

## Article

# Comparative Study of the Legal Status of Bengalis in Pakistan and Biharis in Bangladesh

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**Abstract:** Bangladesh came into existence in 1971. Though both Bangladesh and Pakistan still struggle with the consequences of the conflict, especially for two ethnic groups: the Bihari community in Bangladesh and the Bengali community in Pakistan, diplomatic ties between Bangladesh and Pakistan have improved over the last fifty years. Opponents of the freedom struggle, the Biharis have suffered societal ostracism since 1971. Though they are lawful citizens of Bangladesh, their forebears' loyalty to Pakistan causes them notable societal stigma. This research investigates the obstacles Biharis face in reaping the advantages of citizenship. Similarly, the Bengali population in Pakistan finds a more difficult scenario, usually seen as an ethnic minority or illegal migrants. Their legal position is unclear, hence in reality they are stateless, which robs them of fundamental human rights and access to justice. Both populations have suffered official and societal discrimination for decades because of the political consequences of the 1971 conflict, although they also help to support the economy of their own nations. This research looks at the legal quandaries of the Bengali minority in Pakistan and the social difficulties experienced by the Bihari population in Bangladesh as well as possible answers for both governments to handle these long-standing problems.

**Keywords:** Bihari; Bengali; legal status; Pakistan Citizenship; Bangladesh Citizenship

## 1. Introduction

The historical history of East Pakistan, now Bangladesh, reveals a complicated interaction of ethnic, political, and economical elements. This is particularly true in relation to the Bihari group. One reason for the growing conflicts between East and West Pakistan was their more secular perspective. The Biharis, who were mostly pro-Pakistani administration, did not back the Awami League during the 1970 elections as the Awami League pushed for more East Pakistan autonomy. This political loyalty had notable consequences during the 1971 Liberation War as the Biharis faced a harsh reaction from the triumphant Bengali people, hence causing much suffering and bloodshed against them. Many Biharis wanted to migrate to Pakistan after independence as they were seen as enemies of the newly established Bangladesh. The Bangladeshi government attempted to address their plight through Presidential Order 149 in 1972, to grant citizenship to Biharis. However, the response was mixed; while around 600,000 accepted the offer, many chose to return to Pakistan, where the government showed little interest in their repatriation. Zulfikar Ali Bhutto, the first civilian president of Pakistan after the war, was particularly reluctant to accept Bihari refugees. As a result, a significant number of Biharis remained in Bangladesh, with approximately 250,000 still living in urban refugee camps, which have deteriorated into slums (Constantin 2005). Conditions in these camps are dire, with overcrowding and inadequate facilities. Many Biharis struggle to integrate into Bangladeshi society, facing legal and social barriers.

In parallel, demographic landscape in Pakistan shifted post-1971, with a decline in the ethnic Bengali population in Karachi, although migration resumed in the following decades. Ethnic Bengalis in Karachi face social and economic marginalization, often classified as non-citizens by the Pakistani government. The 1978 revision of the Pakistan Citizenship Act excluded East Pakistan residents from citizenship, complicating the status of ethnic Bengalis who had settled in Pakistan before 1971.

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<sup>1</sup> Available online: <http://bdlaws.minlaw.gov.bd/act-423.html> (accessed on 23 March 2025)

## 2. Legal Status of Biharis and Bengalis Under International Instruments

The situation of the Biharis, a Muslim minority speaking Urdu who fled from India to what is now Bangladesh as part of the 1947 split, faces the issues of their international legal standing and entitlements. The Biharis, residing in "refugee camps" in Bangladesh, have been in the spotlight due to the statements made by Sir Humphrey Waldo, a former president of the International Court of Justice (Fahmida 2008). The Biharis are not recognized as refugees by the UNHCR, therefore they are not eligible for the protections and benefits that refugees normally enjoy under international law, even if they are officially recognized as such. The 1951 Refugee Convention<sup>2</sup> states that a person is considered a refugee if they are outside of their own country and reasonably fear persecution. According to the United Nations High Commissioner for Refugees (Article 6)<sup>3</sup>, in order to be considered a refugee, one must be outside of their home country, have a valid fear of persecution because of their race, religion, nationality, membership in a specific social group, or political opinion, and are unable or unwilling to return to their home country as a result of this fear. A crucial caveat, however, is that refugees should not include those who have freely relocated to another country.

This description is made more difficult by the Biharis' predicament. They were awarded citizenship under the Pakistan Citizenship Act after migrating to East Pakistan in 1947, assuming they were part of West Pakistan. Based on this legal framework, it seems that they did not qualify as refugees according to the Refugee Convention or UNHCR regulations. As a result of Pakistan's denationalization of Biharis during the 1971 war and the revision of citizenship regulations that followed, however, a large number of Biharis are now without nationality. Citizens of Pakistan who lived in East Pakistan before December 16, 1971, would lose their citizenship status if they continued to live there, according to the modification (Sec- 16 A(1)(i) of the Pakistan Citizenship Act 1951). Many Biharis became de jure stateless since they were no longer officially recognized as citizens of Pakistan. The 1954 Convention on the Status of Stateless Persons<sup>4</sup> defines a stateless person as someone who is not recognized as a national by any state. This group includes the Biharis, who are no longer considered citizens of either Pakistan or Bangladesh due to the loss of their citizenship in the former country. One definition of "de jure stateless refugees" are persons who fled their home country because they are afraid for their safety and do not possess a valid passport. The freedom to flee and return to one's own country is one of the many significant safeguards afforded to persons in times of war by the 1949 Fourth Geneva Convention.<sup>5</sup> The parties to the agreement are obliged to ensure that the internees may either return home or get help doing so. It is still debatable whether the Biharis are refugees as defined by the Fourth Geneva Convention and what their legal status is. The fact that they are unable or unable to seek protection from their previous country owing to valid worries further complicates things, since they dwell outside their country of nationality, further establishing their "de facto stateless" status. Biharis is in a vulnerable position due to the 1951 Refugee Convention's failure to recognize them as refugees. They are socially marginalized, have trouble accessing essential services, and worry about their future continuously. States and international organizations have a responsibility to ensure the safety of vulnerable people, but the world has failed to do enough to alleviate their suffering. Biharis' predicament shows how complicated refugee and statelessness rules are and how difficult it is for people who are caught in the middle of nowhere because of political and historical factors (Hasan 2018). States should fulfill their responsibility to safeguard and aid individuals who are stateless or threatened with persecution, and international legal systems must evolve to accommodate such circumstances. Addressing the humanitarian and legal aspects of statelessness and refugee status globally is crucial, as the Biharis' fight for recognition and rights shows.

The Bengali community in Pakistan has a complex history in Pakistan, with some members having resided in the region since the 1947 partition, while others migrated for work or due to the political upheaval surrounding the 1971 independence of Bangladesh. Presently, many Bengalis live in designated colonies such as Machar Colony and Chittagong Colony in Pakistan, which lack a formal legal definition under both international and Pakistani law. The concept of "minority" itself is nebulous and not explicitly defined in international law (Petricusic 2005). It encompasses various factors such as religion, language, ethnicity, and culture, making it difficult to establish a universally accepted definition. The Court of International Justice has noted that a minority community is characterized by shared identity and solidarity, aimed at preserving their traditions and culture (Greco-Bulgarian Agreement).<sup>6</sup> Despite efforts by the United Nations to clarify the definition of minorities, a consensus remains elusive due to the inherent complexities of the term.

Francesco Capotorti, a UN Special Rapporteur, said in 1977 that a minority is a group of people in a state that is numerically smaller than the majority and does not hold the most power.<sup>7</sup> Its members band together to preserve their distinct linguistic, religious, or ethnic identities. Despite omissions, several international treaties including the UNESCO Convention against Discrimination in Education<sup>8</sup> and the International Covenant on Civil and Political Rights (ICCPR)<sup>9</sup>, stress the need of safeguarding the rights of minorities. According to the ICCPR, no one can take away the cultural, religious, or linguistic rights of a people because of their ethnicity, religion, or language.<sup>10</sup> States have a responsibility to uphold the rights of minorities as outlined in this legal framework. Promoting and defending minority rights is crucial for the stability of nations, as stated in the 1992 resolution on minority rights

<sup>2</sup> Available online: <https://www.unhcr.org/about-unhcr/overview/1951-refugee-convention> (accessed on 23 March 2025)

<sup>3</sup> Available online: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-relating-status-refugees> (accessed on 23 March 2025)

<sup>4</sup> Available online: [https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons\\_ENG.pdf](https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf) (accessed on 23 March 2025)

<sup>5</sup> Available online: <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949> (accessed on 23 March 2025)

<sup>6</sup> Available online: [https://www.worldcourts.com/pcij/eng/decisions/1932.03.08\\_greco\\_bulgarian.html](https://www.worldcourts.com/pcij/eng/decisions/1932.03.08_greco_bulgarian.html) (accessed on 23 March 2025)

<sup>7</sup> Available online: <https://digitallibrary.un.org/record/701736?ln=en&v=pdf> (accessed on 23 March 2025)

<sup>8</sup> Available online: <https://www.unesco.org/en/right-education/convention-against-discrimination> (accessed on 23 March 2025)

<sup>9</sup> Available online: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (accessed on 23 March 2025)

<sup>10</sup> Ibid.

passed by the United Nations General Assembly.<sup>11</sup> The resolution stressed the necessity of minorities effectively participating in many parts of public life.

Pakistan is bound to protect the rights of minorities since it has signed many international treaties requiring it to do so. As a result of their capture in the wake of the 1971 liberation war, the Biharis were subject to widespread animosity and demonization in Bangladesh. Because Pakistan's government was hesitant to take them in, many of them ended up in Bangladeshi refugee camps, where they continue to endure terrible congestion and lack of access to basic amenities and education. The legal framework in Bangladesh complicates their situation, as citizenship laws have rendered many Biharis ineligible for citizenship due to their perceived allegiance to Pakistan.

### 3. Bihari and Bengali's Status Under Constitution of Both Bangladesh and Pakistan

Part II and Part III of the constitution of Bangladesh<sup>12</sup> elaborately emphasizes the Fundamental Principles of State Policy and Fundamental Rights of the citizens which are based on International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>13</sup> and International Covenant on Civil and Political Rights (ICCPR).<sup>14</sup> According to the article 7(2) of the constitution of Bangladesh, the constitution is the supreme law of the land. So, it is wise to determine Bihari Communities citizenship status first under constitution. Article 6 of the constitution of Bangladesh describes who can be citizen of Bangladesh.<sup>15</sup> According to article 6(1) the citizenship of Bangladesh shall be determined and regulated by law and article 6(2) describes that the people of Bangladesh shall be known as Bengalis as a nation and the citizens of Bangladesh shall be known as Bangladeshis. Under the Citizenship Act, 1951 and Bangladesh Citizenship (Temporary Provision) Order, 1972 the other Urdu-speaking people who are citizens and were already recognized by the government to be citizens. Section 3(a) of the Bangladesh Citizenship Act, 1951 provides that,

*"at the commencement of this Act every person shall be deemed to be a citizen of Bangladesh who or any of whose parents or grandparents was born in the territory now included in Bangladesh and who after the fourteenth day of August, 1947, has not been permanently resident in any country outside Bangladesh."*

However, since Bangladesh's independence, no Bangladeshi government has raised the issue of an enemy. The Sadaqat Khan case decision (*Md. Sadaqat Khan (Fakku) and Others v. Chief Election Commissioner, Bangladesh Election Commission*) is a big deal for everyone in the Bihari community.<sup>16</sup> The Supreme Court's decision in 2008 has made it clear that the Bihari community can no longer be thought of as stranded, because they are Bangladeshi citizens. So according to article 6(1) of the constitution Bihari communities are the citizens of Bangladesh under the operation of law. Biharis, as citizens of Bangladesh, are entitled to all the rights mentioned in the constitution, but they are often denied most of these rights despite having formal citizenship. The preamble of the Constitution acknowledges Urdu-speakers as Bangladeshi citizens.

The Urdu-speaking community in Bangladesh has an intrinsic right to life and personal liberty, which is guaranteed by Article 32. This right applies to everyone, regardless of nationality or ethnicity. This provision supports international human rights law's ban on status-based discrimination, especially against refugees and stateless individuals. The Constitution also contains clauses important to Bangladesh's democracy. Article 15 of the Constitution is similarly important because a sizable proportion of Urdu-speaking people is still unable to obtain the most basic economic necessities of existence. Article 15 states:

*"It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens –*

*(a) the provision of the basic necessities of life, including food, clothing, shelter, education and medical care;*

*(b) the right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work;*

*(c) the right to reasonable rest, recreation and leisure; and*

*(d) the right to social security, that is to say, to public assistance in cases of undeserved want arising from unemployment, illness or disablement, or suffered by widows or orphans or in old age, or in other such cases."*

Urdu-speaking community, especially those in settlements, is facing challenges due to lack of official accountability, resulting in inadequate access to essential services such as food, housing, education, healthcare, and social security (Ritu et al.1998). To ensure their right to social security, the administration should provide equal treatment to Bengali nationals in terms of public relief and support. Article 28 ensures no citizen should be subject to discrimination by the state. Clause 3 of this article states:

*"No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution."*

Although Article 28(4) specifies that the state may adopt special steps for the progress of any "backward parts of the citizenry," the state is not required to comply with this provision in any way. Rather, the provision just gives the state the option to do so. Since

<sup>11</sup> Available online: [https://www.bmeia.gv.at/fileadmin/user\\_upload/Zentrale/Aussenpolitik/Menschenrechte/Konzept.pdf](https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Menschenrechte/Konzept.pdf) (accessed on 23 March 2025)

<sup>12</sup> Available online: <http://bdlaws.minlaw.gov.bd/act-367.html> (accessed on 23 March 2025)

<sup>13</sup> Available online: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> (accessed on 23 March 2025)

<sup>14</sup> Available online: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (accessed on 23 March 2025)

<sup>15</sup> Available online: <http://bdlaws.minlaw.gov.bd/act-367/section-24554.html> (accessed on 23 March 2025)

<sup>16</sup> Available online: <https://www.refworld.org/jurisprudence/caselaw/bansc/2008/en/69231> (accessed on 23 March 2025)

it is now confined to religion, race, caste, sex, and place of birth, adding a nondiscriminatory clause to Article 28's language provision may enable Urdu-speakers be recognized as a linguistic minority. The necessity to address the right to work and the assurance of employment is also necessary (Ahmed 2022). Many people struggle to find suitable employment despite having high school or university degrees because of their "Bihari identity." Article 40 of the Constitution states that,

*"every citizen possessing such qualifications, if any, as may be prescribed by law in relation to his profession, occupation, trade or business shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business."*

Article 29 says:

*"(1) There shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic.*

*(2) No citizen shall, on grounds only of religion, race, caste, sex or place of birth, be ineligible for, or discriminated against in respect of, any employment or office in the service of the Republic.*

*(3) Nothing in this article shall prevent the State from – (a) making special provision in favour of any backward section of citizens for the purpose of securing their adequate representation in the service of the Republic."*

The way clause (3)(a) is written, it sounds like the government can make special rules "in favor of any backward section of citizens." This is usually used to talk about women's rights in Bangladesh, but it might also work and be used in Urdu-speaking Community. This could also be seen as one of the basic principles of state policy, especially considering Article 14 of the Constitution, which says that it is the state's job to free backward parts of the population from all kinds of exploitation. Article 19 makes it clear that the Constitution protects citizens against discrimination. To achieve economic parity across Bangladesh, as outlined in Article 19(2), the state must take steps to eliminate social and economic disparities and ensure equitable access to resources. The community's right to property, which they have struggled to obtain, is another important right. Constitution Article 42 states:

*"Subject to any restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property, and no property shall be compulsorily acquired, nationalized or requisitioned save by authority of law."*

During the war, Urdu-speakers' properties were confiscated as enemy property under the 1972 Bangladesh Abandoned Property Order.<sup>17</sup> The administration took over their business and industrial operations, leaving the people without legal redress for years. The aftermath of their property disposal still needs to be addressed, and they may not enjoy their community's festivals. Article 23A of the Constitution requires the state to maintain and develop the distinctive local culture and heritage of ethnic sects and communities. Article 39 protects the fundamental right to freedom of thought, conscience, and expression. Article 44 ensures the respect of all fundamental rights in Part III, with the court having the power to move the High Court Division. The state can place reasonable limits on these guaranteed rights, but they are crucial to the community as all individuals have the right to equal protection under the law and are presumed innocent unless proven guilty. Fair categorization or limitation would be against the spirit of the Constitution.

Pakistan's constitutional framework has been marked by military coups, and martial law regimes (Kamal 1991). The 1956 and 1962 constitutions were revoked by military coups in 1958 and 1969, respectively. The 1973 constitution, altered by the military government that overthrew Prime Minister Bhutto in 1977, remains in force since a smooth transition to civilian rule was achieved after General Zia-ul-Haq's death in 1988. The first constitution, ratified in 1956, guaranteed basic freedoms and protection of human rights for all residents, regardless of faith. However, it was abolished in 1958 and replaced with a 1962 constitution that did not include basic rights. A new constitution was drafted in 1973, ensuring all citizens' fundamental rights. The status of the Bengali community in Pakistan remains unclear, with many Bengalis living in Pakistan before 1947 and never returning to East Pakistan after partition. Pakistani authorities have not made any distinction between these two categories of Bengali communities, and they have not formally announced whether they will be considered ethnic minorities or illegal migrants. Bengalis who lived in Pakistan before 1947 and before 1971 are entitled to citizenship and constitutional rights under Pakistani law.

Article 25 of the Constitution of 1973 guarantees equal rights.<sup>18</sup> This privilege is founded on the preeminence of law. It signifies that minorities residing in Pakistan likewise get equal protection under the law and are treated without discrimination. Anyone who is a citizen of Pakistan can do any kind of public service, no matter their religion, race, gender, or family background. One of the most fundamental human rights is rights to life and personal liberty. The concept of "rule of law" can be traced back to this. That no one can be arrested, detained, or restrained unless as authorized by law is a cornerstone of this principle. Minorities can live and practice their freedom without interference. But in Pakistan, especially in Karachi, Bengali people are arrested without necessary documents and subjected to police torture on suspicion of being terrorists (Khalid et al. 2018).

Minorities have the rights of speech, expression, employment, and peaceful assembly (Article 19). They are free to voice their disapproval of the government and may fully engage in Pakistan's political system. Article 15 grants them the freedom to live anywhere in Pakistan and travel freely throughout the nation. For Bengalis, freedom of conscience and the rights of minorities in Pakistan is complicated and multifarious. The Constitution of Pakistan promises freedom of religion and the right for minorities to exercise their faith without compulsion, hence enabling them to create houses of worship and carry out religious ceremonies.

Bengali children often struggle to get into schools because of insufficient documents, Article 22 of the Constitution guarantees minorities access to educational institutions. Lack of appropriate identity also impairs their capacity to buy and control property as stated in Article 24, which safeguards people from being dispossessed of their property without recompense. The ambiguous legal status of the Bengali population compounds these matters since many lack the required papers to participate in property transactions. Article 36 underlines the duty of the state to safeguard minorities' rights and interests, especially their representation in government services. Notwithstanding this constitutional safeguard, the Pakistani government has left the Bengali population in a vulnerable

<sup>17</sup> Available online: <http://bdlaws.minlaw.gov.bd/act-373.html> (accessed on 23 March 2025)

<sup>18</sup> Available online: [https://www.na.gov.pk/uploads/documents/1549886415\\_632.pdf](https://www.na.gov.pk/uploads/documents/1549886415_632.pdf) (accessed on 23 March 2025)



situation by failing to specify their status. Though their citizenship status is unclear, historically the Bengali community has greatly benefited Pakistan's economy and agriculture.

Particularly considering the Citizenship Act of 1951 and the Bangladesh Citizenship Order of 1972, legal actions have sought to clarify the citizenship of Bengali people. Court rulings, such as the Abid Khan case in 2003, have had little effect, mostly helping just a few petitioners. The Sadaqat Khan case drew further attention to the difficulties Urdu-speaking people, notably ethnic Bengalis, had in getting national identification cards and voting registration. Originally used to describe all migrants to Pakistan during the Partition, the word "Mohajir" has come to be linked particularly with Urdu-speaking migrants in Karachi. Ethnic Bengalis who moved to Karachi during and after Partition have experienced notable social and economic marginalization. Estimates suggest they may constitute around 10% of Karachi's population, but these figures are often politically manipulated. The community has struggled with its identity, asserting its status as pre-1971 immigrants, while facing systemic discrimination. The Pakistani government's treatment of ethnic Bengalis has led to their classification as non-citizens, exacerbating their vulnerability to persecution. The 1978 revision of the Pakistan Citizenship Act excluded residents from East Pakistan from citizenship, further complicating their legal standing. Although the government has offered amnesty to Bengalis who arrived before 1974, many still lack the documentation necessary to apply for citizenship (Maryam 2021).

#### 4. Legal Status of Biharis and Bengalis Under the Citizenship Law of Bangladesh and Pakistan

Bangladesh's creation has left the Biharis stranded, with 200,000 Biharis returned to Pakistan in the Delhi Tripartite Agreement<sup>19</sup> of 1974 (Mizanur 2003). Despite this, many Biharis still reside in Bangladesh without a distinct nationality. The issue of citizenship was resolved in 2003 and 2008, and domestic laws for Urdu-speaking community can serve as an example of citizenship rights. The Citizenship Act (Act No. II of 1951) plays a critical role in granting Bangladeshi citizenship. Citizenship is acquired at birth (*jus soli*) and by descent (*jus sanguinis*) per section 5. Section 3 specifies citizenship at the date of the act's implementation, stating that every person is considered a citizen if their father or grandfather was born in the areas now Bangladesh and has not been permanently resident in any country outside Bangladesh since August 14, 1947, or if they were born in India on March 31, 1937, and had their domicile in Bangladesh or the territories now included in Bangladesh. Urdu-speaking individuals are current citizens of the state, as their ancestors moved to East Pakistan (now Bangladesh) when India was split up in 1947. The law gives someone the right to be a citizen if their father or grandfather was born in the areas now Bangladesh.

The Bangladesh Citizenship (Temporary Provisions) Order, a part of the Bangladesh Constitution, regulates nationality and citizenship status. It states that every person born in the territories now comprised in Bangladesh on March 25, 1971, is a citizen if they were a permanent resident of those territories and are not otherwise disqualified for being a citizen (*Abdul Hoque v. Bangladesh* [1992] 44 DLR (HCD) 273). This applies to Urdu speakers who immigrated to Bangladesh during the Liberation War. However, the 2008 ruling of the Supreme Court of Bangladesh has safeguarded Urdu-speaking community, meaning this provision cannot be applied en masse to ban their Bangladeshi citizenship. In a 1994 Supreme Court case, Justice Latifur Rahman explained what it means to be a Bangladeshi citizen, stating that citizens form up the state and form the government to advance general welfare, safeguard personal liberties, and ensure the security of all residents (*Bangladesh v. Professor Golam Azam* (1994) 46 DLR (AD) 192).<sup>20</sup>

The Births and Deaths Registration Act<sup>21</sup> gives the community the right to be Bangladeshi, allowing births to be registered under section 5. Birth certificates are accepted as proof of age for many governmental processes, including obtaining identification documents and enrolling in school. These provisions apply to all Urdu-speaking Bangladeshis. In Karachi, Urdu-speaking migrants outnumber ethnic Bengalis. The sources on Pakistani Mohajirs focused on Urdu-speaking migrants and did not cover ethnic Bengali migrants' role in identity formation (Ansari et al. 2005). After the 1971 War, many people moved from Bangladesh to Pakistan, which had a more stable economy. People from Bengal who moved to Sindh province, especially Karachi, have had a big impact on Pakistan's economy. Many have been denied citizenship rights because of the Pakistan Citizenship Act of 1951. Section 16A of the Pakistan Citizenship Act 1951 stipulates that people who were residing in territories that make up Pakistan prior to December 16, 1971, would continue to be citizens of Pakistan, and their children would be considered citizens of Pakistan by virtue of their descent. However, Bengali speaking 'residents' in Pakistan continue to be deprived of citizenship and social and legal remedies.

Currently, if an individual can establish that they have continuously resided in Pakistan before 1978, they are considered a citizen of Pakistan in accordance with NADRA's own rules. This schedule adds seven years to the date specified in the Pakistan Citizenship Act (PCA). The Act of 1951 codifies the concept of *jus soli*, or citizenship by birth. At the time the Act went into effect, a person who was born in Pakistan and lived in Pakistan could claim nationality. Everyone born in Pakistan after this Act is a citizen of Pakistan by birth. The law bans a person's citizenship if his father possesses diplomatic immunity in Pakistan or if his father was an enemy or alien in Pakistan (Bose 2001). Therefore, children born to foreign parents in Pakistan are not granted citizenship. Section 6 specifically addresses people migrating to Pakistan from Indo-Pak territories after the Act's inception but before the year 1952. After receiving a certificate of domicile from the Federal Government, such a person can register as a Pakistani citizen.

#### 5. Findings and Recommendations

The Bihari community in Bangladesh, particularly in Geneva Camp, has legal citizenship but is deprived of many civic opportunities. They lack clean drinking water, sanitation, and civic facilities provided by Dhaka City Corporation. The Bihari camp's Non-Local Junior High School, now run by an NGO, is not under the MPO and is not providing free books to students. Education

<sup>19</sup> Available online: <https://casebook.icrc.org/case-study/bangladeshindiapakistan-1974-agreement> (accessed on 23 March 2025)

<sup>20</sup> Available online: <https://muktangon.blog/wp-content/uploads/2012/02/Bangladesh-Vs-Prof-Golam-Azam.pdf> (accessed on 23 March 2025)

<sup>21</sup> Available online: <http://bdlaws.minlaw.gov.bd/act-56.html> (accessed on 23 March 2025)

officers are unwilling to address these issues. Post-liberation generation of the Bihari camp faces discrimination when applying for government jobs due to the Geneva camp address. The schools also refuse their admission due to Geneva Camp identity, violating their constitutional and civil rights. Additionally, properties abandoned by the Bihari community in 1972 have not been returned or compensated, violating their right to property.

The Bengali community in Pakistan is entitled to citizenship according to the Pakistan Citizenship Act but are not provided citizenship certificates. Many are given National Database and Registration Authority (NADRA) cards, but most do not, leading to discrimination and harassment. The status of the Bengalis is unclear—with some labeling them as illegal migrants. The unclear legal status of the Bengalis makes it difficult for international organizations to work with them due to legal complications. Hence, they suffer from a lack of housing, education, medical, employment opportunities, and sometimes police harassment in the name of terrorism and illegal immigrants.

Bihari community faces social discrimination, even though they have obtained citizenship from the state. To eliminate this, projects should be undertaken to increase interaction with common Bengali citizens. Institutions should be brought under the law if they discriminate against the Bihari community in education and employment. In Pakistan, the government should determine the status of the Bengalis through gazette legislation and sensitize the police administration to prevent arrests based on Bengali identity. Citizenship should be granted to them, as they are entitled to it according to the Pakistan Citizenship Act. A database can be created to keep record of the Bengalis, providing them with NADRA and other citizenship documents. If the Pakistani government declares the Bengalis a minority group, they should receive all the rights and benefits accorded to minority people under national law and internationally ratified treaties.

## 6. Conclusions

After independence in 1971, ties between Bangladesh and Pakistan have improved. However, the war's aftermath still impacts the Bengali community in Pakistan and the Bihari population in Bangladesh. Despite the fact that they are legitimate citizens, Biharis are subject to social exclusion since they resisted the emancipation in Bangladesh. In Pakistan, on the other hand, the Bengali population often confronts the challenge of statelessness and is seen as illegal migrants who are devoid of fundamental rights. Even though they both make economic contributions, both groups are subject to prejudice.

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