Chapter 36

Dual Citizenship

General Observations

We were called upon by the Terms of Reference of the Committee "to review the status of Persons of Indian Origin (PIOs) and Non-Resident Indians (NRIs) in the context of the Constitutional provisions, laws and rights applicable to them both in India and the countries of their residence".

There are broadly two distinct categories of overseas Indians: -

i) Persons of Indian Origin (PIOs) who have acquired the citizenship of other countries;

ii) Non Resident Indians (NRIs) who continue to hold Indian passports and are citizens of India.

Basically, all NRIs are PIOs but all PIOs are not NRIs. We use the two expressions for the sake of convenience of reference. Most PIOs, except those in North America, Europe, Australia, New Zealand and Singapore have not evinced any particular interest in dual citizenship. Those PIOs would be more interested in PIO Cards.

36.2. Many waves of migration took Indians to different lands during different periods of history. Most of them who went before the advent of the East India Company have been assimilated in those countries. Those who went as indentured labour during the British rule have become citizens of the countries where they settled. Those countries have gained independence. Indians whose ancestors migrated to these countries are full-fledged citizens of those countries. In most countries, the overseas Indian communities have blossomed and have come into their own. Fiji is an unfortunate exception. Later waves of migration to the developed countries of the world account for the bulk of the Indian community in those countries. Most of them, except those who had gone to some of the Commonwealth countries as agriculturists or as passengers have also become citizens of those countries. For lack of a better expression, we call them Persons of Indian Origin. They are Indogenic people, the Bharatvanshis, who at different periods of history have taken the citizenship of the countries where they took their domicile. Of those who left India for further education or in search of better opportunities, many have taken the citizenship of foreign countries;

Many of them, however, do continue to have Indian passports but they have rights of residence including the right to indefinite residence in those countries. Those who have taken citizenship of foreign countries are full-fledged citizens of those countries. Their legal status is defined by the law of the country of which they are citizens. Their status in the Indian law at present is that they acquired the citizenship of another country and renounced the citizenship of India.

36.3. Non-Resident Indians (NRIs) do, of course, retain their Indian citizenship and Indian passports. Indian laws apply to them except in certain situations of conflict of laws under private international law and the laws of the countries in which they reside. Their stay in the countries of their domicile depends on the provisions of the laws of the country where they reside.

36.4. In this chapter, the Committee deals with the question of dual nationality, an expression which is employed synonymously with dual citizenship in terms of international law.

Demand for Dual Nationality

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 grand children 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.

Nationality and Citizenship

36.7. The two expressions 'citizenship' and 'nationality' are often used interchangeably in international law, though there may certain shades of distinction between the two. Citizenship is acquired by birth or by naturalization. Nationality, on the other hand, is more a description of cultural identity than a matter of political and personal rights. In some Latin-American countries, for example, the expression 'citizenship' is used to denote the sum total of political rights of which a person may be deprived, by way of punishment or otherwise without being divested of is or her nationality. A different kind of distinction between the two terms exists in the U.S.A. The States of the United States of America may grant citizenship to their residence in their respective territories after fulfilling certain conditions under their laws, whereas the Federal Government of U.S.A. confers American nationality. Moreover, persons belonging to territories and possessions which are not among the States forming the Union are described as 'nationals'. They owe allegiance to the United States and are United States nationals in the contemplation of international law but they do not possess full rights of citizenship in the United States. It is their nationality in the wider sense, not their citizenship, which is internationally relevant. In the Commonwealth, it is the citizenship of the individual states of the Commonwealth which is of primary importance for international law, while the concept of a 'British subject' or 'Commonwealth citizen' is relevant only as a matter of the internal law of the countries concerned.

Nationality in International Law

36.8. The term nationality is, however, often used in common parlance synonymously with citizenship. Oppenheim describes it as "the principal link between individuals and the benefits of the Law of

Nations" (*Oppenheim's International Law*, eighth edition by H. Lauterpacht, P.645). Ordinarily matters connected with nationality fall within the ambit of the constitutional or public law of a State. The jurisdiction of a State to legislate or regulate on matters relating to nationality has, however, to be exercised in consonance with the prevailing norms of international law and practice so as to obviate or minimise conflict situations which may arise in a number of ways.

36.9. Articles 1 and 2 of the Convention on Certain Disputes Relating to the Conflict of Nationality Laws, 1930 (*League of Nations*, Doc. C 24 M. 13. 1931 signed at The Hague on April 12, 1930. L.N.T.S. Vol. 179, P.89) clearly stated as follows:

Article 1: "It is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality."

Article 2: "Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of that State."

36.10. In 1952, Professor Manley O. Hudson, a Special Rapporteur of the International Law Commission who was also a Judge of the Permanent Court of Justice (League of Nations), stated: "In principle, questions of nationality fall within the domestic jurisdiction of each State."

36.11. The question of nationality or citizenship of individuals, the conferment as well as the deprivation, is thus largely determined by the sovereign States. Nationality laws must, however, take note of the laws of other countries as far as possible and should be consistent with international customs, usage and conventions. Such laws should also aim to avoid statelessness and other anomalies. Dual or multiple nationality may often arise as a result of the operation of different national laws and the absence of global uniformity in respect of citizenship laws. It is noteworthy that after the Second World War, there has been a growing movement in the direction of recognising plural nationality or citizenship.

36.12. Nationality is acquired by birth or naturalization as well as by operation of laws. Nationality at birth could be acquired in different ways, each of the ways showing proof of a connection between the national and his or her State. A person born within the territory or the State could acquire the nationality of that State by operation of law under the principle of *jus soli*. Nationality by birth underlines the territorial connection of the person with the land of his or her birth. There are many examples of this type of nationality. The principle of *jus soli* does not however apply to the children of diplomatic agents or of an alien in transit. It also does not apply to those whose residence is due to their being in the service of a foreign country. On the other hand, the principle of *jus sanguinis* confers nationality by descent according to the nationality of one, or both, of the parents, usually of the father alone, but in some cases also of the mother. A patrilinear or matrilinear connection is, therefore, a part of the *jus sanguinis*. The principles of *jus soli* or *jus sanguinis* came

to be generally accepted as forming the basis of national laws concerning nationality by the beginning of the 20th century. Both those principles were based on the evidence of a connection between the individual and the State of his nationality. Similarly, marriage has also been recognised as one of the involuntary modes of acquisition of dual nationality in many countries. For instance, the national laws of India, Indonesia and the Philippines allow a woman marrying a foreign national to continue to retain her original nationality even when she acquires automatically the nationality of her husband by virtue of marriage according to the law of her husband's country. In the Indian legal system, there is no automatic acquisition of nationality by marriage, but marriage to an Indian national is regarded as a good ground for the purpose of naturalization. It appears that most countries do not object to dual nationality arising from involuntary modes of acquisition or conferment of nationality. The problem is somewhat more complex in cases of relinquishment or renunciation of one's nationality and the voluntary acquisition of another nationality by naturalization and registration.

36.13. Nationality may be acquired by naturalization or by procedures of registration. A period of residence in the country of naturalization is often required by the legislation as a condition of naturalization. In many countries, the period can be reduced substantially for those seeking naturalization if they belong to specified categories: e.g. those who are married to a national or have their ancestral connection with the country upto a specified number of generations or possess particular educational qualifications or have rendered service to the State in which naturalization is sought. In some countries, the ability to read and write the language of that country is also stipulated as a condition for naturalization. In certain cases, such as the '*Flutie* cases' (Ralston*, Venezuelan Arbitrations of 1903,* p.38), a certificate of naturalization was held to be invalid on account of the noncompliance with the legal requirement of the required period of residence. In many cases, naturalization is preceded or accompanied by a declaration of renunciation or relinquishment of the original nationality.

36.14. While the procedures of naturalization and registration are voluntary modes of acquisition of nationality, the other two principles – *jus soli* and *jus sanguinis* – are not. By virtue of the operation of those principles governing nationality, dual or plural nationality arises in several cases even if dual nationality is not expressly recognised by a State. For instance, India recognises both *jus soli* and *jus sanguinis* principles. A person born in the U.S.A. to an Indian father would become an Indian citizen automatically by descent under the principle of *jus sanguinis*. (Section 4 of the Indian Citizenship Act, 1956). At the same time, he acquires the American nationality by virtue of his birth in that country *(jus soli)*. Similarly, if a person was born to American parents in India on or after the 26th day of January, 1950 and before the commencement of the Citizenship (Amendment) Act 1986, he or she became an Indian citizen by birth. A person born after the commencement of the Amendment Act, 1986, if either of his or her parents was a citizen of India at the time of his or her birth would also be an Indian citizen. (Section 3 of the Act as amended).

Citizenship Issues in the Constituent Assembly

36.15. The Constituent Assembly received numerous memoranda on behalf of the people of Indian origin from different parts of the world but the question of dual nationality as such was not discussed in detail in the Constituent Assembly. The idea was neither accepted nor negatived. Loss of Indian citizenship as a result of the voluntary acquisition of foreign nationality was expressly contemplated in Article 9 which seemed to have a wider application, although that was mainly with a view to avoid the confusion with regard to citizenship at the time of partition and its consequences. The travoux preparatoire, the draft articles and the debate in the Constituent Assembly show that on the question of citizenship at the commencement of the Constitution was the main focus of attention.

36.16. When draft Articles 5 and 6 of the original draft came up for discussion on 10 August, 1949, the President of the Constituent Assembly, Dr. Rajendra Prasad observed that "there was a veritable jungle of amendments, something 130 or 140 amendments", to those two articles. He called upon Dr. B.R. Ambedkar to move the Articles in the form in which he had finally framed them. Dr. Ambedkar made it clear repeatedly that **"it is not the object of this particular article to lay down a permanent law of citizenship for this country. The business of laying down a permanent law of citizenship has been left to Parliament, and as Members will see from the wording of Article 6 as I have moved, the entire matter regarding citizenship has been left to Parliament to determine by any law that it may deem fit."** Dr. Ambedkar added that the effect of draft Article 6 was that "Parliament may not only take away citizenship from those who are declared to be citizens on the date of the commencement of this Constitution by the provisions of Articles 5 and those that follow, but Parliament may make a new law embodying new principles." He emphasised that the provisions in the Constitution were not intended to be permanent or unalterable and that those Articles contained only ad-hoc decisions for the time being. The premise of the constitutional provisions as contained in Part II of the Constitution was that they were only for the purpose of conferring citizenship on the date of the commencement of the Constitution. With the partition of the country, it was necessary to define citizenship as on the date of the commencement of the Constitution, and to exclude those who had chosen to opt for Pakistan from the citizenship of India. The rest was left to Parliament. As the President of the Constituent Assembly pointed out in the debate on 11 August, 1949: **"Dr. Ambedkar drew the attention of the House to two important limitations. 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.** With these limitations in mind, I think the discussion of these two articles can be curtailed to a considerable extent and the matter might be disposed of quickly." It was already the eighth month of the year 1949 and the Constituent Assembly was keen to bring its deliberations to a close. In any case, the entire law of citizenship could not be

incorporated in the Constitution itself. That is why, time and again, it was emphasised that the articles in the Constitution relating to citizenship were entirely **provisional** and that the question of citizenship laws were left to legislation by Parliament.

36.17. Dr. P. S. Deshmukh pointed out in the course of the debate that "the whole House and the whole country is aware of the way in which Indian nationals are treated all over the world. They are aware of the kind of colour prejudice that used to be there in England, the kind of persecution through which Indian citizens are going even now in South Africa, how they are persecuted in Malaya and Burma, how they are looked down upon everywhere else in spite of the fact that India is an independent country. The House is aware how it is not possible except for the merest handful to obtain citizenship in America, although they have spent their whole lives there.... In America, Indians can obtain citizenship at the rate of 116 or 118 per annum." He said that he would not mind if it is left to Parliament to debate the whole question of citizenship of India. Shri Naziruddin Ahmad's intervention makes it clear that Members were finding it difficult to wade their way through the jungle of amendments. Shri Jaspat Roy Kapoor found it obnoxious that persons who had migrated to Pakistan and transferred their loyalty from India to Pakistan were being allowed to return to India for resettlement or permanent return and would be deemed to be citizens of India, as was contemplated in the draft provision which eventually became Article 7 of the Constitution of India. However, he concurred with the intention underlying the draft articles that Parliament should have the right to frame any new law laying down qualifications for the right of acquisition of citizenship.

36.18. Prof. K.T. Shah moved an amendment under which "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 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." Prof. K.T. Shah's amendment would have had the effect of preserving the nationality of those who had or were entitled to have Indian citizenship by virtue of their birth at the commencement of the Constitution. He was keen to make citizenship not only a birthright, but also an inheritance and wanted to confer it on individuals whose grandparents were born in India. He intended that such person would acquire the privilege of being an Indian citizen automatically. Interestingly, Prof. Shah went on to address the question of "those who by settlement in other lands for business connection or by a formal act of acquisition of another citizenship, under the naturalization laws of that country, become citizens of that country, we would be right in providing that, if they desire to acquire the citizenship of India, their path should be simplified." He wanted that option to be made available subject to the condition that they really intended to reside in India, be part and parcel of India, and were prepared to share all the duties and obligations of the country's citizenship. Prof. Shah also referred to the countries of South Asia "where large

numbers of Indians have settled and where, under the new upsurge of local nationalism, their treatment is not all that can be desired." Referring to Africa as the most glaring, the most poignant case of invidious discrimination against Indians, Prof. Shah wanted India to retaliate against nations which did not mete out equal treatment to people of Indian origin and did not protect their dignity and honour. He criticised the inequalities and indignities faced by Indian citizens within the Commonwealth.

36.19. Both Pandit Thakur Das Bhargava and Shri R.K. Sidhwa were opposed to the draft provision which enabled the return of those who had migrated to Pakistan and the deeming provision which made them Indian citizens. Shri R.K. Sidhwa wanted the doors of Indian citizenship to be kept open to Parsis outside India. Shri B.P. Jhunjhunwala moved an amendment to the effect, *inter alia*, that "a person who on account of civil disturbances or the fear of such disturbances, having the domicile of India, as defined in the Government of India Act, 1937, and being resident in India before the partition, has decided to reside permanently in India, or has migrated to the territory of India from the territory now included in Pakistan, shall be deemed to be a citizen of India at the date of the commencement of this Constitution. The debate on the draft articles relating to citizenship continued on the third day, i.e. on the 12th of August, 1949. On that day, Sardar Bhupinder Singh Mann stoutly opposed the deeming provision which enabled those who had migrated to Pakistan and had then returned to India to be recognised as Indian citizens. Shri Mahboob Ali Baig Sahib supported the deeming provision.

36.20. In a significant intervention, Pandit Jawaharlal Nehru pointed out that the articles relating to citizenship "have probably received far more thought and consideration during the last few months than any other article contained in this Constitution." He referred to two factors which had given rise to the difficulties relating to the provisions on citizenship. He said, "**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**. Personally, I think that the provision made has been on the whole very satisfactory. Inevitably no provision could be made, which provided for every possibility and provided for every case with justice and without any error being committed. **We have millions of people in foreign parts and other countries. Some of those may be taken to be foreign nationals, although they are Indians in origin. Others still consider themselves to some extent as Indians and yet they have also got some kind of local nationality too, like for instance, in Malaya, Singapore, Fiji and Mauritius. If you deprive them of their local nationality, they become aliens there. So, all these difficulties arise and you will see that in this resolution we have tried to provide for them for the time being, leaving the choice to them and also leaving it to our Consuls Generals there to register their names. It is not automatic. Our representatives can, if they know the applicants to be qualified for Indian citizenship, register their names."** (emphasis added).

36.21. Pandit Jawaharlal Nehru, however, devoted the greater part of his speech to the question of those who had migrated to Pakistan and had returned to India under permits issued under the authority of the Government of India. The number of such persons was quite small, but the debate was heavily preoccupied with the issue.

36.22. Shri Alladi Krishnaswami Ayyar, an eminent lawyer and a Member of the Drafting Committee, explained that the object of the draft articles on citizenship was not to place before the House anything like a code of nationality law and that no State had tried to lay down its laws of citizenship at the time of ushering in of its Constitution. He said, "…. Therefore there is no use of our attempting in any Constitution and much less in the present Constitution which is now making a tentative proposal in regard to citizenship to deal with the problem of double citizenship or double nationality." Pandit Hirday Nath Kunzru concentrated mainly on the provision giving citizenship to those who had migrated to Pakistan but had then returned to India. Shri N. Gopalaswami Ayyangar justified the proposal.

36.23. Replying to the debate, Dr. B.R. Ambedkar devoted much of his time to the question relating to immigrants from Pakistan to India and to those who had returned from Pakistan to India. He reiterated out that it was for the Parliament to enact a comprehensive legislation on citizenship in due course.

36.24. The Constituent Assembly Debates on Citizenship show that the main concern of the Constituent Assembly was: firstly, to provide for citizenship at the commencement of the Constitution; secondly, to exclude those who had migrated from India and had acquired the nationality of other countries (mainly Pakistan); and thirdly, to treat those who having migrated to Pakistan had returned to India as Indian citizens. Other questions relating to nationality including the larger question of dual nationality were left largely to the Parliament, although the issue of dual nationality was marginally touched upon by some of the members of the Constituent Assembly, notably Prof. K.T. Shah and Pandit Jawaharlal Nehru and was kept open.

Citizenship in the Indian Constitution

36.25. The constitutional provisions relating to citizenship are embodied in Part-II of the Constitution in a fasciculus of seven articles from Article 5 to Article 11 inclusive. Those provisions were meant mainly to delineate the framework of citizenship at the commencement of the Constitution by inclusions, exclusions, and deeming provisions. More importantly, the Constitution left it to the Parliament to enact a comprehensive legislation on citizenship.

36.26. Article 5 makes it clear that the purpose of the Constitution was only to provide for citizenship at the commencement of the Constitution and is in the following terms:

"5. **Citizenship at the commencement of the Constitution**: At the commencement of this Constitution, every person who has his domicile in the territory of India and –

(a) who was born in the territory of India; or

(b) either of whose parents was born in the territory of India; or

(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India."

36.27. Article 6 was formulated specifically in respect of the rights of citizenship of certain persons who migrated to India from Pakistan. It was necessary to make that provision so that those who had migrated to the territory of India from the territory then included in Pakistan may be deemed to be citizens of India at the commencement of the Constitution. Accordingly, Article 6 reads as follows:

"6. **Rights of citizenship of certain persons who have migrated to India from Pakistan** – Notwithstanding anything in Article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if -

(a) he or either of his parents or any of his grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and

(b) (i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or

(ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefore to such officer before the commencement of this Constitution in the form and manner prescribed by that Government:

Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application."

36.28. Article 7 expressly provides that "notwithstanding anything in articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India." This provision was, however, subject to a proviso to accommodate those who after having migrated to Pakistan, returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person was for the purpose of article 6(b) was deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

36.29. Article 8 provided for the rights of citizenship of certain persons of Indian origin residing outside India and was based on the principle of *jus sanguinis*. Article 8 reads as follows:

"8. **Rights of citizenship of certain persons of Indian origin residing outside India** – Notwithstanding anything in article 5, any person who or either of whose parents or any of

whose grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefore to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India."

36.30. Article 9 of the Constitution refers to persons who had voluntarily acquired citizenship of a foreign State and declared that such person shall not be citizens of India by virtue of Article 5 or deemed to be citizens of India by virtue of Article 6 and Article 8 if he or she had voluntarily acquired the citizenship of any foreign State. Article 9 was meant to apply principally to those who had migrated to Pakistan and to demarcate clearly the exclusive zone of Indian citizenship at the time of the commencement of the Constitution.

36.31. Article 10 provides for continuance of the rights of citizenship and lays down that "every person who is or is deemed to be a citizen of India under any of the foregoing provisions of Part II of the Constitution shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen."

36.32. Article 11 constitutes an overriding exception to the other provisions of Part II of the Constitution. It provides unequivocally and unreservedly that "none of the provisions in Part II of the Constitution shall derogate from the power of Parliament to make any provisions with respect to the acquisition or termination of the citizenship and all other matters relating to the citizenship." Article 11, thus, confers a flexible and plenary power on the Parliament to enact any law or provision with respect to acquisition or termination of the citizenship and all other matters relating to citizenship. Clearly, the power of the Parliament is unfettered by the formulations embodied in Articles 5 to 10 of Part II of the Constitution. It follows that the question of dual citizenship is open for the consideration of Indian Parliament as a question of policy without any particular constitutional impediment or constraint. No constitutional amendment would be required if Parliament wished to provide for dual nationality through appropriate provisions in the Citizenship Act, 1955 or by a separate Act of Parliament.

Dual Nationality in Some Other Countries

36.33. Since the enactment of the Indian Constitution and the Citizenship Act, 1955, there has been a sea change in terms of the growing acceptance of Dual Nationality. As of 1999, more than 70 countries permitted dual nationality. They allow their citizens to retain or regain citizenship or nationality after being naturalized in another country. Many more are in the process of considering similar changes in their laws. To illustrate, until 1976, Canada's Citizenship Act provided that Canadian citizens could lose their status by voluntarily acquiring citizenship in another country.

Under the 1976 Citizenship Act of Canada, a Canadian citizen loses citizenship only when he or she applies for permission to renounce and a citizenship judge grants such permission.

36.34. The acquisition and loss of British nationality is now governed by the British Nationality Act, 1981 and the special provisions made in the British Nationality (Falkland Islands) Act, 1983, the British (Hong Kong) Act, 1990, the Hong Kong (War Wives and Widows) Act, 1996 and the British Nationality (Hong Kong) Act, 1997. The 1981 Act replaced the provisions of the British Nationality Acts from 1948 to 1965 and repealed those Acts with the exception of a few sections. The 1981 Act replaced citizenship of the United Kingdom and Colonies with three separate citizenships, namely, (i) British citizenship, (ii) British Dependent Territory citizenship, and (iii) British Overseas citizenship. The 1981 Act makes general provision, *inter alia*, for reducing statelessness; for registration and naturalization; for the classes of persons who have the status of the Commonwealth citizens or the British protected persons; for depriving a person of British citizenship; and also for legitimated and posthumous children. Section 1 provides for acquisition of British citizenship by birth or adoption. Section 2 provides for acquisition by descent. Section 6 provides for acquisition of British citizenship by naturalization. Section 8 provides for registration as a British citizenship by virtue of marriage. Section 9 deals with the right to registration as a British citizenship by virtue of father's citizenship, etc. **Section 10 incorporates the provisions of the British Nationality Act 1964 (Resumption of Citizenship) and applies also to cases in which a person may have ceased to be a citizen of the United Kingdom and Colonies as a result of declaration of renunciation**. **Section 13** deals with resumption of British citizenship and provides that **a person who has ceased to be a British citizen as a result of a declaration of renunciation shall be entitled, on an application for registration as a British citizen, to be registered as such a citizen if (a) he is of full age and capacity; and (b) his renunciation of British citizenship was necessary to enable him to retain or acquire some other citizenship or nationality**. These two provisions are of particular relevance to the question of dual citizenship for persons of Indian origin who may have renounced their Indian citizenship to enable them to retain or acquire the citizenship or nationality of a country in which they had settled.

36.35. The law in the United Kingdom no longer visits voluntary acquisition of another nationality or citizenship with the loss of local status. The present law of the United Kingdom may be said to favour rather than discourage plural nationality. It recognises the concept of primary or master-nationality, that is to say the nationality of the habitual residence of the person concerned with which he or she is in fact most closely connected. It is in the country of one's primary nationality alone that military service upon a double national may be imposed, "although deprivation of his alternative status may be made the price of his exemption for service in the state of that status." (*Halsbury's Laws of England*, Vol. 18(2), para. 934). A plural national who is entitled to renounce or decline the nationality of a State is exempt under the law from service of that State during minority.

36.36. The French amended the Civil Code in 1973 to liberalise the citizenship laws to permit dual nationality and to prevent the automatic loss of nationality on acquisition of another nationality. A Swiss citizen does not lose his citizenship by voluntarily acquiring a second nationality. It appears that the German law on nationality grants citizenship at birth to children born in Germany to parents legally resident for at least eight years, but such children who have dual nationality, by the time they reach the age of 23, have to renounce the other nationality or lose their German citizenship. Citizenship laws in Europe are, however, in a state of flux. It is safe to assume that the nationality laws in Europe would undergo further significant and far-reaching changes in the near future. Dual or multiple nationality is likely to be increasingly acceptable in Europe.

36.37. After over a century of forbidding dual nationality, Mexico amended its Constitution in 1998, and also its statutes, to permit Mexicans to simultaneously hold foreign citizenship and Mexican nationality. Under these amendments, Mexican dual nationals are able to preserve their Mexican-owned property, protect family inheritances, and avoid the restrictions on business and stock ownership placed on foreigners in Mexico.

36.38. In 1990, the US State Department adopted a policy statement under which a US citizen naturalized in another country is presumed to have the intent to retain US citizenship, although the presumption may be overcome by the person's express declaration to renounce US citizenship. In a 1995 opinion circulated to all US diplomatic posts, the Department of State observed that "it is no longer possible to terminate an American's citizenship without the citizen's cooperation". Thus, it is the US citizen's express intent that governs the loss of citizenship, if any.

36.39. Even where the foreign state's naturalization process includes an oath explicitly renouncing all but the foreign state's citizenship, the US State Department treats such oaths as "routine" and hence not resulting in expatriation unless the individual specifically insists on the renunciation of US citizenship. Conversely, the US oath of naturalization requires renunciation of other allegiances. US government officials routinely and increasingly advise prospective citizens that even this oath will not result in loss of their earlier citizenship. The rationale is that most other countries under their own laws will not recognise the loss of citizenship based solely on the US oath, as the US does not consider its citizen to lose his/her citizenship by taking a similar oath in another country. It appears that the oath of renunciation is also not uniformly and invariably insisted upon. Nor does it have the consequence of automatic loss of citizenship. Voluntary acquisition of the nationality or citizenship is, thus, no longer an operative ground on U.S. practice to deny or deprive any person of his other nationality.

36.40. In States like Singapore, Taiwan, the Republic of Korea and Japan, the renunciation of one's own nationality is not a condition precedent for acquiring nationality by naturalization or registration. For instance, in Singapore, there is no prohibition for naturalization of a foreign national who is allowed to retain his nationality. Under the laws of the Republic of Korea, an alien can retain his foreign nationality upto six months even after acquiring Korean nationality by naturalization.

The nationals of the Republic of Korea can voluntarily acquire foreign nationality without losing their Korean nationality. To renounce their Korean nationality, they are required to seek express permission of the Korean Government by submitting an application for the purpose to the Ministry of Justice together with documents establishing their dual nationality. Under the laws of Taiwan, the individual acquiring foreign nationality may at his option renounce his Chinese (Taiwanese) nationality; but this is with the permission of the Minister of Interior. Thus, in the situations described above, if the individuals concerned do not choose to renounce their nationality, or the governments concerned refuse permission for such renunciations, it would result in dual nationality.

36.41. Countries like Bangladesh are conferring their nationality on foreign nationals with a view to attract foreign investment and skills. Bangladeshis residing abroad are permitted to retain their Bangladesh nationality, even if they acquire the nationality of a foreign country of their domicile, provided that they make regular or periodical remittances of foreign exchange to Bangladesh. Any foreign national willing to invest in large-scale development projects in Bangladesh may also acquire Bangladesh citizenship without giving up his original nationality. The only requirement in these cases of dual nationality is that the security and intelligence agencies of Bangladesh have to give clearance. It is pointed out by an author that the system in Bangladesh is based largely on "administrative practice devoid of any legal basis and is being pursued 'as a matter of policy involving vital economic interests". [See also M. Rafiqul Islam*: 'The Nationality Law and Practice of Bangladesh' in* Nationality and International Law in Asian Perspective/ Ko Swan Sik (Ed.) (The Hague, 1990), p.1 at 21].

36.42. Some countries have accorded certain rights and privileges to dual nationals. In Japan, there is no discrimination between the dual nationals and the citizens. The dual nationals can also exercise, *inter alia*, the right of franchise, right to hold property and engage in other economic activities, right to education and the right to return. The dual nationals, however, are not entitled to hold any post in the Foreign Public Services of Japan. In 1960 and 1964, the Philippines had enacted laws to confer on the dual nationals the right to vote and the right to be appointed to public offices. These privileges are, however, confined to those Filipino nationals possessing simultaneously the nationality of any of the Iberian or friendly Ibero-American countries or of the United Kingdom. In Taiwan, the Chinese nationals holding the nationality of any other country are entitled to be nominated to certain public bodies, though they are otherwise ineligible to hold any public office.

36.43. Dual Nationality is a growing phenomenon in the world. The conditions on which dual nationality operates and the rights and responsibilities of dual citizenship are determined and worked out by each State. The incidence of dual nationality arises by virtue of operation of domestic laws of various States embodying the well-recognised principles of *jus soli* and *jus sanguinis*. It is allowed under the national laws of some countries despite deliberate and voluntary procedures of acquisition of nationality, namely naturalisation and registration.

Citizenship under the Citizenship Act of 1955

36.44. When the Citizenship Act, 1955 (Act 57 of 1955) was brought forth, the question of dual nationality had not acquired either the character of a public demand nor an issue of wider public concern. Migrants from India to the developed world did not add up substantially in numbers, affluence or influence. Indeed, they were making a headway as nationals of an independent India. The Citizenship Act, 1955 did not and was not called upon to deal with the question of dual nationality in-depth. The Act merely took its cue from some of the provisional and tentative formulations contained in Part II of the Constitution. Nor had the new aspects of the dual nationality laws in different countries emerged clearly in the evolutionary process by 1950. The Statement of Objects and Reasons appended to the citizenship legislation invoked Article 11 of the Constitution and stated that the Constitution as originally enacted did not make any provision with respect to the acquisition of citizenship after its commencement or the termination of citizenship or other matters relating to citizenship. The Act provides for the acquisition of citizenship after the commencement of the Constitution, by birth, descent, registration, naturalization and incorporation of territory. It also makes necessary provisions for the termination and deprivation of citizenship under certain circumstances. **The Act permits the Central Government to extend on 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**. The Act was amended in 1957, 1985 and 1986. Among the cognate Acts related to the Citizenship Act 1955 are the registration of Foreigners Act, 1939 (Act 16 of 1939), Foreigners Act, 1948 (Act 31 of 1948) and Passport Act, 1967 (Act 15 of 1967).

36.45. The Citizenship Act of 1955 as amended does not provide for dual nationality or citizenship. Section 3 recognises citizenship by birth. Every person born in India on or after the 26th day of January, 1950 but before the commencement of the Citizenship (Amendment) Act, 1986 shall be a citizen of India by birth. Every person born in India on or after the commencement of the Citizenship (Amendment) Act, 1986 one of whose parents is a citizen of India at the time of his birth shall be a citizen of India by birth. Sub-section 2 of Section 3 provides for the exceptions to the rule of *jus soli* contained in Section 3(1). Sub-Section 2 of Section 3 provides that a person shall not be a citizen of India by birth if at the time of his birth his father possesses such immunities from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and is not a citizen of India; or if his father is an enemy alien and the birth occurs in a place then under the occupation by the enemy. Section 4 provides for citizenship by descent on the principle of *jus sanguinis*. A person born outside India on or after the 26th January, 1950 shall be a citizen of India by descent if his father is a citizen of India at the time of his birth. There is a proviso to Section 4(1) which lays down certain exceptions and conditions to citizenship by descent. Section 5 provides for citizenship by registration. Section 6 deals with citizenship by naturalization. A person to whom a certificate of naturalization is granted is required to take an oath of allegiance in the prescribed form. Section 7 provides for the Indian citizenship of persons by reasons of their connection with any territory which becomes a part of India. Section 8 deals

with renunciation of citizenship and provides that if any citizen of India of full age and capacity, who is also a citizen or national of another country, makes in the prescribed manner a declaration of renunciation of his Indian citizenship, the declaration shall be registered by the prescribed authority, and upon such registration that person shall cease to be a citizen of India. It appears that many of the Indian citizens who became citizens or nationals of another country may not have formally renounced their Indian citizenship or their declaration of renunciation may not have been registered by the prescribed authority.

Section 9 deals with termination of citizenship and provides that any citizen of India who by naturalization, registration or otherwise voluntarily acquires or has, at any time between the 26th day of January, 1950 and the commencement of the Act of 1955, voluntarily acquired the citizenship of another country shall, upon such acquisition or, as the case may be, such commencement, ceases to be a citizen of India. Whereas Section 8 deals with renunciation of Indian citizenship by a citizen of India of full age and capacity, Section 9 provides for the automatic termination of Indian citizenship in the case of any person who subsequently and voluntarily acquires citizenship of another country. Section 9 is similar to Article 9 of the Constitution but somewhat wider in scope. It has been held by courts that the question of renunciation of citizenship, cessation of citizenship and termination of citizenship is a matter to be determined ultimately by courts of law. A Division Bench of Delhi High Court held in AIR 1970 Delhi 76 that the Citizenship Act and the Rules framed thereunder do not contemplate dual citizenship and it is not possible under Indian law, except to a limited extent, as contemplated by the proviso to Section 9(1) [which provides an exception to Section 9 with regard to termination of citizenship in case of 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]. It was pointed out in AIR 1965, Supreme Court 1623, that Section 9 does not lay down an objective test and that obtaining of a passport from another country does not necessarily imply exercise of free volition. It was held in AIR 1966 Calcutta 552 that mere long residence or acquisition of property in another country is not enough to establish an intention of abandoning domicile of origin and acquiring a domicile of choice. It was held by the Supreme Court in AIR 1986 Supreme Court 1534 that there is no provision in the law which provides that a person would automatically lose his Indian citizenship on his marriage with a person who is a citizen of a foreign country or by acquiring property in a foreign country. It has also been held by the Supreme Court that under Section 9(2) and Rule 30(2) of Citizenship Rules, 1956, an inquiry has to be made by the Central Government and not by courts. Section 10 contemplates the deprivation of citizenship by an order of the Central Government. Section 11 recognises Commonwealth citizenship.

Section 12 and Dual Citizenship

36.46. The Committee finds that Section 12 of the Act contemplates within its orbit the concept of dual citizenship. Section 12 contains the seeds of dual nationality. It provides an indicative model on

the basis of which a specific concept of dual nationality can be elaborated. Section 12 reads as follows:-

"12. **Power to confer rights of Indian citizen on citizens of certain countries** –

(1) The Central Government may, 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.

(2) Any order made under sub-section (1) shall have effect notwithstanding anything inconsistent therewith contained in any law other than the Constitution of India or this Act."

36.47. It is clear that Section 12 empowers the Central Government to make provisions 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. Such conferment of all or any of the rights of a citizen of India on the citizens of any other country is tantamount to the recognition of the principle of dual citizenship. The countries specified in the First Schedule under Section 12 are primarily the Commonwealth countries and the Republic of Ireland. With regard to 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, the Central Government may make a provision but only on the basis of reciprocity. If a provision for dual nationality is to be made in respect of some of the Commonwealth countries and countries like the U.S.A., Canada, the U.K., members of the European Union, Australia, New Zealand, Singapore and such other countries as the Government may consider appropriate, an additional provision which may be Section 12A may have to be added in the Citizenship Act, but without the condition of reciprocity as is stipulated in Section 12. The names of the Commonwealth countries which are specified in the First Schedule and which may then be included in the Schedule under the new Section 12A would have to be deleted from the First Schedule. An indication would also have to be given in the new Section 12A with regard to the non-conferment of electoral rights and the right to apply for and serve in the armed forces and other such rights. Section 12 provides a pattern and a building block which commends itself to the Committee of appropriate adaptation in respect of dual nationality. It can also be clarified that the conferment of all or any of the rights of a citizen of India on the citizens of other countries specified in the Schedule to the Act would be confined to those who were or were entitled to be citizens of India at the time of the commencement of the Constitution as well as children and grandchildren of those persons.

36.48. It is noteworthy that Section 12(2) provides for the effect of an order granting dual nationality under Section 12 to override anything inconsistent therewith contained in any law other than the Constitution of India or the Act of 1955. Section 12 clearly contains the seeds of dual nationality. It provides an indicative model on the basis of which the concept of dual nationality can be unfolded and elaborated. Dual nationality should also be granted to the children and grandchildren of those who apply and obtain dual citizenship under the amended provisions of the Citizenship Act.

A Blueprint for Dual Citizenship

36.49. 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.

36.50. The Committee is of the view that the expression 'NRI' which is used in common parlance as a synonym for the Diaspora consisting both of those who have retained Indian passports and those who have taken foreign nationality, are no longer to be regarded as the 'Not Required Indians". The Committee endorses its Chairman's description of NRIs many years ago as the 'National Reserve of India' and also as the 'National Resource of India'. The Committee is of the opinion that dual citizenship has become a rallying point for the Indian Diaspora's solidarity with Mother India and that dual citizenship is an idea whose time has come. The demand for dual citizenship has an emotional resonance particularly for the first generation Indians who have made their homes in Europe, North America, Australia, New Zealand, Singapore, and Thailand. Many of them have taken the nationality of the countries of their domicile but look upon their passports with nostalgia. Many of them must have had to renounce their Indian citizenship by making a declaration to that effect but that did not weaken their emotional bonds with India. Dual Nationality is regarded by them as a badge of belonging. They feel unhappy when they have to apply for their Indian visas " to go to their own country." The Committee asked many of them why they were so keen on dual nationality when the PIO Card Scheme did offer practically all the benefits of dual nationality. Their answer was twofold: firstly, they argued that if the Government had already offered practically all the benefits of dual nationality under the Scheme of PIO Cards to the entire Indian Diaspora, it should have no difficulty in providing for dual nationality for citizens of a few specified countries by legislation; and secondly, they considered a legislative provision of dual nationality a higher form of the acknowledgement of their linkage with Mother India.

36.51. The most frequent and forceful argument against dual citizenship, apart from constitutional issues which we have dealt with elsewhere in this Report is the argument of security implications of dual nationality. Whenever the question of grant of dual nationality is considered, apprehensions have been expressed that the entry and exit of persons to whom dual citizenship may be granted would become impossible to regulate under the Foreigners Act and may jeopardise the sensitive internal security scenario in the country. It is also erroneously assumed that the induction of persons having dual citizenship in sensitive organisations and armed and paramilitary forces is implicit in the concept of dual citizenship. It is on that assumption that dual citizenship is opposed. It is sometimes feared that the grant of dual citizenship would lead to the creation of another privileged class, which would result in a further sharpening of the existing social divide in the country. The Committee would like to deal with each of these apprehensions one by one in the succeeding paragraphs.

36.52. The Committee is not convinced that regulation of the entry and exit of any person would become difficult or impossible if dual citizenship is introduced. We are constrained to point out in the first place that the entry and exit of persons into India even at present is insufficiently regulated and according to media reports, there are millions of illegal entrants in India especially from neighbouring countries, some of whom might even be security risks and the existing legislation including the Foreigners Act and the Illegal Migrants' (Determination by Tribunal) Act etc. has not been able to deal with the problem effectively. The Committee is of the considered opinion that a person of Indian origin living in the countries to be specified and to whom a proper document of dual citizenship would be granted, would be subject to more effective regulation than the lakhs of visitors who enter India without any let or hindrance and make India their home without any visa or work permit.

36.53. It is not possible to understand why the entry or exit of a person to whom the document of dual citizenship is granted after full scrutiny is any more difficult to regulate and monitor than the entry and exit of any foreign national or an Indian citizen. If the existing procedures are inadequate, they can be altered; if the will and vigilance is lacking, remedial measures can and ought to be taken. We are of the view that a person travelling on a document of dual nationality would be like any other visitor or a PIO cardholder or an Indian national returning to India. The Government of India may, if it so desires, prescribe the period of one year at a time for the dual citizen's stay in India except when permission for a longer or indefinite period is granted as in the case of senior citizens. A dual citizen may also be covered by the Passport Act of 1920 and the Passports Act of 1967. In the alternative, he or she may be covered by the Foreigners Act by means of a limited deeming provision. Special forms may be prescribed for holders of dual citizenship both for entry and exit and those may also be deemed as registration of dual citizens on their entry. Security implications are minimal in case of dual citizens of Indian origin because those who desire to have dual citizenship would have to make an application in the first place; they would have to make a full and faithful disclosure; they would be subject to scrutiny before dual citizenship is granted to them; they would fill prescribed forms when they enter and exit; subject to appropriate exceptions in case of students and senior citizens, they would be able to stay only for a period of one year at a time; their dual citizenship passports would be stamped on entry and exit.

36.54. The Committee has also examined the provisions of the Foreigners Act, 1947, the provisions of the Passport (Entry Into India) Act, 1920 and the Passports Act, 1967. The Committee is of the view that wherever necessary, provisions of the Passport (Entry Into India) Act, 1920 and those of the Passports Act, 1967 are made applicable to dual nationals *mutatis mutandis*, the authorities would be armed with sufficient control mechanisms. In the alternative, certain provisions of the Foreigners Act, 1947 may be made applicable to those to whom dual citizenship is granted, and this could be done by means of a deeming provision, particularly because those persons would continue to have their foreign passports. Care should, however, be taken to simplify rather than multiply procedures and to make their application and implementation effective without making them cumbersome or onerous.

36.55. Another argument against the grant of dual citizenship is that the induction of persons having dual citizenship in sensitive organisations, armed and paramilitary forces would have serious security implications. The Committee wishes to clarify that it is not its intention to recommend that persons having dual citizenship would have the right of employment in the civil services or in the defence forces or in any sensitive organisations. The Committee would like to make it clear that those to whom dual citizenship is granted shall not, as a rule, be entitled to be inducted in the civil services of the States or the Union. They shall also not be entitled to be inducted in any sensitive organisations or in armed and paramilitary forces. Exceptions may, however, be made so far as any appointment is concerned by a specified order of the Central Government. The Committee also feels that it will not be practicable to grant any electoral rights or the right to hold any elective office in India to persons to whom dual citizenship is granted. For those who would acquire dual citizenship, their entry document should be deemed to be their registration and the period of continuous stay for them should be one year. An exception should also be made in case of senior citizens who may be granted permission to stay indefinitely; Diaspora students who have dual citizenship under Indian law should be granted permission upto a maximum of two years at a time.

36.56. The Committee is also not persuaded that the introduction of dual citizenship would create another privileged class and that it would result in a further sharpening of the existing social divide in the country. Firstly, the so-called social divide in terms of economic disparities is sharp enough without the introduction of dual nationality. The introduction of dual nationality cannot make any difference to the so-called existing social divide in the country. The PIO Card Scheme attracted a mere 1200 applicants. Even if there were a hundred times more number of applicants for dual citizenship, it could hardly make any difference whatsoever to the "existing social divide" in the country. It is an unrealistic assumption that the conferment of dual nationality would automatically make several million persons of Indian origin full-fledged citizens of India and that Indians living in North America, Europe, Australia, New Zealand and Singapore or other countries to be specified in the Act would all come to visit India. The Committee may also add that as a matter of policy, the Government of India welcomes and encourages ethnic tourism which has come to constitute a significant proportion of tourists who visit India. The Committee is of the considered view that the demand and expectation of dual nationality deserves to be considered in a positive and constructive spirit taking into account the goodwill it would generate among the PIOs.

36.57. The Committee wishes to emphasise that at this stage dual citizenship is proposed to be granted only to the citizens of Indian origin in certain specified countries such as countries of North America, Europe, Australia, New Zealand, Singapore, etc. Those are highly developed countries. It is to those countries that the migration of Indians took place after India became independent. Most of those who migrated to those countries were Indian citizens. Some of them continue to be Indian citizens and hold Indian passports. Many of them are under pressure to take the citizenship

of the countries where they live but would like to retain their Indian citizenship. The Committee is of the view that the grant of dual citizenship to them would not compromise India's security in any way. In any event, the country is entitled to expect a high degree of vigilance efficiency from its security set up. Procedures for vigilance and scrutiny have to be streamlined by the authorities and a constant watch has to be kept. We are of the opinion that regulation of entry and departure of persons to whom dual nationality is granted can be fully taken care of by adequate procedures within the existing legislative framework and by extending it wherever necessary.

36.58. There is an apprehension that the introduction of dual nationality might allow nationals of countries, which are inimical to India to freely enter India to carry on their nefarious activities. Presumably, that aspect of the problem was attended to by the PIO Card Scheme, which extends to the whole world whereas the proposed dual nationality would apply to a very small number of specified countries. Article 7 of the Constitution already provides that a person who after the first day of March 1947 migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India. That principle would continue to apply to citizens and former citizens of Pakistan and Bangladesh as well as other neighbouring countries. The proposed scheme of dual nationality would apply only to citizens of a few specified countries. Moreover, dual nationality should only be granted to those who have acquired the nationality of countries which, by law or in practice, accept the principle of dual nationality. The Committee is of the view that a critical and rational assessment of the security considerations should be made in aid of a cautious and vigilant approach. The Committee is of the opinion that the scheme of dual nationality can be worked into our legislation with appropriate safeguards. Firstly, by not including the nationals of the countries in respect of which we have security apprehensions; secondly, by specifying a few countries, the nationals of which, if they are members of the Indian Diaspora and if they were or were entitled to be citizens of India at the commencement of the Constitution, may be granted dual nationality and the provision may be extended to their children and grandchildren; thirdly, the principle of *jus sanguinis* may be appropriately applied to verify and monitor the Indian linkage; fourthly, the requirement of complete disclosure on an affidavit and the provision for careful scrutiny by the Missions as well as a nodal agency comprising of representatives of Ministry of External Affairs and Ministry of Home Affairs would safeguard the security interests of the country. The Committee would like to enter the caveat that those procedures should be simple and swift and should be insulated from red tape and corruption. The Committee is deeply conscious of our heightened security concerns in the wake of a series of terrorist attacks, more particularly the attack on our Parliament House on December 13. We are of the view that, to accord paramount priority to security concerns is a national imperative. We hold that dual citizenship with proper safeguards will not undermine national security. We believe that dual citizenship and national security are not mutually exclusive: indeed linkages of love and loyalty represented by dual citizenship and all-round vigilance safeguarded by procedures of scrutiny to be embodied in the forms and the Rules would prove to be the bastion of India's national security and worldwide economic, cultural and political interests. A rational analysis and assessment has

led the Committee to the unequivocal conclusion that provisions for dual nationality can be made in the Citizenship Act with appropriate safeguards, and that the decision on dual nationality should not be delayed or deferred any further.

36.59. The Committee has carefully considered the provisions of the Constitution and the Citizenship Act, 1955, as amended and is of the view that its provisions would have to be amended and can be constitutionally and legally amended to provide for grant of dual nationality or citizenship to certain members of the Indian Diaspora belonging to certain specified countries if they satisfy the conditions and criteria laid down in the legislation. The Committee is of the view that those who were or were entitled to be citizens of India at the commencement of the Constitution but have acquired the citizenship of other countries such as, for example, the United States of America, the United Kingdom, countries of the European Union, Canada, Australia, Singapore, Malaysia, Thailand, Japan, New Zealand should be eligible for dual citizenship. We must make it clear that we do not recommend automatic conferment of dual citizenship. It would have to be acquired by following an appropriate procedure as may be laid down in the Parliamentary legislation and the rules framed thereunder. We are also of the opinion that the document of dual nationality or citizenship should clearly specify, wherever applicable, the details of the previous documents of Indian nationality or proof thereof as well as full details of the foreign nationality or citizenship of the person concerned. It should also be a requirement of the entry and departure procedures to stamp the document of dual nationality as well as the document of the individual's other nationality, which ought to be regarded as the primary nationality. We are of the view that it is not practicable to extend to those who acquire dual nationality or citizenship the electoral rights and the right to contest elections to elective bodies in India, particularly if those rights have to be operationally exercised outside India. Postal arrangements are tardy, impracticable, and often infructuous. Wherever necessary, suitable amendments can also be made in other legislation such as the Passports Acts and Foreigners Act to safeguard India's security concerns. There are already several existing requirements for passengers arriving into India and leaving India. Those procedures can be made more adequate wherever greater disclosure is considered necessary. Apart from those who were or were entitled to become Indian citizens at the time of the commencement of the Constitution, the children and grandchildren of those who were Indian citizens or were entitled to become Indian citizens at the commencement of the Indian Constitution should be eligible to apply for dual nationality or citizenship if they are citizens of the countries to be specified in a Schedule to the Citizenship Act.

36.60. The Committee would like to put on record its thankful appreciation of many distinguished jurists, Members of Parliament and other distinguished persons with wide experience who have responded to Chairman's request eliciting their views on the terms of reference, and more particularly on the question of dual citizenship. Nearly all the responses received orally or in writing by the Committee endorsed the idea of dual citizenship for economic, technological, social, political and psychological reasons. The Committee received only one negative response

to the proposal, and that response was based on the apprehension that Pakistanis and Bangladeshis might gain access to India's dual citizenship. The Committee has made it amply clear in this Report that the citizens of only those countries specified in the Schedule (to be appended) will be eligible for dual citizenship and that citizens of other countries (including those of Bangladesh and Sri Lanka, and Pakistan, for example, regarding which some apprehensions have been expressed) would not be eligible for India's dual citizenship. The Committee has also made it clear that the dual citizenship recommended by it would not be automatic, that it would be confined to persons who were or were entitled to become citizens of India, as well as their children and grandchildren if they have taken the citizenship of the countries to be specified in the Schedule.

36.61. The Committee recommends:

(1) That dual citizenship should be permitted within the rubric of Citizenship Act, 1955.

(2) That Sections 9, 10 and 12 of the Citizenship Act, 1955 should be suitably amended.

(3) That a provision analogous to Section 12 of British Nationality Act, 1981 shall be included in The Citizenship Act and should be substituted under the caption "Renunciation and Resumption of Citizenship". The provision which we recommend is patterned on the British Nationality Act, 1981 and may read as follows:-

Renunciation:

(1) If any Indian citizen of full age and capacity makes in the prescribed manner a declaration of renunciation of Indian citizenship, then, subject to provisions of this Section, the Central Government shall cause the declaration to be registered.

(2) On the registration of a declaration made in pursuance of this Section, the person who made it shall cease to be an Indian citizen.

Provided that a declaration made by a person in pursuance of this Section shall not be registered and shall not be given effect unless the Central Government is satisfied that the person who made it will after the registration have or acquire some citizenship or nationality other than Indian citizenship; and if that person does not have any such citizenship or nationality on the date of registration or does not acquire some such citizenship or nationality within one year from that date, he shall be, and be deemed to have remained, an Indian citizen notwithstanding the registration.

Resumption:

(1) Subject to the provisions of subsection (2), a person who has ceased to be an Indian citizen as a result of a declaration of renunciation on or after the date of the commencement of the Constitution shall be entitled, on an application for registration for dual citizenship of India, to be registered as such a dual citizen if:

(a) he is of full capacity; and

(b) his renunciation of Indian citizenship was necessary to enable him to retain or acquire the citizenship or nationality of any one of the countries specified in the Second Schedule.

(2) Any person who was or was entitled to be an Indian citizen at the time of the commencement of the Constitution of India and who has acquired the citizenship of any of the countries specified in the Second Schedule as well as the children and grand children of such person shall be entitled to avail of the benefit of resumption of his Indian citizenship in the capacity of a dual citizen of India.

(3) If a person of full capacity who has ceased to be an Indian citizen as a result of a declaration of renunciation (for whatever reason made) and has acquired the citizenship of any of the countries specified in the Second Schedule makes an application for his registration as a dual citizen of India, the Central Government may, if it thinks fit, cause him to be registered as such a citizen."

(4) That dual citizenship of India and a dual citizen of India may be defined in the Act. We recommend that the language of Section 12 may be adopted for the purpose of providing for the "conferment of all or any of the rights of a citizen of India as may be provided under the rules to be framed on the citizens of any country specified in the Schedule to the Act." The language of Section 12(2) may be expressly borrowed for the purpose of *non obstante* and overriding operation of the clause providing for dual citizenship. The Committee is of the opinion that the provision for Commonwealth citizenship may be reviewed either to put some living substance in Sections 11 and 12 of the Citizenship Act or to substitute those provisions by new provisions relating to the Indian Diaspora in the countries of the Commonwealth as specified in the First Schedule and in the countries to be specified in the Second Schedule.

(5) That those who hold PIO cards should be allowed to avail themselves of the provisions for naturalization after two years of obtaining the card, and those who acquire dual citizenship should be allowed to become naturalized citizens after one year. This relaxation should be particularly applicable to senior citizens of Indian origin who may wish to return to India in the evening of their lives and may wish to spend the rest of their lives in India.

(6) That it may be provided by a proviso to the proposed new Section that those who have acquired dual citizenship, shall not be entitled to exercise electoral franchise and shall not be inducted into civil services or the defence or paramilitary forces except by a special order of the Central Government. It may also be provided in the proviso that they shall not be entitled to any other employment in the service of the States and the Union except by a special order of the Central Government.

(7) That a provision should be made for framing of rules in respect of all matters relating to dual citizenship including the form and fee to be prescribed for an application to be made for dual citizenship. The prescribed form should ask for full and faithful disclosure of previous Indian and other passports, record of employment, residence, electoral registration in India and all foreign countries and such other particulars as the Central Government may consider appropriate. A provision should be made for the issue of dual citizenship passports, prescribed fee therefore, and stamping of both foreign nationality passport and Indian Dual Nationality passport at the time of entry and exit.

(8) The processing fee for an application for dual citizenship should be fixed at US$100; at the time of the first issue of dual citizenship, the fee of US$300 may be levied. However, in the case of an application for the issue of dual citizenship passports to a husband and wife, a composite fee of US$500, inclusive of the processing fee, may be levied. For every dependent member of the family, an additional fee of US$50 without any additional processing fee should be levied. The validity of the passport should be 10 years. An appropriate renewal fee may be prescribed in the rules.

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