

# Citizenship Laws of Pakistan A Critical Review

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## Abstract

Citizenship is considered a fundamental right that guarantees every other right. Citizenship law of Pakistan was enacted in 1951 and took care of the situations that could presumably arise with respect to this right. The changes in geography, technology and demography as well as the evolution of international law on citizenship during almost seven decades have created certain gaps that may have implications for individuals and their rights might be at stake. Varying interpretations of the courts on certain dimensions of law as well as the failure to introduce the modifications suggested by superior judiciary are among the factors that cause concerns. Along with the Citizenship Act and the law for naturalization, the treatment of foreigners in the country too has certain serious shortcomings that may have severe implications. This paper focuses more on the statutes and their current interpretation. It underscores the significance of the right to citizenship and analyzes various scenarios for acquisition of citizenship, its loss, the status of foreigners and judgements under Pakistani citizenship laws.

**Keywords:** Citizenship, Nationality, Migration, *Jus Soli*, Irregular Immigration.

## Introduction

'Rule of Law' is one of the most oft-repeated phrases from street to state levels when the progress, security and wellbeing is under discussion.<sup>1</sup> The first factor related to the rule of law concerns jurisdiction of the state over its territory and 'citizens.' The question, 'who is a citizen?' is therefore of fundamental significance. This is a question of civil, political, and economic rights as well as the identity and definition of the very being of a person.<sup>2</sup>

Pakistan is a country that has attracted huge numbers of immigrants over the years and has undergone significant geographic and

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Author has been studying the subject for several years and has benefitted from some of his earlier published and unpublished works. He thankfully acknowledges Ms Amara Aijaz's assistance in preparation of this article.

<sup>1</sup> Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge: Cambridge University Press, 2004), 1-6.

<sup>2</sup> For a contemporary discussion on citizenship right, theories, and transforming concepts see: Herman R. Van Gunsteren, *A Theory of Citizenship: Organizing Plurality in Contemporary Democracies* (New York: Routledge, 2018).

demographic changes. Huge waves of migration to and from parts of India to the West and East Pakistan at the eve of independence, to and from Bangladesh on its establishment as a separate country, and from Afghanistan over the years constitute a unique phenomenon that has posed numerous questions with respect to nation-building, identity and governance. The international law on nationality and citizenship too has evolved over the years.<sup>3</sup> The citizenship laws of Pakistan were formulated in 1951 when the country was only in the fourth year of its existence. And it would be interesting to see if the citizenship laws of the country, that have undergone very few amendments, take care of the various situations posed to them or do these laws need to be revisited. The dimensions covered by these laws are numerous and reviewing each of them distinctly would not be possible in one journal article. The focus of this paper, therefore, is more on the statutes and their current interpretation. After briefly emphasizing the significance of the right to citizenship, the paper looks into treatment of situations for acquisition of citizenship, its loss and the status of foreigners under these laws.

### **Nationality: A Vital Human Right**

In the contemporary international system, characterized by the prominence of nation-states as the central actors, nationality or citizenship provides the link that associates an individual with a political entity and reflects the legal bond<sup>4</sup> between a state and an individual. This bond gives an individual the affiliation and distinct identity, brings him/her under an umbrella of guaranteed rights and explains his/her duties towards the nation, country and the world at large. States, in this equation, are obliged to guarantee various rights to their nationals including their protection and wellbeing. Regardless of the possession of a nationality, however, every human being should be able to enjoy certain fundamental human rights as enshrined in various international human rights instruments and numerous national laws.<sup>5</sup>

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<sup>3</sup> In some contexts, citizenship and nationality can be two different legal concepts. In the former Soviet Union for example, while citizenship reflected a political status, the term nationality referred to membership of the same ethnic or linguistic group. Despite these differences in certain contexts, the terms nationality and citizenship are commonly used to denote a legal bond between a state and an individual and are therefore used interchangeably.

<sup>4</sup> *Nottebohm Case (Liechtenstein v. Guatemala) (second phase)*, [1955], I.C.J. 4, <http://www.icj-cij.org/docket/files/18/2674.pdf>.

<sup>5</sup> Pakistan is a state party to all major international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), Convention on the Rights of the Child (CRC), Convention on the Rights of Persons with Disabilities (CRPD), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Convention on the Elimination of All Forms of Discrimination

Nationality is conferred and withdrawn<sup>6</sup> by states based on their domestic laws. In principle, every state has the sovereignty to draw up its own legislation and policies, but the developments in international law over the course of the last century have set important limits to state discretion with regard to nationality matters.<sup>7</sup> Most states adopt similar criteria for the acquisition of nationality, i.e. based either on the connection with the state's territory, which may be proven by birth on state soil (*jus soli*) or long-term residence within the state (such as through naturalization) or on the basis of family relation to a national of the state, through descent (*jus sanguinis*) or marriage. Once acquired, the possession of that nationality is not a lifetime guarantee, but can be lost during the course of one's life. As with the acquisition of nationality, the states also determine the conditions under which nationality can be lost. This can happen through renunciation (where a person voluntarily gives up nationality), automatic loss of citizenship (where a person ceases to be a national automatically as certain legal conditions have been met) or deprivation (when a person's nationality is withdrawn by decision of the authorities).

### **Citizenship Laws of Pakistan**

The Pakistan Citizenship Act, 1951 (Act II of 1951)— hereinafter referred to as PCA 1951— is the primary legislation dealing with the question of citizenship. Other relevant laws include, the Naturalization Act, 1926 (Act VII of 1926), referred to as NA 1926, the National Database and Registration Authority (NADRA) Ordinance, 2000 (Ord. VIII of 2000), and the Foreigners Act, 1946 (Act XXXI of 1946), referred to as FA 1946.

Like elsewhere in the world and like any other law of the land, the Constitution of Islamic Republic of Pakistan, 1973 provides the framework and fundamentals for the citizenship rights as well. It leaves the job of defining a citizen of Pakistan to the law<sup>8</sup> but makes a distinction on the basis of citizenship while guaranteeing constitutional rights. In a judgment, the Lahore High Court (LHC) has put it in these words:

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against Women (CEDAW). Pakistan is also a party to the Covenant on the Rights of the Child in Islam (CRCI).

<sup>6</sup> 'Withdrawal of nationality' is used in this paper in a broad sense to refer to both automatic *ex lege* (by operation of law) and non-automatic (withdrawal initiated by the State authorities) loss and deprivation of nationality.

<sup>7</sup> Nationality Decrees Issued in Tunis and Morocco, Advisory Opinion 4, [1923], PCIJ, <http://www.refworld.org/docid/44e5c9fc4.html>.

<sup>8</sup> Article 260 of the Constitution of Pakistan, 1973 states, 'citizen means a citizen of Pakistan as defined by law.'

A study of the Constitution of the Islamic Republic of Pakistan would indicate that certain rights have been granted to all 'persons' residing in the State while some rights are available to only 'citizens'. For instance, the right to be treated in accordance with law (Article 4), right of freedom of movement (Article 15), right of freedom of assembly (Article 16), of freedom of association (Article 17), of trade (Article 18), of speech (Article 19) and to profess religion and of equality before law and equal protection of law (Article 25), are available to citizens alone. On the other hand, the right to life (Article 9), right to safeguard against illegal detention (Article 10) and of inviolability of dignity of man (Article 14) are available to all persons irrespective of their nationality. The citizen under the Constitution enjoys a special status. The right to be a citizen is, therefore, considered a precious right in Pakistan. It is the most valuable right that an individual may have in a State.<sup>9</sup>

Before looking into PCA 1951 for citizenship criteria, it should be noticed at the very outset that the legal system of Pakistan envisages only two categories of persons with respect to their relationship with the state: citizens and foreign nationals. It does not acknowledge a situation where a person is not citizen of any country and is 'stateless'. However, the citizenship laws of Pakistan appear to aim at preventing and reducing statelessness to some extent.<sup>10</sup>

### ***Citizenship Acquisition and Withdrawal***

The PCA was passed by the Constituent Assembly of Pakistan on April 10, 1951 and it came into force on April 13, 1951 after receiving assent by the Governor General. It defines the essential criteria for the acquisition of citizenship of Pakistan as well as its loss, deprivation and renunciation. It consists of 23 sections.

By virtue of this law, the citizenship of Pakistan is acquired (1) at the commencement of PCA in 1951, (2) by birth in the territory, (3) by descent, (4) in certain circumstances by migration, (5) by naturalization,

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<sup>9</sup> Umar Ahmad Ghumman v. Government of Pakistan and Others, [2002] PLD 521 (Lah.).

<sup>10</sup> Pakistan has not acceded to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. However, it is a Party to The Hague Convention on Certain Questions relating to the Conflict of Nationality Laws, 1930 and the Protocol relating to a Certain Case of Statelessness of 1930 by succession from British India. Pakistan has also signed the 1957 Convention on the Nationality of Married Women in 1958, but has not ratified it.

(6) by marriage, and (7) by incorporation of territory, as per prescribed procedures and conditions.

When determining whether someone is considered as a national of a State or not, it is helpful to establish whether an individual's nationality status has been influenced by automatic or non-automatic mechanisms or modes.<sup>11</sup> The citizenship law of Pakistan appears to contain both automatic and non-automatic modes of acquisition, retention or withdrawal of citizenship. The acquisition of citizenship on the basis of birth in the territory (section 4) is automatic. Citizenship by descent (section 5) is also automatically acquired except by a person whose parent has already acquired citizenship by descent. Moreover, citizenship at the commencement of the Citizenship Act in 1951 (section 3) was automatic. Non-automatic modes of acquisition include citizenship by naturalization (section 9) and citizenship by marriage (section 10). Furthermore, the retention of Pakistani citizenship under section 16A (1) (iii), (iv) and the proviso (retention after the independence of Bangladesh in 1971) for those coming from/staying in Bangladesh was automatic. As regards the withdrawal, cessation under section 14 due to dual citizenship (by interpretation of the court as discussed below) as well as the deprivation (by definition) of citizenship under section 16, they are non-automatic.

### ***Competent Authorities for Nationality Matters***

The foremost authority that has to be approached for clarifying the status of a person as a citizen of Pakistan or otherwise is the National Database and Registration Authority (NADRA). Pakistani citizens who have attained the age of eighteen years have to register themselves with NADRA in accordance with the provisions of the NADRA Ordinance, 2000. Computerized National Identity Cards (CNICs) are to be issued only to citizens by NADRA,<sup>12</sup> which operates a centralized database of citizens with the family tree of each person documented. While NADRA is not mandated to carry out determination of Pakistani nationality, it is the only government agency running such a comprehensive and centralized database of citizens. CNIC acts as a strong evidence of Pakistani citizenship and is usually required to exercise rights reserved for citizens including voter registration, child registration with NADRA, ownership of immovable property and acquisition of a passport. The Citizenship Rules,

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<sup>11</sup> Automatic modes are those where a change in nationality status takes place by operation of law (*ex lege*). According to automatic modes, nationality is acquired as soon as criteria set forth by law are met, such as birth on a territory or birth to nationals of a State. By contrast, in non-automatic modes an act of the individual or a State authority is required before the change in nationality status takes place.

<sup>12</sup> National Database and Registration Authority Ordinance of 2000, No. VIII, Sec. 10 (2000).

1952 provide for the issuance of a 'certificate of citizenship' by the provincial governments for those who acquire citizenship under sections 4 (by birth) and 5 (by descent) of PCA, 1951. However, issuance of such a document is not a common practice today. In this sense, NADRA may be considered as the *de facto* competent authority for nationality matters at least for those who acquire citizenship automatically.

With regard to persons who acquire Pakistani citizenship non-automatically such as under section 9 (citizenship by naturalization) and section 10 (citizenship by marriage), the Directorate General of Immigration and Passports (DGIP), Ministry of Interior (MoI), is responsible for determining eligibility for such citizenship acquisition. For this category, CNIC is only issued upon producing the certificate of citizenship issued by the Directorate on behalf of MoI. Thus, DGIP can be considered the primary competent authority for nationality matters for persons who acquire citizenship non-automatically. The Pakistani Missions or Consulates abroad also play an important role in maintaining close coordination with NADRA and DGIP for issues related to registration of births, applications for registration of minors, acquisition of nationality, renunciation applications, and for the issuance of different registration cards and certificates.

### **Acquisition of Citizenship**

#### ***Citizenship at the Commencement of Act (April 13, 1951)***

The partition of the Subcontinent in 1947 caused mass displacement and migration of millions of people to Pakistan and India. According to section 3 of PCA 1951, all persons of Indo-Pakistan subcontinent origin who were permanent residents of the territories included in Pakistan on April 13, 1951 were deemed to be the citizens of Pakistan and had acquired Pakistani citizenship automatically.<sup>13</sup> However, in order to obtain a certificate of citizenship, an application had to be made on Form A, appended with the Pakistan Citizenship Rules, 1952 (PCR 1952), along with documentary evidence and witnesses in support of the claim for citizenship and details of permanent residence, migration, relatives etc. (Rule 4, 5 and 6 of PCR, 1952).

It may be presumed that the procedure was not widely practiced in actual terms; rather the provision has worked to recognize automatically all permanent residents of the territories included in Pakistan as citizens of Pakistan. This is confirmed by the fact that the possession of a citizenship certificate in accordance with PCR, 1952, is

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<sup>13</sup> See the original wording of the law for more details.

not required for the issuance of a national identity card and presence in Pakistan at the commencement of PCA 1951 may be proved through other evidence.<sup>14</sup> This is supported by a judgment by the Sindh High Court (SHC), which ruled that continued residence in Pakistan after migration from India following partition is the only relevant criterion for citizenship.<sup>15</sup>

### ***Citizenship by Birth in the Territory***

Section 4 of PCA 1951 incorporates the principle of *jus soli* (literally, 'by right of the soil', i.e. a person acquires nationality by way of birth in a State) and provides that every person born in Pakistan after the commencement of the Act (April 13, 1951) shall be a citizen of Pakistan by birth in the territory. The only exceptions to this provision concern persons born to foreign diplomats or to enemy aliens.<sup>16</sup>

The scope of section 4 of PCA 1951 is very clear and does not limit the acquisition of citizenship by birth to the children of Pakistani citizens only. Hence, a person born in Pakistan should also acquire Pakistani citizenship. However, the interpretation of this provision by the Peshawar High Court (PHC) differs from this reading.

In the case of a person born to an Afghan refugee residing in Pakistan who based his claim for a National Identity Card (NIC) to be issued by the National Registration Office (the predecessor of NADRA) on his birth in the territory of Pakistan, the court ruled against the petitioner by stating that section 4 cannot be read in isolation or independently of the other provisions of PCA 1951, and observed as follows:

Sections 4 and 5 of the Act *ibid* read together would provide that every person born in Pakistan after the commencement of the Act shall be a citizen of Pakistan by birth and subject to the provisions of section 3, a person born after the commencement of the Act shall be a citizen of Pakistan by descent, if his father is a citizen of Pakistan at the time of his birth.<sup>17</sup>

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<sup>14</sup> Muhammad Umar v. Federation of Pakistan, PLD [2017] 585 (Sindh); and ICTA, "Activation of Blocked CNIC," Islamabad Capital Territory Administration, accessed December 23, 2019, <https://ictadministration.gov.pk/services/information-desk-block-cnrc/>.

<sup>15</sup> Sardar Muhammad Ali v. Pakistan, [1961] PLD 88 (Kar.).

<sup>16</sup> The term 'enemy alien' has been defined in section 2(d) of the Protection of Pakistan Act 2014 as a person who fails to establish his citizenship of Pakistan and is suspected to be involved in waging of war or insurrection against Pakistan or depredation on its territory by virtue of involvement in scheduled offences.

<sup>17</sup> Ghulam Sanai v. Assistant Director, National Registration Office, [1999] PLD 18 (Pesh.).

In this judgment, birth in the territory (section 4) has been associated with descent (section 5) and the court held that only a person born to a Pakistani national would be entitled to the citizenship of Pakistan, and thus rejected the Afghan refugee's decedent's claim for an NIC.

Apparently, the text of provisos (a) and (b) of section 4 (referring to the possibility that the father is a foreign diplomat or an enemy alien) suggest that the law in principle envisaged that children born from foreign parents could also benefit from this provision, otherwise these two exceptions would not have been necessary.

In 2018, however, the Islamabad High Court (IHC) had decided the case of a person who was born in Pakistan to Somali parents. The Court discussed the earlier judgment of PHC along with other legal arguments and found that the meaning of the relevant provisions of law were simple and straight and literal rule of statutory interpretation was applicable. It held that any individual born in Pakistan can apply for citizenship of Pakistan in terms of the section 4 of PCA, 1951, despite the fact that the parents of such individual are not Pakistani citizens 'There is no cavil to the proposition that any foreigner non-citizen of Pakistan or person from any other state born in Pakistan, except a refugee, is entitled to be dealt under the Pakistan Citizenship Act,' the Court ruled. The petitioner was directed to approach MoI along with application forms duly filled in, where-after the Ministry had to decide the application within a period of three months in accordance with law.<sup>18</sup>

This judgment is extremely significant and has manifold implications. More importantly, however, the two judgments by two different High Courts offer significant points to consider. Both judgments agree that a refugee cannot be considered for *jus soli* but the question whether or not the *jus soli* is to be read with *jus sanguinis* has created a legal anomaly as well. Rulings of a High Court are binding on all subordinate courts in the province but only persuasive for the courts in rest of the country. Decisions taken by the High Court of one province are not binding on the High Court of another province.<sup>19</sup>

It is important that the competent authority with respect to applications for citizenship, DGIP, MoI mentions the birthright in the literal sense and does not link it to the descent. As a principle, it says, 'Any person born in Pakistan after the commencement of Pakistan Citizenship Act, 1951 is citizen of Pakistan.' Exceptions to this general

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<sup>18</sup> Saeed Abdi Mehmod v. NADRA, [2018] CLC 1588 (Pak.).

<sup>19</sup> Muhammad Munir, *Precedent in Pakistani Law* (Karachi: Oxford University Press, 2014), 154.

principle include children of foreign diplomats and children of enemy alien.<sup>20</sup>

For a consistent and comprehensive view, the Supreme Court of Pakistan (SCP) and more preferably, the Parliament may have to give a detailed consideration to the subject conditions of the country where a large number of refugees and immigrants have been staying for decades and are raising their second or third generation, as well as to the domestic and international legal norms.

### ***Citizenship by Descent***

The citizenship law of Pakistan also provides for the principle of *jus sanguinis* which literally means 'by right/law of the blood'. Under this principle, a person whether born in or outside the territory of a State is a citizen of that State if he is a direct descendent of a citizen of that State. By virtue of the section 5 of PCA 1951, children born to Pakistani citizen(s) outside of Pakistan automatically acquire citizenship by descent.<sup>21</sup> However, if the parent is also a citizen of Pakistan by descent only, the child (unless the parent works for the government) has to acquire citizenship through the non-automatic procedure and is required to be registered with the nearest Pakistani Consulate or Mission in accordance with the rules laid out in rule 21 of PCR 1952.<sup>22</sup>

No birth would be registered unless a prior written approval has been obtained from the Federal Government, if it is not reported within one year from the birth of the child.<sup>23</sup> It is unclear what would happen to children whose birth is not registered within one year for any possible reason e.g. lack of awareness of the deadline or impossibility to approach the Mission or Consulate or a failure to seek approval from the Federal Government. The children would remain without Pakistani citizenship until registration. It is important to flexibly implement this provision, in particular the deadline, and remove restrictions for acquiring Pakistani citizenship as long as the family can provide proof of eligibility for citizenship by descent.

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<sup>20</sup> Directorate General of Immigration & Passport, Ministry of Interior, GoP, "Immigration" (Government of Pakistan, n.d.), accessed December 15, 2019, <http://www.dgip.gov.pk/Files/Immigration.aspx>.

<sup>21</sup> Ibid.

<sup>22</sup> Section 5, proviso (a) of PCA 1951 does not specifically refer to the rule 21 of PCR 1952, and vice versa. However, it is assumed that as rule 21 provides for rules for birth registration abroad in general, it is applicable to birth registration under section 5 proviso (a). Second generation children automatically acquire citizenship at birth by descent, regardless of whether their birth is registered with a Pakistani Mission or Consulate. However, failure to register birth for these second generation children can also lead to loss of Pakistan's citizenship.

<sup>23</sup> Pakistan Citizenship Rules of 1952, Rule 21 (aa), (1952).

Prior to the Pakistan Citizenship (Amendment) Ordinance 2000 (Ordinance XIII of 2000) promulgated on April 18, 2000, only the father of the child could confer citizenship by descent to his children. After the said amendment, a person acquires the citizenship of Pakistan by descent if either of his/her parents is a Pakistani national. The said amendment is not retroactive<sup>24</sup> and is not applicable to children born before the year 2000 to a Pakistani mother and a foreigner father. Minor children of Pakistani women married to foreigners may, however, be registered as Pakistani citizens under section 11 of PCA 1951. Such registration is non-automatic and requires application by a parent. The grant of citizenship is at the discretion of the government.

This scenario often becomes relevant when a Pakistani woman is married to the member of refugee or immigrant communities in Pakistan and might offer citizenship right to the person born to such family.

### ***Citizenship by Migration***

Section 6 of PCA 1951 addressed the migration that took place after the commencement of the Act on April 13, 1951, and welcomed the displaced persons from India<sup>25</sup> as full-fledged citizens of the country.<sup>26</sup> This section provides that the Federal Government may register any person (upon obtaining a certificate of domicile) as a citizen of Pakistan by migration who has migrated before the first day of January 1952 to Pakistan from any other territory in the Indo-Pakistan sub-continent with the intention of residing permanently in those territories.

### ***Citizenship by Naturalization***

If a person wishes to move to Pakistan from another place in the world and obtain its citizenship, PCA 1951 provides for such cases by recognizing the possibility of acquiring citizenship through an application for naturalization.

Section 9 of PCA 1951 reads 'The Federal Government may, upon an application made to it in that behalf by any person who has been

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<sup>24</sup> Directorate General of Immigration & Passport, Ministry of Interior, GoP, "Citizenship by Descent" (Government of Pakistan, n.d.), accessed December 15, 2019, <http://www.dgip.gov.pk/files/Immigration.aspx>.

<sup>25</sup> Section 2 of PCA 1951, 'Indo-Pak subcontinent' means India as defined in the Government of India Act, 1935 as originally enacted. According to the said Act, India means British India together with all territories of any Indian ruler under the suzerainty of His Majesty, all territories under the suzerainty of such Indian ruler, the tribal areas and any other territories, which his majesty in council may declare to be part of India.

<sup>26</sup> Abdul Majeed and another v. S.H.O Police Station Naulakha, [1989] PLD 223, (Lah.).

granted a certificate of naturalization under NA 1926 register that person as a citizen of Pakistan by naturalization.'

According to section 3 of NA 1926, the Federal Government may grant a certificate of naturalization to any person<sup>27</sup> who submits such an application and satisfies the Federal Government that s/he:

(a) is not a minor;<sup>28</sup>

(b) is neither a citizen of Pakistan nor a subject of any state of which a citizen of Pakistan is prevented by or under any law from becoming a subject by naturalization;

(c) has resided in Pakistan throughout the period of twelve months immediately preceding the date of application and has during the seven years immediately preceding the said period of twelve months, resided in Pakistan for a period amounting in aggregate to not less than four years;

(d) is of good character;

(e) has an adequate knowledge of a language which has been declared by the Federal Government, by notification in the official gazette, to be one of the principal vernaculars of Pakistan;<sup>29</sup> and

(f) that he intends, if the application is granted, to reside in Pakistan or to enter or continue in the service of the State in Pakistan.<sup>30</sup>

The grant of a certificate of naturalization is at the discretion of the Federal Government of Pakistan<sup>31</sup> and in granting naturalization, it may even withhold certain rights, privileges and capacities otherwise

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<sup>27</sup> While section 3 of NA 1926 clearly states that 'The Federal Government may grant a certificate of naturalization to any person...', officials of the DGIP maintained that only citizens of non-Commonwealth countries could apply for a certificate of naturalization. Citizens of Commonwealth countries are not eligible to apply for a certificate of naturalization under NA 1926, rather they are covered under PCA 1951.

<sup>28</sup> Any person who has not reached the age of 21 years is a minor as per section 2(c) of NA 1926.

<sup>29</sup> Principal vernaculars of Pakistan are: Urdu as National language, English for official purposes until arrangements are made for its replacement by Urdu (Article 251 of the 1973 Constitution).

<sup>30</sup> Naturalization Act of 1926, No. VII, Sec. 3 (1926).

<sup>31</sup> Naturalization Act of 1926, No. VII, Sec. 5(3), (1926).

available to citizens.<sup>32</sup> The certificate of naturalization will take effect only when the person obtaining it makes an oath of allegiance to the Constitution of Pakistan before a magistrate within thirty days of the grant of the certificate.

An issue of specific concern is the question of what legal quality the 'residence' of applicants for naturalization must have to be considered relevant. In the absence of a legal definition of 'residence' in the Pakistani legislation,<sup>33</sup> the review of case law impliedly shows that a person applying for naturalization has to prove a legal stay.<sup>34</sup> Offering naturalization to the irregular immigrants who have been registered with the erstwhile National Alien Registration Authority (NARA) or currently with NADRA as aliens for regulation of their stay would mainstream irregular immigrants in the country.<sup>35</sup>

### ***Citizenship by Marriage***

A woman, who is not a citizen of Pakistan but married to a Pakistani man, is entitled to the citizenship of Pakistan under section 10 of PCA 1951.<sup>36</sup> The relevant provision of this section is reproduced below:

Section 10: Married women. (2) ... a woman who has been married to a citizen of Pakistan or to a person who but for his death would have been a citizen of Pakistan under section 3,4 or 5 shall be entitled, on making application therefore to the Federal Government in the prescribed manner, and, if she is an alien, on obtaining a certificate of domicile and taking the oath of allegiance in the form

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<sup>32</sup> Naturalization Act of 1926, No. VII, Sec. 5(1), (1926).

<sup>33</sup> Section 2 (j) of the Registration of Foreigners Rules, 1966 defines residence as '... ordinary dwelling place in Pakistan.'

<sup>34</sup> Ghulam Sanai v. Assistant Director, National Registration Office, Peshawar, [1999] PLD 18 (Pesh.); and Saeed Abdi Mehmud v. NADRA, [2018] CLC 1588 (Pak.).

<sup>35</sup> *Glossary on Migration*, IOM International Organization for Migration. Irregular migration has been defined as: 'Movement that takes place outside the regulatory norms of the sending, transit and receiving countries. There is no clear or universally accepted definition of irregular migration. From the perspective of destination countries, it is illegal entry, stay or work in a country, meaning that the migrant does not have the necessary authorization or documents required under immigration regulations to enter, reside or work in a given country. From the perspective of the sending country, the irregularity is for example seen in cases in which a person crosses an international boundary without a valid passport or travel document or does not fulfil the administrative requirements for leaving the country. There is, however, a tendency to restrict the use of the term "illegal migration" to cases of smuggling of migrants and trafficking in persons.'

<sup>36</sup> According to DGIP, this provision applies to any foreign woman who is married to a Pakistani national irrespective of whether she is his only wife or one of multiple wives.

set out in the Schedule to this Act, to be registered as a citizen of Pakistan whether or not she has completed twenty one year of her age and is of full capacity.

According to PCR 1952 (Rule 14) a female married to a Pakistani national can apply for the citizenship of Pakistan in the form and manner prescribed in Rule 15. She may be entitled to citizenship even if her husband died before filing such an application. While section 10 (2) of PCA 1951, does not prescribe a particular duration of the marriage, the DGIP's website refers to 'An Affidavit duly supported by documentary evidence about her stay in Pakistan for a period of 05 years' as a requirement for application.<sup>37</sup>

The law does not recognize the same right for the foreigner husband of a Pakistani female citizen. The Federal Shariat Court (FSC) of Pakistan had taken *suo moto* notice of the issue in 2006<sup>38</sup> and had held that this situation was discriminatory, in violation of articles 2-A and 25 of the Constitution of Pakistan, international commitments of Pakistan and 'most importantly' in repugnance to the Holy Qur'an and Sunnah.<sup>39</sup> In its judgment pronounced on December 12, 2007, the Court called upon the President of Pakistan 'to take suitable steps for amendment of relevant section 10 (2) and other related provisions of PCA 1951 within a period of six months' so that an appropriate procedure could be provided for the grant of Pakistani nationality to a foreign husband of a Pakistani woman.

The submission of the MoI before the Court is of interest as it sheds light upon the nature and origin of some apprehensions in this regard. Among the reasons provided for denying the right in question to foreign husbands of Pakistani women are security concerns stated in the following words: 'apart from social/economic implications, the provision can also be used by any foreign country to plant their agents in Pakistan' because 'the foreign husband after marrying a Pakistani lady and obtaining Pakistan nationality would be free to divorce Pakistani lady and move freely in Pakistan.'<sup>40</sup>

The Court, however, dismissed these apprehensions by stating that the 'grant of nationality would remain within the domain of discretion

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<sup>37</sup> Directorate General of Immigration & Passport, Ministry of Interior, GoP, "Grant of Citizenship" (Government of Pakistan, n.d.), accessed December 15, 2019, <http://www.dgip.gov.pk/files/Immigration.aspx>.

<sup>38</sup> *Suo Moto Case No.1/K*, [2006] PLD 2008 FSC 1.

<sup>39</sup> The term Sunnah refers to the practice and example of the Prophet Muhammad (peace be upon him).

<sup>40</sup> *Suo Moto Case No.1/K*, [2006] PLD 2008 FSC 1.

of the Government which may refuse it for reasons of national security or public interest.<sup>41</sup>

LHC too had termed the provision discriminatory and in violation of Article 25 of the Constitution.<sup>42</sup> However, the amendment as directed by FSC has not yet been introduced and the appeal that has been filed against this judgment by the Federal Government is pending with SCP as Civil Shariat Appeal No. 1 of 2008. Considering this issue in view of the FSC judgment and international commitments of the country would ensure equality and fair treatment to all without discrimination.

### ***Citizenship by Incorporation of Territory***

Section 13 of the Act states that 'if any territory becomes a part of Pakistan the President may by order specify the persons who shall be citizens of Pakistan by reason of their connection with that territory; and those persons shall be citizens of Pakistan from such date and upon condition, if any, as may be specified in that order.'

Pakistan had accepted all persons belonging to Gwadar (Balochistan) as its citizens through S.R.O. 1472. A(K) on November 3, 1960 under this section after Gwadar formally became part of Pakistan on December 8, 1958 in effect of an agreement with Oman.

### ***Registration of Minors as Citizens***

Apart from the above provisions outlining the criteria for acquisition of citizenship, PCA 1951 contains section 11 regarding the registration of minors as citizens, which reads as follows:

11. Registration of Minors. (1) The Federal Government may, upon application to it in this behalf made in the prescribed manner, by a parent or guardian of a minor child of a citizen of Pakistan, register the child as a citizen of Pakistan.

(2) The Federal Government may in such circumstances as it thinks fit, register any minor, as a citizen of Pakistan.

Further, section 12 of PCA 1951 provides that:

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<sup>41</sup> Ibid.

<sup>42</sup> Mst. Rukhsana Bibi v. Government of Pakistan, [2016] PLD 857 (Lah.).

12. Citizenship by registration to begin on date of registration. —Any person registered as a citizen of Pakistan shall be such a citizen from the date of his registration.

Based on the wording of section 11 (The Federal Government 'may' [...] register") combined with section 12 providing that citizenship by registration (assumably including under section 11) is acquired at the date of registration; section 11 appears to provide for a non-automatic and discretionary mode of acquisition<sup>43</sup> for minors without Pakistani nationality.

Section 11, however, appears to provide procedural aspects of the registration of minors without referring to specific criteria for the acquisition of citizenship in order to be registered as such. The relationship between this provision and other provisions establishing specific acquisition criteria within PCA 1951,<sup>44</sup> if any, is not clear from the text of the law.

The corresponding rule 17 of CRP 1952 requires an application through Form 'M' for claiming citizenship.<sup>45</sup> The website of the DGIP mentions as the type of persons who should claim citizenship through this Form 'M', 'minor children (below 21 years of age) of Pakistani ladies married to foreigners". However, after the amendment in section 5 of PCA 1951 on April 18, 2000, a Pakistani female married to a foreigner is able to automatically pass on her citizenship by descent and there should hence be no registration requirement.

### **Loss, Deprivation, Renunciation and Restoration of Citizenship**

The PCA 1951 also lays down conditions and situations in which a Pakistani citizen may lose his nationality or have it withdrawn.

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<sup>43</sup> Section 3 of NA 1926 limits naturalization to a person who is 'not a minor.' Section 11 offers an avenue for non-national minors to acquire Pakistani citizenship.

<sup>44</sup> The wording of section 11 ('registration' 'as citizens') appears to relate to non-automatic mode of acquisition of citizenship. It is at least clear thus that this section would not be relevant to the sections providing for automatic modes of acquisition of citizenship such as section 3 (citizenship at the commencement of the Act), 4 (by birth in the territory) and 5 (by descent).

<sup>45</sup> Directorate General of Immigration & Passport, Ministry of Interior, GoP, "Grant of Citizenship."

### ***Loss of Citizenship by Migration outside Pakistan***

In certain instances, a person automatically loses his citizenship, for example if he migrated from the territories now included in Pakistan to the territories now included in India in and after 1947 (Section 7) or if he continued residing in territories now included in Bangladesh after its separation from Pakistan on December 16, 1971 or voluntarily migrated to those territories (section 16A).

### ***Withdrawal of Citizenship due to Dual Citizenship***

According to section 14 of PCA 1951 'if a 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 other country renouncing his status as citizen or national thereof, cease to be a citizen of Pakistan.' The same section, however, allows for dual citizenship with respect to certain countries mentioned in the law or notified by the Federal Government.<sup>46</sup>

At first glance, this provision appears to provide for automatic loss of citizenship if the conditions are met. However, the interpretation of this provision by the High Court of Lahore makes it clear that a person does not lose the citizenship of Pakistan automatically 'unless the acquisition of foreign citizenship makes it a condition precedent and he does so.'<sup>47</sup> A later judgment of the same court further clarifies that section 14(1) of PCA 1951 was introduced to cater to a situation that had arisen immediately after independence. According to this judgment, a declaration has to be made to renounce the citizenship of Pakistan and the declaration has to be registered as per PCR 1952.<sup>48</sup> In the absence of any such declaration, a person remains a citizen of Pakistan despite acquisition of a second citizenship.<sup>49</sup>

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<sup>46</sup> Currently, Pakistan explicitly allows dual citizenship with Australia, Belgium, Canada, Egypt, France, Holland/Netherlands, Iceland, Italy, Jordan, New Zealand, Sweden, Switzerland, Syria, UK, USA and Ireland.

<sup>47</sup> Umar Ahmad Ghumman v. Government of Pakistan and Others, [2002] PLD 521 (Lah.).

<sup>48</sup> It is not clear from the judgement whether the court requires that the person making such a declaration needs to produce evidence for having acquired another citizenship. However, based on section 14-A of the Citizenship Act, he would have to 'satisfy the Government of Pakistan he is either a citizen or national of another country or has been given any valid document assuring grant of citizenship or nationality of that country by a competent authority.'

<sup>49</sup> Aziz-ur-Rehman v. Alia Munir, [2010] YLR 269 (Lah.).

### **Deprivation of Citizenship by an Order or Application**

The Federal Government may deprive a person of citizenship on its own motion by an order (i.e. non-automatically) or on an application (section 16, PCA 1951). This provision applies to both naturalized citizens and citizens who acquired their citizenship in any other ways including at birth. With regard to the provisions specifically applicable to naturalized persons, the Government may take that step if it is satisfied that the concerned citizen obtained the certificate of domicile or certificate of naturalization by means of fraud, false representation or by concealment of material facts.<sup>50</sup> The order of deprivation may also be issued if the Federal Government is satisfied that a naturalized citizen has shown by any act or speech to be disloyal or disaffected to the Constitution of Pakistan, or has acted against the interests of Pakistan in a war, or after being naturalized has been sentenced to imprisonment in any country for a term not less than twelve months.<sup>51</sup>

Further, article 16(4) provides 'Any citizen' (including one who acquired citizenship other than naturalization such as at birth) may be deprived of the Pakistani citizenship if he has ordinarily been residing in a country outside Pakistan for a continuous period of seven years, and has neither been in the service of Pakistan or an international organization to which Pakistan has been a member during that period, nor has registered himself with the Pakistani Mission or Consulate in order to express his intention to retain the citizenship of Pakistan. It is noted that article 16(4) does not make deprivation of citizenship conditional upon possession or acquisition of another citizenship, which may leave a person without a citizenship.<sup>52</sup> Section 16(4) could be amended so that the loss of Pakistani citizenship resulting from

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<sup>50</sup> Pakistan Citizenship Act of 1951, Art. 16(2) (1951). See the international standards possibly relevant to this provision in, UNHCR, *Expert Meeting - Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality ("Tunis Conclusions")*, summary (United Nations High Commissioner for Refugees, 2014), para 56-60, <https://www.refworld.org/docid/533a754b4.html>.

<sup>51</sup> Pakistan Citizenship Act of 1951, Art. 16(3), (a), (b), (c) (1951); and UNHCR, *Expert Meeting - Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality ("Tunis Conclusions")*, para 65-69.

<sup>52</sup> The Article 8(1) of the 1961 Convention on Reduction of Statelessness sets out the basic rule that a Contracting State shall not deprive a person of his or her nationality if such deprivation renders him or her stateless. It subsequently allows for a limited set of exceptions to this rule, which should be interpreted narrowly. Although Pakistan is not a State Party to the 1961 Statelessness Convention, it offers helpful guidance in assessing the appropriateness of the deprivation provisions in PCA 1951. UNHCR's Expert Meeting Conclusions in Tunis also provides useful guidance in this regard. UNHCR, *Expert Meeting - Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality ("Tunis Conclusions")*.

deprivation would not take effect unless the concerned individual has acquired another citizenship.

In accordance with the guidelines of the international human rights law,<sup>53</sup> PCA 1951 provides full procedural guarantee for the right to a fair hearing before exercising its option for depriving a person of nationality. PCA 1951 requires that the Federal Government gives the person concerned a notice in writing with the grounds of deprivation<sup>54</sup> and, upon application, an opportunity to be heard<sup>55</sup> before a committee of inquiry appointed by the Federal Government.<sup>56</sup>

Section 16 of the Protection of Pakistan Act (PPA), 2014 also empowers the Special Courts established under the Act, to deprive any person who is convicted for a punishable offence under this law, of their Pakistani citizenship if acquired through naturalization. The Act considers such person 'enemy alien' who is a militant and 'whose identity is unascertainable as a Pakistani' or 'who has been deprived of his citizenship under the PCA 1951 acquired by naturalization.'<sup>57</sup> PPA 2014 applies to a long list of crimes termed 'scheduled offences' (listed in the schedule annexed to the Act) that are committed with the purpose of waging war or insurrection against Pakistan or threatening the security of Pakistan. Sub-section (3)(b) of section 16 of PCA 1951 seems to cover the scope of deprivation described under PPA 2014.

### ***Renunciation of Citizenship***

A citizen of Pakistan, who is not a minor, may also renounce his or her citizenship provided if he can satisfy the Government of Pakistan (GoP) that he is either a citizen or national of another country or has been given 'any valid document assuring him the grant of citizenship' of that country by a competent authority (section 14-A, PCA 1951).

However, a person renouncing the citizenship of Pakistan on the basis of a mere assurance for grant of citizenship by another country may

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<sup>53</sup> UNHCR, *Expert Meeting - Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality ("Tunis Conclusions")*, para 26.

<sup>54</sup> Pakistan Citizenship Act of 1951, Sec. 16 (6) (1951).

<sup>55</sup> Pakistan Citizenship Act of 1951, Sec. 16 (7) (1951).

<sup>56</sup> However, the letter of the Rule 25 (1)(2)(3) of the Pakistan Citizenship Rules, 1952 suggests as if the written notification and an opportunity to be heard may only apply to naturalized persons subject to deprivation under section 16(2)(3) and not to citizens in general for whom deprivation is being considered under section 16(4) (residence abroad). As noted above, no information was however available as to the actual implementation of these provisions.

<sup>57</sup> Protection of Pakistan Act of 2014, Sec. 2 (d) (2014).

eventually not acquire that citizenship and hence become stateless.<sup>58</sup> To prevent such a situation, an amendment in the law may be considered to provide for automatic re-acquisition of citizenship of Pakistan if his application for citizenship of another country does not mature within a specific period.<sup>59</sup>

The PCA 1951 contains no specific provision that allows reacquisition of Pakistani citizenship by an adult person who renounced citizenship. This stands in contrast to the legal possibility of a former minor who lost citizenship upon his/her father's renunciation to 'resume' citizenship (while not retroactively) under rule 19-B of PCR 1952 subject to certain conditions (see below for details). In order to address this lack of safeguards in PCA 1951, LHC directed:

for Pakistani citizens who have renounced their citizenship of origin and would like to have it resumed, the law is not explicit. ... It is, therefore, directed that till such time the law and rules are suitably amended, rule 19-B of the Pakistan Citizenship Rules, 1952 [restoration of the citizenship of Pakistan] shall be applicable mutatis mutandis and a declaration in Form Y prescribed under the said rule shall be sufficient proof of the intent of resumption of citizenship and the declarant shall be treated as a citizen of Pakistan.<sup>60</sup>

As a separate issue, section 14-A(A)(2)(a) also provides that if a male person renounces the citizenship of Pakistan, his minor children who are residing in Pakistan shall continue to be citizens of Pakistan while those minor children who are residing outside of Pakistan at the time of renunciation would lose their Pakistani citizenship (supposedly automatically). While the law appears to assume that the minor children living abroad would be able to acquire their father's new citizenship, this

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<sup>58</sup> Ayane Odagawa, Sosuke Seki, eds., *Typology of Stateless Persons in Japan*, report (Tokyo: UNHCR Representation in Japan, 2017), [https://www.unhcr.org/jp/wp-content/uploads/sites/34/2018/01/TYOLOGY-OF-STATELESS-PERSONS-IN-JAPAN\\_webEnglish.pdf](https://www.unhcr.org/jp/wp-content/uploads/sites/34/2018/01/TYOLOGY-OF-STATELESS-PERSONS-IN-JAPAN_webEnglish.pdf). In one such case, a couple and their child with Pakistani nationality applied for naturalization in Japan and renounced their Pakistani nationality based on an instruction by a legal affairs bureau in Japan. However, on knowing further facts about the applicant, application was denied and the whole family became stateless.

<sup>59</sup> UNHCR, *Expert Meeting - Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality ("Tunis Conclusions")*, para 32. Also, x Convention on the Reduction of Statelessness of 1961, Sec. 2 (d) (1961).

<sup>60</sup> Umar Ahmad Ghumman v. Government of Pakistan and Others, [2002] PLD 521 (Lah.).

may not always be the case. This provision too asks for a careful consideration.

Under section 14(A)(2)(a) of PCA 1951, these children may resume the citizenship of Pakistan within one year after completing the age of twenty-one years through a declaration in the 'Form Y' under rule 19-B of PCR 1952. The procedure spelled out for such resumption is not sufficient as a safeguard as the child who has lost citizenship may have to live without an identity and rights until he attains 21 years. The provided deadline (within one year of his completing the age of 21 years) is also quite short, limiting further the effectiveness of this provision as a safeguard. Section 14(A) should also be amended so that a person's renunciation of Pakistani nationality does not result in the loss of his child's nationality unless the child concerned possesses or acquires another nationality.

### ***Retention and Loss of Citizenship following Bangladesh's Secession from Pakistan***

When Pakistan came into being in 1947, Muslims from Bihar, Orissa, Uttar Pradesh, Nagaland, Manipur, Tripura and Sikkim migrated to the East Pakistan (now Bangladesh) and were commonly known as the Urdu-speaking or the Bihari community.<sup>61</sup> When civil war started in the East Pakistan, many Bengalis and the vast majority of Biharis sided with the Federation and opposed the idea of separation. During the war and after Bangladesh's independence, federalist Bengalis and Urdu-speaking people faced revenge attacks.<sup>62</sup> The situation prompted another wave of migration after 1947 from the newly independent state of Bangladesh to Pakistan and vice versa. While many others waited for their safe exit. Through Simla Agreement of 1972 and Delhi Agreement of 1973, Pakistan agreed to 'repatriate' those willing to join Pakistan and a tripartite agreement was signed between Pakistan, India and Bangladesh in 1974. Under these agreements, some 534,792<sup>63</sup> members of the Urdu-speaking community in Bangladesh showed their desire to move to Pakistan and registered themselves with the International Committee of

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<sup>61</sup> Sumit Sen, "Stateless Refugees and the Right to Return: The Bihari Refugees of South Asia-Part I," *International Journal of Refugee Law* 11 No. 4 (1999): 625-645 (626), [http://www.mcrg.ac.in/Statelessness/Further\\_Readings/Stateless\\_Refugees\\_Part1.pdf](http://www.mcrg.ac.in/Statelessness/Further_Readings/Stateless_Refugees_Part1.pdf).

<sup>62</sup> Ninette Kelly, "Ideas, Interests and Institutions: Conceding Citizenship in Bangladesh," *The University of Toronto Law Journal* 60, no.2 (2010): 349-371.

<sup>63</sup> Sumit Sen, "Stateless Refugees and the Right to Return: The Bihari Refugees of South Asia- Part 2," *International Journal of Refugee Law* 12, no. 1 (2000): 41-70,55,62, <https://doi.org/10.1093/ijrl/12.1.41>. The number of those registered with ICRC varies between literatures. For example, Khalid Hussain mentions 539,669. Khalid Hussain, "The End of Bihari Statelessness," *Forced Migration Review*, no. 32 (2009): 30.

the Red Cross (ICRC) for this purpose. Of them, according to ICRC, about 178,069<sup>64</sup> persons were repatriated to Pakistan.<sup>65</sup> Many who had fled Bangladesh to escape the violence only reached Pakistan after several months or even years through long, perilous and complex routes.<sup>66</sup>

The legislation to address this migration into Pakistan came rather late. An amendment was made in the Citizenship Act through Ordinance No. XI of 1978 by inserting the following section 16A:

16. A. Certain persons to lose and to retain citizenship: -  
(1) All persons who, at any time before the sixteenth day of December 1971, were citizens of Pakistan domiciled<sup>67</sup> in the territories which before the said day constituted the Province of East Pakistan...

These provisions came into effect on March 18, 1978, on the date of the issuance of Ordinance No. XI,<sup>68</sup> thus the retention and cessation of citizenship based on this section (which is automatic) occurred on that same day. Paragraphs (i) and (ii) of sub-section (1) of this provision withdrew Pakistani citizenship from persons who had preferred to stay in or migrated to Bangladesh. Paragraph (i) of sub-section (1) read in conjunction with the proviso to this section also deny the retention of nationality for those persons in Bangladesh who had not registered for repatriation by March 18, 1978. On the other hand, paragraph (iii) of sub-section (1) provides for the retention of citizenship for those who migrated to Pakistan before December 16, 1971 and paragraph (iv) for those who migrated after that day following registration.

The second sub-section of section 16A is, however, clear in the sense that if a person belonging to areas now included in Bangladesh, who previously was a citizen of Pakistan, resided abroad (in a country other than Pakistan and Bangladesh) at the time of commencement of

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<sup>64</sup> Ibid. The number of those who repatriated to Pakistan with ICRC's facilitation varies between literatures. Khalid Hussain, "Inhuman Camp Life of Bihari Urdu Speaking Linguistic Minority of Bangladesh," *Bangladesh Universal Periodic Review*, 2012, [https://lib.ohchr.org/HRBodies/UPR/Documents/Session16/BD/JS5\\_UPR\\_BGD\\_S16\\_2013\\_Jointsubmission5\\_E.pdf](https://lib.ohchr.org/HRBodies/UPR/Documents/Session16/BD/JS5_UPR_BGD_S16_2013_Jointsubmission5_E.pdf).

<sup>65</sup> Iqthyer Uddin Md Zahed, "A Theoretical Analysis of Stranded Biharis in Bangladesh: Seeking for Nationality since Decades," *International Journal of Advanced Research* 1, no. 6 (2013): 429-435, [www.journalijar.com/uploads/2013-09-03\\_152846\\_261.pdf](http://www.journalijar.com/uploads/2013-09-03_152846_261.pdf).

<sup>66</sup> Qutbuddin Aziz, *Blood and Tears* (Karachi: United Press of Pakistan, 1974).

<sup>67</sup> It is not clear what 'domiciled' in East Pakistan means in this context. It may refer to those who had obtained a certificate of domicile (as provided under section 17 of PCA 1951) in East Pakistan, however, considering that the acquisition of a formal certificate of domicile was assumingly not very common at the time, it could generally refer to persons who had a permanent residency in East Pakistan (see more information relating to the nature of certificate of domicile below).

<sup>68</sup> Pakistan Citizenship (Amendment) Ordinance of 1978, Sec. 1(2) (1978).

this amendment ordinance i.e., March 18, 1978, such person was required to express preference for the citizenship of Pakistan through an application in Form 'E-3' to the Federal Government and seek issuance of a certificate of citizenship in Form 'E-4' prescribed under PCR 1952.

To correspond with the amendment made in 1978, rule 13-A was inserted in PCR 1952, through SRO 1207 (1)/1978 on October 9, 1978, by virtue of which any person claiming (retention of) citizenship under section 16A of the Citizenship Act or under the proviso to that sub-section, may be granted a certificate of citizenship.<sup>69</sup> Assumingly, in order to respond to the influx of people from Bangladesh, the National Registration Act, 1973 (NRA 1973) (Act LVI of 1973) was enacted to provide for the registration of citizens and issuance of national identity cards (NICs) for the first time. Currently, any person who can provide a documentary proof that he or his parents were permanent residents of Pakistan prior to 1978 is provided a National Identity Card.<sup>70</sup>

### **Status of Foreigners (Irregular Stayers)**

When examining the legal framework for citizenship, it is important to understand the law that defines and treats foreigners.

### **Definition of Foreigner**

Foreigners Act, 1946 (FA 1946), Registration of Foreigner Act, 1939 (RFA 1939) and National Database Registration and Authority Ordinance, 2000 define the term 'foreigner' as 'a person who is not a citizen of Pakistan.' In other words, a person who is not a citizen of Pakistan at the commencement of the Act, by birth in the territory, by descent, by migration, by naturalization, by marriage or by incorporation of territory is a foreigner within the jurisdiction of domestic law.<sup>71</sup> PCA 1951 uses the word 'alien' in the same meaning as foreigner and defines it as 'a person who is not a citizen of Pakistan or a Commonwealth citizen.'

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<sup>69</sup> Certificate of citizenship of Pakistan from a person of former East Pakistani domicile residing in Pakistan, or in a foreign country [under Rule 13A(1)(i) of Citizenship Rules, 1952 and section 16A sub-section (1), Citizenship Act, 1951 is issued in Form E-1; Certificate of citizenship to a former East Pakistani residing in Pakistan since 16 December 1971, repatriated thereafter /cleared for repatriation to Pakistan vide Rule 13A (1) (iv) of the Pakistan Citizenship Rules, 1952 which corresponds to clause (iii) and clause (iv) of sub-section (1) of section 16A of PCA 1951 is issued in Form E-2. Certificate of citizenship vide Rule 13A (2) (iv) of the Pakistan Citizenship Rules, 1952 which corresponds to clause sub-section (2) of section 16A of PCA 1951 is issued in Form E-4.

<sup>70</sup> ICTA, "Activation of Blocked CNIC."

<sup>71</sup> Abdul Majeed and Another v. S.H.O Police Station Naulakha, [1989] PLD 223, (Lah.).

### ***Regulations Regarding Irregular Entry and Stay***

The entry, stay, movement and departure of foreigners in Pakistan are regulated by the Pakistan (Control of Entry) Act, 1952 (Act LV of 1952), RFA 1939 (Act XVI of 1939) and the Emigration Ordinance, 1979 (EO 1979) (Ord. XVIII of 1979). FA 1946 (Act XXXI of 1946) confers certain powers to the Federal Government with respect to the entry, stay, movement and departure of foreigners in Pakistan. Under this law, a foreigner contravening any provisions of this Act, or any order made thereunder or any direction given in pursuance of this Act, shall be punished with imprisonment for a term which may extend from three to ten years and a fine which may extend to ten thousand rupees.<sup>72</sup> A foreigner who has been convicted and sentenced to imprisonment under this Act for having no permission to stay in Pakistan can be kept in detention even after the expiry of his initial sentence, for a period not exceeding three months to finalize the arrangements for his/her deportation.<sup>73</sup>

### ***Determination of Nationality***

The GoP has established certain standards for determining the nationality of a foreigner in implementing laws relating to immigration control and deportation in view of the severe consequences of the application of such laws, including detention, punishment and deportation.

Section 8 of FA 1946 provides for the determination of nationality. It does not explicitly recognize that a person can be without a citizenship. It appears to suggest that, even in case of uncertainty regarding whether and which citizenship an individual possesses, the relevant authority is required to attribute a certain citizenship to that individual while the standards of evidence for such a decision and procedural safeguards are not further elaborated. It further states that once the determination by the administrative authority has been completed, it is not challengeable in court.

Under the wide-ranging powers available to the law enforcing authorities, persons are at times apprehended based on their mere

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<sup>72</sup> Foreigners Act of 1946, Sec. 14 (1) and (2) (1946).

<sup>73</sup> Foreigners Act of 1946, Sec. 14-C (1946). However, such prolonged detention has to be approved by the Federal Review Board constituted under Article 10 (4) (i) of the Constitution of Pakistan, which is appointed by the Chief Justice of Pakistan and composed of a Chairman and two other persons, each current or previous judges of the Supreme Court or a High Court. If a person is detained under a provincial law, a Board is appointed by the Chief Justice of the concerned High Court, which consists of a Chairman and two other persons, each current or previous judges of a High Court.

appearance and detained pending deportation to a country of nationality prescribed to them, which may not reflect their actual nationality status. This situation calls for a due process of law including a judicial review of the administrative body's nationality determination.

Furthermore, Section 9 of FA 1946 places the burden of proof upon the person who claims that he is not a foreigner or is a national of a particular country. It is often difficult for irregular immigrants to prove their citizenship or that they hold no citizenship at all. The burden of proof naturally lies with the immigrant but facilitation and cooperation in obtaining evidence and establishing the facts would exhibit humanitarian spirit.<sup>74</sup>

### ***Risk of Indefinite Detention***

According to section 14 of FA 1946, any contravention of the provisions of this Act is punishable with imprisonment for a term, which may extend from three to ten years and a fine. Following the amendments made in the law through Ordinance XXV of 2000 on July 10, 2000, an accused of an offence punishable under FA 1946 cannot be released on bail except when he is considered *prima facie* innocent.<sup>75</sup> As mentioned earlier, a foreigner without a permission to stay in Pakistan, who has been sentenced to imprisonment under this Act cannot be released even on the expiry of the sentence and shall continue to remain in custody as per rules indicated above.<sup>76</sup>

The law does not provide for a scenario where a person may no longer possess a citizenship and cannot be deported to any country in the world. The law enforcing authority (Federal Investigation Agency in this case) may ascribe a nationality to such a person and he/she may subsequently be sentenced to imprisonment, but ultimately cannot be deported. Such persons are doomed to remain indefinitely behind bars as the law does not provide for their release. Any persons in Pakistani prisons who have completed their sentences under the Foreigners Act 1946 (FA 1946) can neither be released nor deported due to operational and financial obstacles.

SHC had to rule in the case of an irregular immigrant from Bangladesh, who had been convicted under the FA 1946 and had not

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<sup>74</sup> UNHCR, *Handbook on Protection of Stateless Persons: Under the 1954 Convention Relating to the Status of Stateless Persons*, para 25 and 26 (Geneva: United Nations High Commissioner for Refugees, 2014), <https://www.unhcr.org/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>.

<sup>75</sup> Foreigners Act of 1946, Sec. 14 -A (1946)

<sup>76</sup> Foreigners Act of 1946, Sec. 14-C (1946).

been released two and half years after completion of his sentence. The High Court set aside the order of deportation and directed his release from prison on surety. In the judgment, the court formulated the dilemma faced by the concerned individual in the following words:

Serving of sentence by the accused will not serve the purpose because there is an order of deportation and he will continue to remain in jail till arrangements for his deportation are made. He cannot be released because for getting release he has to acquire citizenship of Pakistan for which he needs proof which he could not produce in the Court. The conviction order will always come in his way and as such it will not be possible for him to get the nationality/citizenship of Pakistan.<sup>77</sup>

From this brief judgment it is not clear why the deportation to Bangladesh was not possible and whether there was any question around the individual's Bangladeshi nationality. However, the judgment identifies a need to reconsider the current legal approach in such cases.

## **Conclusion**

Immediately after establishment of Pakistan as an independent state, the national legislature, the Constituent Assembly, formed a Basic Principles Committee to propose the features of the future constitution of the country. IHC has reproduced parts of the report of the Basic Principles Committee in its judgment of *Saeed Abdi Mahmud v. NADRA* to underscore that the definition and details of the citizenship were deliberately excluded from the constitution and left to ordinary legislation with the observation that 'the law relating to citizenship, naturalization and aliens should not be a part of the Constitution but should be capable of amendment in the same manner as legislative measures which are not part of the Constitution.'<sup>78</sup>

This exhibits the realization that the issues related to citizenship have to be reviewed and reconsidered in view of the changes in political, demographic, geographical, technological and social scenarios, including migration trends and security issues. No change can be imagined greater and more significant than those through which Pakistan had to undergo, including cessation of its major part (East Pakistan), annexation of further territories (like Gwadar), huge influx of migrants (from India and former East Pakistan – Bangladesh), and refugees (from Afghanistan).

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<sup>77</sup> *Muhammad Noorullah Kabir v. The State*, [2008] MLD 916 (Kar.).

<sup>78</sup> *Saeed Abdi Mahmud v. NADRA*, [2018] CLC 1588 (Pak.).

Meanwhile, the right to citizenship has been established as a fundamental human right and the human rights law related to nationality issues has seen remarkable development.

Notwithstanding the fact that PCA 1951 is a statute that despite being brief takes care of almost all conceivable aspects of the phenomenon at the time of its legislation, certain gaps have developed over the period of nearly seven decades. The original statute took care of the issues arising from the independence of the country, while the later insertion of section 16A in 1978 aimed at dealing with the issues concerning the establishment of former East Pakistan as Bangladesh.

Still, however, there are questions, touched upon in this paper, that ask for a review of PCA, 1951. Among them is an authoritative and decisive interpretation of section 4 (*jus soli*) of the Act in view of apparently two different approaches taken by two different High Courts. Upholding the statutory expression in which *jus soli* is independent of *jus sanguinis* seems more rational approach, but there are implications that need to be calculated. It would therefore be more appropriate if the decision comes from the legislature than from the judiciary.

A flexible implementation of the one-year deadline for registering the child born abroad to a Pakistani parent who has acquired citizenship by descent only with the Pakistani Mission or Consulate as per rule 21 (aa) of PCR 1952 would bring the Pakistani diaspora closer to the nation and would ensure that the second, third and fourth generations of the expatriates keep enjoying the strong bond with Pakistan.

Discrimination in acquisition of citizenship through marriage needs a serious consideration by the apex court or the Parliament particularly in view of the thorough discussion and findings recorded by FSC. The provision of law to this effect draws frequent criticism from various quarters. The need for a clearer, unambiguous, and rational policy is being undermined by keeping the issue on hold with SCP.

Any citizen (not limited to naturalized citizens) may be deprived of his or her citizenship for more than seven years of continuous residence abroad under section 16 (4) of PCA 1951. Though, this is not known to have been implemented at least in recent years, the deprivation has to be subjected to condition of possession of another citizenship. Additionally, full procedural guarantees have to be ensured including the right to a fair hearing by a court or other independent body, whose decision is binding on the executive authorities.

Similar is the case of section 14-A of the Act. Renouncing citizenship in anticipation of another citizenship may cause a person to fall through the cracks and be left with no citizenship at all. The current law needs an amendment so that the loss of citizenship due to renunciation would only take effect once the other country has granted its citizenship to the person. Alternatively, the law may provide that the loss is void if the individual fails to acquire the new nationality within a fixed period. Addressing these gaps will not always require revisions of the laws, but can also be achieved by adopting clear policies/by-laws that would ensure sufficient protection, consistency, and conformity of laws with the international standards.