



NEW INDIAN GOVERNMENT RULE REQUIRING RENUNCIATION OF INDIAN CITIZENSHIP AND SURRENDER OF INDIAN PASSPORTS OUTRAGES OVERSEAS INDIANS

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The new rules requiring overseas Indians to renounce Indian citizenship and surrender the Indian passport after they have taken up the citizenship of another country misinterpret the provisions of the Indian Citizenship Act, 1955. The guidance, including Frequently Asked Questions, can be found on the website of the Indian Consulate in New York, http://www.indiacgny.org/php/showHighLightDet.php?h_id=138&key.

According to the guidance, the Indian passport must be surrendered within 90 days of US naturalization even if the US passport is obtained later. A fee of \$175 has been imposed to surrender the Indian passport. Additional monetary penalties are imposed on those who failed to surrender the passport within three years of acquiring US citizenship or for travelling on the Indian passport or applying for its reissuance after US citizenship. The new rules are especially harsh on those who may have obtained US citizenship many decades ago and who may have lost their Indian passports. An applicant who has lost, damaged or surrendered his or her Indian passport to a foreign government must furnish certified copies of the following documents:

1. Details of last held Indian passport (Passport No., Date of Issue & Place of issue). The onus of providing details rest on the applicant.
2. Official documents submitted to authorities of new country at the time of obtaining citizenship/naturalization & documents used for entry such as US

Form I -130.

3. Notarized letter explaining reasons for loss.

4. Police report.

Failure to comply with the surrender policy will likely deprive a person of Indian origin to obtain an Indian visa, an OCI/PIO card or other consular services.

The provision for termination of Indian citizenship is separate and distinct from the provision for making a declaration of renunciation. While renunciation of citizenship is covered in Section 8 of the Citizenship Act 1955 and has to be applied on a prescribed form by a citizen of India, automatic termination of citizenship, which occurs when one takes up the citizenship of another country, is covered under Section 9 and requires no formal application to the Indian government.

It is clear that a person cannot use the Indian passport to travel when he or she becomes a US citizen as Indian citizenship has automatically terminated under Section 9. There may also probably be a basis for establishing rules requiring surrender of the passport that has been rendered invalid under Section 9, although it is unfair to penalize a person for failing to surrender the passport when there was no established procedure to do so prior to the recent guidance. However, the Surrender Form, [http://www.indiacgny.org/UserFiles/Renunciation%20Form\(2\).pdf](http://www.indiacgny.org/UserFiles/Renunciation%20Form(2).pdf), requiring renunciation of Indian citizenship, does not make sense. One cannot renounce citizenship when it has ceased to exist. Under Section 9, Indian citizenship was automatically terminated when the person took up the citizenship of another country. On the other hand, Section 8 provides for a citizen of India to renounce Indian citizenship, and it should be noted that the words “who is also a citizen or national of another country” were deleted from Section 8 by Act 6 of 2004. Thus, a person who is no longer a citizen of India cannot renounce Indian citizenship.

Rule 13 of the Passport Rules, 1980 states that “ person holding a passport or travel document shall not be entitled to another passport or travel document unless he surrenders to the passport authority the passport or travel document already held by him.” Rule 13 further states, “Provided that separate passports or travel documents may be issued to the same person in respect of different countries if it is necessary so to do for facilitating his visits to such countries.”

Section 12 (3) of the Passport Act, 1967 states that “hoever contravenes any condition of a passport or travel document or any provision of this Act or any rule made thereunder for which no punishment is provided elsewhere shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.”

This rule, which the Indian government appears to be relying on, is ambiguous and appears to apply more readily to one who holds a valid Indian passport and is applying for another, rather than one who ceases to have a valid Indian passport by operation of Section 9 of the Citizenship Act and has been issued a US passport. In any event, the Indian consulates in the US never had a formal procedure for surrendering a passport until the recent guidance. Even when a person applied for the OCI card and handed in the Indian passport with the intention to surrender the document, the Indian Consulate merely cancelled it. We are now told that such a cancellation will not be considered a valid surrender of the Indian passport, and a person who in good faith handed in the Indian passport earlier will have to pay additional penalties above the \$175 basic fee for surrender.

It is important that the Indian government continues to maintain goodwill with the overseas Indian community. The new rules merely antagonize the community and there is absolutely no need for this. There surely is a better way to implement a surrender policy of invalid Indian passports on a prospective basis, without also requiring renunciation, rather than the clumsy and arbitrary way it has been handled so far. The Global Organization of People of Indian Origin has launched a campaign requesting the government to reconsider the retroactive enforcement of the new rule, http://www.gopio.net/news_052510.htm.

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