

## ISSUES WITH RESPECT TO OVERSEAS CITIZEN OF INDIA CARD HOLDER

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### I. ABSTRACT

Overseas Citizen of India Card Holder is a concept of citizenship granted by the Citizenship Act, 1955 in accordance with Part II of the Constitution of India. This concept was developed in order to recognize the Persons of Indian Origin (PIO) and grant the deserving individuals Indian citizenship who were eligible for such citizenship at the time of commencement of the Constitution of India. In the year 2000, the Government of India decided to establish a committee for the purpose of examination of the global Indian diaspora along with recommendations and strategies for fostering a constructive relationship with them. The report of the committee laid the foundation for the introduction of the concept of Overseas Citizenship. The Citizenship Act, 1955 was amended in the year 2003 for the purpose of formally including the scope of overseas citizenship along with including certain provisions for illegal immigrants. Foreign nations with Indian origin for a long period have been making requests to the Government of India for providing them with a recognition for their Indian roots, thus the Overseas Citizen of India Card Holder (OCI Card Holder) had been brought into picture. This brought in various questions to be raised, one of them is majorly whether or not India recognizes dual-citizenship. This paper will highlight the need of the concept of OCI, the issues and challenges associated with it and a comparison with the US system of Green Card Holder.

**Keywords:** *Indian Citizenship, Overseas Citizen of India, Citizenship Act, 1955, Constitution of India, Amendment to Citizenship Act, 1955.*

### II. INTRODUCTION

Overseas Citizen of India was introduced as a result of significant amendments to the Citizenship Act, 1955<sup>196</sup> which was primarily driven by the need to strengthen the ties with the global Indian diaspora. In the year 2000, the Government of India constituted a High-Level Committee on the Indian Diaspora to study about the Indian community across the globe and recommend measures to enhance and develop their connection with India. The report of the Committee was submitted in the year 2001 and it majorly focussed on the need for grant of certain rights and privileges to persons of Indian origin living in foreign nations while maintaining the sovereignty and integrity of

laws related to citizenship in India.<sup>197</sup> This report contributed in laying the foundation and proposing the concept of granting a form of citizenship-like status to persons of Indian origin who had acquired foreign citizenship.

The first significant step towards the institutionalization of Overseas Citizenship of India was through the Citizenship (Amendment) Act, 2003<sup>198</sup> which officially added the OCI scheme to the Citizenship Act, 1955. This provision was made available to those persons of Indian origin who had acquired foreign citizenship provided their home countries allowed dual citizenship under their domestic laws. However, this concept is not extended to those persons of Indian origin who were citizens

<sup>196</sup> Citizenship Act, 1955 (No. 57 of 1955).

<sup>197</sup> Overseas Citizenship of India Scheme, Consular Services, Ministry of External Affairs, Government of India, available at: <https://www.mea.gov.in/overseas-citizenship-of-india-scheme.htm>

<sup>198</sup> Citizenship (Amendment) Act, 2003 (No.6 of 2004).

of Pakistan or Bangladesh due to concerns regarding national security. While Overseas Citizens of India are not granted full Indian citizenship, they are entitled to certain rights such as multiple entry, lifelong visas for visiting India and exemption from reporting requirements during their stay in India. But they do not enjoy the right to vote, contest elections, hold constitutional offices or even acquire agricultural property in India.

The concept of Overseas Citizen of India was further refined and expanded through the Citizenship (Amendment) Act, 2005<sup>199</sup> which merged Persons of Indian Origin (PIO) Card Scheme with Overseas Citizen of India Card Holder. The rights and privileges available to Overseas Citizens of India were broadened which made it more attractive for the diaspora to apply for Overseas Citizen of India status. Another long-term benefit was added through this amendment where the OCIs have been granted permission to engage themselves in economic activities, pursue education, and own property in India but this does not include agricultural or plantation property.

The above amendment act was replaced and repealed by the Citizenship (Amendment) Act, 2015<sup>200</sup> which formally merged the two concepts of PIO and OCI in order to remove the complications and confusions that kept arising while foreign nationals of Indian origin were applying for OCI. Through this amendment the scope of previously available rights have been expanded with references to uniformity in eligibility and access to rights and privileges.

This paper aims to understand the need as to why the concept of Overseas Citizen of India Card Holder (hereinafter OCI Card Holder) was brought into picture through the amendment of the Citizenship Act, 1955. Further focus on identifying the positive impact which has been brought in through the introduction of OCI Card Holder and whether this can be considered as dual citizenship given that India being a quasi-

federal Union of States allows only single citizenship along with understanding the issues and challenges associated with respect to the implementation of the concept of OCI Card Holder, how its application is processed and whether such a citizenship could be misused.

Identifying the rights and privileges enjoyed by OCI Card Holders and also those rights and privileges not available to them but only available to resident Indian citizens. This paper will also focus on doing a comparative analysis with the Green Card System of the US to understand in a better way as to how India is developing as a young nation globally with respect to grant of citizenship to foreigners. Finally, providing suggestions regarding proper definitions as to who is an OCI Card Holder, their rights and privileges of OCI Card Holder while maintaining India's national security and policy priorities.

In recent years, the Government of India has introduced certain restrictions on OCI card holders. In 2021, new rules have been introduced which require the OCI card holders to obtain special permits for activities including research, missionary work, and journalism related activities in India. They are also explicitly barred from exercising fundamental rights completely reserved for Indian citizens and OCIs are also required to re-register when renewing their foreign passports under certain conditions. Thus, the concept of OCI card holder has led 37.72 Lakh people across the globe to obtain the status of Overseas Citizen of India.<sup>201</sup>

However, the provisions of Overseas Citizenship do not amount to dual-citizenship; the reason being the Constitution of India. Article 9 of the Constitution of India clearly states that whoever voluntarily acquires the citizenship of another country will cease to be an Indian citizen. Therefore, overseas citizenship is different from Indian citizenship. Overseas Citizen of India is a status through which a person of Indian origin can enjoy limited benefits, rights and privileges

<sup>199</sup> Citizenship (Amendment) Act, 2005 (No. 32 of 2005).

<sup>200</sup> Citizenship (Amendment) Act, 2015 (No. 19 of 2015).

<sup>201</sup> Press Information Bureau, Government of India, Guidelines for Re-Issue of OCI Cards, 15th April, 2021.

because of his or her Indian roots, but it does not provide complete rights same as that enjoyed by an Indian citizen who enjoys all the fundamental rights.

### III. PROVISIONS OF CITIZENSHIP ACT, 1955 FOR OCI

The Citizenship Act, 1955 was amended in the year 2003 following the outcome of the report submitted by the High-Level Committee on the Indian Diaspora. The amendment act added Sections 7A to 7D to the act<sup>202</sup> concerning Overseas Citizenship. This amendment brought in provisions related to Registration of Overseas Citizen of India Cardholder<sup>203</sup>, Conferment of Rights on Overseas Citizen of India Cardholder<sup>204</sup>, Renunciation of Overseas Citizen of India Card<sup>205</sup> and Cancellation of registration as Overseas Citizen of India Cardholder<sup>206</sup>.

Section 7A of the Citizenship Act provides in detail about the process through which a person of Indian origin residing in a foreign state can register for Overseas Citizen of India Card Holder. It states that the Central Government may grant the status of Overseas Citizen of India by registration to those persons who make an application on this behalf. Persons who fall under the categories mentioned below can apply for Overseas Citizen of India Card Holder:

- Any person who has attained full age and capacity who is a citizen of another country:
  - a. but was earlier an Indian citizen at the time of or after the commencement of the Constitution of India; or
  - b. but at the time of the commencement of the Constitution of India was eligible to be an Indian citizen; or

- c. but was a part of a territory which later on (after 15th August 1947) became India's part; or

- Descendants of the persons mentioned in the above clauses who has attained full age and capacity; or
- Minor children of Indian citizens (or one parent is an Indian citizen); or
- Spouses of Indian citizens or OCI cardholders (provided their marriage has been registered and have continued for at least two years preceding the making of such application for OCI status).

It is pertinent to note that any person who is a citizen or is a descendant of persons who is or has been a citizen of Pakistan, Bangladesh or other countries as notified by the Central Government have been excluded from applying for Overseas Citizen of India Cardholder.<sup>207</sup> Since the concept of Persons of Indian Origin (PIO) was merged with Overseas Citizen of India Card Holder, such persons holding PIO Card will be deemed as OCI Cardholders as on the date specified via notification in the Official Gazette.<sup>208</sup> An OCI Cardholder does not possess the same rights as those of Non-Resident Indians (hereinafter NRIs) who are Indian citizens. The provisions grant OCI Cardholders a parity with NRIs only in specific and limited areas. In all other respects, OCI Cardholders are to be regarded as foreigners only.

The procedure for registration as an Overseas Citizen of India Cardholder has been clearly outlined in the Citizenship Rules, 2009. An application for registration as OCI Cardholder must be made under Form XXVIII as provided for under the Citizenship Rules, 2009.<sup>209</sup> Such an application must be made in India to the Foreigners Regional Registration Officer or to the Foreigners Division of the Ministry of Home

<sup>202</sup> Citizenship (Amendment) Act, 2003 (No.6 of 2004).

<sup>203</sup> Citizenship Act, 1955 (No. 57 of 1955) s. 7A.

<sup>204</sup> Citizenship Act, 1955 (No. 57 of 1955) s. 7B.

<sup>205</sup> Citizenship Act, 1955 (No. 57 of 1955) s. 7C.

<sup>206</sup> Citizenship Act, 1955 (No. 57 of 1955) s. 7D.

<sup>207</sup> Citizenship Act, 1955 (No. 57 of 1955) s. 7A (d) *proviso*

<sup>208</sup> Citizenship Act, 1955 (No. 57 of 1955) s. 7A (2). Explanation- PIO Cardholders mean those persons who have been registered under notification number 26011/4/98 F.I., dated 19th August 2002 which has been issued by the Central Government on this behalf.

<sup>209</sup> Citizenship Rules, 2009: Rules 29 and 30.



Affairs and for applications outside India must be made to the Indian Mission or Post which has the jurisdiction over the country of whose citizen such applicant is or if such applicant is not the citizen of that country then application must be made to the Indian Mission or Post which has the jurisdiction over the country where the applicant resides ordinarily.<sup>210</sup>

The central Government will conduct a preliminary inquiry in order to ensure that no adverse information is found against the applicant. If satisfied, the applicant is registered as the Overseas Citizen of India within a period of thirty days (subject to post-verification of the background of the applicant). But if any adverse information is found about the applicant, the Central Government will conduct further inquiry and the decision to approve or reject the application will be made within a period of four months from the date of receipt of such an application.<sup>211</sup>

Once the applicant is registered successfully as an Overseas Citizen of India under Section 7A of the Citizenship Act, 1955, a certificate as prescribed in Form XXIX is issued to the applicant which is duly signed by an officer not below the rank of an Under Secretary. A copy of the certificate so issued is also kept for record by the issuing authority. Also, a register is also maintained which contains the names and details of the persons registered as Overseas Citizens of India and a copy of this register is sent to the Ministry of Home Affairs on a monthly basis.<sup>212</sup>

Section 7B of the Citizenship Act, 1955 outlines those rights which the Overseas Citizen of India Cardholders are not entitled to. They are entitled to rights which are notified by the Central Government in the Official Gazette which may be updated from time to time as the need arises. Following is a list of those rights which are not granted to an OCI Cardholder:

- Right to equality in public employment under Article 16 of the Constitution of India;
- Right to contest election for President under Article 58 and Vice-President under Article 66 of the Constitution of India.
- Appointment as a judge of the Supreme Court under Article 124 and High Court under Article 217 of the Constitution of India.
- To register as a voter under Section 16 of ROPA, 1950.<sup>213</sup>
- To contest elections to the Parliament or State Legislatures under Sections 3 and 4 of ROPA, 1951.<sup>214</sup>
- Becoming a Member of Legislative Assembly or Legislative Council under Sections 5, 5A and 6 of the ROPA, 1950.
- Appointment to public services or any post in the Union or any State.

These exclusions mark a clear line of distinction between an Indian citizen (by way of birth, descent, registration, naturalization or incorporation of territory) and an Overseas Citizen of India Card Holder. The reasons for such differentiation are principles of sovereignty, national security, political accountability and the integrity of democratic governance ensuring peace. Indian citizenship entails an allegiance to the country, showcasing a belongingness towards the nation and respect towards the Constitution and the laws. Granting political rights as mentioned above such as contesting elections, voting rights, holding public offices to an OCI cardholder would potentially undermine the sovereignty of India because in order to hold such positions, one must be able to understand extremely well the working of the nation completely, its culture, heritage, history and current status, its people and the society. An OCI cardholder is not

<sup>210</sup> Citizenship Rules, 2009: Rule 31.

<sup>211</sup> Citizenship Rules, 2009: Rule 32.

<sup>212</sup> Citizenship Rules, 2009: Rule 33.

<sup>213</sup> Representation of the People Act, 1950 (No. 43 of 1950).

<sup>214</sup> Representation of the People Act, 1951 (No. 43 of 1951).

required to take an oath of allegiance unlike those who are citizens by descent, registration or naturalization, therefore, they would have their allegiance towards their home country making them ineligible to hold government positions in India.

The 2021 notification released on official gazette<sup>215</sup> majorly talks about the rights and privileges of OCI Cardholders which are explained below:

- OCI Cardholders are granted a lifetime, multiple-entry visa to visit India for any purpose.
- OCI Cardholders are required to take permission for the following activities:
  - a. Undertaking any research work.
  - b. Engaging in missionary, Tabligh, mountaineering, or any journalistic activities.
  - c. Doing internships or employment in foreign diplomatic missions in India.
  - d. Visiting any restricted or protected areas within the territory of India.
- OCI Cardholders do not have to register themselves with Foreigners Regional Registration Officer for any length of stay in India. But such an individual is required to provide information if they change their permanent address or occupation.
- OCI Cardholders have the same rights as that of Indian nationals with respect to domestic airfares, entry fees to national parks, historical sites, museums, etc.

→ OCI Cardholders are in parity with Non-Resident Indians (NRIs)<sup>216</sup> in certain cases:

- a. Inter-country adoption of Indian children.
- b. Appearing in all-India entrance tests such as NEET, JEE, but eligible only for NRI seats or supernumerary seats, and OCI Cardholders cannot claim the seats meant for reservation of Indian citizens.
- c. Buying or selling of property (but does not include agricultural land, farmhouses, and plantation property).
- d. Pursuing professions such as Medicine (includes doctors, dentists, nurses, and pharmacists), Law, Architecture, Chartered Accountancy.

→ Those economic, financial and educational matters which are not covered in the above mentioned lists, for such purposes, an OCI Cardholder will be treated as a foreigner only.

Although the OCI Cardholders do have benefits, but certain benefits were removed via the notification issued on 4th March 2021 by the Ministry of Home Affairs in the Official Gazette. In the case of *Anushka Rengunthwar v. Union of India*, the petitioners are OCI Cardholders and are students who grew up in India and pursued their entire schooling in India. Many of them aspire to study medicine, MBBS, and had prepared to take the NEET-UG examination. Earlier notifications issued on 11th April 2005 and 5th January 2009 had granted OCI Cardholders educational parity with NRIs (Non-Resident Indians) allowing them to compete for admission to various professional courses

<sup>215</sup> Notification No. S.O. 1050 (E), dated, 4th March 2021, Ministry of Home Affairs, Government of India, available at: [https://www.mha.gov.in/sites/default/files/2022-09/Notification\\_19032021%5B1%5D.pdf](https://www.mha.gov.in/sites/default/files/2022-09/Notification_19032021%5B1%5D.pdf)

<sup>216</sup> For definition of Non-Resident India refer to the definition provided for in the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018, issued by the Reserve bank of India under the Foreign Exchange Management Act, 1999 (No. 42 of 1999) and the Income Tax Act, 1961 (no. 43 of 1961).

including medical seats. The subsequent notification issued on 4th March 2021 modified these rights which restricted the OCI Cardholders by making them eligible only for NRI quota or supernumerary seats, thereby excluding them from contesting for the general pool of seats reserved for Indian citizens.

The petitioners argued that by withdrawing their broader admission rights which they had long enjoyed, the government had violated the Doctrine of Non-Retrogression<sup>217</sup> and defeated their legitimate expectations. The petitioners contended that the new classification which treats OCI Cardholders differently from Indian citizens despite their long-term residence in India, violates the constitutional guarantee of equality under Article 14<sup>218</sup>. This restriction is seen as arbitrary and discriminatory, particularly given that the OCI cardholders in the present case have pursued their entire education in India and are culturally (and socially) integrated into Indian society.

The Hon'ble Supreme Court of India reviewed the sequence of the notifications (2005, 2007 and 2009) that progressively enhanced the rights of OCI Cardholders. It was observed that OCI Cardholders had been treated in parity with the NRIs in educational admissions until change brought in via the 2021 notification in question which was critically analyzed for its impact on the OCI Cardholders. The Court evaluated whether restricting them solely to NRI quota was a reasonable classification or whether it resulted in arbitrary discrimination. While acknowledging the State's authority to manage limited educational resources in favour of citizens, the Court weighed this against the constitutional rights of OCI Cardholders, who, despite their foreign passport, have deep-

rooted connections and long-standing residence in India.

The judgment deliberated on the expectation built by the years of consistent policy. The sudden curtailment of these rights were observed to be conflicting with the principle of legitimate expectation and doctrine of non-retrogression. The Court held that the legitimate expectation created by previous policies should not be arbitrarily limited to NRI quota seats. The decision implied that any policy altering the rights that have been consistently enjoyed over time must be scrutinized closely. In this case, the limitation imposed on OCI Cardholders may be subject to modification in order to ensure that it does not violate constitutional guarantees of equality and fairness.

Renunciation of OCI card means giving up the status of Overseas Citizen of India and it is a voluntary act done by the concerned individual. The provision for the same is given under Section 7C of the Citizenship Act, 1955 which states that an individual of full age and capacity, if makes a declaration renouncing their OCI Card, then such declaration would be duly registered by the Central Government and once such renunciation is registered, the concerned individual from the date of such registration shall cease to hold the status of Overseas Citizen of India Cardholder. Further, when such a person ceases to be an Overseas Citizen of India Cardholder, the spouse of such person who had acquired the OCI Card under Section 7A (1) (b) shall also cease to be such citizen and every minor child of such person shall also cease to be such citizen.

A declaration regarding the renunciation of Overseas Citizen of India shall be made in Form XXXI as provided for under the Citizenship Rules, 2009. The form along with the original certificate of registration as OCI must be submitted to the concerned Indian Mission of the country where the individual ordinarily resides, or Post or to the Ministry of Home Affairs (Government of India); and they will forward the declaration form and certificate to the authority which has originally

<sup>217</sup> **Doctrine of Non-Retrogression:** It is a human rights principle that prevents Governments from taking actions that go against their obligations to protect rights. It is a central part of the obligation to progressively realize economical and social rights. [John C. Jeffries Jr., The Non-Retrogression Principle in Constitutional Law, 86 California Law Review, 1211-1249 (1998)].

<sup>218</sup> Constitution of India, 1950 (No. 1 of 1950): Art. 14. **Equality before the law**-The State shall not deny to any person equality before the law or equal protection of the laws within the territory of India.



issued the certificate of registration as an OCI Cardholder. Once the declaration for renunciation is received by the issuing authority, they shall issue an acknowledgement receipt as provided for in Form XXXII of the Citizenship Rules, 2009 and shall remove the name of such declarant from the register of Overseas Citizen of India Cardholders.<sup>219</sup>

Cancellation of the registration of Overseas Citizen of India Cardholder unlike renunciation is done by the order of the Central Government by giving a reasonable opportunity of being heard to the OCI Cardholder. The conditions for the same is provided for under Section 7D of the Citizenship Act, 1955. If the individual registered as an Overseas Citizen of India Cardholder:

- has obtained the OCI status by way of fraud, false representation or by concealing any material facts he or she ought to declare during registration.
- shows disloyalty or disaffection towards the Indian Constitution.
- does any unlawful communication or engages in any trade activities with enemy alien during wartime where India is in war situation with such country.
- Within a period of five years of registration he or she has been convicted for an offence having punishment for a period of not less than two years.
- violated any provisions of any law specified by the Central Government vide notification(s) in the Official Gazette.
- Such action is necessary in the interest of India's sovereignty, integrity, security, foreign relations, or for public good.
- If the marriage of an OCI Cardholder who obtained such a card under Section 7A (1) (b) has been dissolved by a competent court, or if not dissolved, such

citizen has solemnized marriage with another person.

When such an order for cancellation of registration of an OCI Cardholder is passed by the Central Government, then such an individual who is in possession of the certificate of registration must surrender such certificate once he or she receives a written notice on this behalf from the Central Government. The notice contains specifications about the recipient and the time frame for surrender of the certificate. Once the certificate is submitted, it will be cancelled officially by the prescribed authority and if such person fails to surrender the certificate within the stipulated time frame, then such a certificate of registration shall be deemed to be cancelled by the Central Government. The issuing authority must maintain an updated record of such in order to reflect the cancellation and a copy of this entry shall be sent to the Ministry of Home Affairs in the first week of each month.<sup>220</sup>

#### IV. ISSUES FACED BY OCI CARDHOLDERS

Overseas Citizen of India Cardholders enjoy many privileges similar to citizens, such as visa-free travel and long-term residency rights. However, the legal framework defining these rights is not always crystal clear and seems to have undefined boundaries. While OCI Cardholders are granted multiple privileges, the specific limits and scope of these benefits are not always well-delineated. For example, questions arise about property ownership, inheritance rights, and other economic entitlements. Over time, various Government orders and circular have tried to clarify these rights, however, inconsistencies remain in how these rules are applied, leading to confusion among both cardholders and local authorities.

OCI Cardholders do not enjoy full rights as that of a citizen of India, as per Section 7B of the Citizenship Act, 1955 as explained above, the OCI Cardholders are not allowed to vote in elections or participate directly in political

<sup>219</sup> Citizenship Rules, 2009: Rule 34.

<sup>220</sup> Citizenship Rules, 2009: Rule 35.

processes. This is a significant limitation for those who feel a strong connection to India and wish to contribute to its political landscape. There are restrictions on holding certain government positions, particularly those which are related to national security or defence. This is because the State reserves these roles for citizens in order to ensure loyalty and protect sensitive information keeping in mind the integrity, sovereignty, and security of India.

Overseas Citizen of India Cardholders face administrative, legal and practical difficulties which have been outlined below:<sup>221</sup>

1. **Administrative Challenges:** Applicants of Overseas Citizen of India Card are required to provide extensive documentation to establish ancestral linkages, sometimes dating back to multiple generations. This is particularly difficult for people from countries where record-keeping is inadequate. There have been instances where applicants wait for years before receiving their cards. The process of issuing OCI cards varies across Indian embassies and consulates. Some have also been reported to lack adequate human resource capacity, which leads to inefficiencies. Many applicants find it cumbersome to retain their old passports for verification purposes.
2. **Legal Issues:** Many applicants have raised queries stating that the Government's implementation of the OCI scheme lacks clarity and consistency which leads to confusion. OCI Cardholders are supposed to have similar privileges and Non-Resident Indians (NRIs), but there have been instances where they were denied such rights. For example, an OCI dentist in Canada had to file a legal petition to

clarify his right to practice in India. Another important thing to note is that OCI cardholders do not enjoy the status of dual citizenship and India does not recognize the concept of dual citizenship, therefore they are not equivalent to Indian citizens.

3. **Practical Difficulties:** Many Indian officials, including those in State governments and airport authorities, are unfamiliar with the OCI scheme which leads to immigration difficulties. Unlike some countries that provide streamlined services for their overseas citizens, India does not have a separate immigration counter or facilities for OCI cardholders. While OCI cardholders can invest in India and own property (except agricultural and plantation property as mentioned above), some sectors still impose restrictions on their participation limiting their ability to engage in businesses or professional practices.
4. **Persons of Indian Origin (PIOs) and OCI Merger:** With the merger of PIOs and OCI scheme, many cardholders were unsure whether they are supposed to re-apply or pay any additional fees in order to retain their OCI status. Many cardholders also raised concerns over the terminologies used in the new scheme arguing that referring to descendants of Indians over multiple generations as 'Overseas Indians' could create doubts about their national loyalty.

In a research study related to the securitization of dual citizenship, Daniel Naujoks<sup>222</sup> identified several issues and challenges related to the Overseas Citizenship of India status primarily focussing on national security concerns, exclusionary policies and the legal ambiguities associated with the status:

<sup>221</sup> Sohali Verma, Instruments of engagement: Assessing India's PIO and OCI Schemes, CARIM-India RR 2013/21, Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute, 2013. <https://www.mca.gov.in/images/pdf/AssessingIndiasPIOandOCISchemes.pdf>

<sup>222</sup> Daniel Naujoks, Columbia University, The securitization of dual citizenship. National security concerns and the making of the Overseas Citizenship of India, *Diaspora Studies*, 2015, Vol. 8, No. 1, 18-36, <http://dx.doi.org/10.1080/09739572.2014.957975>



**1. National Security Concerns:** The formulation of OCI policy was influenced by concerns over terrorism and national security. The exclusion of nationals from Pakistan and Bangladesh was justified on grounds of security and sovereignty of India as many policy makers feared that allowing OCI status to them would undermine the security causing a threat to the public at large and a potential disruption of peace. There were concerns that OCI cardholders, unlike other foreigners, were not required to register with the Foreigners' Regional Registration Office and this exemption led to the fears of free-roaming overseas citizens posing security threats. The possibility of OCI cardholders being involved in political activities or gaining access to sensitive government positions was addressed by prohibiting them from holding public office or serving in security organizations.

**2. Procedural and Institutional Challenges:** The policy faced opposition from various government agencies, particularly the Ministry of Home Affairs, which emphasized the need for stringent background checks before granting OCI status. The OCI framework was designed with multiple safeguards, including provisions allowing the government to revoke OCI status on grounds of national security, sovereignty, or any action deemed against India's interests.

**3. Selective Eligibility Criteria:** Initially, OCI status was granted only to nationals of 16 select countries, primarily affluent Western nations like the US, UK, Canada and Australia. This was later expanded but still excluded countries with large Indian-origin populations such as South Africa, Fiji and Suriname. The selection of eligible countries was partly based on whether the host country permitted dual citizenship and partly on the national security considerations.

**4. Diaspora and Dual Citizenship:** While OCI status was introduced as a substitute for dual citizenship, it does not provide full citizenship rights, leading to dissatisfaction among the Indian diasporas. The Government of India was concerned that granting full dual citizenship could create diplomatic issues and complicate relations with host countries.

## V. US GREEN CARD

The Green Card System of the US and the Overseas Citizen of India Cardholder are completely different from each other. The Green Card System is about granting a permanent resident status that authorizes an individual to live and work in the US on a permanent basis, whereas Overseas Citizen of India Card grants citizenship to a foreigner who is a person of Indian origin and such person does not necessarily reside in India and they do not have the full rights as that of a regular Indian citizen.

As proof of holding a status of permanent residency status, the US Citizenship and Immigration Services grants the concerned individual a Permanent Resident Card (commonly referred to as PR or Green Card). To apply for a Green Card, one must be eligible under any one of the following categories:<sup>223</sup>

**1. Green Card Through Family:** This includes, through immediate relatives of US citizens, through family-based preference categories, through fiancé(e) of a US citizen or their child, through widow/widower of a US citizen and through VAWA<sup>224</sup> self-practitioner.

→ Immediate relatives of US citizens include spouses, unmarried children below 21 years of age, and parents of US citizens who are at least above 21 years of age.

<sup>223</sup> US Citizenship and Immigration Services, Green Card Eligibility Categories, available at: <https://www.uscis.gov/green-card/green-card-eligibility-categories>

<sup>224</sup> Violence Against Women Act, 1994 (Public Law 103-322).

- Family-based preference categories include family-based members of US citizens such as unmarried sons or daughters aged 21 years or older, married sons or daughters of any age, brothers or sisters of US citizens who are at least 21 years of age, and family members of lawful permanent residents such as spouses, unmarried children below the age of 21 years, and unmarried sons or daughters aged 21 years or older.
- Fiancé(e) of a US citizen or their child includes individuals admitted to the US as a fiancé(e) or as the child of a fiancé(e).
- Widow(er) of a US citizen includes individuals who were married to a US citizen at the time of the death of the citizen.
- VAWA self-petitioner includes victims of battery or extreme cruelty by a US citizen or a lawful permanent resident spouse, parent or child.

**2. Green Card through Employment:** This includes the following individuals who can apply.

- First Preference (EB-1): Individuals with extraordinary abilities, outstanding professors or researchers, and certain multinational executives and managers.
- Second Preference (EB-2): Professionals with advanced degrees or individuals with exceptional abilities in specific fields.
- Third Preference (EB-3): Skilled workers, professionals and other workers.

→ Fourth Preference (EB-4): Certain special immigrants, including religious workers and employees of US foreign service posts.

→ Fifth Preference (EB-5): Immigrant investors who invest a specific amount of capital in a new commercial enterprise that creates jobs.

### 3. Green Card through Refugee or Asylee Status:

This includes those individuals who have been admitted as refugees and/or granted asylum status at least one year ago.

### 4. Green Card for Human Trafficking and Crime Victims:

This includes victims currently holding a T nonimmigrant visa<sup>225</sup> and victims holding a U nonimmigrant visa<sup>226</sup>.

### 5. Green Card for Victims of Abuse:

This includes VAWA self-petitioner, special immigrant juvenile who are children who have been abused, abandoned, or neglected by a parent and have SIJ (Special Immigrant Juvenile)<sup>227</sup> status. Abused spouses or children of qualifying individuals under the Cuban Adjustment Act or HRFIA<sup>228</sup> also fall under this

<sup>225</sup> T nonimmigrant visa also referred to as T-visa is a visa category in the United States that allows victims of human trafficking to remain in the country temporarily to assist law enforcement in investigations and prosecutions related to their trafficking, providing them with protection and a chance to stabilize their lives. US Department of State - BUREAU of Consular Affairs, available at: <https://travel.state.gov/content/travel/en/us-visas/other-visa-categories/visas-for-victims-of-human-trafficking.html#:~:text=T%20nonimmigrant%20status%20allows%20certain%20victims%20of,the%20United%20States%20due%20to%20their%20trafficking>.

<sup>226</sup> U nonimmigrant visa is a visa that allows victims of certain crimes to come to the United States who have experienced significant mental or physical abuse. US Department of State - BUREAU of Consular Affairs, Visa for Victims of Criminal Activity, available at: <https://travel.state.gov/content/travel/en/us-visas/other-visa-categories/visas-for-victims-of-criminal-activity.html#:~:text=Victims%20of%20certain%20criminal%20activities,available%20under%20Reference%20%2D%20U.S.%20Law>.

<sup>227</sup> Special Immigrant Juveniles, US Citizenship and Immigration Services, available at: <https://www.uscis.gov/working-in-US/eb4/SIJ#:~:text=If%20you%20are%20in%20the,as%20getting%20a%20Green%20Card>

<sup>228</sup> Haitian Refugee Immigration Fairness Act (HRIFA), enacted by Congress on 21st October 1998. **Haitian Refugee:** is a person from Haiti who has fled their country due to a crisis situation such as political instability, gang violence, natural disasters, or extreme poverty, seeking asylum and protection in another country. UNHCR, Haiti: A multi-dimensional crisis leading to continued displacement, available at: <https://dataviz.unhcr.org/product->

category of individuals who can apply for green card.

## 6. Green Card through Other Categories:

This includes the following:

- **Liberian Refugee Immigration Fairness:** Liberian nationals who have been continuously physically present in the US since 20th November 2014 and their eligible family members.
- **Diversity Immigrant Visa Program:** Individuals selected for a diversity visa in the Department of State's diversity visa lottery.
- **Cuban Adjustment Act:** Cuban natives or citizens and their spouses or children.
- **Dependent Status under HRIFA:** Spouses or children of lawful permanent residents who received their Green Card based on their Haitian Refugee Immigration Fairness Act.
- **Lautenberg Parolee:** Individuals paroled<sup>229</sup> into the US as Lautenberg parolees.
- **Indo-Chinese parole Adjustment Act of 2000:** Natives or citizens of Vietnam, Cambodia, or Laos paroled into the US on or before 1st October 1997.
- **American Indian Born in Canada:** Individuals born in Canada possessing at least 50% American-Indian roots, and maintaining their principal residence in the US.
- **Person Born in the US to a Foreign Diplomat:** Individuals born in the US to a foreign diplomatic officer

stationed in the US at the time of birth.

- **Section 13 (Diplomat):** Foreign diplomats or high-ranking officials stationed in the US who are unable to return home.

## 7. Green Card Through Registry:

Individuals who have been present in the United States since 1st January 1972 can apply for a Green Card under this registry provisions, even if currently in the US unlawfully.

The above clearly explains what a green card is and who can apply to be a green card holder in the United States.

## VI. ANALYSIS AND CONCLUSION

It is highly important to note that Overseas Citizenship of India Cardholder status does not amount to dual citizenship, nor does the Constitution of India recognize such. Dual citizenship means that an individual is a legal citizen of two countries simultaneously, but OCI cardholder status does not allow this. The following table outlines the main differences between OCI Card status (applies to India) and dual citizenship (does not apply in India):

Feature	OCI Card Status	Dual Citizenship <sup>p230</sup>
<b>Definition</b>	A special status given to foreign nationals of Indian origin.	Legal citizenship of two countries at the same time.
<b>Indian Citizenship</b>	Not a citizen of India.	Full citizenship

[gallery/2024/10/haiti-a-multi-dimensional-crisis-leading-to-continued-displacement/#:~:text=Outside%20Haiti,majority%20remaining%20within%20the%20Americas.](https://www.iledu.in/gallery/2024/10/haiti-a-multi-dimensional-crisis-leading-to-continued-displacement/#:~:text=Outside%20Haiti,majority%20remaining%20within%20the%20Americas.)

<sup>229</sup> **Parolee:** is a prisoner who has been released from prison early before the end of their sentence.

<sup>230</sup> Does not apply in India as the Constitution of India strictly does not allow for dual citizenship as per Article 9 of Part II.



		of both the countries.
<b>Passport</b>	Cannot hold an Indian passport. OCI holders use their foreign passport.	Holds valid passports of both the countries.
<b>Voting Rights</b>	No voting rights in India.	Can vote in both countries.
<b>Political Rights</b>	Cannot contest elections or hold public office in India.	Can run for office in both countries.
<b>Property Rights</b>	Can buy property in India except agricultural land.	Full property ownership rights in both countries.
<b>Employment Restrictions</b>	Cannot hold government jobs or work in defence, banking, etc. as explained in the previous sections of this paper.	No restrictions on employment in either country.
<b>Visa and Residency</b>	Lifelong multiple-entry visa for India.	No visa is needed for either country.
<b>Consular Protection</b>	Only from foreign country of citizenship.	Consular protection from both the countries.

<b>Inheritance Rights</b>	Can inherit property in India but with certain legal formalities.	Can inherit property in both countries freely.
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Table 1: Comparison between OCI and dual citizenship

The Consulate General of India issued a notice clarifying dual citizenship. In its notice it clearly stated that the Constitution of India does not permit individuals to hold Indian citizenship alongside the citizenship of another country. However, the Government of India has chosen to grant Overseas Citizenship of India (OCI) status to certain categories of Persons of Indian Origin as outlined under Section 7A of the Citizenship Act, 1955. The OCI card primarily serves as a lifelong visa and includes additional privileges. It is emphasized that possessing an OCI card does not grant the holder dual citizenship in any manner.<sup>231</sup>

Although India has taken huge steps towards global integration with the Indian diaspora, but the concept of Overseas Citizenship of India Cardholder has its own pros and cons. This concept brought in the persons of Indian origin to connect back to their native country but the complex procedure makes it quite difficult and multiple restrictions are also imposed on the persons who apply for OCI cards. The Green Card system of the US allows the list of persons explained above to apply for US citizenship unlike OCI status which does not grant full Indian citizenship to such card holders. The US largely recognizes, accepts and allows for dual-citizenship but India, on the other hand does not allow for the same. Through this paper the author has explained the legal provisions of Overseas Citizenship of India Cardholder under the Citizenship Act, 1955 while comparing it to dual-citizenship and the Green Card system of the US to mark the difference that OCI is not full citizenship.

<sup>231</sup> Consulate General of India, Notice regarding Dual Citizenship, available at: <https://www.cgisf.gov.in/page/notice-regarding-dual-citizenship/>