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Legal Uncertainty and Administrative Discretion in Post-Citizenship Amendment Act 2019 OCI Cancellations: A Study of Procedural Fairness and Proportionality in India

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ABSTRACT: The Citizenship (Amendment) Act (CAA) 2019 made a major change in India's policy towards the diaspora by changing Section 7D of the Citizenship Act, 1955. To be exact, the new Section 7D(da) gives the Central Government the power to cancel the Overseas Citizen of India (OCI) registration if that person violates "any other law" as per the Official Gazette. This paper explores how this led to the increase in administrative discretion and the emergence of "legal uncertainty" that currently defines the OCI status. Initially, OCI was promoted as a "lifelong" connection for Indian diaspora offering them civil and economic rights comparable to a "midway citizenship." However, due to the 2019 amendment, these rights have become uncertain and dependent on the government's will. The Indian judiciary is stepping up its scrutiny of executive overreach, in particular when it comes to cancelling laws under Section 7D(da). As it happens, the absence of clear rules for deciding which laws get cancelled ends up weakening the legislature's authority. However, courts today are incorporating proportionality checks into their decision-making processes and are insisting on due process before sanctioning such steps. In this respect, the landmark judgment in *Ashok Swain v. Union of India* (2025) reflected the judiciary's impatience with the executive decision-making process in the absence of clear reasoning by the government. At the same time, the excessive delegation doctrine ceases to be a mere conceptual tool. It is being regarded by judges as a serious danger to the democratic equilibrium. However, officials keep on promoting policy changes without boundaries. This gives rise to a situation where accountability appears to be postponed, thus causing friction. Lawyers consider that this change is a phase of administrative oversight. It is stated in the report that the present system after the CAA lacks *Lex Certa* (legal certainty) which is a prerequisite of the Article 14, Constitution. The article considers the proportionality rule as the one that will unlock the door towards new administrative adjudication. Most importantly, it is only indicating that "grave" statutory offenses--not minor civil infractions--should be capable of leading to the denial of lifelong residency. On a larger scale, this article raises issues related to global diaspora rights and the exercise of state sovereignty in the face of administrative overreach.

1. INTRODUCTION

1.1 The Precarity of "Lifelong" Status

The Overseas Citizenship of India (OCI) program was launched with the Citizenship (Amendment) Act, 2005. It was a very elaborate attempt to satisfy the diaspora's almost universal demand for dual citizenship something that the Constitution of India through Article 9 completely rules out. Considering it a "statutory compromise," the Supreme Court of India in *Anushka Rengunthwar v. Union of India* (2023) described the rights given by the OCI status as "midway rights." These rights lift the individual to a level that is between a native and a foreigner. For a long time, this status was seen as a "forever" visa giving a feeling of legal permanence and security to millions of people of Indian origin all over the world [1]. However, the introduction of the Citizenship (Amendment) Act (CAA) 2019 has, in fact, changed the security of citizenship completely and has brought in the idea of "revocable belonging". The main focus of the public spoken about CAA 2019 was on giving naturalization to persecuted minorities but equally significant change was made in the powers of the administration to deprive persons of Indian citizenship. The amendment in Section 7D has furnished the Central Government with the power to cancel OCI registration if the violation of "any other law" by the person is notified by the government. This legislative change marks a very important transformation of the grounds for revocation from limited, security-related reasons to broad, open-ended grounds for full governmental control. The fundamental issue of administrative law arises from the "legislative ambiguity" contained in this new section [2]. Giving the executive

branch the authority to decide which laws can lead to cancellation is, in fact, the legislature who has given away too much power by delegating. As a result, a condition of "legal uncertainty" arises with the OCI cardholder being in a constant state of potential non-compliance. From the constitutional point of view, this leads to the pressing problem of the application of the "Doctrine of Proportionality." Is it that the ease of the administration in the revocation of a lifelong status for a very small statutory infringement should get outweigh the cardholder's deeply entrenched civil and economic interests in India? On top of that, not having a complete list of the laws notified is making the OCI holder exposed to "legal surprises," and the principle of *Lex Certa* (legal certainty), a component of the Rule of Law as per Article 14 of the Indian Constitution, is getting violated. Currently this work maintains that a post-2019 policy has changed OCI status from a legally safe one to a "precarious privilege" that can be withdrawn [3]. Through a critical doctrinal approach, the paper looks into the conflict between the power of the state to refuse entry to foreigners and the adequacy of fairness procedures in administrative law. The paper looks at recent cases where courts have sometimes stood as a protective fence against the bailiff's message, requiring "reasoned orders" as well as the disclosure of material evidence. Through the analysis of the Zambia Citizenship and Immigration Control Act Section 7D(da) vis-a-vis the principles of natural justice, the paper tries to lay down the foundation for the coexistence of state interests and diaspora's rights protection under the Executive.

1.2 The Legislative Shift: Section 7D and the CAA 2019

The laws regulating the Overseas Citizen of India (OCI) status have changed dramatically over time. Initially, the OCI was a scheme to give Indian diaspora a permanent Indian identity. However, the legal changes brought in by the Citizenship (Amendment) Act (CAA) 2019 have led to the concept of "conditional residence." This article traces the changes in the cancellation mechanism from a strictly defined, security-focused one to an open-ended administrative one, through the discussion of Section 7D(da) and the statutory requirement for procedural fairness [4].

2. THE PRE-2019 LEGAL LANDSCAPE

2.1 Specificity and Security

Section 7D of the Citizenship Act 1955 before its amendment in 2019, was a limiting provision in the law. The power of the state to cancel an Overseas Citizen of India (OCI) registration was tied to certain, very few and high-level, circumstances. These circumstances included:

- a. Registration obtained by fraud: Deliberate misrepresentation or hiding of significant facts.
- b. Disaffection towards the Constitution: Going against the very framework (the constitution) of India.
- c. Security of the State: Actions threatening the sovereignty, unity, or security of India; or the friendly relations with foreign countries.

d.Criminal Court Conviction: Imprisonment for a period of two years or more within five years from the date of the registration.

Under this original framework, an OCI holder enjoyed a high degree of legal certainty. The grounds for cancellation were exceptional and tied to "grave" conduct. As the statute precisely defined the grounds for cancellation, the administrative discretion was limited in such a way that the "lifelong" commitment of the OCI card was not to be terminated by mere minor regulatory violations[5].

2.2 The CAA 2019 Intervention: The "Any Other Law" Clause

With the implementation of the CAA 2019, Section 7D(da) was inserted in the act sequence in a way that it considerably reduced the necessity for a state action. Through this, cancellation of OCI could be issued not only if the person had breached the Citizenship Act, but also if "any other law for the time being in force as may be specified by the Central Government by notification in the Official Gazette" was resorted to. This change in the law signifies that the principle of ejusdem generis (of the same kind) is not going to be followed anymore. The earlier grounds (fraud sedition national security) all revolved around the theme "threat to the state." [6] However, the new provision gives the executive an opportunity to consider any statutory violation be it disregard of environmental norms, violation of foreign exchange management, or failure to comply with social media guidelines as a reason to lose residency rights.

The phrase "as may be specified" gives the Central Government an open-ended authority to set the rules for cancellation after the event. From the standpoint of administrative law, this is a case of a "floating" legal norm because the OCI holder fails to have any reasonable way of knowing exactly which of the breaches of the law would result in their status being revoked.

2.3 The Proviso of Opportunity: A Procedural Safeguard

Apart from recognizing the potential for misuse of such wide-ranging powers, the 2019 amendment also introduced a compulsory condition:

"Provided that no order under this section shall be passed unless the person concerned has been given a reasonable opportunity of being heard."

Although this clause enshrines the principle of Audi Alteram Partem (hear the other side), the ability of this protection to be effective is very much under judicial scrutiny. In the scenario of Section 7D(da), the term "reasonable opportunity" refers to a rather complicated issue. Should the "other laws" the government pointed out be either extensive or vague, the OCI holder might not be able to challenge effectively [7]. Moreover, giving the accused a fair hearing is hardly possible amidst this "sealed cover" culture which is characteristic of Indian administrative adjudication. In most of the post-2019 cancellations, the government has relied on confidential intelligence reports to justify the "violation of law". Thus, the right of an OCI holder to be informed of the specific evidence against them has been completely overlooked" by the state. Hence, the statutory proviso is more often than not at loggerheads with the executive's contention of "sovereign immunity" with regard to sensitive information.

2.4 Administrative Law Implications: From Rights to Privileges

The change in laws under the CAA 2019 is a signal how India sees its diaspora on an even larger scale. The state by making OCI status dependent on the compliance with an ever-increasing number of "notified laws," has, in fact, turned OCI from a rightful statutory status into a mere removable administrative concession. This transformation results in a 'chilling effect' of the diaspora's involvement in India, especially for scholars, journalists, and activists. If a very small breach of a notified law (like the conditions of the visa or a local rule) can cause the complete loss of the rights to visit or live in India, the official leniency under Section 7D(da) turns into a means for 'governmental overreach' [8].

2.5 Summary of the Shift

The transition can be summarized as follows:

Pre-2019: Cancellation was an exception only when it was clearly revealed that the person posed a threat to the state.

Post-2019: Cancellation became a mere administrative means to get rid of a person based on a broad and indefinite list of violations of the law.

The inclusion of the "reasonable opportunity" clause is indeed a positive however it merely acts as a procedural fix to a major problem of legal ambiguity. Unless the legislature explicitly defines which laws constitute "cancellable" offenses, it will be the executive branch that decides the extent of possession of OCI in individual cases. This is contrary to the principles of administrative transparency[9].

The change introduced by the CAA 2019 to Section 7D of the Citizenship Act brings out one of the most enduring problems in administrative law: how to distinguish between permissible delegated legislation and the unconstitutional handing over of legislative functions. At the heart of this argument is the Doctrine of Excessive Delegation, which claims that if Parliament entrusts a power to the executive, it should provide a "policy guideline" or an "intelligible differentia" so that the use of that power can be controlled.

3. THE ABSENCE OF A "POLICY OBJECTIVE"

Section 7D(da) legally empowers the Central Government to declare "any other law" breach of which would lead to the cancellation of OCI status. Yet, the statute says nothing about how the government is to choose these laws. Normally, the parent act should clearly guide the way - for example, confined to the laws regarding national security, public order, or serious economic offenses[10]. By removing this limiter, the executive is handed a "blank check". The absence of a main policy goal can lead to a situation where an administrative decision takes over the original will of the legislature. As mentioned by the analysts of law (HRDI, 2020), this is a case of "policy-less delegation" where the executive not simply enforces the law but ends up deciding what "cancellable" law is, thus trespassing the exclusive domain of Parliament.

3.1 The Uncertainty Spectrum: Civil vs. Criminal Infractions

The wording of the current legislation results in what may be called an "Uncertainty Spectrum." Without a set list, it is unclear from the law what level of seriousness of violation is necessary to resort to the "nuclear option" of cancelling an OCI.

The Quantitative Difference: Is one offense of a very minor traffic rule or a municipal by-law (if the person is given a notice) considered equal in weight to a violation of the Unlawful Activities (Prevention) Act (UAPA)?

The Qualitative Difference: Is it necessary that the violation be one involving mens rea (guilty mind), or is there also an inclusion of strict liability offenses?

One of the main issues with the law is that by not classifying the offenses, it is actually going against the principle of Legal Certainty. Now, imagine being an OCI cardholder who is probably living abroad most of the time and not even realizing that you are breaking a newly changed Indian law (like FCRA filing or reporting residency)[11]. In such a situation, the fear of your membership cancellation hanging over your head like the "sword of Damocles" is really a metaphor for life-threatening insecurity. This kind of unpredictability is completely opposite to the Rule of Law which on one hand signifies that people should be able to live their lives in accordance with the knowledge of the legal consequences which are clear and foreseeable.

4. PROCEDURAL FAIRNESS: BEYOND THE "OPPORTUNITY TO BE HEARD"

Natural justice in the form of the rule of fair hearing acts as a bridge between the two.

The 2019 amendment to the Citizenship Act only formalised the requirement to give a "reasonable opportunity of being heard" through a proviso. But it is quite possible that despite the insertion of this clause, departure from fairness will happen. There is always a risk that administrative authorities will treat such provisos as mere "checkbox" exercises procedural hurdles to be bypassed rather than substantive protections of the individual's interest. The courts therefore have had to step in to lay down the limits of what will be a "reasonable" opportunity in the area of OCI cancellation when the stakes are very high. The ancient maxim audi alteram partem gives rise to the right to a hearing. Still, in the present-time Indian administrative law, this right has been changing its shape. It is not just allowing the accused to have a say now. The state has to go a step further to make sure that this participation is really understood by the individual. Therefore, the individual must be made aware of the case against them. If grounds are not disclosed, the right to a hearing is nothing but a facade, and the administration process becomes a "hollow ritual."

4.1 From "Boilerplate" to Specific Allegations: The *Swain* Paradigm

The most decisive development in this area has been the courts deeming vague and "boilerplate" Show-Cause Notices (SCNs) as unacceptable. In the past, the Central Government usually resorted to introducing unreasonably general cancellation

proceedings for example, they would blame "activities prejudicial to the sovereignty" or "communicating propaganda" as if these were well-demonstrated facts. First, the Supreme Court, in *Ashok Swain v. Union of India* (2025), took these issues head-on and made a decision opposing this method. It literally considered the case of a Show Cause Notice not supported by facts. The decision was announced that the recognized law of issuing a Show-Cause Notice under Section 7D was that there should be something beyond a mere general allegation^[12]. The "Swain Paradigm" calls for Also the three essential aspects of specificity that is embodied in a notice are given below:

- **Legal Fidelity:** The notice must refer to the accurate provision of the law or the specific "notified law" under Section 7D(da) which the cardholder is alleged to have contravened. Without this, the cardholder would not be able to know whether the officer is implementing the powers given to him or if he is making an ultra vires move.
- **Factual Specificity:** The officer must specify the exact conduct, failure to act, or utterances that are being blamed on the cardholder. If the termination is due to social media activities, academic writings, or financial transactions, then the exact dates, contents, and types of such actions must be revealed. In fact, the court pointed out that in the absence of these details, an OCI is only left "fighting shadows" - i.e. not knowing with which specific behavior that he has to defend.
- **Referential Support:** The notice should indicate the piece of evidence that the authority considers as the "preliminary opinion". Although the state frequently resorts to the plea of "intelligence confidentiality", the Swain case raises the point that the main features of the evidence must be disclosed in order to meet the requirements of Article 14 (Equality and Arbitrariness).

Judicial demands for clarity in this instance are a response to the natural deference imbalance between the state and the individual. With the courts requiring the executive to reveal its hand, they are making sure that the exercise of the administrative discretion is based on facts rather than on the political or ideological considerations. It disallows the state from treating Section 7D as a means for "selective targeting", where the absence of the details enables the government to forcibly align a cardholder's conduct into the broad categories of the law^[13].

4.2 The Mandate of Material Disclosure

One of the key principles of procedural fairness, which courts lately have discussed such as in the case of *Khalid Jahangir Qazi vs. Union of India* (2024), is the

Disclosure of Material Evidence. Usually it is the government that depend on "adverse reports" from intelligence agencies or Special Investigation Teams (SIT) to ground their decisions of cancellation. Any documents and facts must be made available, regardless of type. Unless the state proves disclosure would harm national security through Public Interest Immunity, courts end up sharing the essence of evidence with the OCI holder. That said, it doesn't matter if it's a social media post, financial record, or research paper - each gets opened up. So often, even minor details slip through without a fight. As it happens, the rules feel strict when they're applied in practice.

4.3 The Convergence of Fairness and Proportionality

This elevated standard of procedural fairness is an essential brake on administrative discretion that can go unchecked. By mandating specific allegations and revealing evidence, the judiciary ensures that the government's withdrawal of OCI status is grounded in truths rather than mere thoughts. Not merely a technicality, the hearing is turned into an intensive deliberation safeguarding the "permanent" residency of the diaspora against arbitrary or even politically inspired administrative actions^[14].

5. PROPORTIONALITY AS A JUDICIAL CHECK

Proportionality doctrine has become quite a potent instrument for courts to examine the legality of administrative acts that lead to the violation of fundamental rights. In the context of cancelling OCI status, proportionality acts as a crucial mechanism to ensure that the government is held responsible for infringing personal freedoms while at the same time enjoying full sovereignty. It implies not only that a state intervention must be authorized by law but also that it should be the "least restrictive" method of achieving a legitimate goal. Since OCI is associated with a bundle of rights that are almost the same as citizenship, the judiciary considers withdrawal of such recognition to be "a very serious punishment" that therefore requires a very strong justification.

5.1 The "Least Restrictive" Measure: *Ebrahim Nasir Jadwet v. Union of India* (2026)

In a landmark judgment, the Supreme Court of India in *Ebrahim Nasir Jadwet v.*

Union of India (2026) has thoughtfully used the proportionality test against Section 7D of the Citizenship Act. The Hon'ble Supreme Court, at the same time as this matter, also took the issue of whether the complete withdrawal of an OCI card is really a proportionate response to the breach of law or not, for its consideration. It was declared that the power given to the administrative authorities must not be tied in the sense that the only "severe" measure i.e. revocation must always be adopted even when there are other less invasive alternatives and indeed they are available. The Court clearly set the rule that the state has to conduct a "tiered response" analysis. In case the state intends to punish a certain illegal act, the state should consider the likelihood that a fine, temporary suspension of certain privileges, or a warning could be enough[15]. As cancellation is the highest level of penalty similar to the permanent expulsion from the homeland, the State has to prove that no other measure would have been able to serve the public interest. At this "necessity" element of the proportionality analysis, the executive is barred from exerting "a sledgehammer to crack a nut."

5.2 The Balancing Test: Security vs. Vested Rights

The Balancing Test is at the heart of the proportionality principle. It requires courts to weigh the "social importance" of the state's objective (such as national security or public order) against the "extent of the restriction" imposed on the individual's rights. The OCI card is definitely not only a travel document; it is almost like a "completely attached civil right" in India. These rights include, among others, the ownership of property, the pursuit of a profession, and family interaction. Hence, removing such a status for a child or in case of a very minor breach of a "notified law" does not succeed at the balancing test. To take an example if an OCI cardholder breaches a local rule or a minor provision of the Foreign Exchange Management Act (FEMA), then the "social benefit" of maintaining the citizenship discipline strictly is significantly less than the "individual hardship" of lifelong residency[16].

Quite a few courts are of the opinion that arbitrary cancellation of OCI is like "civil death". It cuts the person off legally and emotionally from India and quite often the effect on the person's livelihood and family is so drastic that there is no going back. Therefore, judges are doubting more and more "automatic" cancellations under Section 7D(da). It would neither make sense, nor be legal, for a tiny breach to lead to the loss of a status that was meant to be permanent. When courts carry out the proportionality check, they guarantee that administrative discretion is kept in line with the constitutional values of fairness and reasonableness. This way, the amendments to the CAA 2019 will not be changed into a weapon for executive excess.

6. COMPARATIVE DATA: INDIA VS. GLOBAL DIASPORA POLICIES

Table 1.1

Comparative Metric	Indian OCI Framework (PostCAA 2019)	Global Standard (e.g., UK, Canada, EU)
Legal Characterization	Statutory Right: Derived from the Citizenship Act. Vulnerable to legislative amendment and executive rules.	Quasi-Constitutional/Vested Right: Often treated as "earned citizenship" or protected permanent residency.
Grounds for Revocation	Elastic/Broad: Includes "violation of any notified law," creating high legal uncertainty and executive discretion[17].	Specific/Narrow: Generally restricted to serious criminality, fraud, or direct threats to national security.
Primary Adjudicator	Executive Branch: The Ministry of Home Affairs (MHA) acts as both the accuser and the judge.	Independent Tribunals: Specialized bodies (e.g., UK's SIAC or Canada's IRB) provide a buffer from the executive.

Standard of Judicial Review	Writ Jurisdiction (Art. 226/32): Courts primarily review the legality and procedure, not the merits of the decision.	Merits Review: Tribunals often conduct a "de novo" review, reexamining the facts and humanitarian circumstances.
Procedural Safeguard	Statutory Proviso: "Reasonable opportunity of being heard," often limited by "sealed cover" evidence.	Adversarial Fairness: Use of "Special Advocates" to review sensitive evidence while protecting the individual's defense[18].
Application of Proportionality	Evolving: Judicial doctrine is still establishing that minor infractions should not lead to "civil death."	Established: Strict adherence to the "least restrictive measure" before revoking residency status.
Accessibility of Redress	High Barrier: Requires expensive, protracted litigation in High Courts or the Supreme Court[19].	Moderate Barrier: Specialized immigration courts offer more streamlined, cost-effective, and faster resolution.
Impact of Decision	Binary/Absolute: Cancellation usually results in an immediate loss of all residency and economic rights.	Tiered: Possible to impose conditions or penalties short of full revocation of status.

7. CONCLUSION AND RECOMMENDATIONS

OCI rules making powers-the 'lifelong' aspect of the status is now turning into a big advantage of the executive's wider discretionary powers. To fix the present legal confusion and align the Citizenship Act with the constitutional mandate of Article 14, there must be a transition from arbitrary discretion to a regime of well-defined rules. The main suggestion is that the Government should publish a comprehensive and exhaustive list of 'other laws' under Section 7D(da). By explicitly stating the statutory violations that will be considered as grounds for cancellation, the Central Government could eliminate the 'floating' legal standards which currently keep the diaspora in a permanent state of uncertainty. This announcement might serve as a crucial milestone in the implementation of the Lex Certa principle, ensuring that OCI holders can foresee the legal consequences of their actions and also prevent the executive from being involved in providing ex-post-facto cancellation reasons. Besides that, it is imperative for the government to establish a statutory classification system as a precaution that withdrawal of rights of residence should only be the last resort. Currently, the 'one-size-fits-all' approach, where even the tiniest administrative error can lead to the same punishment as a serious crime, is totally out of proportion. This announcement might serve as a crucial milestone in the implementation of the Lex Certa principle, ensuring that OCI holders can foresee the legal consequences of their actions and also prevent the executive from being involved in providing ex-post-facto cancellation reasons. Besides that, it is imperative for the government to establish a statutory classification system as a precaution that withdrawal of rights of residence should only be the last resort. Currently, the 'one-size-fits-all' approach, where even the tiniest administrative error can lead to the same punishment as a serious crime, is totally out of proportion. The OCI system loses credibility when decisions lack clear reasoning. Mostly when vague labels like "anti-national activity" are used without context. But this undermines trust because citizens can't see how their actions connect to legal standards, and the absence of factual links creates room for arbitrary punishment. Realistically, every cancellation must tie specific behaviors directly to proportionality

rules so there's a transparent chain of logic. Often, officials skip detailed analysis, opting for generic statements that feel more like bureaucracy than fair judgment. So long as orders remain hollow, plus the program risks being seen as a tool of control rather than connection. Overall, the diaspora needs concrete proof that reviews follow built norms, not just policy slogans. The system works best when every decision includes documented evidence and references to existing laws. A wellreasoned order doesn't just satisfy procedural checks; it gives individuals a real chance to challenge outcomes in court. This approach makes enforcement feel accountable and consistent, not unpredictable. With such clarity, India keeps its promise of inclusion, and protects national interests. For better or worse, this structure shapes how far the program goes in building trust across global communities.

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