

Pakistan

The Struggle for Equal Citizenship

Elaine Alam

Introduction

The right to citizenship is significant in many aspects. It is the 'genuine effective link' between the state and the population it governs.¹ Primarily, it obliges the government to take responsibility for the population under its authority and ensure 'their general welfare and the protection of their individual and collective rights'.² It is also recognised by the United Nations as a fundamental human right.³ By virtue of being citizens of the state, individuals are protected by the law of the land that guarantees them certain inviolable rights and gives them the opportunity to create a secure livelihood for themselves.

Citizenship also has important social and psychological dimensions. It has implications on how individuals experience everyday life, forge communal bonds and whether they get to lead a dignified existence. Yasmeen contends, 'The idea of citizenship includes an emotional and psychological aspect; the sense of belongingness and the feeling that the citizen is not just part of a system but is acknowledged and respected in this system.'⁴

1 United Nations High Commissioner for Refugees (UNHCR), *The State of the World's Refugees: A Humanitarian Agenda*, accessed February 2, 2020, <https://www.unhcr.org/3eb7ba7d4.pdf>.

2 Sapana Pradhan-Malla and Phanindra Gautam, *Women's Right to Nationality and Citizenship* (Kuala Lumpur: International Women's Rights Action Watch Asia Pacific, 2006), 2, <https://www.iwraw-ap.org/resources/womens-right-to-nationality-and-citizenship>.

3 See *The Universal Declaration of Human Rights*, art. 15, Paris, 10 December 1948, accessed February 3, 2020, <https://www.un.org/en/universal-declaration-human-rights>.

4 Samina Yasmeen, 'Islamisation and Democratisation in Pakistan: Implications for Women and Religious Minorities,' *South Asia: Journal of South Asian Studies* 22, no. s1 (1999): 184, <https://doi.org/10.1080/00856408708723381>.

Citizenship rights are, therefore, often at the centre of an individual's life in a state with implications on the political, social and economic spheres. However, not all people who find themselves within the territorial boundaries of a state have access to the right to citizenship. The modern state is based on an exclusionary framework. The Westphalian construct of the territorially bounded nation-state is characterised by its limits. As Anwar has remarked, 'Borders are by definition lines of exclusion and inclusion that modern states establish.'⁵

Moreover, international norms of equality of all humans often clash with political imperatives and processes of nation-building. Ideas regarding citizenship have evolved under different political circumstance.⁶ The question of who is a citizen and who is not, the 'politics of citizenship', also depends upon the form and character of nationalism prevalent in the country at that particular time.⁷ In short, citizenship is not accessible to each and every individual within a state, and, it is also more accessible to some than to others.

The thematic focus of this year's report, 'Migrants, Refugees and the Statelessness,' provided an opportunity to examine the exclusionary citizenship regime in Pakistan. According to the United Nations High Commissioner for Refugees (UNHCR), in 2018, the world's second largest population of 1.4 million refugees was hosted by Pakistan.⁸ The International Organization for Migration (IOM) noted that, in 2017, Pakistan housed around 3.4 million immigrants.⁹ Refugees and migrants in Pakistan are in states of either *de facto* or *de jure*¹⁰ statelessness. This report explores the

5 Nausheen H. Anwar, 'Negotiating New conjunctures of Citizenship: Experiences of 'Illegality' in Burmese-Rohingya and Bangladeshi Migrant Enclaves in Karachi,' *Citizenship Studies*, 17, no. 3-4 (2013): 419, <https://doi.org/10.1080/13621025.2013.793070>.

6 Yasmeen, 'Islamisation and Democratisation,' 184.

7 Anwar, 'Negotiating new conjunctures,' 423.

8 United Nations High Commissioner for Refugees (UNHCR), *Global Trends: Forced Displacement in 2018*, accessed February 3, 2020, <https://www.unhcr.org/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html>.

9 International Organization for Migration (IOM), *Pakistan Migration Snapshot*, (Bangkok: International Organization for Migration, Regional Office for Asia and the Pacific, 2019), 7, <https://displacement.iom.int/system/tdf/reports/Pakistan%20Migration%20Snapshot%20Final.pdf?file=1&type=node&id=6535>.

10 *De jure* statelessness implies a 'a person unable to demonstrate that he/she is *de jure* stateless, yet he/she has no effective nationality and does not

operation of legal processes and institutional structures that serve to marginalise migrants, refugees and the stateless in the country.¹¹ It notes that citizenship laws not only discriminate against international immigrants but also create a distinction between ‘first-class citizens’ and ‘second-class citizens’ through unequal application of the law as well as gender bias.

It may seem impossible for Pakistan to initiate a naturalisation process for such a large population of refugees and immigrants given the current state of its economy, political system and security. However, the state not only can still take certain measures to improve their well-being but also should address the problems faced by migrant and refugee communities that have been living in the country for decades but have been pushed to the margins by exclusionary policies and political imperatives. The last section of the report outlines steps that Pakistan can take to address the problems of statelessness and ensure the economic, social and political rights of vulnerable groups.

Gaps in the Legal Framework: A Brief Overview

The right to nationality has been recognised by a number of international human rights agreements to which Pakistan is a party such as the Convention on the Rights of the Child; the Convention on the Elimination of All Forms of Discrimination against Women; and the International Covenant on Civil and Political Rights. All of these international conventions recognise the right to nationality as a fundamental human right (Table 1).

Exclusionary Citizenship Laws

Enacted in April 1951, the Pakistan Citizenship Act, 1951 defines the rules and conditions under which a person can acquire the

enjoy national protection.’ The difference between de facto statelessness and de jure statelessness has been a matter of much debate in the legal community. See ‘Citizenship & Nationality,’ International Justice Resource Center, accessed February 3, 2020, <https://ijrcenter.org/thematic-research-guides/nationality-citizenship>.

¹¹ A stateless person is defined by the 1954 Convention relating to the Status of Stateless Persons as ‘a person who is not considered as a national by any State under the operation of its law.’ See ‘Right to a Nationality and Statelessness,’ United Nations Human Rights Office of the High Commissioner, accessed February 3, 2020, <https://www.ohchr.org/EN/Issues/Pages/Nationality.aspx..>

Table 1: International Conventions Recognising the Right to Nationality and Protection of Refugees and Stateless Persons vis-à-vis Pakistan

International Convention	Relevant Article	Ratified/Not ratified
Universal Declaration of Human Rights (1948)	<p>Article 15(1): (1) Everyone has the right to a nationality.</p> <p>Article 16(1): Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family.</p>	Ratified
International Covenant on Civil and Political Rights (1966)	Article 24(3): Every child has the right to acquire a nationality.	Ratified
Convention on the Elimination of All Forms of Discrimination against Women (1979)	<p>Article 9(1): States Parties shall grant women equal rights with men to acquire, change or retain their nationality.</p> <p>Article 9(2): States Parties shall grant women equal rights with men with respect to the nationality of their children.</p>	Ratified
Convention on the Rights of the Child (1989)	Article 7(1): The child shall be registered immediately after birth and...the right to acquire a nationality...	Ratified
Convention relating to the Status of Refugees (1951)	<p>Article 3: The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the present Protocol.</p> <p>Article 34: The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.</p>	Not ratified

Convention relating to the Status of Stateless Persons (1954)	Article 32: The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.	Not ratified
Convention on the Reduction of Statelessness (1961)	Article 1: A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Article 9: A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.	Not ratified

citizenship of Pakistan. It provides for citizenship by birth,¹² descent and migration. The provision of citizenship by birth makes Pakistan one of the handful of countries in the world which grant this right. However, children of foreign diplomats and ‘enemy aliens’ born in Pakistan are not considered citizens of Pakistan.¹³

It should also be noted that the Act only covers general cases, and only three categories of persons have been defined by the Act as ‘extraordinary cases’.¹⁴ In other words, no other group of migrants are covered by the national legal regime on citizenship. This exclusionary framework puts refugees and migrants, who have been residing in Pakistan for almost three decades, in a state of continued insecurity, as it restricts their economic, social and political advancement.¹⁵ As will be detailed in the chapter, the

12 Section 4 of the Pakistan Citizenship Act, 1951 states, ‘Every person born in Pakistan after the commencement of this Act shall be a citizen of Pakistan by birth.’ See Republic of Pakistan, *Pakistan Citizenship Act, 1951*, (The Government of Pakistan: Pakistan, 1951), section 4, <https://www.refworld.org/docid/3ae6b4ffa.html>.

13 ‘Immigration,’ Directorate General of Immigration & Passports, Ministry of Interior, Government of Pakistan, accessed February 2, 2020, <http://www.dgip.gov.pk/files/immigration.aspx>.

14 Mass migrations from India, East Pakistan and Kashmir are included in extraordinary cases. See Sarah Hyder, ‘Steering the Refugee Debate,’ DAWN, accessed February 10, 2020, <https://www.dawn.com/news/1440342>.

15 Afghans are not integrated into national development planning though they de facto access to certain public services like health facilities. See UN High

limitations in the citizenship law, legal loopholes and political biases have created a discriminatory legal and institutional regime that has a strong impact on those already at the margins of Pakistani society.

Absence of a National Legal Framework for Statelessness

There is no recognition of the concept of statelessness in Pakistan's political system. The United Nations High Commissioner for Refugees (UNHCR) notes that 'Statelessness has not been properly mapped in Pakistan and there are no procedures in place for determining whether a person is stateless.'¹⁶ Currently, the Foreigners Act, 1947 is the only law governing the presence of non-citizens in the country, but it 'contains no provisions relating to the protection of refugees, asylum-seekers or other persons of concern'.¹⁷

Non-Ratification of International Conventions on Refugees and the Stateless

Pakistan has neither signed nor ratified the Convention relating to the Status of Stateless Persons (1954) or the Convention on the Reduction of Statelessness (1961),¹⁸ which states that 'while States maintain the right to elaborate the content of their nationality laws, they must do so in compliance with international norms relating to nationality, including the principle that statelessness should be avoided'.¹⁹ Pakistan has also not ratified the 1951 Refugee Convention, including its 1967 Protocol. Pakistan's non-ratification of these international instruments has led to a lack of accountability on how Pakistan treats the stateless and refugees within its territory. Further, due to the absence of a national framework to guide political actors, there is no policy for the

Commissioner for Refugees (UNHCR), *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report—Universal Periodic Review: Pakistan* (Geneva: UN High Commissioner for Refugees, 2012), 3, <https://www.refworld.org/docid/4f9663d12.html>; IOM, *Pakistan Migration Snapshot*, 13.

16 UNHCR, *Submission by the United Nations High Commissioner for Refugees*, 9.

17 *Ibid.*, 5.

18 *Ibid.*, 1.

19 UN General Assembly, *Convention on the Reduction of Statelessness* (Geneva: United Nations, 1961), introductory note, 3, https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness_ENG.pdf.

long-term rehabilitation and/or eventual inclusion of the stateless, non-citizens, *de facto* non-citizens, and refugees in Pakistan.

Institutional Framework

The subject of nationality and citizenship rights falls under federal jurisdiction in Pakistan. In the case of international migration, the Ministry of the Interior is responsible for determining the legal status of an individual in Pakistani territory. The registration of international immigrants and the issuance of identity cards is done by the National Data Registration Authority (NADRA) under the Ministry of the Interior. Only 'a Pakistani citizen resident in Pakistan' has the right to a Computerised National Identity Card (CNIC) issued by NADRA, and only citizens are issued a domicile that reserves jobs and quotas for them in the public sector in accordance with their place of domicile.²⁰ Under the Foreigners (Amendment) Ordinance 2000, registering as an 'alien' allows foreigners the right to apply for a work permit and engage in business activities.²¹ International migrants are often reluctant though to register themselves, fearing that claiming the legal status of an alien will block their path towards eventually acquiring citizenship.²²

There is also a lack of clarity on whether the cancellation of a CNIC by NADRA implies the revocation of citizenship. According to Section 16 of the Pakistan Citizenship Act, 1951, the Federal Government 'may by order deprive any person who is a citizen of Pakistan by naturalisation of his citizenship of Pakistan.'²³ However, NADRA has contended that Section 18 of the NADRA Ordinance 2000 gives it the authority to cancel CNICs.²⁴ The cancellations by

20 Haris Gazdar, *A Review of Migration Issues in Pakistan* (Karachi: Collective for Social Science Research, 2003), 6, http://www.researchcollective.org/Documents/A_Review_of_Migration_Issues_in_Pakistan.pdf.

21 Andreas Zimmermann, Jonas Dörschner, and Felix Machts, eds., *The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol* (New York: Oxford University Press, 2011), 174, Google Books.

22 Gazdar, *A Review of Migration*, 14.

23 'NADRA Cannot Revoke Citizenship, IHC Told,' *The Express Tribune*, accessed February 10, 2020, <https://tribune.com.pk/story/2105526/1-nadra-says-cancelled-jui-f-leaders-cnlic>.

24 'Afghan Family Disputes Cancellation of CNICs,' *The Express Tribune*, accessed February 10, 2020, <https://tribune.com.pk/story/2066161/1-afghan-family-disputes-cancellation-cnlics/>; See National Database and Registration

NADRA of identity cards has given rise to legal disputes wherein the cancellation has been challenged by the aggrieved party in the courts. One particular case that caught national attention in 2019 was the cancellation of the identity card of Hafiz Hamdullah, a senator from the Islamist party Jamiat Ulema-e-Islam-Fazl (JUI-F). It was reported that NADRA had received intelligence from security agencies, which found that Hamdullah was in possession of counterfeit documents and that he was an Afghan national.²⁵ On the basis of the evidence received, NADRA declared Hamdullah an ‘alien’ and ‘not a citizen of Pakistan’.²⁶ The decision was later suspended by the Islamabad High Court.²⁷ The institutional framework thus exacerbates the dichotomy that exists at the political, social and legal levels between those who are legitimate citizens and those who are ‘aliens’.

Vulnerable Groups in Pakistan: Examining Legal and Political Hindrances towards Citizenship Rights

Afghan Refugees

The civil strife that engulfed Afghanistan after the pro-communist coup of April 1978 and the subsequent Soviet invasion in 1979 resulted in a massive influx of Afghan refugees into Pakistani territory. According to the UNHCR, as of January 2020, there are 1,416,078 registered refugees in Pakistan.²⁸ The total number of Afghan refugees in the country has been estimated to be over 2.5 million though.²⁹ The Human Rights Commission of Pakistan (HRCP) notes that the majority of the refugee population in

Authority (NADRA), NADRA Ordinance 2000 (Islamabad: The Government of Pakistan, 2000), section 18, 194, <https://www.nadra.gov.pk/download/nadra-ordinance-2000>.

²⁵ ‘NADRA Cannot.’

²⁶ Ibid.

²⁷ Ibid. IHC Chief Justice Athar Minallah, upon hearing that Hamdullah’s son was serving in the Pakistan Army, remarked, ‘If a mother is willing to sacrifice her son for this soil, then how is her husband’s citizenship being doubted?’

²⁸ ‘Operational Portal,’ Country—Pakistan, accessed February 5, 2020, <https://data2.unhcr.org/en/country/pak>.

²⁹ Human Rights Commission of Pakistan (HRCP), *State of Human Rights in 2017* (Lahore: Human Rights Commission of Pakistan, 2017), 8, <http://hrcp-web.org/publication/book/state-of-human-rights-in-2017>.

Pakistan comprises of Afghans.³⁰ This is the only group that has been granted refugee status by the UNHCR.³¹

Although Afghan refugees are not considered stateless from a strictly legal standpoint,³² they face a number of obstacles in gaining rights for themselves and their children. According to the HRCP, 'While technically all refugees born in Pakistan are eligible to obtain citizenship, they are generally discouraged from doing so.'³³ This type of resistance is typified by legal and political roadblocks that prevent refugees from obtaining a CNIC and exercising citizenship rights. The judiciary has argued that the citizenship laws of Pakistan do not extend to Afghan refugees and that their stay is governed by the provisions of the 1988 Geneva Accords.³⁴ There is little legal ground on which Afghan refugees can claim citizenship in Pakistan. According to a court opinion, the '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'.³⁵

The legal path for acquiring nationality is essentially non-existent for Afghan refugees. There are no laws that explicitly deal with the question of the citizenship of refugees living in Pakistan. This leads to refugees using fake documents to establish their nationality as Pakistani. When these documents are found to be counterfeit, they are cancelled by NADRA.³⁶ News reports such as

30 Human Rights Commission of Pakistan (HRCP), 'Refugees' in *State of Human Rights in 2015* (Lahore: Human Rights Commission of Pakistan, 2015), 3, <http://hrcp-web.org/hrcpweb/hrcp-annual-report-2015>.

31 Bilal Karim Mughal and Saher Baloch, 'The Woes of Bengalis, Burmese and Iranians of Karachi,' *Herald Magazine*, accessed February 10, 2020, <https://herald.dawn.com/news/1153771>.

32 They have been recognized as refugees. See Faryal Nazir, *Report on Citizenship Law: Pakistan* (Badia Fiesolana: European University Institute, 2016), 6, www.eui.eu/RSCAS/Publications/. They can also become Afghan citizens under the Afghan Law on Citizenship. See Hyder, 'Steering the Refugee Debate.'

33 HRCP, *State of Human Rights in 2017*, 267.

34 One of the agreements under the Geneva Accords includes the Bilateral Agreement between Republic of Afghanistan and Islamic Republic of Pakistan on Voluntary Return of Refugees that calls for the peaceful repatriation of Afghan refugees back to their homeland. See Nazir, *Report on Citizenship*, 9.

35 *Ibid.*

36 Ali Akbar, 'Nat Geo's Famed 'Afghan Girl' Sharbat Bibi Arrested by FIA in Peshawar,' *DAWN*, accessed February 10, 2020, <https://www.dawn.com/news/1292383>.

the arrest of Sharbat Bibi, an Afghan refugee known as ‘The Afghan Girl’ for gracing the cover of the June 1985 *National Geographic*, who allegedly forged a CNIC,³⁷ illustrates the precarious condition of Afghan refugees in Pakistan.

Documented refugees only receive a Proof of Registration (PoR) card by NADRA, which ‘provides temporary legal stay and freedom of movement’.³⁸ The temporary nature of the POR makes it an inadequate safeguard and it falls short of a protective function. Unregistered refugees are even more at risk, as they are labelled illegal immigrants in keeping with the Foreigners Act 1946.³⁹

The uncertain legal status of Afghan parents also affects their children. Afghan refugees fall under the category of aliens under the citizenship regime due to which the children of these refugees, despite being born in Pakistan, are not accorded citizenship.⁴⁰ This implies that Afghan children can be denied CNICs after turning 18 years old, since their parents are considered aliens according to the citizenship law. They do not have the right to citizenship even if their mothers are Pakistani citizens.⁴¹ Citizenship by birth is recognised in Section 4 of the Pakistan Citizenship Act, 1951. However, it is not extended to members of the Afghan community whose claims are, according to one report, ‘denied both at administrative and judicial levels’.⁴² In one case, the child of an Afghan refugee was denied a national identity card upon turning 18, and the matter was taken to the High Court.⁴³ The court rejected the petition on the grounds that the relevant legislation governing the stay of Afghan refugees is the Foreigners Act, 1946 under which they would be considered as foreigners.⁴⁴ In other words, their stay does not entitle them to citizenship.

The current political climate and security environment makes amending the law difficult. The bilateral relationship between Afghanistan and Pakistan has been characterised by enmity due to

37 Ibid.

38 IOM, *Pakistan Migration*, 13.

39 HRCP, *State of Human Rights in 2017*, 265.

40 Nazir, *Report on Citizenship*, 8.

41 Iftikhar A. Khan, ‘Afghan Refugees’ Children Can’t Get CNICs: Nisar,’ *DAWN.COM*, accessed February 10, 2020, <https://www.dawn.com/news/1276821>.

42 Nazir, *Report on Citizenship*, 5.

43 Nazir, *Report on Citizenship*, 5.

44 Ibid., 6.

a number of issues between the two countries. In Pakistan, these include past Afghan governments' support for Pashtun demands in Pakistan for a separate state,⁴⁵ Afghanistan's non-recognition of the Durand Line,⁴⁶ Indian involvement in Afghan reconstruction⁴⁷ and alleged terrorist safe havens in Afghanistan.⁴⁸ The wider public, too, perceives Afghan refugees as threats to the social fabric and national security of the country. They are often blamed for 'cross border drug trafficking, human trafficking, smuggling and the arms race across Pakistan's western border' though provincial data from 2014 shows that only a small number of Afghans were responsible for crimes in Khyber Pakhtunkhwa.⁴⁹

The general institutional response to the Afghan refugees' plight has been poor. This is exemplified by the recent ruling from the Peshawar High Court calling for the restriction of activities of Afghan refugees, including limiting their ability to conduct businesses, and the requirement of specific permission before they can start a venture.⁵⁰ Afghans, currently conducting trade, face disadvantages, with additional checks and procedures levied on their import and export activities. Aside from these restrictive regimes, tariff barriers, customs regulations and administrative hindrances, Afghans face a narrowing space for economic activity

45 Faridullah Bezhani, 'The Pashtunistan Issue and Politics in Afghanistan, 1947-1952,' *Middle East Journal* 68, no. 2 (2014): 198, <https://doi.org/10.3751/68.2.11>; Amin Saikal, 'Afghanistan and Pakistan: The Question of Pashtun Nationalism?', *Journal of Muslim Minority Affairs* 30, no. 1 (2010): 8, <http://dx.doi.org/10.1080/13602001003650572>.

46 Vinay Kaura, 'The Durand Line: A British Legacy Plaguing Afghan-Pakistani Relations,' Middle East Institute, accessed February 12, 2020, <https://www.mei.edu/publications/durand-line-british-legacy-plaguing-afghan-pakistani-relations>.

47 Ruchi Kumar and Hikmat Noori, 'Afghans Are Cheering for an Indian Win,' Foreign Policy, accessed February 12, 2020, <https://foreignpolicy.com/2019/02/28/afghans-are-cheering-for-an-indian-win/>.

48 Associated Press of Pakistan, 'Terrorist safe havens exist in ungoverned areas of Afghanistan, not Pakistan: Maleeha Lodhi,' *DAWN*, accessed February 12, 2020, <https://www.dawn.com/news/1378410>.

49 Sania Sabir Qureshi, 'Diasporic Identity and Rehabilitation: Why the Afghan Refugees in Pakistan are not opting for Voluntary Repatriation,' *Stratagem* 2, no. 1 (2019): 59-60, the Centre for Strategic and Contemporary Research (CSCR).

50 Waseem Ahmad Shah, 'View from the Courtroom: Pakistan's Citizenship Law in the Limelight,' *DAWN*, accessed February 10, 2020, <https://www.dawn.com/news/1284651>; Rafia Zakaria, 'A Matter of Foreign Spouses,' *DAWN*, accessed February 10, 2020, <https://www.dawn.com/news/1469361>.

and increasingly unequal access to opportunities. The lacuna in the legal framework also enables repressive actions against the Afghan community that include ‘repeated threats, detention, regular demands for bribes and occasional violence by the police’.⁵¹

Most of these issues are discounted by administrative authorities as the government continues to emphasise the voluntary repatriation of the Afghan refugees. The initial deadline of 30 June 2019 was extended by an additional year in the midst of a political visit by the Afghan President, Ashraf Ghani. Current data estimates that the UNHCR has facilitated the voluntary repatriation of 4,374,208 Afghan refugees from 2002 till 4 December 2018.⁵² Moreover, the state’s continuous emphasis on repatriation of the refugees makes clear its intent of not allowing them access to citizenship or naturalisation laws.⁵³

Pakistani Women and Foreign Spouses

Pakistan also serves as an example of how citizenship laws can be discriminatory on the basis of gender and deprive women of their right to equality under Article 25 of the 1973 Constitution of Pakistan.⁵⁴ Steps have been taken to make the language in the Pakistan Citizenship Act 1951 gender-neutral and extend to women the right to pass down nationality to their children, which are commendable. The Act, however, discriminates against women who have married foreigners. Section 5 of the Pakistan Citizenship Act 1951 was amended in 2000 to grant nationality to the children of a Pakistani woman who was married to a foreigner.⁵⁵ Yet, the

51 ‘What Are You Doing Here?: Police Abuses Against Afghans in Pakistan,’ Human Rights Watch, accessed February 10, 2020, <https://www.hrw.org/report/2015/11/18/what-are-you-doing-here/police-abuses-against-afghans-pakistan>.

52 ‘Pakistan: Voluntary Repatriation of Afghan Refugees from Pakistan: As 30th of Nov, 2018—Pakistan,’ *ReliefWeb*, accessed February 3, 2020, <https://reliefweb.int/report/pakistan/pakistan-voluntary-repatriation-afghan-refugees-pakistan-30th-nov-2018>.

53 Hyder, ‘Steering the.’

54 Article 25(1) states, ‘All citizens are equal before law and are entitled to equal protection of law.’ Moreover, article 25(2) prohibits discrimination on the basis of sex. See Republic of Pakistan, *The Constitution of the Islamic Republic of Pakistan* (Islamabad: The National Assembly of Pakistan, 2012), article 25, http://www.na.gov.pk/uploads/documents/1333523681_951.pdf.

55 Waseem Ahmad Shah, ‘View from the Courtroom: Pakistan’s Citizenship

same right was not extended to the husband, thereby leaving Section 10 of the Act that deals with the transfer of nationality to men unamended to date.⁵⁶ Hence, while the Act does not permit the foreign spouses of Pakistani women to attain nationality it extends that right to the spouses of Pakistani men.

Such inconsistency places Pakistani women, especially those who have married Afghan men, in a vulnerable position, as their spouses are denied protection under the legal regime.⁵⁷ In 2016, a petition was filed in the Peshawar High Court by a Pakistani woman, Abida Bibi and her Afghan husband, Asmatullah.⁵⁸ Abida Bibi was denied a CNIC by NADRA on the grounds that her husband did not possess one.⁵⁹ The court noted that the 1951 citizenship law discriminated against women and issued a notice to the Attorney General of Pakistan to address the concerns raised in Abida Bibi's petition.⁶⁰

In addition to violating a woman's right to equality, the law also places the spouses of Pakistani women in a difficult position. Despite being legally wed to Pakistani women, these men remain non-citizens and therefore unfairly deprived of their rights to equal opportunities. In this manner, the state also violates its constitutional duty under Article 35 to protect the institutions of family and marriage.⁶¹

The gendered character of the law must be seen through the lens of systemic discrimination of Pakistani women in the public sphere. Women have access to a 'second-class citizenship' in which they are subordinate to men when it comes to 'the rights to acquire, change, transfer or retain nationality'.⁶² This subordination

Law in the Limelight,' *DAWN*, accessed February 10, 2020, <https://www.dawn.com/news/1284651>; Rafia Zakaria, 'A Matter of Foreign Spouses,' *DAWN*, accessed February 10, 2020, <https://www.dawn.com/news/1469361>.

⁵⁶ Zakaria, 'A Matter.'

⁵⁷ Shah, 'View from.'

⁵⁸ 'Discriminatory' Citizenship Law Challenged in High Court,' *DAWN*, accessed February 12, 2020, <https://www.dawn.com/news/1290892>; 'Woman moves PHC to seek citizenship for husband, kids,' *The News*, accessed February 12, 2020, <https://www.thenews.com.pk/print/158247-Woman-moves-PHC-to-see-citizenship-for-husband-kids>.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Article 35 states, 'The state shall protect the marriage, the family, the mother and the child.' See *The Constitution of the Islamic Republic of Pakistan*.

⁶² Pradhan-Malla and Gautam, *Women's Right*, 1.

is rooted in structures of patriarchy that relegate women to the private sphere at the cost of their participation in public affairs.⁶³

The resistance towards extending citizenship rights to foreign husbands is both securitised and gendered. The exclusion is justified by the state on the basis of national security and the need to prevent illegal immigration. A bill tabled in 2017 to amend the citizenship law was rejected by the governing party because it could 'jeopardise national security by allowing hostile countries to set up espionage networks by simply marrying Pakistani women'.⁶⁴ The Ministry of Interior has stated in the past that granting nationality to the foreign husband of a Pakistani woman will not only lead to the law being abused by 'illegal immigrants like Afghan refugees, Bengali, Behari and other South Asian states/countries who do not intend to return to their country' but also 'provide legal ingress to Indian male citizens into Pakistan'.⁶⁵

The citizenship law is thus rooted in gender bias, cultural fears and security imperatives. The law denies women the right to transfer nationality to their husband on the pretext of protecting Pakistani soil against foreign enemies who may come under the guise of male refugees from India and Afghanistan. It demonstrates the link between patriarchal social systems, geopolitical imperatives, a masculine state and the rights of refugees. For this reason, this particular provision in the law can be especially difficult to amend if wider efforts are not taken to sensitise social and political systems towards gender bias and create awareness of Pakistan's international human rights obligations.

Migrants from Bangladesh and Burma/Myanmar⁶⁶

It has been estimated that around a million Bangladeshis migrated to Pakistan in the 1980s and 1990s in search of economic

63 Ibid.

64 Irfan Ghauri, 'Security fears block tweak in citizenship law,' *The Express Tribune*, accessed February 10, 2020, <https://tribune.com.pk/story/1391721/gender-bias-security-fears-block-tweak-citizenship-law/>

65 Nazir, *Report on Citizenship Law*, 9; 'No Citizenship for Foreigners Marrying Pakistani Women,' *DAWN*, accessed February 10, 2020, <https://www.dawn.com/news/233113>.

66 The state collectively refers to Burmese and Bangladeshi migrants as 'Bengali Speakers'. Since the Burmese also choose to identify as Bengali, they have been grouped together in this report. See Anwar, 'Negotiating New' 415.

opportunities.⁶⁷ Most of them are settled in Karachi though exact numbers remain uncertain.⁶⁸ In contrast to the many Afghan refugees that share ethnic ties with the local pashtuns, this group is at a higher risk of marginalisation and targeting due to their distinct physical appearance.⁶⁹ Pakistan also houses around 250,000 Rohingyas who left their homes in response to their expulsion by the Burmese military starting in 2015.⁷⁰

The citizenship status of these migrants is also ambiguous. The Pakistani state's attempts to govern and control the Rohingya and Bangladeshi migrants has manifested itself in the 'imposition of new citizenship norms through the enforcement of strict legal codes, disciplinary interventions (police squads, detention) and administrative rationalities'.⁷¹ This has created a highly visible distinction between legitimate citizens and *de facto* non-citizens. Coercive methods of governance are accompanied by the 'language of illegality' that discursively constructs migrants as security threats.⁷² For instance, institutions governing citizenship status such as NADRA refuse to legitimize Bengali-speaking populations as Pakistani citizens despite their residence in the country for several decades and continue to refer to them as 'illegals'.⁷³

The citizenship laws discriminate against a certain sub-section of Bengalis who migrated to Pakistan after 1971. According to the Pakistan Citizenship Act 1951, as amended by the Pakistan Citizenship (Amendment) Ordinance, 1978, 'All persons who, at any time **before** [emphasis added] the sixteenth day of December 1971, were citizens of Pakistan domiciled in the territories which... constituted the Province of East Pakistan...shall continue to be citizens of Pakistan'.⁷⁴ The rules issued by NADRA stipulate that individuals can be accorded citizenship upon proving that they had been residents of Pakistan before 1978.⁷⁵ The latter cut-off

67 Ibid., 415.

68 Gazdar, *A Review of Migration*, 13.

69 Ibid., 14.

70 Anwar, 'Negotiating New', 415.

71 Ibid., 416.

72 Ibid., 421.

73 Ibid., 424.

74 Republic of Pakistan, Pakistan Citizenship Act, 1951, section 16-A

75 Bilal Karim Mughal and Zehra Naqvi, 'Bengalis of Karachi Demand Urgent

date is used to deny citizenship to Bangladeshis who migrated for economic purposes.⁷⁶ Moreover, the law puts immense pressure on Bangladeshis to prove that they settled in Pakistan prior to 1971.

Bangladeshi migrants who settled in Pakistan after 1971 are denied citizenship and only receive work permits. This puts such migrants at an increased risk of being rendered stateless due to their status as *de facto* non-citizens in addition to depriving them of protective, economic and political rights and subjecting them to routine state coercion. Bangladeshi residents of Karachi are excluded from electoral rolls, and there have been some instances in which Bangladeshis have been forced to register as aliens after their CINCs were revoked by NADRA for ‘failing’ to establish proof of citizenship.⁷⁷ In one case, Khairuddin, a fisherman, was detained by the police after he failed to produce a CNIC which had been denied to him by NADRA.⁷⁸ The policy also affects the children of these migrants since they are unable to gain recognition as Pakistani citizens due to the uncertain legal status of their parents.⁷⁹ Some migrants have no choice but to resort to illicit means such as using counterfeit documents to register themselves as pre-1971 immigrants and acquire citizenship.⁸⁰ Others reportedly bribe officials at NADRA at varying rates to get their CNICs renewed.⁸¹

Under the Pakistan Citizenship Act 1951, only people born in the Subcontinent and residing in Pakistan qualify as citizens.⁸² But unlike Bangladesh, Myanmar/Burma was not considered to be a part of the Subcontinent under the Government of India Act 1935.⁸³ This meant that Rohingyas do not qualify for citizenship rights. They are thus not only economically insecure, as they are mostly involved in low-paid employment, but are also socially, legally and politically

Resolution to Identity Problem,’ *DAWN*, accessed February 10, 2020, <https://www.dawn.com/news/1414503>.

⁷⁶ Ibid.

⁷⁷ Mughal and Naqvi, ‘Bengalis of’

⁷⁸ Mughal and Baloch, ‘The Woes.’

⁷⁹ Anwar says, ‘this poses a greater challenge for these migrants’ children who cannot obtain identification cards unless their parents’ status is legalized or they have corroborating identity cards.’ For more, see Anwar, ‘Negotiating New,’ 425.

⁸⁰ Ibid.; Gazdar, *A Review of Migration*, 13.

⁸¹ Mughal and Baloch, ‘The Woes.’

⁸² Ibid.

⁸³ Ibid.

at risk. They are often denied access to healthcare and education. In one instance, a Rohingya woman was denied medical treatment at a hospital for not having a valid CNIC.⁸⁴ Their status as non-citizens also makes them victims of arbitrary police detention and harassment, and security agencies take advantage of their precarious state to ask for bribes from the community, an occurrence that is especially prevalent in the ethnicised political spaces of Karachi.⁸⁵

Rohingyas, who migrated to Pakistan due to religious bonds, harbour feelings of betrayal at the harassment and discrimination against their community. The concept of the *muhajir*, or migrant, is a feature of both Islamic and Pakistani history. It evokes the *hijrah* [migration] in Islamic history caused by the religious persecution of Muslims. The term, literally meaning ‘a person who has left home’, was also used to describe Muslim migrants from India after the 1947 Partition, and, by the 1980s, to descendants of Urdu-speaking migrants in parts of Sindh and Punjab.⁸⁶ However, Rohingya migrants feel that they are not accepted by the Pakistani state and society despite having escaped persecution. As one Rohingya migrant said: ‘Despite our achievements we have never been accepted as part of this land. We too have performed *hijrah* and are *muhajir* but remain unacknowledged as such.’⁸⁷

Bihari Muslims

The case of Bihari Muslims⁸⁸ is unique in the sense that they mostly reside in Bangladesh as a stateless community of ‘stranded Pakistanis’. They make up an economically deprived group mostly inhabiting neglected urban slums.⁸⁹ Their current predicament is the result of their opposition to the creation of Bangladesh in 1971 and their desire to be identified as Pakistanis. Though a reported 170,000 have been repatriated to Pakistan, the Pakistani government has refused to take in the remaining half a million Biharis,

84 Ibid.

85 Gazdar, *A Review of Migration*, 13.

86 Ibid., 3.

87 Anwar, ‘Negotiating New,’ 418.

88 Though referred to as *Biharis*, not all of them came from Bihar. See Gazdar, *A Review of Migration*, 13.

89 Katherine Southwick and M. Lynch, *A Progress Report and Global Survey on Statelessness* (Washington D.C: Refugees International, 2009), ii, <https://www.refworld.org/docid/49be193f2.html>.

arguing that they have acquired passports and exercised voting rights in Bangladesh.⁹⁰ The Foreign Office has stated that ‘under Section 16-A of Pakistan Citizenship Act 1951, all those persons in the territories, which before December 16, 1971 constituted the province of East Pakistan, and residing there since that day, voluntarily or otherwise, ceased to be citizens of Pakistan.’⁹¹ The Bihari Muslims continue to reside in camps to this day and hope that one day they will be taken in as citizens of Pakistan.⁹²

Conclusion

This report examined the plight of refugees, migrants and the stateless in Pakistan. It identified gaps in the institutional and national legal framework that contribute towards the social, political and economic disempowerment as well as exclusion of vulnerable communities of refugees and migrants. Pakistan has not honoured its obligations as a party to international human rights conventions that recognise the right to nationality. Moreover, Pakistan’s non-ratification of the Convention relating to the Status of Refugees, the Convention relating to the Status of Stateless Persons and Convention on the Reduction of Statelessness has resulted in a lack of accountability on the rehabilitation, inclusion and naturalisation of the stateless. The situation has been exacerbated by both Pakistan’s exclusionary citizenship laws as well as their interpretation. Pakistan contravenes its constitutional responsibility of ensuring gender equality by denying women the right to transfer nationality to their foreign husbands. Despite recognising the right to citizenship by birth, Pakistan has demonstrated a dismal record of its implementation when it comes to refugees and their children.

Legal and administrative obstacles in acquiring citizenship have thus led to the systematic marginalisation of Afghan refugees and Bihari migrants who have been residing in the country for decades but whose claims to citizenship are often denied by the authorities. These vulnerable groups are also targets of state harassment and coercion and lead a precarious existence in perpetual insecurity.

⁹⁰ HRCP, *State of Human Rights in 2015*, 14.

⁹¹ *Ibid.*

⁹² UNHCR, *The State*, n.p.

Therefore, there is a pressing need to grant a legal identity to these vulnerable groups, one that facilitates their socioeconomic wellbeing and naturalisation in line with standards set by international instruments and policy guidelines.

Recommendations

- Pakistan should ratify the Convention relating to the Status of Refugees, Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness in order to ensure that its national legal framework includes comprehensive safeguards for both refugees and the stateless.
- In fulfilling its obligations under international human rights conventions as well as its constitutional duty, the Pakistani state should foster gender equality by amending laws to enable women to transfer nationality to their foreign husbands.
- In order to address the protracted refugee situation, Pakistan should undertake efforts to secure adequate financing for the long-term rehabilitation as well as voluntary repatriation of refugees.
- Pakistan should continue playing a constructive role in the Afghan peace process to improve the regional security environment so that Afghan refugees who want to return to Afghanistan are able to do so.
- Efforts should be undertaken to devise political consensus on a policy that gives Afghan refugees a legal identity that allows for their social and economic uplift.
- The state should take measures to launch wider political dialogue on increasing awareness on the rights of refugees. The political class should initiate talks and spread awareness over the status of migrants, refugees and the stateless in Pakistan. This should be followed up with a policy that lays out the strategy and goals with regards to the vulnerable groups.
- The legal regime on citizenship should be streamlined and greater transparency introduced through appropriate legislation and institutional oversight. Arbitrary deprivation of citizenship and cancellation of identity cards should also be brought to an end.