# BEYOND THE TEXT OF 1950: THE JURISPRUDENTIAL RATIONALE OF ARTICLE 11, THE CITIZENSHIP ACT, 1955, AND THE EVOLUTION OF THE INDIAN POLITY

Raja Sekhar Manchani, BA LLB, Mahatma Gandhi Law College,
Osmania University, Hyderabad.

**ABSTRACT**

A prevailing misconception in Indian constitutional discourse assumes that Part II of the Constitution exhaustively codifies citizenship law. This paper deconstructs this notion by analyzing the deliberate structural divide the framers created between traditional constitutional provisions and flexible statutory mandates. By examining the legislative intent behind Article 11[1] alongside the subsequent enactment of the Citizenship Act, 1955, this article explores how the constitutional design intentionally empowers Parliament to protect national sovereignty through legislation. Moving beyond abstract theory, the paper evaluates the practical application of this statutory flexibility through critical legislative shifts: the 1986 Amendment, the 2003 Amendment, and the Citizenship Amendment Act (CAA), 2019. Crucially, it explores the ongoing ideological conflict between anti-CAA civic arguments anchored in the inclusive territoriality of Article 5[2] and the state's sovereign mandate. Finally, it argues that the symbiotic relationship between Part II and the Citizenship Act, 1955 forms a robust legal shield allowing India to dynamically defend its borders and demographic integrity while remaining anchored to foundational constitutional values.

**Keywords:** Adultery, Section 497, Indian Marital System, Judicial Shift, Civil Remedy, Chaturvidha Purushartha.

[1]Article 11 of The Constitution of India
[2]Article 5 of The Constitution of India

## I. Introduction

Citizenship serves as the foundational legal currency of a sovereign republic, dictating the boundaries of political membership and individual rights. In India, the legal architecture governing citizenship is uniquely split between the explicit text of Part II of the Constitution and the fluid statutory provisions of the Citizenship Act, 1955. For students of constitutional law, a vital question emerges: if the Constitution is the supreme law of the land, why does it not comprehensively codify the rules governing its own polity? This question has taken on renewed urgency in contemporary legal discourse, as recent legislative amendments test the limits of parliamentary oversight versus constitutional principles.

The enactment of a separate statutory framework via the Citizenship Act, 1955 was a deliberate architectural choice by the framers rather than an administrative oversight. Recognizing that a newly partitioned nation required an adaptable statutory mechanism to navigate volatile demographic shifts, the creators of the Constitution intentionally bifurcated citizenship regulations into two distinct tiers: foundational, transitional anchors within the constitutional text, and flexible legislative mandates subject to parliamentary modification.

Article 11 of the Constitution and the Citizenship Act of 1955 give Parliament the full power to pass new laws to protect the country's security and borders[3]. To handle changing times, India updated these laws through major amendments in 1986, 2003, and the Citizenship Amendment Act (CAA) of 2019. While the CAA triggered intense debates between inclusive birthright citizenship and national security, the courts continuously review these updates under the Basic Structure Doctrine[4] to ensure India protects its borders without violating core constitutional values.

## II. The Temporal Architecture of Part II

To understand why the Indian Constitution is not self-contained regarding nationality, one must revisit the turbulent historical context of its drafting. The Constituent Assembly debates reveal that creating a permanent citizenship code was nearly impossible in 1949 due to the massive, unpredictable migration waves caused by the Partition of India [5].

[3]The Citizenship Act, 1955, No. 57 of 1955 (India)
[4]Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225
[5]Constituent Assembly Debates, Vol. IX, 10th August 1949 (Statement by Dr. B.R. Ambedkar)

As a direct consequence, Articles 5 through 8 were engineered with a strict temporal anchor. They did not aim to establish permanent law for future generations; rather, they settled who would be recognized as a citizen at the exact moment of the Constitution's commencement on 26th January 1950[6]. Article 5 addressed individuals' domicile in India, while Articles 6 and 7 created transitional legal rules for those migrating between India and Pakistan. Article 8 protected the status of overseas Indians[7]. Because these provisions were designed to deal with immediate post-colonial emergencies, they lacked the systemic longevity required to manage a nation-state across centuries. The framers intentionally left a blank canvas for the future.

**1. The Structural Complications Within Articles 5 to 8**

The creation of Article 11 was a direct response to what Dr. B.R. Ambedkar famously called a "headache"—the volatile, chaotic, and unprecedented situations created by the Partition of India[8]. Articles 5 to 8 were drafted as an ad hoc, emergency framework to handle millions of displaced people moving across newly created borders. However, the immediate real-world cases and intense political demands inside the Constituent Assembly proved that no permanent constitution could predict the future of a newborn nation. The framers attempted to group people into distinct categories, but each category presented volatile, evolving challenges:

**Article 5 (Citizenship by Domicile):** This granted citizenship to anyone born or resident in India for 5 years. The legal complication was that it based citizenship largely on jus soli (right of birth/soil). Members pointed out absurd anomalies—such as a child born to a foreigner passing through India on a temporary visit, or even born mid-flight over Indian airspace—automatically becoming a citizen, whereas children of patriotic Indians born abroad might face hurdles.

**Article 6 (Migration from Pakistan to India):** It carved a path for those arriving from Pakistan before or after the cut-off date of July 19, 1948 (the day the permit system for migration was introduced). Commencing on 26th January 1950, this rule froze a dynamic human emergency into a rigid constitutional text. What if people continued fleeing communal violence in East or West Pakistan long after 1950? A fixed article offered them no

[6]Durga Das Basu, Commentary on the Constitution of India 1245 (Lexis Nexis, 9th ed., 2014)
[7]Articles 6, 7 and 8 of the Constitution of India
[8]Constituent Assembly Debates, Vol. IX, 10th August 1949, p. 421

constitutional remedy.

**Article 7 (Migration to Pakistan and Return):** This dealt with a highly controversial demographic—people who migrated to Pakistan after 1st March 1947, but returned to India under a permit for resettlement. This created massive domestic unrest. Many returning migrants found their properties already designated as "evacuee property" and allocated to Hindu/Sikh refugees from Pakistan. Granting automatic citizenship to returning Muslims while local refugees remained homeless created extreme socio-political friction.

**Article 8 (Indian Diaspora Abroad):** It allowed persons of Indian origin residing abroad to register via embassies. In 1949, India's consular registration infrastructure was practically non-existent or deeply flawed. Framers realized they could not predict how changing international treaties or hostile foreign governments would affect millions of overseas Indians over the next few decades.

**2. The Clashing Demands in the Constituent Assembly**

During the debates of August 1949, over 140 amendments were proposed, driving a deep wedge between two ideological factions. Factions led by Dr. P.S. Deshmukh vehemently demanded that India explicitly prioritize Hindus and Sikhs, moving an amendment stating that every person who is a Hindu or a Sikh, wherever they lived in the world, should be automatically entitled to Indian citizenship because "they have no other home"[9]. Prime Minister Jawaharlal Nehru and Alladi Krishnaswami Iyer forcefully countered these demands, dismissing religion-based citizenship as "absurd," and arguing it would violate international law and India's secular promise.

**3. Key Judicial Cases Highlighting the Chaos**

The courts quickly faced complex, heartbreaking human scenarios that highlighted why a rigid constitutional code would have failed. In *State of Bihar v. Kumar Amar Singh (1955)*, a lady went to Pakistan in 1947, leaving her husband in India, and claimed she went only for medical treatment. Returning on a Pakistani passport, the Supreme Court had to untangle whether her physical migration under Article 7 overrode her marital domicile under Article 5[10]. Similarly,

[9]Constituent Assembly Debates, Vol. IX, 11th August 1949 (Statement by Dr. P.S. Deshmukh)
[10]State of Bihar v. Kumar Amar Singh, AIR 1955 SC 282

in *Central Bank of India v. Ram Narain (1955)*, the courts noted that strict application of Articles 5 and 6 without a flexible legislative remedy would cause immense human cruelty to minors trapped by split families[11].

**The Ultimate Resolution: Why Article 11 was born?** Faced with a "veritable jungle" of conflicting amendments, overlapping migration timelines, and volatile geopolitics, Dr. B.R. Ambedkar made a tactical legislative decision. He declared that the Constituent Assembly was only deciding citizenship ad hoc for the time being (as of January 26, 1950). To untie the hands of the future nation, he drafted Article 11, granting plenary authority for the future so a democratically elected Parliament could pass comprehensive, logical laws.

## III. Article 11 as a Constitutional concession of plenary power.

The structural limitations of Part II were resolved through Article 11, which acts as a powerful non-obstante clause within the constitutional framework. Dr. B.R. Ambedkar explicitly clarified in the Constituent Assembly that the purpose of Part II was simply to create a functional baseline to jump-start the Republic. The assembly recognized that a future Parliament, operating in a more stable geopolitical environment, would be better equipped to draft a comprehensive nationality code. Thus, Article 11 represents a rare constitutional concession, granting ordinary statutory law the power to bypass preceding constitutional text.

## IV. The Core Functional Mandate of the Citizenship Act, 1955.

Pursuant to Article 11, Parliament enacted the Citizenship Act, 1955, providing the essential, operational machinery that the Constitution deliberately omitted. The necessity of this statutory framework is evident across two legal pillars:

**Continuous Acquisition Pathways:** The constitutional text fails to provide a mechanism for the acquisition of citizenship by persons born after its commencement. Sections 3, 4, 5, and 6 of the 1955 Act created sustainable legal channels for acquisition via birth (jus soli), descent (jus sanguinis), registration, and naturalization[12].

**The Mechanics of Exit and Loss:** While Article 9 of the Constitution bars dual nationality[13],

[11]Central Bank of India v. Ram Narain, AIR 1955 SC 36
[12]The Citizenship Act, 1955, §§ 3-6
[13]Article 9 of The Constitution of India

it fails to provide any administrative or penal process for the renunciation of nationality. The 1955 Act explicitly details the terms for renunciation (Section 8), automatic termination upon taking another passport (Section 9), and compulsory deprivation by the state in cases of fraud or disloyalty (Section 10)[14].

## V. The Act in Action.

The true brilliance of utilizing an ordinary Act over constitutional text is the speed with which the state can adjust its borders and community definitions without executing a rigid constitutional amendment process under Article 368. The evolution of the 1955 Act reflects India's shifting national security and political landscape:

**The 1986 Amendment: Shifting away from pure Jus Soli.** Originally, Section 3 of the 1955 Act granted automatic citizenship to anyone born within the territory of India. However, mass irregular migration from Bangladesh into Assam led Parliament to amend the Act in 1986[15], adding a requirement that a person born in India on or after 1st July 1987, would only be a citizen if at least one parent was an Indian citizen at the time of birth, shifting towards jus sanguinis.

### The 2003 amendment: The rise of the 'Illegal Migrant' and OCI.

The 2003 Amendment formally introduced the concept of an "illegal migrant" into Section 2(1)(b)[16], declaring that any foreigner entering India without valid travel documents could never apply for naturalization. Concurrently, the amendment created the framework for the overseas Citizenship of India (OCI) scheme.

### The Citizenship Amendment Act (CAA), 2019: The paradigm of plenary discretion.

The Citizenship Amendment Act (CAA), 2019, serves as the ultimate contemporary case study of Article 11's statutory elasticity[17]. By fast-tracking naturalization pathways for persecuted religious minorities from Pakistan, Bangladesh, and Afghanistan, Parliament fundamentally altered the criteria under Section 6 of the Act. While the state asserts its sovereign mandate through Article 11, anti-CAA civic arguments remain anchored in the inclusive, territorial

[14]The Citizenship Act, 1955, §§ 8-10
[15]The Citizenship (Amendment) Act, 1986 (Act No. 51 of 1986) (India)
[16]The Citizenship (Amendment) Act, 2003 (Act No. 6 of 2004) (India)
[17]The Citizenship (Amendment) Act, 2019 (Act No. 47 of 2019) (India)

philosophy of birthright citizenship inherent in the original spirit of Article 5.

Therefore, Article 11 must be interpreted as a Constitutional Trust. Parliament is fully empowered to alter the logistics of citizenship (such as changing residency years, introducing registration cuts, or updating documentation rules to prevent illegal entry). However, it cannot use ordinary statutory amendments to fundamentally alter the identity of the political community in a way that destroys the pluralistic, non-ethnic foundation established in 1950. The statutory power granted by Article 11 must always be used to protect the constitutional ecosystem, never to undermine it[18].

## VII. Conclusion: Reconciling plenary power with constitutional equilibrium

The evolutionary journey of Indian citizenship law reveals that the framers of the Constitution never intended for the legal definition of an Indian identity to be frozen in the ashes of the 1947 Partition. The deliberate separation between Part II of the Constitution and the Citizenship Act, 1955 is a defining feature of the Indian state. Part II served as an emergency framework for a nation born out of Partition, while Article 11 left the door open for future growth. Together, the constitutional principles of Part II and the statutory flexibility of the Citizenship Act, 1955 form a robust legal shield, allowing the Indian polity to protect its borders and demographic integrity dynamically, while ensuring its legislative updates remain answerable to foundational constitutional values.

[18]Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225

**REFERENCES:**

The Constitution of India, 1950, art. 5, 6, 7, 8, 11.

Constituent Assembly Debates, Vol. IX, 10th August 1949 (Statement by Dr. B.R. Ambedkar).

The Citizenship Act, 1955 (Act No. 57 of 1955), §§ 3-6, §§ 8-10.

The Citizenship (Amendment) Act, 1986 (Act No. 51 of 1986).

The Citizenship (Amendment) Act, 2003 (Act No. 6 of 2004).

The Citizenship (Amendment) Act, 2019 (Act No. 47 of 2019).

Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

Central Bank of India v. Ram Narain, AIR 1955 SC 36.

State of Bihar v. Kumar Amar Singh, AIR 1955 SC 282.

Durga Das Basu, Commentary on the Constitution of India 1245 (Lexis Nexis, 9th ed., 2014).