



IMMIGRATION LAW

Citizenship by Descent and the Mandatory Requirement of Consular Registration: An Analysis of Dolly Khilankumar Vadalia v. Union of India

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In a significant pronouncement, the High Court of Gujarat at Ahmedabad, in Special Civil Application No. 9457 of 2025 (Dolly Khilankumar Vadalia née Dolly Ketan Barai v. Union of India & Others), delivered its judgment on 30th April 2026, dismissing a writ petition that sought to compel the issuance of an Indian passport without proof of citizenship. The Bench comprising Hon'ble Mr. Justice Hemant M. Prachchhak was called upon to adjudicate whether a person born abroad to Indian parents, who returned to India in infancy under emergency circumstances and never acquired foreign nationality, could claim an Indian passport despite failing to satisfy the procedural prerequisites for citizenship by descent.

The petitioner, Dolly Khilankumar Vadalia, was born on 18th February 2000 in Xai-Xai, Mozambique, to Indian citizen parents, Ketan Hasmukhrai Barai and Arti Ketanbhai Barai, both holders of valid Indian passports. Her birth was registered with the local authorities in Mozambique. However, within weeks of her birth, Mozambique was devastated by severe floods. Compelled by this emergency, the petitioner, then merely 18 to 25 days old, returned to India with her parents on 14th March 2000 on an emergency certificate. She has never held Mozambican citizenship or any foreign passport. Since her return, she has resided continuously in Rajkot, Gujarat, completed her schooling and higher education in India, including a Master's degree from Saurashtra University, and on 30th July 2023, married Khilankumar Ashokbhai Vadalia, an Indian citizen presently working in Canada.

When the petitioner applied for an Indian passport, the respondent authorities raised objections. They required her to produce the cancellation of the emergency certificate, consular registration of her birth, or proof of Indian citizenship. The High Commission of Mozambique informed her that there was no procedure for cancelling the emergency certificate and that she was not a Mozambican citizen. The High Commission of India in Maputo further clarified that consular registration of birth could not be done at this stage, as it was required to be completed within one year of birth. Her passport application was closed, and she was directed to obtain a certificate of registration or naturalisation of Indian citizenship. When she approached the concerned authorities for such a certificate, she was told she must submit a valid foreign passport, a document she does not possess. Despite holding Indian identity documents such as an Aadhaar card, PAN card, driving licence, and Voter ID, her application remained in limbo. Consequently, she approached the High Court under Articles 14, 21, and 226 of the Constitution of India, read with the Citizenship Act, 1955, and the Citizenship Rules, 2009.

Learned counsel for the petitioner, Mr. Krishna Shah, contended that the impugned actions violated the petitioner's fundamental rights under Articles 14 and 21 of the Constitution. It was argued that the petitioner has been integrated into Indian society, is married to an Indian citizen, and holds multiple official Indian identity documents. The insistence on a foreign passport was characterised as absurd, given that she has never been a foreign national. It was further submitted that her birth has been validly registered under the Registration of Births and Deaths Act, 1969, pursuant to a court order, and that consular registration is not mandatory in her peculiar circumstances. The refusal to issue a passport, it was urged, violates her right to life and liberty under Article 21, which encompasses the right to travel on an Indian passport.

Per contra, the learned Standing Counsel for respondent Nos. 1 to 3, and the learned AGP for respondent Nos. 4 and 5, stoutly opposed the petition. It was submitted that the petitioner entered India on an Emergency Certificate issued by the Government of Mozambique dated 12th March 2000, along with an Indian visa valid until 9th September 2000. This indicated that her parents did not follow the prescribed procedure for acquiring Indian citizenship by descent at the time of her birth. The respondents argued that the petitioner does not qualify as an Indian citizen under the proviso to Section 4(1)(b) of the Citizenship Act, 1955, as she failed to provide proof of registration of her birth at an Indian Consulate within one year of birth or thereafter with the approval of the Central Government. An objection letter dated 9th May 2025 was issued requiring documentary proof of Indian citizenship, and it was pointed out that her earlier passport applications dated 29th September 2023 and 24th March 2025 were closed for the identical reason. The respondents further relied upon a communication from the Ministry of Home Affairs dated 15th October 2025, which reiterated that under Section 4 of the Citizenship Act, 1955, read with Rule 3 of the Citizenship Rules, 2009, birth must be registered at an Indian Consulate to claim citizenship by descent. They also challenged a birth certificate issued by the Rajkot Municipal Corporation dated 18th October 2025, which recorded Rajkot as her place of birth, contending that it is not valid for citizenship purposes as it records an incorrect place of birth and lacks the prior approval of the Central Government mandated under Section 4.

The Court, after perusing the record and hearing both sides, framed the central issue as whether the petitioner had discharged the burden of proving Indian citizenship. The Court noted that it is an admitted fact that the petitioner was born in Mozambique to Indian parents and returned to India under emergency circumstances. However, the Court observed that the petitioner's parents had not followed the procedure to acquire Indian citizenship by descent for her at the time of her birth. The proviso to Section

4(1)(b) of the Citizenship Act, 1955, mandates that a person born outside India on or after 10th December 1992 shall not be a citizen of India by descent unless his birth is registered at an Indian Consulate within one year of its occurrence or with the approval of the Central Government. The Court held that this statutory requirement is mandatory and not merely directory. The petitioner's failure to comply with this condition, coupled with the fact that two previous passport applications were closed for the same deficiency, led the Court to conclude that she had failed to prove Indian citizenship either by birth under Section 3 or by descent under Section 4 of the Citizenship Act, 1955.

The Court did not accept the petitioner's argument that her birth registration under the Registration of Births and Deaths Act, 1969, or her possession of Indian identity documents, could substitute for the statutory requirement of consular registration. It implicitly accepted the respondents' position that the Passport Act, 1967, and the Passport Rules, 1980, restrict the issuance of passports to Indian citizens, and that the authorities were justified in closing her application for want of proof of citizenship. The Court did not find any violation of Articles 14 or 21, holding that the authorities had acted in accordance with the settled principles of law governing citizenship and passport issuance.

In the ultimate analysis, the Court dismissed the writ petition, holding that it does not deserve to be entertained. However, in a gesture preserving the petitioner's alternative remedies, the Court declared that it is open for the petitioner to make an online or offline application for citizenship before the concerned authority under Sections 5 or 6 of the Citizenship Act, 1955, and the concerned authority shall decide the same in accordance with law. The judgment thus reaffirms that while emergency circumstances may evoke sympathy, the statutory architecture governing citizenship by descent remains impervious to ad hoc relaxations, and the burden of establishing citizenship rests squarely upon the applicant.

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