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REPORT ON CITIZENSHIP LAW: PAKISTAN

AUTHORED BY
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Report on Citizenship Law

Pakistan

Faryal Nazir

1. Introduction: 1951 Act of Citizenship

Pakistan enforced its first citizenship law, the Pakistan Citizenship Act, 1951 (“the Act”), on 13 April 1951. Before its creation in 1947, Pakistan was part of the British-Indian colony. Pakistan inherited several procedural and substantive laws as colonial legacy. Nonetheless, the British-India colony did not have any law on the issue of citizenship. The Act was especially drafted to accommodate diverse group of individuals then residing in Pakistani territory. The Act defined different modes of acquisition of citizenship and features the instances of loss of citizenship. Since 1951, the law has been amended several times to adapt to the evolving political landscape of the country. The citizenship as a legislative subject falls exclusively in the domain of the Federal Legislature and therefore, all amendments in the Act are also passed by it.¹

In the second part of the report, it explores the historical setting in which the Act was introduced. In this regard, the citizenship provisions of the Act which were required to fill in the lacuna created by the event of partition of British India and mass migration to Pakistan have been discussed. The details of laws and cases which involved citizenship claims either directly or indirectly have also been analysed.

In the ensuing part, the report discusses the current citizenship regime at length i.e. the modes of acquisition of citizenship, the loss of citizenship and the law on dual nationality in Pakistan.

The section on acquisition of citizenship, initially examines the mode of acquisition of citizenship by birth and following on from this, the second section sheds light on the citizenship status of Afghan refugees. The third section details the acquisition of citizenship by descent. Next section provides information about the acquisition of citizenship through migration. The mode of acquisition through naturalisation and the requirements of law in this respect have been examined in the fifth section. The following two sections in the report focus

¹ Entry 4, Part I, Federal Legislative List- Fourth Schedule, the Constitution of Pakistan, 1973. Pakistan has a bicameral Federal Legislature (also referred as the Parliament) comprising the National Assembly, and the Senate. A legislative bill to introduce or amend a law can be tabled in any of the houses but must be approved by both the houses.

on some of the exceptional modes of acquisitions. The Act allows Commonwealth citizens to apply for citizenship under the Act on the basis of investment in the country; the pre-requisites for this mode of acquisition with salient features of investment policy have been discussed in the sixth section. The seventh section explains the special place of Kashmiri subjects and their right to citizenship as spelled out in the Act. The eighth section describes the citizenship rights of a woman married to a Pakistani national. Further, the report expounds upon the historic event of separation of East Pakistan (Bangladesh) and the corresponding changes made in the Act to redefine the criterion of citizenship. The succeeding section looks at the mode of acquisition of citizenship by incorporation of territory.

Following the discussion on modes of acquisition, the report illustrates various scenarios in which a person would become disentitled to or deprived of citizenship.

Lastly, the legislative history and development of jurisprudence of dual citizenship in Pakistan is set out. In the end, a conclusive analysis of the citizenship law of Pakistan has been presented.

2. Citizenship and the Partition

It is crucial to understand the backdrop in which the Act was introduced. Before 1947, Pakistan and India were part of the British India colony. The colony was partitioned on the basis of religious affiliations. The Muslim majority provinces of the colony were made one country, now known as Pakistan and rest of the territories with a Hindu majority were designated as India. The creation of two independent dominions of Pakistan and India on 14 and 15 August 1947, respectively is known as the partition of British India (“the partition”). At the time of the partition, a mass migration took place in both countries. Hundreds of thousands of Muslims living in now Indian territory, migrated to Pakistan. Similarly, Hindu populations in Pakistan migrated to India. Moreover, since British India was officially part of the British Empire, there was a whole segment of population who were in British service or were naturalised as British subjects. Section 3 of the Act regulates the citizenship of all such segments of population. At present, to a large extent this provision of law does not form part of the litigation issues, as most of the citizenship claims arising out of the partition era are now settled.

This provision of law bestows the citizenship status on four distinct types of persons.

- i- The citizens who or whose parents or grandparents were born in the territory of Pakistan at the time of creation of the country and who are now permanently residing in Pakistan.
- ii- The second category includes those persons who were born in the territories now included in India; however they are presently domiciled in Pakistan.
- iii- The third category of persons includes those who were naturalised as British subjects in Pakistan, and have renounced their foreign citizenship before the commencement of this Act.
- iv- Lastly, the clause allows the persons migrating from various parts of Indo-Pakistan subcontinent to the territories of Pakistan, to acquire citizenship. For this last category,

there are two further criteria defined in law. Firstly, the person must have migrated to the territories of Pakistan before the commencement of this Act i.e. 13 April 1951 and secondly, the person must have the intent to reside permanently in Pakistan.

The question of citizenship was presented before the courts in Pakistan where a couple domiciled in British India, applied to the courts in Pakistan for dissolution of marriage.² The court refused to exercise its jurisdiction as the couple was simply residing in the Pakistani territories and there was no intent to abandon the domicile of origin, or adopt the domicile of Pakistan. The court held that mere residence in a country does not prove a domicile of choice and the following two essential conditions must co-exist to establish this factum:

- 'i) that a person has abandoned his domicile of origin or that his domicile of origin is in abeyance; and
- ii) that he has adopted the country in which he resides as his home, that is to say, he intends living in the country in which he resides as his home, and does not intend going back to his country of origin.'

The residence, *animus manendi* (intent of remaining) and lack of *animus revertendi* (intent of returning) to the former domicile are necessary ingredients for establishing *sui juris*. The residence without the *animus manendi* and, *animus manendi* without the proof of residence are insufficient to claim citizenship and this principle is unequivocally encapsulated in the Act (Section 3).

In another case an Indian national of Chinese origin travelled to Pakistan on an Indian passport in 1951, when visa system was not prevalent and the Act had not come into force.³ As soon as he came, he applied for citizenship of Pakistan which was rejected. He purchased property in Pakistan and also settled his family and business there. In 1961, he received a letter from the Federal Government of Pakistan instructing him to leave the country within one month. He was issued a show cause notice under the Foreigners Act, 1946 by the government as to why an order of conviction should not be passed against him. He was eventually charged and convicted under the Foreigners Act, 1946. The petitioner challenged his conviction before the High Court on the ground that he was a citizen of Pakistan within the meaning of Section 3 of the Act. He maintained that he migrated to Pakistan on 8 April 1951 whereas the Pakistan Citizenship Act, 1951 came into force on 13 April 1951. Any person who came to Pakistan before the commencement of the Act with the intention to live permanently in Pakistan is deemed to be a citizen of Pakistan under Section 3 of the Act. After perusing the record, the court came to the conclusion that the petitioner came to Pakistan before the commencement of the Act with the intention of settling and has not returned to India since then. The court granted the petition declaring the petitioner entitled to citizenship of Pakistan.

Besides the grant of citizenship after the partition, the migrants from India were also allotted immovable property in Pakistan under a settlement scheme. The migrants were identified as displaced persons under the Displaced Persons (Compensation and Rehabilitation) Act, 1958. The expression 'displaced person' is defined as 'any person who, on account of the setting up of dominions of Pakistan and India, or on account of civil disturbances or the fear of such disturbances in any area now forming part of or occupied by India, has, on or after the first day of March 1947, left or been displaced from, his place of residence in such area and has subsequently become a citizen of Pakistan, or is residing therein and includes any person who being a resident of any territory outside India, is for that

² John Oswald Horatio Neale vs. Mrs. Margrate Eilen Neale, PLD 1957 Dacca 363

³ Hse Yung Hsieh vs. The State, PLD 1962 Dacca 349

reason unable to manage, supervise or control any property belonging to him in India or in any area occupied by India, and also includes the successors-in-interest of any such person'.⁴

In this regard the displaced persons does not include a person whose residence was in Pakistan or who was domiciled in Pakistan, however for some reason temporarily stationed in India for business or other reasons. A British woman who was domiciled in Rawalpindi district in Pakistan was running a hotel in Srinagar, Kashmir (now part of Indian controlled disputed territory). Due to social unrest in Kashmir following the partition, she had to wind up her business and return to her domiciled district in Pakistan. She applied for a settlement claim under the Displaced Persons (Compensation and Rehabilitation) Act, 1958 (the "1958 Act"). The court declared that she was not a displaced person within the meaning of the 1958 Act as first, she was domiciled or permanently resident in Pakistan and second, being a British subject she was capable of managing her property in Kashmir therefore, she could not claim property for settlement.⁵

A similar case concerns a person who was permanently domiciled in district Gujranwala, Pakistan. Being a government servant, he was serving in Calcutta which formed part of India at the time of partition. He chose to return to Pakistan and filed claim under the 1958 Act. The Settlement Commissioner and the court refused the claim and declared that he is not a displaced person as he was permanently domiciled in Pakistan.⁶

In one of the cases, a family migrated to Pakistan at the time of partition.⁷ Nasimmuddin Ahmed, the head of the family, filed for a settlement claim. While his claim was verified by the government, no payment of the claim was made to him and he died while the claim was still pending. His widow, Shamsa Khatoon, petitioner sought to substitute him as legal representative for the purpose of payment of the claim. She submitted her domicile certificate as well as guardianship certificate of her children to the government. Her application was refused and no payment of claim was made to her. She petitioned to the court against the refusal of the government. The State took the position that her domicile certificate suggests that she has 'settled down' in Pakistan and was not 'domiciled' there. The court rebuffed the stance adopted by the government and accepted the petition. The court clarified that there is no difference between the expressions 'settled down' and 'domiciled' for the purpose of the Act.

3. The Current Citizenship Regime

3.1. Acquisition of citizenship

3.1.1. Citizenship by Birth

Jus soli or citizenship by birth is recognized in the Act (Section 3 and 4). At the time of commencement of the Act, a person born in Pakistan could claim nationality if he was residing in Pakistan. Every person born in Pakistan after the commencement of this Act is

⁴ Section 2(3) of the Displaced Persons (Compensation and Rehabilitation) Act, 1958.

⁵ Mrs. Keays Byrne vs. The Settlement Commissioner, Rawalpindi, PLD 1963 (W.P.) Lahore 88

⁶ Imdad Ali Malik vs. The Settlement Commissioner (Policy), Lahore and another, PLD 1962(W.P.)Lahore 502

⁷ Mst. Shamsa Khatoon vs. Chief Settlement Commissioner, PLD 1967 Karachi 265

deemed to be citizen of Pakistan by birth. The law denies citizenship to a person born in the country, if his father enjoys diplomatic immunity in Pakistan or if his father was an enemy or alien in Pakistan. Therefore, the children born to aliens in Pakistan are not accorded the privilege of citizenship.⁸

3.1.2. Citizenship Claims by Afghan Refugees

No statutory provision of law expressly deals with status of citizenship of refugees and especially, Afghan refugees in Pakistan. With regards to citizenship by birth the case of Afghan Refugees is of special importance, as the status of citizenship is not extended to them even if a child of a refugee is born in Pakistan. After Soviet invasion in Afghanistan in 1979, around five million Afghan Nationals fled the country and took refuge in neighbouring countries.⁹ Pakistan alone housed around three million refugees (Noorani 1988, Shahi 1988). On 14 April 1988, four agreements, known as the Geneva Accords, were signed by four High Contracting Parties namely, Afghanistan, Pakistan, Soviet Union and United States of America. The purpose of Geneva Accords was withdrawal of Soviet forces and restoration of peace in Afghanistan. One of the four agreements was the Bilateral Agreement between Republic of Afghanistan and Islamic Republic of Pakistan on Voluntary Return of Refugees.¹⁰ Under the terms of the agreement, the Afghan refugees were to be repatriated peacefully to their home country, however, due to continued instability in Afghanistan up to now, very few refugees have returned.¹¹ Over time, an increasing number of Afghan refugees made efforts to naturalise in Pakistan as citizens, however, their claims have been denied both at administrative and judicial levels. The problem of undocumented refugees exacerbated due to porous and unregulated border between Afghanistan and Pakistan. Most of the Afghan refugees are of *Pashtun* ethnicity and have familial links with people in the adjoining northern province of Pakistan. Some of the Afghan refugees reportedly have obtained Pakistani Identity Cards by settling in smaller towns and providing incorrect information to Pakistani officials.¹² The refugees have been settled in Pakistan for more than three decades, the children born to such refugees in Pakistan are not issued with the citizenship certificates as their parents are considered aliens under the citizenship laws of the country.¹³ In one such case a child of Afghan refugee who was born and raised in Pakistan was denied the issuance of national identity card when he attained the age of 18 years.¹⁴ He challenged the decision of the administrative authority before the High Court, claimed the citizenship by birth and prayed that the administrative authority should be directed to issue him an identity card. The record showed that his father obtained the National Identity Card and passport by providing false information to government officials. While refusing the petition, the court pronounced that the children of Afghan refugees cannot claim citizenship by birth as their parents have a

⁸ As defined in Section 2 of the Act, an alien is a person who is not a citizen of Pakistan or a citizen of a Commonwealth country.

⁹ United Nations Good Offices Mission in Afghanistan and Pakistan, Introduction, <http://www.un.org/en/peacekeeping/missions/past/ungomap/background.html>

¹⁰ Bilateral Agreement between Republic of Afghanistan and Islamic Republic of Pakistan on Voluntary Return of Refugee, United Nations Security Council, http://peacemaker.un.org/sites/peacemaker.un.org/files/AF_880414_AgreementsSettlementoftheSituationRelatingAfghanistan%28eng%29.pdf

¹¹ United Nations Good Offices Mission in Afghanistan and Pakistan, Introduction, <http://www.un.org/en/peacekeeping/missions/past/ungomap/background.html>

¹² '278 Afghans held for possessing Pakistani CNICs', *Express Tribune*, 14 May 2012.

<http://tribune.com.pk/story/378429/dual-nationality-278-afghans-held-for-possessing-pak-cnics/>

¹³ 'Afghan refugees children can't get CNICs', *Dawn*, 11 August 2016. <http://www.dawn.com/news/1276821>

¹⁴ Ghulam Sanai vs. The Assistant Director National Registration Office, Peshawar, PLD 1999 Peshawar 18

recognized refugee status and they would be deemed foreigners and aliens under the law. The Afghan refugees were provided temporary refuge in the country and the governing law for them is the Foreigners Act, 1946. The opinion stressed that long stay of a foreigner in a foreign country would not automatically convert him to be the citizen of that country unless he acquires the nationality by process of law.

In another case, an Afghan refugee claimed that they should be provided the rights guaranteed to citizens under the Constitution of Pakistan, 1973 (“the Constitution”) including freedom of movement.¹⁵ The applicant refugee petitioned to the court that Afghan refugees cannot be treated as foreigners, as the refugees coming to Pakistan at the time of partition in 1947 and refugees from disputed territory of Kashmir are categorized as citizens. Similar privileges of citizenship should be extended to Afghan refugees as well. The court dismissed the case and categorically distinguished the case of Afghan refugees from both the 1947 partition refugees and the Kashmiri refugees. It emphasized that statutory exceptions were carved out in the citizenship laws of Pakistan for these groups. Quite the contrary, Afghan refugees were granted refugee cards and under the terms of the Geneva Accords, their stay in the territory of Pakistan is allowed for a temporary period in which foreign troops have occupied Afghanistan. For this reason, the court held, the law enforcement agencies are justified to restrict the movement of foreigner refugees in the country.¹⁶ Afghan refugees cannot claim entitlements such as a place of residence from the Government of Pakistan, though they can sue the government for any damage to their property by its officials.¹⁷

3.1.3. Citizenship by Descent

The citizenship by descent can be acquired if a parent of the child is a citizen of Pakistan and the child is born outside Pakistan. The citizenship by descent can be claimed if the birth of such a child is registered at a Pakistani Consulate or Mission in the foreign country or the parent is an official serving government of Pakistan. Initially the citizenship by descent could be claimed only if the father of the child is a Pakistani citizen. However, the law was amended in year 2000 to make Section 14 of the Act gender neutral and the expression ‘father’ was substituted with ‘parent’ in the Act.¹⁸

Similarly, a person living abroad can obtain citizenship provided his father or paternal grandfather was a citizen of Pakistan and that person has obtained a domicile certificate or has a Pakistani passport.¹⁹

In the case of *Muhammad Younas vs. Shahzad Qamar*, the rule of citizenship by descent was recognized in precedent.²⁰ The dispute involved a divorced couple settled in the UK, both of whom were nationals of Pakistan. The couple had two children and both were born in the UK. After the divorce, the woman filed a claim of maintenance against the husband on behalf of the minor children in Pakistani courts. The defendant challenged the claim on the ground that his children are British nationals and thus the courts in Pakistan have no jurisdiction. The court rejected the argument and acknowledged the principle of citizenship by descent. The court passed the order that it has the jurisdiction over this case as both the children are also Pakistani nationals due to Pakistani citizenship of their parents. The father

¹⁵ Abdul Majeed and another vs. The S.H.O. Police Station Naulakha, Lahore, PLD 1989 Lahore 223

¹⁶ *Ibid.*

¹⁷ Sardar Muhammad Ali and others vs. Pakistan, PLD 1961 (W.P.) Karachi 88

¹⁸ The Pakistan Citizenship (Amendment) Ordinance, 2000

¹⁹ Section 8, the Pakistan Citizenship Act, 1951

²⁰ Muhammad Younas vs. Shazad Qamar and 3 others, PLD 1981 Lahore 280

still holds a Pakistani passport and there is nothing on the record to suggest that he is a British citizen. Therefore, the courts in Pakistan shall have the jurisdiction to decide the issue. Similar facts were under consideration in the case of *Abu Saeed A. Islahi vs. Talat Mir*, where the children were born in the United States of America (USA) and held the USA passports. The mother filed a suit for injunction in Pakistan to restrain father from taking over the custody. The father raised the objection of jurisdiction of court which was dismissed as the court held that the children would be deemed to be citizens by descent.²¹

In *John Deneys Vanrenen Taylor vs. The State*²², the petitioner was a British passport holder. He travelled to Pakistan but there was no corresponding visa entry on his passport. He was arrested by police under the Foreigners Act, 1946 for his unlawful entry in Pakistan. He explained the attenuating circumstances to the court that even though he is a British passport holder, he came to Pakistan on the death of his mother. His mother was a Pakistani by birth and also died in Pakistan. He presented her birth and death certificates and claimed that he is a citizen by descent owing to her mother's citizenship. The court directed the government to verify his mother's certificates and if those were found to be genuine the court ordered the quashing of criminal complaint against the petitioner.

3.1.4. Citizenship by Migration

Section 6 particularly deals with the persons migrating to Pakistan from Indo-Pak territories after commencement of the Act but before year 1952. Such a person, on obtaining a certificate of domicile from the Federal Government, can register as a citizen of Pakistan.

Moreover, persons migrating from Pakistani territory to Indian territory shall not be citizens of Pakistan. However, persons who once migrated but later returned to Pakistani territory under a permit of resettlement shall not be deprived of citizenship.

3.1.5. Citizenship by Naturalisation

The law in Pakistan allows for citizenship through naturalisation. For this purpose, a person must first obtain a naturalisation certificate under the Naturalisation Act, 1926 from the Federal Government. One of the pre-requisites for applying for the certificate is residency in Pakistan. The applicant must live in Pakistan for a continuous period of one year before application and a period of four out of seven years prior to the one year period before the application.²³ Other requirements include that the applicant must not be a minor, must be of good character, must have adequate knowledge of at least one vernacular language of Pakistan and must not be a citizen of a country of which a citizen of Pakistan is prevented by or under any law from becoming a subject of naturalisation. Lastly, the applicant must intend to reside in Pakistan, or enter service of Pakistan if the certificate of naturalisation is granted. After obtaining a certificate of naturalisation, the person can apply for a citizenship certificate and the Federal Government in its discretion grants the status of citizenship.²⁴

The distinction has been drawn by the courts between the permanent residence certificate issued under the administrative provincial rules and the domicile certificate issued

²¹ *Abu Saeed A Islahi vs. Mrs. Talat Mir and 2 others*, 1994 MLD 1370

²² *John Deneys Vanrenen Taylor vs. The State*, 2004 PCr.LJ 1755

²³ Section 3 (1) (c), The Naturalisation Act, 1926

²⁴ Section 9 of the Pakistan Citizenship Act, 1951 and Section 3 of The Naturalisation Act, 1926

under the Pakistan Citizenship Rules, 1952.²⁵ The court has elucidated in a series of cases that the two certificates are entirely different concepts of law. The permanent residence certificate is issued under provincial rules by District Magistrate and is colloquially called the domicile certificate. The other is issued under the Pakistan Citizenship Rules by the Federal Government and is called a domicile certificate. The District Magistrate can only refuse to issue a permanent residence certificate of a particular district but not the domicile certificate of the country. The issue has been disputed in various cases where the provincial quota for students of a particular district has been reserved for admission in professional degree colleges as part of affirmative action for underprivileged areas of the country. It has been explained by the court that the citizenship certificate and the domicile certificate cannot be used for this purpose.

3.1.6. Citizenship, Commonwealth citizens and investment policy

Commonwealth citizens are given special status under the law. The Act declares that the Federal Government may, upon such terms and conditions as it may by general or special order specify, register a citizen of Commonwealth countries as a citizen of Pakistan. A Commonwealth citizen can obtain citizenship, by transferring PKR 5 Million worth of foreign exchange to Pakistan. After confirmation from the State Bank of Pakistan, of the bank transaction of PKR 5 Million, an immigrant visa for Pakistan is issued to the applicant. Pakistan Citizenship certificate is granted after arrival in Pakistan.²⁶

In 1998, for attracting foreign investment in country, Pakistan's investment policy allowed acquisition of Pakistani citizenship to a person investing a minimum of US\$ 0.75 Million in tangible assets and \$ 0.25 Million (or equivalent in major foreign currency) in cash, both on non-repatriable basis and subject to fulfilment of the conditions of Pakistan citizenship law. It was clarified that transfer on non-repatriable basis meant that the amount will be brought to Pakistan through normal banking channels, converted into rupee and never remitted back through the free market.²⁷ However, neither this policy is in field any longer nor subsequent national investment policies contained a comparable incentive.

3.1.7. Citizenship of Kashmiri Subjects

The state of Azad Jammu and Kashmir is a disputed territory between India and Pakistan, since the time of partition in 1947. Before partition, the territory was a princely state governed by a Hindu Ruler with a predominantly Muslim population. At the time of partition, the prince of Kashmir initially decided to remain independent, but later acceded the territory to India through a controversial deed. The accession soon followed uprisings in the princely state by Muslim population who intended to join Pakistan. Both the countries asserted competing claims over the territory. The tension in the region led to a war between India and Pakistan. As a result, each country holds a part of the territory regulated by a de-facto border called 'line of control'. The State of Kashmir has since been treated as a disputed territory. Those parts of Kashmir held by Pakistan are self-governed by the local population with their own legislative and judicial system. Indian-held Kashmir (IHK) has remained prone to violence for more than 60 years with many clashes between the local population and Indian

²⁵ Muhammad Yar Khan vs. Deputy Commissioner/Political Agent, Loralai and another, 1980 SCMR 456; Miss Mehrun Nisa Baloch vs. Appellate Committee and others, 1978 SCMR 439

²⁶ Government of Pakistan, Directorate of Immigration and Passports, Ministry of Interiors, *Immigration*, <http://www.dgip.gov.pk/files/immigration.aspx>

²⁷ Pakistan Investment Policies, Board of Investment, Revised Edition (September 1998), page 27.

Army.²⁸ Pakistan has seen an influx of Muslim migrants from IHK and in 1973 amended the Act to accommodate such migrants. There are two important provisions in the Act which provide protection to Kashmiri subjects:

- i- A subject of State of Azad Jammu and Kashmir who holds a Pakistani passport, and is resident in United Kingdom or any other country as the Federal Government may notify, would always be deemed a citizen of Pakistan (Section 8(2)).
- ii- Any person who migrates to Pakistan from the State of Jammu and Kashmir with the intention of residing in Pakistan shall be granted citizenship status, until such time the status of Kashmir is finally determined (Section 14-B).

The entitlement of citizenship without any additional compliance of residency requirement has been acknowledged by the courts in Pakistan. One such case involved a Kashmiri subject who migrated to Pakistan in 1971 from IHK. He married a Pakistani woman and was running a handicraft shop in a metropolis in Pakistan.²⁹ He applied for Pakistani citizenship as a Kashmiri subject but was denied citizenship due to a pending litigation against him in the courts of Pakistan. At the same time, the administrative authority noted in its refusal letter that the person was a Kashmiri subject on the basis of documentation provided and was residing permanently in Pakistan. He appealed the decision of the authority. The Supreme Court of Pakistan held that no other requirement is needed to be fulfilled by the Kashmiri subject as the facts of the case show that he migrated with an intent to reside in Pakistan and, therefore, has attained the citizenship status under Section 14-B of the Act.

The subjects of Pakistan Held Kashmir are accorded the protection of Pakistani passport and enjoy privileges similar to any Pakistani citizen. A judge of the Supreme Court of Azad Jammu Kashmir applied for the official passport called the gratis passport for himself and his wife. The gratis passport is usually granted to all senior public officials and their immediate family members in Pakistan. The applications of the judge and his wife were refused by the administrative authority on the grounds that the state of Kashmir does not form part of the territories of Pakistan and is an independent administrative unit. On petition to the Lahore High Court in Pakistan by the wife of the judge, the court set aside the order of the administrative authority. It acknowledged that the Kashmiri subjects are recognized citizens of Pakistan under the Act and all the privileges enjoyed by any public official and their families in Pakistan would also be extended to public officials in Kashmir.³⁰

In another case it was pointed out that if a Kashmiri subject permanently settles in Pakistan and becomes a citizen under the Act, the courts in Pakistan shall have the jurisdiction over the disputes involving such citizen. A citizen with Kashmiri origin would be treated no differently from any other citizen. In this particular case, a woman filed a case of dissolution of marriage and maintenance of children against her husband. Both the man and woman were Kashmiris but the woman moved to Pakistan a few years earlier and filed the case in the courts of Pakistan. The husband resisted the claim on the ground of jurisdiction. The courts in Pakistan accepted the claim and rejected the objection with regard to jurisdiction as the wife was now a Pakistani citizen who permanently settled in Pakistan and obtained the identity card as well.³¹

²⁸ ‘Viewpoint: Living in the shadow of curfew in Kashmir’, *BBC News*, 5 September 2016, <http://www.bbc.com/news/world-asia-india-37211760> ; ‘India Sends Eye Specialists to treat pellet injuries’, *BBC News*, 14 July 2016, <http://www.bbc.com/news/world-asia-india-36794364>.

²⁹ Akhtar Husain Jan vs. Government of Pakistan, 1995 SCMR 1554

³⁰ Mst. Naseem Akhtar vs. Director General Immigration and Passport, PLD 2006 Lahore 465

³¹ Muhammad Zaman vs. Uzma Bibi and four others, 2012 CLC 24 (Lahore)

3.1.8. *The Case of a Married Woman*

An extraordinary treatment is accorded to a married woman under the Act. A foreigner woman would be entitled to the citizenship of Pakistan, if she is married to a man who is a citizen of Pakistan by birth, descent or migration.³² She can claim the citizenship even if her husband has died but was otherwise a citizen of Pakistan or was entitled to citizenship.

In a case titled *Sharifan vs. Federation of Pakistan*, the constitutionality of Section 10 of the Act was under consideration.³³ The petitioner was a Pakistani woman who claimed the citizenship for her husband. Her husband was an Indian by origin and was denied citizenship on the basis of her marriage to a Pakistani citizen. Section 10 of the Act only entitles a foreigner woman to acquire citizenship on the basis of marriage if her husband is a Pakistani. However, there is no parallel provision of law which enables a foreigner man marrying a Pakistani woman to acquire citizenship on marital ground. The petitioner, in the case, argued that an equal treatment should be given to a Pakistani woman and a foreigner man marrying a Pakistani woman should be allowed to acquire citizenship on the basis of marriage. Unfortunately, the court rejected the claim of the petitioner. It reasoned that such protection can only be given to a woman marrying a Pakistani man keeping in view the position of women in Private International Law. The court refused to give effect to the equality clause of the Constitution (Article 25).

Pakistani citizens working in the service of Government of Pakistan are subject to an unusual requirement of obtaining a No Objection Certificate (NOC) from the government before marrying a foreign national under the Government Servant (Marriages with Foreign Nationals) Rules 1962. In one of the cases the petitioner was a government servant working in postal department.³⁴ He married his cousin, an Indian national, in an emergency without obtaining an NOC from the government. The government did not provide an NOC ex-post facto and resultantly, the wife of the petitioner was not able to apply for the citizenship certificate. The petitioner challenged the delay of the government in the court and prayed to court to direct the government to provide an NOC. The court noted that the petitioner must be provided an NOC within a period of two months though he was delinquent in not obtaining an NOC before marriage and had been penalized by the government. Moreover, the government has infringed upon the fundamental right to life of a citizen by delaying the process for uncanny reasons. Due to non-issuance of NOC, he was not able to apply for citizenship certificate of his wife who was living in Pakistan on a visa which required extension every three months from the immigration department.

3.1.9. *Separation of East Pakistan and the Citizenship Claims*

In 1947, when Pakistan came into being as an independent state, geographically it consisted of two main provinces, one located at the western border of Sub-continent and the other on the eastern border. The two provinces shared no boundaries and were completely separated by mainland India. In 1971, a war ensued between Pakistan and India and the eastern province of the country became an independent country, now known as Bangladesh. As a result of separation of Bangladesh on 16th December 1971 (the “separation”), the citizenship law also required amendment. Section 16-A of the Act was inserted through Pakistan Citizenship

³² Section 10, the Pakistan Citizenship Act, 1951

³³ *Sharifan vs. Federation of Pakistan*, P L D 1998 Lahore 59

³⁴ *Imran Ahmed vs. Federation of Pakistan through Secretary Ministry of Interior*, Islamabad, PLD 2014 Karachi 218

(Amendment) Ordinance, 1978. Three types of persons were accorded protection under the Act:

- I. The persons who continued residing in Pakistan after the day of separation;
- II. Persons who migrated to Pakistan from East Pakistan after the day of separation; and
- III. The persons domiciled in East Pakistan, however living in some foreign country at the time of separation under the protection of Pakistan passport would be considered citizens only if they obtain citizenship certificate from the Federal Government of Pakistan.

In the same way, following persons lost the status of citizenship:

- I. The persons who continued residing in East Pakistan; and
- II. The persons who were residing in Pakistan but migrated to the territory of East Pakistan after the day of separation.

At the time of separation, several based in East Pakistan sought to maintain Pakistani citizenship status but could not migrate to Pakistan due to inadequacy of resources. Most of them were Muslims who migrated to East Pakistan in 1947 from an Indian province, Bihar (the community is known as, 'Bihari Muslims'). The native language of Bihari Muslims was Urdu instead of Bengali. They actively opposed creation of Bangladesh and refused to become Bengali nationals in 1971 (Sen 1999). However, as they did not migrate to the western province of Pakistan, their claims remained unacknowledged and they lost their Pakistani citizenship owing to the 1978 amendment to the Act. This precipitated into statelessness of Bihari Muslims, stranded in camp sites in Bangladesh as refugees. Bihari Muslims remain one of the biggest stateless communities in the world living in abject poverty.³⁵ In 1990s, around 170,000 Bihari Muslims were repatriated to Pakistan.³⁶ In the last decade, the apex court of Bangladesh has recognized the right of Bihari Muslims to claim citizenship of Bangladesh and to register on electoral rolls.³⁷ In 2015, the Supreme Court of Pakistan rejected the plea of around 300,000 Bihari Muslims to repatriate to Pakistan.³⁸ Despite passage of more than forty years since the separation, Bihari Muslims continue to face discrimination and persecution in Bangladesh and non-recognition by the Pakistani government.

The persons who migrated to Pakistan from Bangladesh after the separation were accorded the status of citizenship without any ethnic discrimination. In the case of *Alam vs. State*, the petitioner was prosecuted by the State on account of unlawful entry in Pakistan under the Foreigners Act, 1946.³⁹ He produced documents on record which showed that he, as a minor, legally migrated from Bangladesh with his father at the time of separation. His father also obtained a National Identity Card and the name of the petitioner was entered in the family tree as a minor son. The court decided that he was undoubtedly of Bengali origin,

³⁵ 'Stranded Pakistanis living in camps in Bangladesh- in pictures', *Guardian*, 11 August 2014.

<https://www.theguardian.com/global-development/gallery/2014/aug/11/stranded-pakistanis-camps-bangladesh-bihari-in-pictures>

³⁶ Hasnaat M., 'Stranded Pakistanis in Bangladesh not Pakistan's responsibility, FO tells SC', *Express Tribune*, 30 March 2015. <http://tribune.com.pk/story/861364/stranded-pakistanis-in-bangladesh-not-pakistan-responsibility-fo-tells-sc/>

³⁷ Sajal A., 'Plight of Biharis in Bangladesh', *Dawn* (originally published in *The Daily Star Bangladesh*), 30 December 2015. <http://www.dawn.com/news/1229448>

³⁸ Malik H., 'Supreme Court rejects plea regarding repatriation of stranded Pakistanis in Bangladesh', *Express Tribune*, 31 March 2015. <http://tribune.com.pk/story/861834/sc-rejects-plea-regarding-repatriation-of-stranded-pakistanis-in-bangladesh/>

³⁹ *Alam vs. The State*, 2007 YLR 1897 (Lahore)

however, he became a citizen of Pakistan in the terms of Section 16-A of the Act. Likewise, in the case of *Muhammad Dilawar Hussain vs. The State*, a person of Bengali descent was held in custody by police under the Foreigners Act, 1946.⁴⁰ He was prosecuted and he produced on record several documents including an identity card, utility bills and passport to show that he was a Pakistani citizen but was convicted by the trial court. Although he appealed the decision, he served the sentence in pendency of appeal. When the appeal was presented for hearing, the prosecution argued that the appeal is infructuous as accused appellant has served the sentence. The court re-examined the evidence presented by the appellant and decided that he was indeed a citizen of Pakistan. Further, it reasoned that even though the appellant had served the sentence, it was the status of the appellant as a citizen that was under scrutiny and the rights attached to citizenship that were held in abeyance due to the impugned judgement of the trial court. In addition, the court held that appellant has showed that his parents and siblings are also living in Pakistan and none of them gained unlawful entry in to the country. Given these circumstances, the trial court ignored material evidence on the record.

The question of loss of citizenship after the separation of East Pakistan became disputed due to the introduction of another law in Pakistan, the Abandoned Properties (Management) Act, 1975 (the “1975 Act”). The 1975 Act categorized all such persons who lost citizenship after separation of East Pakistan, as ‘specified persons’. Further, the 1975 Act provided for vesting in the Government of Pakistan of any abandoned property i.e. property belonging to a specified person.⁴¹ Due to this law, the Government of Pakistan acquired control of abandoned properties and classified individuals as specified persons. One such decision of the government was challenged by a person who was living in the Netherlands at the time of separation of East Pakistan.⁴² He was domiciled in East Pakistan and owned a property in Islamabad, now forming part of West Pakistan. His property was categorized as abandoned property and taken over by the government under the 1975 Act. He challenged the decision of the government and provided proof to the court that he obtained a citizenship certificate from the Federal Government and was still under the protection of Pakistani Passport. He was also issued a Bangladeshi citizenship certificate, however that was granted to him by the Bangladeshi government without his application as he was a Bengali by birth. The court after analysing the evidence, removed the petitioner’s property from the abandoned property list and recognized him as a citizen of Pakistan.

In a more recent case, the Board of Trustees appointed by the Federal Government usurped the land of the claimant under the 1975 Act. The Board of Trustees declared that the claimant was not a citizen of Pakistan and hence he was a specified person under the 1975 Act. The court held that the Board of Trustees did not have the power to decide whether a particular person has lost the citizenship of Pakistan or not. The claimant only carried out business in East Pakistan for a short time period and was otherwise domiciled in West Pakistan. Therefore, he could not be termed a specified person under the 1975 Act and his property could not be taken away by the government.⁴³

Similarly, the interpretation of Section 16-A of the Act was considered in the case of *Mst. Narmeen S. Hussain vs. Administrator Abandoned Properties Management*.⁴⁴ The appellant in the Supreme Court of Pakistan was the daughter of a woman who was

⁴⁰ Muhammad Dilawar Hussain vs. The State, 2008 MLD 414 (Karachi)

⁴¹ Section 2(a) and (f), and Section 3 of the Abandoned Properties (Management) Act, 1975

⁴² The Board of Trustees vs. Saiyid Munirul Chowdhury, PLD 1998 SC 127

⁴³ Abdul Sattar vs. Ghulam Rasool and Board of Trustees, PLD 2006 Karachi 674

⁴⁴ Mst. Narmeen S. Hussain vs. Administrator, Abandoned Properties Management (Cabinet Division), Karachi, PLD 2005 SC 412

categorized as specified person by the administrator of abandoned properties. The mother of the appellant was a person of Bengali origin, however domiciled in West Pakistan. She worked as a professor in parts of West Pakistan and also paid an amount to purchase a plot of land in Pakistan. In 1972, months after the separation of East Pakistan, she travelled to the USA for her daughter's education. Her daughter, the appellant in this case, after death of her mother, paid the remaining instalments due in respect of the plot, on her mother's behalf. The administrator of evacuee property declared the mother of the appellant as a specified person and took over her plot as abandoned property. The Supreme Court held that the mother of the appellant was not a specified person. She was indeed of Bengali origin, but she was domiciled in West Pakistan, remained a Pakistani citizen on the date of separation, travelled on a Pakistani passport and did not migrate to East Pakistan. On the contrary, she had gone only temporarily to the USA. Although on a visit to Bangladesh she was murdered there, no law deprived her of Pakistani citizenship on this count alone. The court pronounced that no justification exists to categorize the mother of the appellant as a specified person.

3.1.10. Citizenship by Incorporation of Territory

In a case where Pakistan acquires territory, the President has the power to extend the status of citizenship under the Act to any such individual who is resident of the new territory. In 1955, Pakistan acquired Gwadar, a city geographically located in south of the country. The Act was brought in force in Gwadar on 8 September 1958.⁴⁵

3.2. Loss of citizenship

There are various provisions in the Act which deal exclusively with loss of citizenship. The conditions in which a person can lose citizenship under the Act are succinctly discussed followed by analysis of the precedent on the subject.

I- The first category of individuals who are not deemed citizens are those who migrated to territories of India at the time of partition of British India. However, if the migrating person has returned to Pakistan after obtaining a temporary or permanent permit, there would be no loss of citizenship.⁴⁶

II- If a citizen of Pakistan obtains citizenship of another country with which dual nationality is not allowed under the laws of Pakistan, that person would cease to be a citizen of Pakistan.⁴⁷

III- A person can lose citizenship by renouncing it in the prescribed manner.⁴⁸

IV-A person can be deprived of citizenship by the Federal Government if he obtains citizenship of Pakistan either fraudulently or by misrepresentation, or commits a crime of disloyalty against Pakistan, or unlawfully trades or communicates with enemies of Pakistan.⁴⁹

⁴⁵ Section 2, The Gwadar (Application of Central Laws) Ordinance, 1960

⁴⁶ Section 7, the Pakistan Citizenship Act, 1951

⁴⁷ Section 14, the Pakistan Citizenship Act, 1951

⁴⁸ Section 14A, the Pakistan Citizenship Act, 1951

⁴⁹ Section 16(3), the Pakistan Citizenship Act, 1951

V-A person may also be deprived of citizenship by the Federal Government if he is resident in a country for a continuous period of seven years and was neither in service of Pakistan nor otherwise registered annually with Pakistan Consulate.⁵⁰

In any case where the Federal Government makes the decision of renunciation or deprivation of citizenship, it must provide the concerned person a notice in writing and an opportunity of hearing in front of a judicial tribunal.

VI- A person who either continued staying in Bangladesh or migrated to its territories after separation of East Pakistan had also lost the citizenship status.⁵¹

The rules set out in precedent prescribe that if a person temporarily migrates to another country without revoking the citizenship of Pakistan and later returns to his domiciled territory in Pakistan, there would be no loss of citizenship. In one case, the plaintiff, Rochomal, was a Hindu living in the province of Sindh.⁵² At the time of partition he left Pakistan and migrated to India. Some months later, in 1948, he applied to the Pakistan High Commission in India for permanent permit to return to Pakistan. He was granted a temporary permit and was advised to apply for a permanent permit directly in Pakistan. He came back to Pakistan in 1948 and since then stayed in his domiciled city. He applied for a permanent permit to stay in Pakistan and was only granted a temporary permit. In 1953, he learnt from police authorities that an order has been passed against him to deport him from Pakistan. The appellant filed a suit and the issue decided by the court was whether the plaintiff continues to be a citizen of Pakistan. The appellate court allowed the claim of the plaintiff and held that merely visiting another country without intent to stay there permanently, did not amount to migration under the Act. The appellant never migrated to India and prima facie he must be deemed a citizen of Pakistan under Section 3(a) of the Act. The court also observed that where a person is a deemed citizen of Pakistan, the burden of proving that he is not entitled to this status is cast upon the party denying his citizenship of Pakistan. In the same way, the citizenship status of another Hindu subject was under scrutiny.⁵³ He was resident of then East Pakistan who did not migrate to India at the time of partition. In 1964, there were communal disturbances in East Pakistan and under the threat of violence he obtained a migration certificate from the Indian High Commission. He travelled to India on the basis of that certificate but returned to Pakistan a few months later when the situation normalized in his hometown. The court held that there was no intent on his part to stay in India permanently and he only left his domiciled city to save his life. This does not amount to migration. Section 7 of the Act is not applicable in the present scenario. While leaving Pakistan, he did not sell any of his properties and after his return repaid the agricultural loan. He also produced witnesses in court who testified that he never intended to leave permanently at the time of his travel to India and came soon after restoration of peace. Once in India on a migration certificate, he did not apply for citizenship. Owing to these circumstances, the court held that the plaintiff never lost the citizenship of Pakistan and cannot be prosecuted under the Foreigners Act, 1946. In yet another case, a person who was a citizen of Pakistan, went to India in 1959 and married an Indian woman there.⁵⁴ He was turned out of India in 1965 with his wife and children. He returned to Pakistan with his family on an emergency certificate from Pakistan Embassy in India which was extended till 1966. He and his wife obtained National Identity cards. They were charged and prosecuted under the Pakistan (Control of Entry) Act, 1952 for an extended

⁵⁰ Section 16 (4), the Pakistan Citizenship Act, 1951

⁵¹ Section 16A, the Pakistan Citizenship Act, 1951

⁵² Rochomal Daryanomal vs. The Province of West Pakistan, PLD 1960 (W.P.) Karachi 150

⁵³ Advocate General, Government of East Pakistan, Dacca vs. Benoy Bhusan Majumdar & others, PLD 1971 SC 179

⁵⁴ Shamsur Rehman vs. Muhammad Rauf, 1985 PCr.LJ 2842 [Peshawar]

illegal stay in Pakistan. He claimed citizenship by birth for himself before the court. The court held that he is a citizen of Pakistan by birth as well as by descent. He never renounced his citizenship and there is no record of him obtaining Indian citizenship. The court further observed that his wife is also entitled to citizenship under the Act, as a woman married to a Pakistani national is entitled to citizenship under the law after following the process (Section 10(2) of the Act). Even though his wife applied to the Ministry of Interior in Pakistan to seek citizenship, the application was not granted in violation of law. The court upheld the order of acquittal of both the man and his wife without any adverse inference.

On the other hand, if a person migrated to India permanently, he cannot claim to be a citizen on the basis of birth in the territories of Pakistan. Such a person would be deemed to lose citizenship in the terms of the Act (Section 7). In a case, a claimant was born in the territories now included in Pakistan but migrated to India at the time of partition.⁵⁵ He held an Indian passport and travelled to Pakistan on that passport in 1955. His visa expired but he did not return to India. He was captured by police authorities in Pakistan and was prosecuted under Pakistan (Control of Entry) Act, 1952. He took the defence that he was a citizen of Pakistan by birth as he was born in the territories of Pakistan. The court rejected his defence. It ordered that the Indian passport held by him was a prima facie proof of his Indian nationality and his case does not merit acquittal.

3.3. Dual Citizenship

Dual citizenship was not allowed in 1951, under the terms of the Act. The Act was amended in 1972 to allow for dual citizenship with the United Kingdom and any other country that the Federal Government may specify through notification.⁵⁶ The Government of Pakistan negotiates bilateral dual nationality agreements with a state party to allow dual citizenship with that particular country. According to the terms of these agreements, the nationals of contracting countries are not required to renounce their nationality while acquiring citizenship of the other country. Currently, Pakistan has dual nationality agreements with following 18 countries and is in process of negotiating another one:⁵⁷

- a. United Kingdom
- b. France
- c. Italy
- d. Belgium
- e. Iceland
- f. Australia
- g. New Zealand
- h. Canada
- i. Finland
- j. Egypt

⁵⁵ Legal Affairs, Government of East Pakistan vs. Amalendu Baul, PLD 1960 Dacca 329

⁵⁶ Section 14, the Pakistan Citizenship Act, 1951

⁵⁷ Government of Pakistan, Directorate of Immigration and Passports, Ministry of Interiors, *Immigration*, <http://www.dgip.govs.pk/files/immigration.aspx>.

- k. Jordan
- l. Syria
- m. Switzerland
- n. The Netherlands
- o. United States of America
- p. Sweden
- q. Ireland
- r. Bahrain
- s. Denmark (in process)⁵⁸

While dual nationality is allowed under the law, the rights of dual nationals are limited. Dual nationals are not allowed to contest the elections of the Parliament or Provincial Assembly in Pakistan.

In the case of *Umar Ahmad Ghumman vs. Government of Pakistan*⁵⁹, the petitioner, being a citizen of both Pakistan and the USA, filed an application to contest Parliamentary elections in Pakistan. His application was rejected by the Election Commission of Pakistan on the ground that he has acquired the citizenship of the USA and he is not eligible to contest elections in Pakistan. The petitioner challenged the decision and sought twofold relief i) a declaration that he continues to be the citizen of Pakistan, and ii) he can contest the elections of the Parliament notwithstanding the acquisition of the USA citizenship by him. The court granted a partial relief by declaring that the petitioner continues to be a citizen of Pakistan, nonetheless he is not entitled to contest the elections.

At the time of judgement, dual citizenship with 13 countries was allowed and the USA was not one of them. The court through its judgment directed the Federal Government to set out objective criteria for the inclusion of countries for dual nationality. It further noted that the USA should be included in this list, because for acquiring the nationality of USA, the process does not mandate renunciation of the existing nationality of the applicant. As an effect of this judgement, the Federal Government notified that nationals of Pakistan are allowed to acquire the nationality of the USA as dual nationals.

The court, while disallowing the relief, relied upon Article 63 of the Constitution which stipulates the disqualifications for membership of the Parliament. One of the provisions expressly provides that:

‘A person shall be disqualified from being elected or chosen as, and from being, a member of the Parliament, if:

(a).....; or

(b).....; or

(c) he ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign state; or...’

⁵⁸ ‘Pakistanis in Denmark: Ministry to send PM summary on Danish dual nationality plea’, *Express Tribune*, 3 November 2016, <http://tribune.com.pk/story/1219121/pakistanis-denmark-ministry-send-pm-summary-danish-dual-nationality-plea/>; ‘Pakistanis in Denmark will be able to get dual nationality’, *Business Recorder*, 3 November 2016, <http://www.brecorder.com/general-news/172:pakistan/99354:pakistanis-in-denmark-will-be-able-to-get-dual-nationality/?date=2016-11-03>

⁵⁹ *Umar Ahmad Ghumman vs. Government of Pakistan*, PLD 2002 Lahore 521

Thus, the use of the term ‘or’ in the provision does not leave any room for flexibility. Therefore, a Pakistani citizen who acquired a foreign citizenship would not be eligible to contest the elections of the Parliament. In another case decided by the Supreme Court of Pakistan, *Syed Mehmood Akhtar Naqvi vs. Federation of Pakistan*⁶⁰ the Supreme Court of Pakistan on application of the petitioner, disqualified certain members of the Parliament who concealed the fact of dual citizenship in their nomination papers. They contested the elections on the basis of incorrect information and became members of the Parliament. While the court distinguished the fact that any citizen of Pakistan has a constitutional right to acquire dual citizenship as provided in the Act, not every citizen has the right to contest elections. An electoral candidate must meet the qualifications and criteria specified in the Constitution of Pakistan to be eligible to contest the elections and become part of the legislative body. The dual citizens can serve at other senior positions of the government such as president, judiciary, chief of army staff etc. However, the court differentiated the role of the members of the Parliament which is to formulate policy of the country in form of laws and other legislative actions. Further, the condition has been made part of the Constitution which the judiciary cannot amend or strike down unilaterally.

In 2012, a bill was introduced in the national Senate of Pakistan to amend Article 63 of the Constitution to enable dual citizens to contest elections. However, the bill never received assent of both the legislative houses to become part of the Constitution.⁶¹

Dual Nationals are not allowed to contest elections of the local bodies under the Punjab Local Government Act 2013 (the 2013 Act). Disqualification criterion is enumerated in Section 27(2) of the 2013 Act which is identical to the constitutional provision already discussed. A person who acquires citizenship of another country is not eligible to contest elections of local bodies in the province of Punjab.⁶²

When delivering these judgments the court confirmed that dual citizens are entitled to all rights enshrined in the chapter on Fundamental Rights in the Constitution. The right to vote in the general elections was recognized by the Supreme Court of Pakistan.⁶³ Every citizen including a dual national whose name is entered in the electoral roll is eligible to cast a vote, this being a right protected in the Constitution.⁶⁴ In the same way, other civic rights of association, profession, trade etc. are also available to dual citizens as well.

In the case of *Malcolm M. Dalal vs. Karachi Stock Exchange*⁶⁵, the plaintiff became a member of the Karachi Stock Exchange (KSE) in 1955. He was a citizen of Pakistan by birth and he acquired the citizenship of USA in 1959. In 1999, the Board of Directors of the KSE resolved to cancel his membership on the ground that he was not a citizen of Pakistan. The KSE informed the plaintiff of the resolution through a notification where it was noted that he

⁶⁰ Syed Mehmood Akhtar Naqvi vs. Federation of Pakistan, 2012 SCMR 1101

⁶¹ Bill of Constitution (Twenty Second Amendment) Act, 2012;
http://www.senate.govs.pk/uploads/documents/1366054513_367.pdf

⁶² Zahid Iqbal vs. Hafiz Muhammad Adnan and three others, 2016 SCMR 430

⁶³ Dr. M. Tahir-ul-Qadri vs. Federation of Pakistan through Secretary Ministry of Law, Islamabad, PLD 2013 SC 413

⁶⁴ Article 51(2) of the Constitution of Pakistan, 1973 encapsulates the right to vote:
“Article 51

(1)....

(2) A person shall be entitled to vote if-

(a) he is a citizen of Pakistan;

(b) he is not less than eighteen years of age;

(c) his name appears on the electoral roll; and

(d) he is not declared by a competent court to be of unsound mind;”

⁶⁵ Malcolm M. Dalal vs. Karachi Stock Exchange (Guarantee) Limited and another, 2005 CLD 1608

had ceased to be a member of the KSE. It explained that under the citizenship laws of Pakistan, one cannot maintain dual nationality and under the stock exchange rules a person who ‘ceases’ to be a citizen of Pakistan cannot be a member of the KSE. The plaintiff objected to the decision of the KSE and informed KSE that he has not renounced the citizenship of Pakistan. The KSE also checked his citizenship documents of Pakistan but refused to accept his position. The plaintiff challenged the board resolution of the KSE in the court and sought a declaration against it. The court ordered that that the said resolution of the KSE was illegal, void and without any lawful authority. The first reason court highlighted in its judgment was that the law of Pakistan has been amended to allow dual citizenship. The amendment was introduced in 1972 to allow dual citizenship with retrospective effect.⁶⁶ Moreover the plaintiff has shown to the defendant that he has never renounced his Pakistani citizenship. Thus, the plaintiff is a citizen of Pakistan in spite of holding the citizenship of USA. Second, the court held that the KSE under the relevant stock exchange rules is only empowered to suspend the membership and not to terminate the membership. For both these reasons the court set aside the impugned resolution of the KSE.

The law has singled out an exception for female citizens of Pakistan who are married to foreign nationals. Such women, even if they acquire another nationality by virtue of marriage, are allowed to retain the Pakistani nationality.⁶⁷ This exception recognizes dual nationality with every country even if it is not so designated by the Federal Government.

A Pakistani woman who obtains dual nationality due to marriage is eligible to receive all benefits under the Pakistani law. A Pakistani woman married a Dutch national and obtained the nationality of the Netherlands. Before her marriage she was working for the Dutch airline KLM.⁶⁸ After her marriage and on obtaining Dutch nationality, her services were terminated on the ground that as a Dutch National she must obtain a permit from Pakistani government to work in Pakistan. No such permit was required for Pakistani nationals working in Pakistan for Dutch Airlines. The woman explained to the employer that she can retain her Pakistani nationality after marriage and can work on this basis. The employer rejected her stance and the woman challenged the decision in the labour court. The labour court accepted the plea of the woman, ordered her reinstatement in the company, and the appellate tribunal awarded her back benefits as well. The court held that while obtaining another nationality the woman had not renounced the nationality of Pakistan and therefore, did not need a permit to work otherwise required for Dutch nationals.

In another case, a Pakistani woman married a national of Saudi Arabia and received dual nationality. Later, she filed a suit in Pakistan for dissolution of marriage.⁶⁹ The defendant/husband argued that both the parties were Saudi nationals and thus the courts in

⁶⁶ Please note the underlined language of Section 14(3) of the Pakistan Citizenship Act, 1951 which provides for the retrospective effect of the clause:

(1) Subject to the provisions of this section if any person is a citizen of Pakistan under the provisions of this Act, and is at the same time a citizen or national of any other country, he shall unless he makes a declaration according to the laws of that country renouncing his status as citizen or national thereof, cease to be a citizen of Pakistan.

(2).....

(3) Nothing in sub-section (1) shall apply, or shall be deemed ever to have applied at any stage, to a person who, being or having at any time been, a citizen of Pakistan, is also the citizen of the United Kingdom and Colonies or of such other country as the Federal Government may, by notification in the official Gazette, specify in this behalf.**

**Subsection (3) of Section 14 was inserted by the Pakistan Citizenship (Amendment) Act (17 of 1972), s.2

⁶⁷ Section 14(4), the Pakistan Citizenship Act, 1951

⁶⁸ Miss Naseem Mehdi vs. KLM Royal Dutch Airlines through General Manager, 1997 PLC 214 [Labour Appellate Tribunal Sindh]

⁶⁹ Mrs. Javed Butt vs. ADJ (East) Karachi and others, 1989 MLD 4719 (Karachi)

Pakistan do not have jurisdiction over the matter. The plaintiff objected to this position and argued that besides her Saudi nationality, she retained her Pakistani nationality as dual nationality is permissible under the Act and hence, the courts in Pakistan should have the jurisdiction. The court rejected the plea of the defendant and ruled that the courts in Pakistan shall have the jurisdiction over this matter. The court ruled that even though the petitioner woman married a foreigner and acquired another nationality, she continued to possess a vested right of being a citizen of Pakistan by operation of law. It added that the petitioner woman shall always be entitled to valuable and beneficial rights conferred upon her under the laws of Pakistan.

4. Conclusion

The citizenship laws in Pakistan provide an overview of the political history of the country. Its genesis amidst the migration crises to each subsequent amendment, every stage is marked by a historical change in the country. The Act was introduced primarily to offer a legal framework of citizenship to the migrants from India. In 1970s, amendment was made in the Act to cope with problems of separation of East Pakistan territory. In the same fashion, changes were made in the law to accommodate the migrants from Kashmir after Indo-Pak conflict in the disputed region. Even though no formal statutory provision is in place addressing the case of Afghan refugees, the judicial precedent of post 1980 era served the purpose of defining legal status of refugees.

Where issue of citizenship is informed by the political realities of the day, it does not exist in a legal vacuum. The amendments in the Act necessitated transformation and reinterpretation of a broad range of laws. The inception of new laws such as Displaced Persons (Compensation and Rehabilitation) Act, 1958 and Abandoned Properties (Management) Act, 1975 are representative examples of this phenomenon. Likewise, the amendment in dual citizenship provisions of the Act, led the apex court to probe the constitutional entitlements of a citizen.

The Act and its jurisprudence also offer an insight into the social norms of Pakistan. Initially the law was framed in a way that rights could only be derived from one's male ascendants i.e. father or grandfather. As noted earlier, it is a much recent development that a female parent has also been included for acquiring citizenship by descent. The law affords a special protection to only a female citizen who marries a foreigner and hence acquires a dual citizenship. This once again is a cultural value codified in form of law. On the contrary, no such reciprocal protection is in place for a male citizen who acquires another citizenship due to marriage. In my view, it is considered a social norm that women after marriage are seen as a counterpart having lesser power in the marital relationship. Therefore, if the relationship ends for some reason, the Act allows the woman to reassert her Pakistani nationality permitting her to file a case of dissolution of marriage in local courts of Pakistan. The changes in dual citizenship laws also present a phenomenon of increasing immigration to other western countries from Pakistan. It is not surprising that most of the countries in the gazetted list issued by the Federal Government are European. With further political developments in region, the changes in the citizenship laws of Pakistan are yet to be witnessed.

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