U.S. Proposal on Birthright citizenship

Why in news?

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U.S. President said recently that he intends to issue an executive order that would end birth right citizenship for children born in the US to undocumented immigrants.

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What is a birthright citizenship in US?

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- Birthright citizenship in the United States is acquired by virtue of the circumstances of birth.
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- It contrasts with citizenship acquired in other ways, for example by naturalization.
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- The U.S. citizenship is automatically granted to any person born within and subject to the jurisdiction of the United States.
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- This includes the territories of Puerto Rico, the Marianas (Guam and the Northern Mariana Islands), and the U.S. Virgin Islands.
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- Birthright citizenship also applies to children born elsewhere in the world to U.S. citizens (with certain exceptions).
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What was the basis of this decision?

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- The U.S. proposed to strike down the right to citizenship decided only by the place of birth, derived from common law.
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- The principle guarantees that a child born on US soil is automatically a full

citizen, irrespective of the citizenship status of its parents.
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- The decision seems to be determined to follow the trail blazed by India.
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- In 2004, India abolished a similar provision in response to fears about mass immigration from Bangladesh.
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- India is the only big country to take this step while the rest of the world supports birthright citizenship, though it may be conditional.
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- With the exception of Chile and a few minor states, the Americas support unconditional birthright citizenship.
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- The decision was taken at the backdrop of the assertion that birthright citizenship draws people to illegally enter the United States.
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- However, all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside.
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- It has long held that the phrase “under the jurisdiction thereof” extends citizenship to anyone born under U.S. territorial jurisdiction, including the children of immigrants.
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- But some have recently claimed that undocumented immigrants are under the jurisdiction of foreign countries, rather than the United States, precluding their children from birthright U.S. citizenship.
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- Recognising this, the U.S. President took a stand to end birthright citizenship to the children of undocumented migrants.
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- However, such a move would significantly restructure U.S. immigration and constitutional law.
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Is the move constitutional?

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- The U.S. Constitution grants the power to regulate citizenship to Congress, not the president.
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- Also, it grants only Congress the authority to establish rules for citizenship

by naturalization.
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- It grants birthright citizenship to all persons born on U.S. soil, meaning that any change would probably require a constitutional amendment.
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- Also, the recent proposal seems an unprecedented grab for executive power by the president.
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- It probably violates the intent of the framers of the constitution.
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- There was a similar ruling in 1867 which stated that black Americans in U.S. could not hold birthright citizenship, effectively making citizenship a hereditary racial matter.
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- However, the decision was overruled and the citizenship was granted to anyone born under U.S. jurisdiction.
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- By linking citizenship status to parentage rather than birthplace now, the proposed executive order relies on similar legal reasoning.
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- Also, any immigrant fell under the protection of the laws and police and courts of the United States was subject to the jurisdiction of the United States.
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- Therefore, children of these immigrants were entitled to birthright citizenship, as are the children of undocumented immigrants born on U.S. soil today.
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What should be done?

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- Thousands of persons of English, Scotch, Irish, German, or other European parentage have always been considered and treated as citizens of the United States so far.
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- Hence the decision will face legal challenges, since millions of citizens, the children of immigrants who were not citizens when they were born, would be disenfranchised by such a move.
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- Also many of them would be found to be achievers, and could mount a successful class action against the proposal.

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- The Supreme Court in U.S. had already upheld a watered-down version of the president’s travel ban, initiated by executive order.
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- That ruling gave wide leeway to interpret and enforce the nation’s immigration laws.
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- Hence, there is a chance that the court could affirm some or all of this executive order that reinterprets birthright citizenship law.
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- But the message would have gone out nevertheless, that in the future, the US may not remain as bravely welcoming of outside talent as it has been.
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Source: Financial Express

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