should prioritise inclusivity, administrative clarity, and alignment with the nation's constitutional principles. Enacting a

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<sup>11</sup> *India Supreme Court to take up petitions challenging controversial citizenship laws*, News (Mar. 15, 2024), <https://www.jurist.org/news/2024/03/india-supreme-court-to-take-up-petitions-challenging-controversial-citizenship-laws/>.

<sup>12</sup> Constitution of India art. 14 (1950)

framework that treats all eligible individuals equally, irrespective of their religious identity, would help restore faith in the rule of law and promote social cohesion. Permitting some form of conditional dual citizenship or at a minimum, expanding the rights associated with Overseas Citizen of India (OCI) status would help millions maintain stronger connections to India, encouraging investment, knowledge transfer, and deeper diaspora engagement while maintaining safeguards relevant to national security. Such policy adjustments could strike a balance between legitimate security concerns and the realities of a globally mobile population.

To maintain a dynamic and adaptive legal framework, India would benefit from periodic, independent reviews of the CAA and related statutes. Engaging legal experts, civil society, and representatives of minority communities in a transparent assessment process would help ensure that citizenship laws remain responsive to changing societal needs and international standards. Such reviews would also reinforce trust in institutions and encourage broader public participation in policy discourse.