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The Urdu-Speaking Community of Bangladesh: Forgotten Denizens or Putative Citizens?

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THE URDU-SPEAKING COMMUNITY OF BANGLADESH: FORGOTTEN DENIZENS OR PUTATIVE CITIZENS?

*Naimul Muquim**

ABSTRACT

The Urdu-speaking community in Bangladesh, commonly known as the “Biharis” or “Stranded Pakistanis,” has been living in distressing circumstances. Despite the Supreme Court of Bangladesh declaring Urdu-speakers citizens of the country in 2008, there continues to be challenges related to their integration prospects. The community still faces widespread discrimination, primarily because of the Bangladeshi bureaucracy’s systemic neglect and the community’s former refugee and stateless status. This study examines to what extent Urdu-speakers are now able to enjoy full citizenship rights. It also assesses the government of Bangladesh’s existing policies and the relationship between citizenship and the law, comprising of both domestic and the international legal frameworks linked to the protection of the Urdu-speaking community’s rights. The findings of this study demonstrate that citizenship operates differently for the Urdu-speaking minority since most of the population has a distinct social identity and continue to live in former refugee settlements. Thus, a broader notion of citizenship than the conventional legally-framed definition that currently applies to the Urdu-speaking community should be used since the traditional definition has critically compromised Urdu-speakers’ ability to exercise their lawful rights and compromised their effective integration into Bangladesh society.

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INTRODUCTION

Among the numerous internally displaced populations around the world, the Urdu-speaking community of Bangladesh, commonly identified as the “Biharis” or “Stranded Pakistanis,” have been a vulnerable minority group since their initial arrival in Bangladesh.¹

Historical context is of great significance when trying to comprehend why the Urdu community has become stranded and their link to Pakistan. Members of the community first migrated as refugees from India during the partition period of British India due to aggression and violence directed towards Urdu speakers and settled in East Pakistan in 1947.² Urdu-speakers in East Pakistan, living in the region, within the Bangladesh population had a distinctive cultural identity that was unlike the cultural identity of the Bengali population, and they perhaps held the opinion that the division of Pakistan and Bangladesh (Bangladesh being liberated from West Pakistan) would strengthen India. Consequently, during the Liberation War of Bangladesh in 1971 the Urdu-speakers favored Pakistan and opposed Bangladesh’s fight for freedom.³

After Bangladesh became a sovereign state following the Liberation War, the Supreme Court, in 1972, issued a ruling stating that the members of the Urdu-speaking community were eligible for Bengali citizenship.⁴ However, many Urdu-speakers preferred returning to Pakistan over obtaining Bengali citizenship and consequently tried to migrate to Pakistan with very little success.⁵ Therefore, most members of the Urdu-speaking minority group could not leave the country. They became stranded in Bangladesh and were subsequently relocated to settlements throughout the country.⁶ The legal status

¹ Ehtesham Shahid, ‘Stranded Pakistanis’ in Bangladesh: The Forgotten Victims of India’s Partition, ALARABIYA NEWS (Apr. 19, 2017), <https://english.alarabiya.net/perspective/features/2017/04/19/-Stranded-Pakistanis-in-Bangladesh-The-forgotten-victims-of-India-s-partition>.

² Arifur Rahaman et al., *Origin and Socio-Cultural Formation of Bihari Identity: A Study on Bihari Community in Bangladesh*, 7 INT’L J. SOC. POL. & ECON. RSCH. 879, 880 (2020).

³ Geoffrey MacDonald, *Bangladesh: Urdu-Speaking “Biharis” Seek Recognition, Respect and Rights*, INT’L REPUBLICAN INST. (Feb. 4, 2021), <https://www.iri.org/resources/new-bangladesh-report-reveals-priorities-of-the-bihari-minority/>.

⁴ Onchita Shadman & Roland Schönbauer, *How a Bangladesh Court Ruling Changed the Lives of More Than 300,000 Stateless People*, UNHCR (Feb. 23, 2015), <https://www.unhcr.org/news/latest/2015/2/54ec22869/bangladesh-court-ruling-changed-lives-300000-stateless-people.html>.

⁵ Eric Paulsen, *The Citizenship Status of the Urdu-Speakers/Biharis in Bangladesh*, 25 REFUGEE SURV. Q. 54, 55 (2006).

⁶ Kamrul Hasan Arif, *The Status of the Bihari Community in Bangladesh Under Domestic and International Law*, 25 INT’L J. MINORITY & GRP. RTS. 665, 665 (2018).

of the Urdu-speaking community remained in question until 2008 when the Supreme Court of Bangladesh ruled that all the members of Urdu-speaking community had the right to Bangladeshi citizenship.⁷

At present, the Urdu-speaking community's rights are still overlooked. Bangladesh has mostly maintained ad hoc institutional practices to protect their rights.⁸ These include activities not planned in advance but done in particular situations; ad hoc situations also include rights of citizenship tried to be conferred on certain persons. There are no settled boundaries and, as a whole, the Bengali bureaucracy lacks awareness of how to handle the "Bihari" burden, particularly regarding how to provide approximately 300,000 community members with their essential legal rights and privileges.⁹ Bangladesh has no mandate to grant Urdu-speakers full national protections and has yet to create a viable solution for them as citizens; this denotes citizenship rights to be implemented accordingly for them under Bangladesh's Constitution and fundamental rights.¹⁰

In March 2015, the Ministry of Foreign Affairs of Pakistan indicated that more than 170,000 members of the Urdu-speaking community had been repatriated back to Pakistan.¹¹ The remaining population was not the Ministry's concern anymore, but rather the responsibility of Bangladesh.¹² Currently, the Urdu-speaking community lives in destitute conditions spread across 116 makeshift urban settlements, popularly known as camps, throughout Bangladesh.¹³ However, the community still hopes for better living circumstances.¹⁴

Since the Supreme Court's decision of 2008, the main questions currently being asked of the Urdu-speaking community are: (i) what is the status of the

⁷ Shadman & Schönbauer, *supra* note 4.

⁸ 'Stranded Pakistanis' Living in Camps in Bangladesh – in Pictures, THE GUARDIAN (Aug. 11, 2014), <https://www.theguardian.com/global-development/gallery/2014/aug/11/stranded-pakistanis-camps-bangladesh-bihari-in-pictures>.

⁹ *Biharis*, MINORITY RTS. GRP. INT'L, <https://minorityrights.org/minorities/biharis/> (last visited Oct. 7, 2022).

¹⁰ San Thai Shin, *Bangladesh: "Engage with Us to Find a Durable Solution,"* AMNESTY INT'L (Jun. 21, 2022), <https://www.amnesty.org/en/latest/news/2022/06/engage-with-us-to-find-a-durable-solution/>.

¹¹ Hasnaat Malik, *Stranded Pakistanis in Bangladesh not Pakistan's Responsibility, FO Tells SC*, EXPRESS TRIB. (Mar. 30, 2015), <https://tribune.com.pk/story/861364/stranded-pakistanis-in-bangladesh-not-pakistan-responsibility-fo-tells-sc>.

¹² *Id.*

¹³ Khalid Hussain, *The End of Bihari Statelessness*, 32 FORCED MIG. REV. 30, 30 (2009).

¹⁴ Bijoyeta Das, *Bihari Migrants Wish for Better Life in Bangladesh*, DEUTSCHE WELLE (June 22, 2011), <http://www.dw.com/en/bihari-migrants-wish-for-better-life-in-bangladesh/a-6554559>.

community, (ii) how are they coping after being granted citizenship, and to what extent are they able to experience fundamental and democratic rights? (iii) In other words, to what extent do the Urdu-speakers enjoy full citizenship? This is a sensitive question since, as this analysis demonstrates, citizenship functions differently for Urdu-speakers due to an overall failure by the government of Bangladesh to successfully integrate the community with the rest of the country's population.

This paper highlights the reality that public opinion in Bangladesh still considers the Urdu-speaking community refugees; however, the term "refugees" is not strictly legally defined in the country. Hence, this paper questions whether it is rational to think of the Urdu-speakers as refugees and suggests there is possibly a "legally incorrect history" that has led to issues with recognizing the community's status today. A legally incorrect history indicates that historical negationism, the distortion of historical records, or, to a broader extent, historical revisionism, a reinterpretation of a historical account, is in force in Bangladesh.¹⁵ This historical negationism is a consequence of the Urdu-speaking community's societal standing.¹⁶ Since members of the Urdu-speaking community were refugees in the past, especially between 1947 and 1971, it is difficult for the community as a whole to break away from the belief that most Bangladeshis hold, that Urdu-speakers are refugees.¹⁷

I. WHO ARE THE "BIHARIS" OF BANGLADESH?

Prior to the liberation of Bangladesh, the word "Bihari" meant a person who belonged to the state of Bihar, India.¹⁸ In Bangladesh, any individual who speaks Urdu is presumed to be a Bihari irrespective of whether such person comes from Bihar.¹⁹ The history of this Urdu-speaking community stretches back to the partition of India, when the British Empire of India was separated into two sovereign states on August 15, 1947: the Dominion of Pakistan, which included East and West Pakistan, and the Union of India.²⁰

¹⁵ BARBARA KRASNER, *HISTORICAL REVISIONISM* 14 (2019).

¹⁶ Zaglul Haider, *Biharis in Bangladesh and Their Restricted Access to Citizenship Rights*, 38 S. ASIA RSCH. 25S, 26S (2018).

¹⁷ 'Stranded Pakistanis' *Living in Camps in Bangladesh – in Pictures*, *supra* note 8.

¹⁸ Rahat Rafe, *The Neglected "Bihari" Community in Bangladesh*, DEUTSCHE WELLE (Oct. 14, 2019), <https://www.dw.com/en/the-neglected-bihari-community-in-bangladesh/a-50824994>.

¹⁹ Shahnawaz A. Mantoo, *Bihari Refugees Stranded in Bangladesh Since 1971*, 1 J. S. ASIAN STUD. 123, 123 (2013).

²⁰ William Dalrymple, *The Great Divide*, NEW YORKER (June 22, 2015), <https://www.newyorker.com/magazine/2015/06/29/the-great-divide-books-dalrymple>.

A. *Overview of Historical Conflicts*

At the time of partition, the Indian subcontinent was divided along religious lines; however, conflicts still erupted between communities of different religions and ethnic origins.²¹ As a direct consequence of these conflicts, nearly one million Urdu-speaking Muslims from different parts of India migrated to East Pakistan.²² Religion was the principal motivator for this local migration to East Pakistan, as Urdu-speaking Muslims saw migration as a way to be free from the constraints of living within India, which had a majority Hindu population.²³

Between 1947 and 1971, the Urdu-speaking community became quite well established within East Pakistan, and, initially, the local Bengali population did not resent the arrival of the Urdu-speakers.²⁴ In early 1948, the first Governor-General of Pakistan, Muhammad Ali Jinnah, proclaimed in Dhaka, that Urdu would be the only state language of Pakistan, and anyone opposing the proclamation would be deemed an enemy of Pakistan.²⁵ Although most of the Urdu-speaking community spoke Bengali, they supported the idea of the imposition of Urdu as the official language in Pakistan. The Urdu-speakers in East Pakistan had accepted West Pakistan's authority and influence to protect their communities.²⁶ In 1952, the Bengali Language Movement formed in opposition to Urdu as the state language of Pakistan.²⁷ Due to the opposition, within a little over a decade Urdu-speakers became alienated from Bengali society, both linguistically and culturally.²⁸

Eventually, the Urdu-speaking community realized they were only a marginal part of the Bengali population in East Pakistan. Such linguistic and cultural differences negatively impacted the Urdu-speakers leading them to relate more with West Pakistan. West Pakistan's control over East Pakistan

²¹ JOHN R. ROGGE, *REFUGEES: A THIRD WORLD DILEMMA* 220 (1987).

²² Sumit Sen, *Stateless Refugees and the Right to Return: The Bihari Refugees of South Asia – Part I*, 11 INT'L J. REFUGEE L. 625, 626 (1999).

²³ Sarah Ansari, *How the Partition of India Happened – and Why Its Effects Are Still Felt Today*, THE CONVERSATION (Aug. 10, 2017), <https://theconversation.com/how-the-partition-of-india-happened-and-why-its-effects-are-still-felt-today-81766>.

²⁴ Anam Zakaria, *Remembering the War of 1971 in East Pakistan*, AL-JAZEERA (Dec. 16, 2019), <https://www.aljazeera.com/opinions/2019/12/16/remembering-the-war-of-1971-in-east-pakistan>.

²⁵ STANLEY WOLPERT, *JINNAH OF PAKISTAN* 359 (1984).

²⁶ Sen, *supra* note 22, at 628.

²⁷ Mostafa Kamal, *The Origin of the Language Movement*, DAILY STAR (Feb. 7, 2022), <https://www.thedailystar.net/views/in-focus/news/the-origin-the-language-movement-2955811>.

²⁸ Sen, *supra* note 22, at 626. The need for Pakistan to integrate large numbers of refugees from India resulted in “insider-versus-outsider syndrome” which inhibited acceptance of Urdu-speakers in East Pakistan. *Id.*

resulted in Urdu-speakers receiving better benefits from the Central Government of Pakistan until 1970.²⁹

The government of Pakistan originally accepted the Urdu-speaking community as citizens of Pakistan through the Pakistan Citizenship Act, 1951; this act led to misconceptions concerning Urdu-speakers' refugee status.³⁰ The text of the initial Pakistan Citizenship Act reads:

At the commencement of this Act every person shall be deemed to be a citizen of Pakistan: . . . [w]ho before the commencement of this Act migrated to the territories now included in Pakistan from any territory in the Indo-Pakistan sub-continent outside those territories with the intention of residing permanently in those territories.³¹

This text applied to the Urdu-speakers as they had migrated to the East Pakistan territory in 1947 from other parts of the Indo-Pakistan.³² However, approximately two decades after the Pakistan Citizen Act was passed, the Pakistani government chose not to recognize Urdu-speakers. In 1978, the government passed the Pakistan Citizenship (Amendment) Ordinance which refused to grant Pakistani nationality to the Urdu-speaking community living in Bangladeshi settlements.

Following India's partition, tensions continued to build within Pakistan. Between 1952 and 1971, West Pakistan dominated East Pakistan through the focused oppression of the Bengali people, while also treating the Urdu-speaking community as an inferior social class.³³ The powerful West Pakistani elite viewed the local Bengali Muslims as "semi-Hindus, pro-Indian and disloyal to Pakistan."³⁴ Meanwhile, the Bengali political elite in East Pakistan used the Urdu-only language mandate as evidence of the oppression carried out by authorities in West Pakistan.³⁵ While this encouraged the Bengali people in East

²⁹ *Id.* The Urdu-speakers were able to take over key occupational positions as a result of West Pakistan feudal elites seizing economic and political power in East Pakistan. *Id.*

³⁰ Kazi Fahmida Farzana, *An Artificial Minority: The Stateless Biharis in Bangladesh*, 29 J. MUSLIM MINORITY AFF. 223, 229 (2009).

³¹ *The Pakistan Citizenship Act, 1951 (II of 1951)*, REFWORLD, <https://www.refworld.org/pdfid/3ae6b4ffa.pdf>.

³² Naimul Muquim, *Strangers to Citizenship: An Analysis of the Deplorable Conditions of the Urdu-speaking Community in Bangladesh* (March 2017) (Master of Laws thesis, University of British Columbia), <https://open.library.ubc.ca/media/stream/pdf/24/1.0343565/4>.

³³ Sen, *supra* note 22, at 628.

³⁴ *Id.*

³⁵ *Id.*

Pakistan, it triggered the isolation of the Urdu-speakers, making them more inclined to continue supporting West Pakistan.³⁶

When tensions between East and West Pakistan reached their peak in 1971, the Muslim League, the religiously-aligned political party of West Pakistan, capitalized on the Urdu-speaking community's sensitivities about religion and language.³⁷ In fact, the Muslim League led the Urdu-speakers to believe they would tolerate them in East Pakistan simply by backing the pro-Pakistan and pro-Islamic forces of West Pakistan.³⁸

When tensions between East and West Pakistan were at their height, during the liberation period of Bangladesh in 1971, the Urdu-speaking community offered public support to the Pakistani militia. They are still generally viewed as responsible for genocidal operations against the local Bangladeshi population.³⁹ Despite this support, after the nine-month war for Bangladeshi independence, the Pakistani army surrendered on December 16, 1971, and Bangladesh gained its independence.⁴⁰ After the surrender, the Urdu-speaking population was confronted with hostility from the Bengali people, thus becoming physically vulnerable and unprotected.⁴¹ A Pakistani government report estimates that Bangladesh's political party, the Awami League massacred 30,000 "Biharis" and West Pakistanis during this period.⁴²

Reeling from the loss of East Pakistan, which became Bangladesh, the government of Pakistan was not eager to accept the Urdu speakers from Bangladesh, most of whom had never lived in West Pakistan.⁴³ Fearing threats from hostile Bengalis, the Urdu speakers also asked the Indian army for asylum, but their appeal was rejected immediately.⁴⁴ The founding father of Bangladesh, Sheikh Mujibur Rahman, was determined to exchange Bengalis living in Pakistan for the Urdu speakers in Bangladesh; however, Rahman's repatriation

³⁶ *Id.*

³⁷ Farzana, *supra* note 30, at 224–25.

³⁸ *Id.* at 225.

³⁹ Chunnun Prasad, *Refugees and Human Rights: Comparative Studies Between Chakmas in India and Biharis in Bangladesh*, in DEV. ISSUES IN CONTEMP. INDIA 238, 246 (2010).

⁴⁰ Farzana, *supra* note 33, at 225.

⁴¹ Muhammad Hamza Tanvir, *The Forgotten Pakistanis: Biharis of Bangladesh*, PARADIGM SHIFT (Nov. 11, 2021), <https://www.paradigmshift.com.pk/bihari-pakistan/>.

⁴² ADAM JONES, GENOCIDE: A COMPREHENSIVE INTRODUCTION 231 (2006).

⁴³ S. Kamaluddin, *Bangladesh: Country of Choice*, FAR E. ECON. REV. 23, 23 (1992).

⁴⁴ Sumit Sen, *Stateless Refugees and the Right to Return: The Bihari Refugees of South Asia – Part 2*, 12 INT'L J. REFUGEE L. 41, 55 (2000).

scheme was particularly politicized and planned to leave the majority of the community out of the political and public arena.⁴⁵

B. Formation of a new nation and its outcome on the Urdu-Speakers

After the formation of a new, secular Bangladesh, the Urdu-speaking community was offered Bangladeshi citizenship, but their decision to obtain it was politicized in the larger Bangladesh community.⁴⁶ Despite this politicization, the Pakistani government repatriated some Urdu-speakers during the post-independence years.⁴⁷ In March 1973, at the request of Sheikh Mujibur Rahman, The United Nations High Commissioner for Refugees (UNHCR) and the International Committee of the Red Cross (ICRC) took part in various repatriation programs.⁴⁸ These organizations registered Urdu-speakers as part of their repatriation to Pakistan and housed them in settlements for their protection.⁴⁹

On August 28, 1973, the governments of Pakistan, India, and Bangladesh signed the New Delhi Agreement, commencing the process of repatriation.⁵⁰ Between 1973 and April 1974, around 170,000 Urdu-speakers were repatriated to Pakistan with support from the ICRC.⁵¹ The UNHCR revealed that around 108,750 members of the community were repatriated to Pakistan by the time it completed its repatriation operations in June 1974.⁵² Although Bangladesh government reports show that 600,000 individuals accepted Bangladeshi citizenship, of those individuals, there were 539,669 who listed and registered themselves with the ICRC as a means to return to Pakistan.⁵³ The ICRC estimated that sixty percent of the Urdu-speaking community wanted to return to Pakistan; however, the report indicated that around ninety-five percent of registered Urdu-speakers wanted to actually go back to Pakistan.⁵⁴

⁴⁵ *Id.*

⁴⁶ Abdus Sattar Ghazali, *Four Decades of Sufferings of the Stranded Pakistanis in Bangladesh*, MILLI GAZETTE (Jan. 23, 2013), <https://www.milligazette.com/news/5953-four-decades-of-sufferings-of-the-stranded-pakistanis-in-bangladesh/>.

⁴⁷ Afzal Hossain, *Stripped from Freedom: Living Realities of Bihari People in Bangladesh*, 1 INT'L J. ADVANCED RSCH. 1, 3 (2013).

⁴⁸ Farzana, *supra* note 30, at 225.

⁴⁹ *Id.*

⁵⁰ Sen, *supra* note 22, at 640; Mantoo, *supra* note 19, at 126.

⁵¹ Saleem Samad, *Urdu-speaking Community Marginalized, but Reconciling*, DAILY OBSERVER (Sept. 9, 2015, 12:00 AM), <https://www.observerbd.com/2015/09/09/109658.php>.

⁵² Sen, *supra* note 44, at 55.

⁵³ Sen, *supra* note 22, at 640.

⁵⁴ *Id.*

At the same time between 1973-1974, the president of Pakistan, Zulfikar Alu Bhutto, negotiated the release of 93,000 Urdu-speakers held in Bangladesh, but expressed concern that approximately 500,000 Urdu-speaking people's return to Pakistan had not yet occurred.⁵⁵ In 1974, The International Red Cross Society, operating together with the UNHCR, helped repatriate 163,072 refugees to Pakistan.⁵⁶ However, 371,720 Urdu speakers still continued to live, unrepatriated, in Bangladeshi settlements.⁵⁷ Because of economic and financial burdens, Sheikh Mujibur Rahman brought up the "Bihari" issue during the Third World Committee of the United Nations General Assembly in December 1974 and in the Commonwealth Leader's conference in Jamaica in May 1975.⁵⁸ However, his political and diplomatic repatriation initiatives did not come to fruition, and his assassination in 1975 further stalled the actual implementation of those initiatives.⁵⁹

In 1977, Pakistan's Foreign Secretary visited Dhaka and took 25,000 "hardship cases,"⁶⁰ but only 4,790 of these 25,000 Urdu-speakers were actually repatriated.⁶¹ However, the Government of Pakistan was able to arrange the return of 58,000 individuals including military personnel, former civilian servants, and members of divided families (denotes a close family unit or members of the wider family separated from each other).⁶²

To secure the Urdu-speaking community's repatriation to Pakistan, the Stranded Pakistani General Repatriation Camp was established on December 2, 1977.⁶³ Several protests, such as hunger strikes by the Urdu-speakers took place. Concurrently, a number of assemblies and meetings between Pakistani and Bangladeshi officials were held in an attempt to address the issue.⁶⁴ But these negotiations were futile since the offers discussed by the Governments of Pakistan and Bangladesh did not bear fruit, as each party was heavily reluctant about bringing in the community within the local populace, further stalling repatriation efforts of the Urdu-speaking Community.⁶⁵

⁵⁵ *Id.*

⁵⁶ Sen, *supra* note 44, at 55–56.

⁵⁷ *Id.* at 56.

⁵⁸ INT'L J. SOC., POL. & ECON. RSCH., 879 (2020).

⁵⁹ Mantoo, *supra* note 22, at 126.

⁶⁰ Sen, *supra* note 44, at 55.

⁶¹ Mantoo, *supra* note 22, at 126.

⁶² Sen, *supra* note 44, at 55.

⁶³ Mantoo, *supra* note 22, at 125.

⁶⁴ *Id.*

⁶⁵ *Id.*

In 1978, the Pakistani president, Muhammad Zia-ul-Haq, promulgated the Pakistan Citizenship (Amendment) Ordinance, 1978, which prohibited the repatriation of Urdu-speakers.⁶⁶ However, in 1985, President Zia-ul-Haq acknowledged the Urdu-speaking community as Pakistani nationals. While this change in Zia-ul-Haq's rhetoric suggested Pakistan would repatriate Urdu-speakers, in reality, repatriation would only occur if the government had sufficient financial resources for relocation and rehabilitation.⁶⁷

Due to limited funds from the UNHCR, 1979 saw only 9,872 individuals repatriated to Pakistan.⁶⁸ In 1980, the UNHCR helped repatriate an additional 7,000 individuals. That same year, following these additional repatriations, Lord David Ennals, a British Member of Parliament, met President Ziaur Rahman of Bangladesh and President Zia-ul-Haq of Pakistan.⁶⁹ This meeting was significant with regards to allowing repatriation of the Urdu-speaking Community. In 1982, 750 families (approximately 4,800 individuals) were able to return to Pakistan.⁷⁰

In August 1985, Pakistan signed a trust agreement with Mecca-based Rabitat al-Alam al-Islami, a humanitarian organization, to raise an estimated \$500 million in funds from overseas for Urdu-speakers.⁷¹ However, for unknown reasons, the Pakistan government did not respond to their orderly departure program. This program entailed raising funds for the community and allowing them to migrate into Pakistan. This agreement was ultimately not fulfilled, as President Zia-ul-Haq was killed in the same year.⁷²

Meanwhile, the previous migrants from India, most of whom had settled in the Sindh province of Pakistan, formed the Muhajir Qaumi Movement, an intimidating and formidable opposition to Zulfikar Ali Bhutto's Pakistan People's Party.⁷³ These events slowed down the repatriation process and demonstrated Pakistan's antipathy towards repatriation as internal political opposition materialized within the country.⁷⁴ The Sindh province, where Urdu-speakers were considered for repatriation, had a large number of immigrants,

⁶⁶ Kamaluddin, *supra* note 43, at 23.

⁶⁷ S. Kamaluddin, *Left in Limbo*, FAR E. ECON. REV. 23 (Oct. 19, 1989).

⁶⁸ Sen, *supra* note 44, at 56.

⁶⁹ Mantoo, *supra* note 19, at 126.

⁷⁰ Sen, *supra* note 44, at 56.

⁷¹ Kamaluddin, *supra* note 67, at 23.

⁷² Sen, *supra* note 44, at 57.

⁷³ Kamaluddin, *supra* note 67, at 23.

⁷⁴ *Id.*

“muhajirs,” who traveled from India to West Pakistan as refugees during the Indian partition period.⁷⁵ In the years following, then Prime Minister Benazir Bhutto’s administration in Pakistan became more constrained and faced backlash from many Sindhi nationalist organizations who strongly opposed further repatriation of “Biharis.”⁷⁶ During this time, the opposition leader, Nawaz Sharif, became the Chief Minister of Punjab and took the upper hand over Benazir Bhutto.⁷⁷

The Sindhis continued to victimize Urdu-speakers, particularly during the Karachi riots of the 1980s.⁷⁸ These issues, especially political ones, impacted the role of Benazir Bhutto’s government. During her visit to Bangladesh’s capital, Dhaka, in 1989, Bhutto steered clear of the Urdu-speaking community issue by only identifying it as “a very complex problem.” She further overlooked the issue by declining to meet or receive a memorandum from a delegation of local Urdu-speaking community leaders.⁷⁹ The political problems she faced centered around cultural and ethnic pressures, hardening her stance against the Urdu-speaking community’s settlement in Pakistan.⁸⁰ Her resistance stalled repatriation, thus lending support to Sindhi groups.⁸¹

Still, Bhutto’s administration made appeals to the Bangladeshi government in Dhaka to resettle Urdu-speakers in the country using funds from Pakistan and other Islamic countries. However, the Bangladeshi government never approved this offer.⁸² Moreover, Bhutto also indicated that if she were to hold the Prime Minister’s Office again, one of her first acts would be to award citizenship to Urdu-speakers from Bangladesh.⁸³ However, upon obtaining the Prime Minister position in her non-consecutive term, she neither awarded citizenship rights to the Urdu-speaking community living in Bangladesh nor the 100,000 Urdu-speaking community members who had returned to Pakistan and were living illegally in the country at the time.⁸⁴

⁷⁵ Priya Kumar & Rita Kothari, *Sindh, 1947 and Beyond, South Asia*, 39 J. S. ASIAN STUD. 773, 782 (2016).

⁷⁶ Mantoo, *supra* note 19, at 127.

⁷⁷ Lawrence Ziring, *Pakistan in 1990: The Fall of Benazir Bhutto*, 31 ASIAN SURV. 113, 121 (1991).

⁷⁸ Charles H. Kennedy, *The Politics of Ethnicity in Sindh*, 31 ASIAN SURV. 938, 938 (1991).

⁷⁹ Kamaluddin, *supra* note 67, at 23.

⁸⁰ Kamaluddin, *supra* note 67, at 23.

⁸¹ Sen, *supra* note 44, at 60.

⁸² *Repatriation Issue and Dhaka’s Claim Just Won’t Go Away*, S. CHINA MORNING POST (Jul. 30, 2002), <https://www.scmp.com/article/386663/repatriation-issue-and-dhakas-claim-just-wont-go-away>.

⁸³ Sen, *supra* note 44, at 60.

⁸⁴ *Id.*

By the mid-1990s, repatriation levels declined, and only about 325 Urdu speaking community members were repatriated to Pakistan in January 1993.⁸⁵ This decline in repatriation occurred because Nawaz Sharif, who had usually supported the Urdu-speaking community, assumed the office of Prime Minister of Pakistan in 1990.⁸⁶ Sharif reconstituted the Rabita Trust and prepared the Punjab province to accommodate everyone from Bangladesh; it was a means to allow for resettlement at Sharif's behest. The Trust also helped build 45,000 non-transferable houses that would prevent Urdu-speakers from moving into the Sindh province.⁸⁷

In April 1993, Nawaz Sharif was removed from power, and Benazir Bhutto was reinstated as Prime Minister. Although her government agreed to uphold the preceding government's repatriation commitments, the repatriation process came to a halt.⁸⁸ Nevertheless, when Nawaz Sharif returned to power in 1997, the Pakistani government once again proposed the same settlement process, but no policy ever materialized.⁸⁹ Thus, only a confirmed 178,069 Urdu-speakers from Bangladesh were repatriated to Pakistan between 1972 and 1993.⁹⁰

Despite repatriation, many Urdu-speakers were excluded from employment in their fields and trades after Bangladesh gained independence.⁹¹ Children were expelled from schools, and community members' bank accounts, annuities, and savings were taken away by the new regime. Urdu households and businesses were proclaimed abandoned or enemy properties and were consequently confiscated under the veil of the law.⁹² As a developing country, Bangladesh had and continues to have limitations on its resources.⁹³

The Urdu-speakers' economic situation became more alarming as they were relegated to inadequately paying jobs in the informal sector; this denotes people working without employment security, workplace safety, or sometimes even

⁸⁵ Sen, *supra* note 44, at 61.

⁸⁶ *Stranded Pakistanis Come 'Home' After 21 Years*, AP NEWS (Jan. 10, 1993), <https://apnews.com/article/59177b57acbd693192191071378add4f>.

⁸⁷ Sen, *supra* note 44, at 61.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* at 62.

⁹¹ Tasmia Persoob, *Social Identity and Its Impact on the Camp Based Urdu Speaking Community in Bangladesh*, OSAKA UNIV. KNOWLEDGE ARCHIVE 16 (2014), https://ir.library.osaka-u.ac.jp/repo/ouka/all/53813/osipp_035_015.pdf.

⁹² *Vested Property*, BANGLAPEDIA: NAT'L ENCYCLOPEDIA BANGLADESH (June 2021), https://en.banglapedia.org/index.php?title=Vested_Property.

⁹³ C. Maloney, *Why Does Bangladesh Remain So Poor? Part II: Eight Answers*, 34 NAT'L LIBR. MED. 1, 1 (1985).

social security.⁹⁴ Even though the Bangladeshi government currently offers them free accommodations, power, and water within the settlements, there remains a need for Urdu-speakers to receive proper education in order to attain a better standard of living.⁹⁵ The low standard of living is a significant issue that has yet to be addressed by the Bangladeshi government. For example, in the early 1990s, the settlements had higher rates of disease due to the appalling living conditions.⁹⁶

In May 2003, three decades after the repatriation programs began, the Supreme Court of Bangladesh heard a petition from a group of Urdu-speakers and subsequently allowed, for the first time, ten stateless community members to obtain citizenship and voting rights in Bangladesh.⁹⁷ On September 6, 2007, the Bangladeshi government gave its support to offer citizenship to the Urdu-speaking community.⁹⁸ In August 2008, the Election Commission of Bangladesh initiated the registration of Urdu-speakers within the settlements, which was a momentous step towards their integration.⁹⁹

The predicament of the Urdu-speaking community and the government's obligation to protect them from systemic neglect have been addressed by the judiciary of Bangladesh.¹⁰⁰ In 2008, the Supreme Court of Bangladesh officially ruled in *Md. Sadaqat Khan (Fakku) and others v Chief Election Commissioner, Bangladesh Election Commission* that Urdu-speakers had the right to Bangladeshi citizenship.¹⁰¹

The partition of India and the mass killings of the Bengali population led to the preliminary displacement of the Urdu-speakers.¹⁰² With the formation of Bangladesh in 1971, the community was once again displaced.¹⁰³ In the four

⁹⁴ Ninette Kelley, *Ideas, Interests, and Institutions: Conceding Citizenship in Bangladesh*, 60 U. TORONTO L. J. 349, 360 (2010).

⁹⁵ Paulsen, *supra* note 5.

⁹⁶ Rosie Majid Ahsan & Shahnaz Huq Hussain, *A Review of Socio-Economic and Nutritional Issues of Bihari Camp Dwellers in Bangladesh: A Micro Study*, 20 GEO J. 3, 285 (1990).

⁹⁷ Waliur Rahman, *Vote for Stranded Pakistanis*, BBC NEWS (May 6, 2003), http://news.bbc.co.uk/2/hi/south_asia/3003949.stm.

⁹⁸ Hussain, *supra* note 12.

⁹⁹ *Id.*

¹⁰⁰ *Khan (Fakku) v. Chief Election Comm'r, Bangl. Election Comm'n, Writ Petition No. 10129 of 2007*, (May 18, 2008) (Bangl.), https://www.refworld.org/cases.BAN_SC,4a7c0c352.html.

¹⁰¹ *Id.*

¹⁰² Steven Brocklehurst, BBC News, *Partition of India: 'They would have slaughtered us'* (Aug. 12, 2017), <https://www.bbc.com/news/uk-scotland-40874496>.

¹⁰³ Rijuta Dey Bera, Al-Jazeera, *1971 Bangladesh: 'None of them returned'* (Dec. 16, 1971), <https://www.aljazeera.com/features/2021/12/16/1971-bangladesh-none-of-them-returned>.

decades following the Indo-Pakistani War of 1971, Pakistan felt compelled to take the Urdu-speakers back.¹⁰⁴ Even though the country repatriated a considerable number of individuals, its moral commitment to repatriation declined due to political reluctance to take responsibility for the remaining members of the community.¹⁰⁵

The denationalization of the Urdu-speakers and Pakistan's unwillingness to reintegrate them is evidence of the Urdu-speakers' previous persecution.¹⁰⁶ Such denationalization of the Urdu-speaking community by Pakistani authorities caused them to become stateless,¹⁰⁷ thus proving that they had few alternatives but to reside in the settlements. At the time of denationalization, Pakistan should have identified the international law norms outlined in the *Nottebohm Case (second phase)* and satisfied its duty to award effective nationality to the Urdu speaking community.

C. Current Treatment of the Community

Currently, most Urdu-speaking community members live in neglected settlements throughout Bangladesh without appropriate legal recognition. Over a decade after its issuance, local Bangladeshi administrations have neither applied nor recognized the 2008 Supreme Court order.¹⁰⁸ Urdu-speakers remain prejudiced by institutionalized practices related to the status of their nationality. Such practices include corruptive activities that are not essentially criminal behavior. Additionally, other important matters such as the right to vote and identity registration have still not been properly established.¹⁰⁹ This delay is primarily due to a lack of a rehabilitation strategy to ease the Urdu-speaking community's sufferings by the Bangladeshi government. Today, Urdu-speakers are still deemed "Bihari" by most of the local population within the country.¹¹⁰

D. Literature Review on the Urdu-Speaking Community

Despite the existence of current literature on the general protection of minorities, specific literature on the Urdu-speaking community is rather narrow.

¹⁰⁴ Paulsen, *supra* note 5.

¹⁰⁵ *Id.*

¹⁰⁶ Sen, *supra* note 22, at 626.

¹⁰⁷ *Id.*

¹⁰⁸ Samir Kumar Dey, *The Neglected "Bihari" Community in Bangladesh*, TAIWAN NEWS (Oct. 15, 2019), <https://www.taiwannews.com.tw/en/news/3795752>.

¹⁰⁹ Khalid Hussain, *Biharis: On Becoming Citizens of Bangladesh*, 83 FOCUS 2, 3 (March 2016).

¹¹⁰ *Id.*

Nonetheless, Sen assessed the conditions of the Urdu-speakers when they were stateless after their forced displacement in Bangladesh.¹¹¹

Sen argued that community members were able to claim refugee status under the 1951 Refugee Convention due to a “well-founded fear of persecution” despite the secession of Bangladesh from Pakistan and that the members of the community became denationalized because of Pakistan, ultimately becoming *de facto* stateless refugees again.¹¹² Sen further analyzed the nationality entitlement of the Urdu-speaking community and considered their right to return to Pakistan to be a critical factor based on the right to return under the purview of international law.¹¹³ It is to be noted that the 1951 Refugee Convention is the cornerstone of refugee protection and the work of the United Nations High Commissioner for Refugees.¹¹⁴ The convention defines a refugee “as a person who has fled his country because of a well-founded fear of persecution on one of five grounds: race, religion, nationality, membership of a particular social group or political opinion.”¹¹⁵

Kelley reviewed the recognition by the Bangladeshi government of the Urdu-speakers’ right to be registered as citizens in 2008.¹¹⁶ Kelley specifically focused on the causes of public choices and examined how ideas, interests, and institutions acted in the reversal of public policy that led to such recognition.¹¹⁷

Redclift looked at the challenges of the Urdu speaking community and what it meant for them to be citizens by focusing on the displacement and experiences of space as a political concept.¹¹⁸ Her findings indicate that ideas of citizenship are “temporally, socially and spatially produced and, as a consequence, crude binary opposition of statelessness and citizenship are no longer relevant.”¹¹⁹ She further exposed a discord between Bangladesh’s bureaucratic state recognition

¹¹¹ Sen, *supra* note 22, at 626.

¹¹² *Id.* at 630.

¹¹³ *Id.* at 625.

¹¹⁴ UNHCR Canada, *The 1951 Refugee Convention is as Relevant Today* (Dec. 5, 2016), <https://www.unhcr.ca/news/1951-refugee-convention-relevant-today/#:~:text=It%20defines%20a%20refugee%20as,social%20group%20or%20political%20opinion.>

¹¹⁵ *Id.*

¹¹⁶ Kelley, *supra* note 94.

¹¹⁷ *Id.*

¹¹⁸ VICTORIA REDCLIFT, *STATELESSNESS AND CITIZENSHIP: CAMPS AND THE CREATION OF POLITICAL SPACE* (2013).

¹¹⁹ *Id.* at 121.

of citizenship and perceptions of that status amongst the Urdu speaking community living in today's settlements.¹²⁰

Lastly, Sholder inquired into fundamental questions about the community's rehabilitation process, especially how the Supreme Court of Bangladesh's ruling has affected the community's housing and land rights situation and whether it has led to any social integration.¹²¹ In particular, Sholder highlighted the socially isolated and susceptible nature of the community despite the court's decision and the ineffective nature of their integration in Bangladesh.¹²²

Public policy concerning the community, concerns of bureaucratic state recognition of citizenship, the Bangladesh Supreme Court's ruling, and the ruling's effect on the community's housing and land rights has exacerbated Urdu speakers' prospects of proper integration. Overall, the existing literature and research suggest that the Urdu-speaking community falls under the definition of refugee to some extent, as well as under the embodiment of international law.

E. The "Bihari" Identity

Nomenclature is a crucial matter that inhibits Urdu-speaking communities. Bangladeshi community members discriminate against Urdu-speaking residents living in camps, in particular, Geneva Camp (the largest of the settlements housing over 25,000 Urdu-speaking community members).¹²³ The Bangladeshi community deems Urdu-speakers as "Bihari," a stigmatized name.¹²⁴ Terms like "Stranded Pakistani," "Muhajir," or "non-Bengali" also exist within the social and communal vernacular of Urdu-speakers in Bangladesh.¹²⁵

It is important to recall that Urdu-speakers did not only migrate from the state of Bihar but also from other parts of India.¹²⁶ After the Indian partition period, India received all those who migrated to its borders and offered them

¹²⁰ Victoria Redclift, *Subjectivity and Citizenship: Intersections of Space, Ethnicity and Identity Among the Urdu-Speaking Minority in Bangladesh*, 12 INT'L MIGR. & INTEGRATION 25, 40 (2011).

¹²¹ HANNAH SHOLDER, HOUSING AND LAND RIGHTS: THE CAMP-DWELLING URDU-SPEAKING COMMUNITY IN BANGLADESH (2011).

¹²² *Id.*

¹²³ Interview with Mr. Ahmed Ilias, Author, *Bihari the Indian Émigrés in Bangladesh: An Objective Analysis*.

¹²⁴ "Neglected" Bihari Youth Battle Stigma in Bangladesh, REFWORLD (Aug. 27, 2013), <https://www.refworld.org/docid/52248b724.html>.

¹²⁵ Dina Siddiqi, *Left Behind by the Nation: "Stranded Pakistanis" in Bangladesh*, 10 SITES: NEW SERIES 150, 158 (Jan. 2013).

¹²⁶ SANJAY KUMAR, *The Regional Patterns, in INDIA'S 2004 ELECTIONS: GRASS-ROOTS AND NATIONAL PERSPECTIVES* 212 (2007).

Indian citizenship.¹²⁷ The situation was different for Urdu-speaking Muslims who migrated to East Pakistan between 1947 and 1965.¹²⁸ They became the “Muhajir.”¹²⁹ The word “Muhajir” means “emigrant” in Arabic and was used for various Muslim communities that were uprooted, due to socio-political pressures, during the partition of British India in 1947.¹³⁰

Meanwhile, the democratic demand for Bengali as a state language with Urdu was not met prior to 1950, even though approximately fifty-six percent of the population in East Pakistan spoke the language.¹³¹ The Language Movement mentioned earlier in this paper transpired as the Bengalis (people from East Bengal comprising today’s Bangladesh are commonly known as “Bangalees”) pursued their own linguistic freedom of expression. During this time, most information disseminated within the Bengali community of East Pakistan was communicated in the “Bangla” language.¹³² Since the “Mohajirs” spoke Urdu, they were unable to learn about what was happening in the Language Movement.¹³³ Consequently, the “Mohajirs” were unaware that the Bengalis had begun forming their own revolutionary movement.¹³⁴ As a result of this lack of awareness, most Urdu-speakers were unable to lend support to the Bengali people’s movement.¹³⁵

Despite these language barriers, some Urdu-speaking community members did support the Bengali people and even took part in the 1952 Language Movement.¹³⁶ The Language Movement brought the assertion of Bengali national identity in East Bengal and later East Pakistan as a political movement, mainly to advocate writing and speaking the Bengali manuscript. The events of February 21, 1952 substantially changed the political process in Pakistan and led the Pakistan Constituent Assembly to adopt a bill in 1954 making both Urdu and

¹²⁷ Dalrymple, *supra* note 20.

¹²⁸ Sushant Sareen & Kriti M. Shah, *The Muhajir: Identity and Politics in Multiethnic Pakistan*, OBSERVER RSCH. FOUND. (Nov. 6, 2019), <https://www.orfonline.org/research/the-mohajir-identity-and-politics-in-multiethnic-pakistan-57322/>.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ Global Nonviolent Action Database, *Pakistanis Demand that Their Government Recognize Bengali as an Official Language, 1947-1952*, <https://nvdatabase.swarthmore.edu/content/pakistanis-demand-their-government-recognize-bengali-official-language-1947-1952>.

¹³² Tariq Rahman, *The Medium of Instruction Controversy in Pakistan*, 18 J. MULTILINGUAL & MULTICULTURAL DEV. 145, 149 (1997).

¹³³ Nadeem F. Paracha, *The Evolution of Muhajir Politics and Identity*, DAWN (Apr. 20, 2014), <https://www.dawn.com/news/1100948>.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ AHMED ILIAS, BIHARI THE INDIAN EMIGRES IN BANGLADESH: AN OBJECTIVE ANALYSIS 112 (2013).

Bengali the official state languages of the country.¹³⁷ Finally, in 1956, the newly adopted Constitution of Pakistan officially declared both Bengali and Urdu the national languages of Pakistan.¹³⁸ Later, in 1965, Pakistan's Premier General, Ayub Khan, announced a "Sons of the Soil" law; this doctrine has the view that a state specifically belongs to the primary linguistic group inhabiting it or that the state constitutes the exclusive 'homeland' of its main language speakers who are deemed local residents.¹³⁹ Under the law, the Pakistani government provided public support to all individuals deemed citizens, which included different groups such as the Punjabi, Sindhi, Pashto, and Bangalee – but not the Muhajir community.¹⁴⁰

In late 1971, after Bangladesh gained its independence, the use of the term "Muhajir" ended, and the same Urdu-speakers became known as the "Biharis."¹⁴¹ "Bihari" is also an ethnic term applied to the Urdu-speakers who migrated from the state of Bihar in East India.¹⁴² However, it is imperative to note that Urdu-speaking Muslims also migrated to Bangladesh from other Indian states such as Assam and West Bengal.¹⁴³

After Bangladesh became independent in December 1971, both the "Bangalees" and Urdu-speakers from India embarked on the process of obtaining Bangladeshi citizenship.¹⁴⁴ However, the Urdu-speaking community members were not able to obtain citizenship rights because of the aggressive actions of Bengali people who believed that the Urdu-speakers had supported and collaborated with Pakistan during Bangladesh's fight for independence.¹⁴⁵ When Bangladesh was liberated, the Urdu-speakers essentially became the "Bihari."¹⁴⁶

The phrase "Stranded Pakistanis" became popular during the repatriation years of Urdu-speakers.¹⁴⁷ The term was given to the community around 1978

¹³⁷ Afroza Anwary, *The National Language Movement*, NEW AGE (Feb. 21, 2021), <https://www.newagebd.net/article/130791/the-national-language-movement>.

¹³⁸ Zubair Torwali, *The National Language Conundrum*, EXPRESS TRIB. (July 23, 2014), <https://tribune.com.pk/story/740006/the-national-language-conundrum>.

¹³⁹ ANDREAS RIECK, *The Ayub Khan Era, 1958-1968*, in *THE SHIAS OF PAKISTAN: AN ASSERTIVE AND BELEAGUERED MINORITY* 103, 103 (2016).

¹⁴⁰ Paracha, *supra* note 133.

¹⁴¹ Siddiqi, *supra* note 125.

¹⁴² Arif, *supra* note 6.

¹⁴³ Prasad, *supra* note 39.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 247.

¹⁴⁶ Arif, *supra* note 6.

¹⁴⁷ Paulsen, *supra* note 5.

since most of the community could not be repatriated and were interned in settlements within Bangladesh.¹⁴⁸

Therefore, the use of this new term illustrates that the nomenclature for Urdu-speakers has evolved. Two terms, “Bihari,” and “Stranded Pakistanis,” are no longer appropriate for Urdu-speakers. However, the term “Bihari” is still associated with the Urdu-speaking population and is itself a pejorative or derogatory expression.

II. JUDGEMENTS OF THE SUPREME COURT AND IMPLICATIONS OF BANGLADESH’S NOTION OF CITIZENSHIP

The Supreme Court of Bangladesh has delivered two important decisions concerning the Urdu-speaking community currently living throughout Bangladesh. The citizenship status of Urdu-speakers in the country follows from these decisions. This is in terms of understanding a number of issues that reflect on the notion of citizenship for the community, including the practicality of citizenship for the Urdu-speaking population, the role and extent of law in enabling social change for the people, and the limits of judicial decisions.

The first judgment, *Md. Abid Khan and others v The Government of Bangladesh and others*, Writ Petition No. 3831 of 2001, 5 May 2003, decided in 2003, concerned the rights of ten Urdu-speaking petitioners who were to be registered as voters in the Mohammadpur area of Dhaka.¹⁴⁹ The court indicated that the mere residence of the petitioners at Geneva Camp could not be designated to another state by conduct.¹⁵⁰ Furthermore, all ten petitioners claimed that they were Urdu-speaking citizens of Bangladesh, and were fully qualified to be registered as voters under the laws of Bangladesh.¹⁵¹ However, they were not included in the electoral rolls.¹⁵² In response, the court clarified that the petitioners did not violate Article 2B of the *Bangladesh Citizenship (Temporary Provisions) Order, 1972*.¹⁵³

Article 2B:

¹⁴⁸ Paulsen, *supra* note 5.

¹⁴⁹ *Khan v. Gov't of Bangl.*, Writ Petition No. 3831 of 2001, (Bangl.).

¹⁵⁰ *Id.* at 4.

¹⁵¹ *Id.* at 2.

¹⁵² *Id.*

¹⁵³ *Id.*

“(1) Notwithstanding anything contained in Article 2 or in any other law for the time being in force, a person shall not, except as provided in clause (2), qualify himself to be a citizen of Bangladesh if he –

(i) owes, affirms or acknowledges, expressly or by conduct, allegiance to a foreign state, or

(ii) is notified under the proviso to Article 2A:

Provided that a citizen of Bangladesh shall not, merely by reason of being a citizen or acquiring citizenship of a state specified in or under clause (2), cease to be a citizen of Bangladesh.

(2) The Government may grant citizenship of Bangladesh to any person who is a citizen of any state of Europe or North America or of any other state which the Government may, by notification in the official Gazette, specify in this behalf.”¹⁵⁴

The two vital issues to be decided in the writ petition were the citizenship of the petitioners and the legal implications of their residence at Geneva Camp.¹⁵⁵ It is important to note that the petitioners neither applied for citizenship to another country, nor did they apply for repatriation to Pakistan.¹⁵⁶ As a result, the court held that the first group of petitioners were citizens of Bangladesh because they were not found disqualified under Article 2B(1) of the *Bangladesh Citizenship (Temporary Provisions) Order*.¹⁵⁷ The second group was also found eligible to become citizens of Bangladesh and thus were entitled to be enrolled on the electoral roll and registered as voters.¹⁵⁸ The inclusion of the second group of the petitioners in Geneva Camp or their continued residence in the camp did not affect citizenship by birth acquired under section four of the Act.¹⁵⁹

Accordingly, the court found that the petitioners were also Bangladeshi citizens by birth.¹⁶⁰ On consideration of these facts, the court held that the petitioners were citizens of Bangladesh and their residence in Geneva Camp was not a bar to be enrolled as voters as long as they were not otherwise disqualified under section seven of the *Bangladesh Electoral Rolls Ordinance, 1982*.¹⁶¹ The

¹⁵⁴ *Id.* at 3.

¹⁵⁵ *Khan v. Gov't of Bangl.*, *supra* note 149, at 2.

¹⁵⁶ *Id.* at 4.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 5.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

rule is thus absolute, and the court therefore directed the Bangladeshi government to enroll the names of the petitioners on the electoral roll.¹⁶² The Supreme Court acknowledged that the Urdu-speaking petitioners were born and brought up in Bangladesh and live in Geneva Camp and elsewhere in the country. The petitioners were immediately qualified to obtain citizenship rights, according to the *Bangladesh Electoral Rolls Ordinance*.¹⁶³ While the petitioners were found eligible to be included in the voting list, the court did not address the overall population of Urdu-speakers in Bangladesh. This decision was a first step to recognizing the citizenship rights of the Urdu-speaking community. However, at the same time, it was an exceptional ruling and did not address the total population.¹⁶⁴ This judgment also had no political support and was appealed by the government who was unwilling to abide by the court's verdict in supporting the Urdu-speaking community.

Following the ruling, the UNHCR expedited the alarming conditions by liaising between national campaigners, the Bangladesh government, and the international community to take consideration of the community's status, which helped pave the way for the 2008 judgement after a writ petition was filed in 2007.¹⁶⁵ The second judgment decided in *Md. Sadaqat Khan (Fakku) and 10 others vs. The Chief Election Commissioner, Bangladesh Election Commission, Block-6, Sher-E-Bangla Nagar, Dhaka and others*, Writ Petition No. 10129 of 2007, 18 May 2008, stipulated within the *Rule Nisi* and asked the respondents, the Election Commission, to show cause as to why the Urdu-speakers could not be registered on the electoral roll and be enrolled as voters in the country.¹⁶⁶

The highest court of the country considered the situation of 300,000 Urdu-speakers living in Bangladesh, and finally identified with great implications that since the community had been residing in Bangladesh since before and after its liberation, they are considered citizens of Bangladesh by birth.¹⁶⁷ This is the key consideration of this significant ruling. In addition, the court interpreted how the newer generation had accepted the emerging reality and swore their allegiance to Bangladesh by merging with the mainstream society and polity.¹⁶⁸ The *Citizenship Act, 1951*, which offers citizenship to those who are born in

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 1.

¹⁶⁵ U.N. High Comm'r for Refugees [UNHCR], *Addressing Situations of Statelessness*, in UNHCR GLOBAL REPORT 2006 35, 35–36 (2006), <https://www.unhcr.org/4a2fd54f6.pdf>.

¹⁶⁶ *Khan (Fakku) v. Chief Election Comm'r, Bangl. Election Comm'n*, *supra* note 100, at 1.

¹⁶⁷ *Id.* at 2.

¹⁶⁸ *Id.* at 8.

Bangladesh, or are descendants of permanent residents, and/or those who migrated or were registered and incorporated within any territory of the country, is also examined in the following judgment.¹⁶⁹ The court specifically mentions:

Every person who or whose father or grandfather was born in the territories now comprised in Bangladesh and who was a permanent resident of such territories on the 25th day of March, 1971 and continues to be so resident shall be a citizen of Bangladesh. Such people have accordingly become eligible with the attainment of majority for entitlement as voters under Article 122(2) of the Constitution and the Election Commission is under constitutional obligation to enroll them in the electoral rolls as voters.¹⁷⁰

Furthermore, a resident of Bangladesh may become citizen of the country in several ways under the Citizenship Act, 1951.¹⁷¹ Under sections three, four, and five, every person who or any of his parents and grandparents was born in the territory now included in Bangladesh shall be a citizen of the country by birth and descent subject to certain exceptions by operation of law.¹⁷² Under sections six, eight, nine and ten of the statute, certain persons may acquire Bangladesh citizenship by migration, residing abroad, naturalization, and marriage for which certificate and/or registration of specified authority shall be necessary.¹⁷³

The court, however, maintains that those who are termed and still call themselves “Stranded Pakistanis” by “owing, affirming and acknowledging, expressly or by conduct allegiance to a foreign state, say, Pakistan, would belong to this class and cease to be citizens of Bangladesh.”¹⁷⁴ and those “who had renounced their citizenship and/or are waiting to leave for Pakistan may be left to their fate.”¹⁷⁵ Conversely, it conveys that the community members who want to become citizens of Bangladesh should be mainstreamed into the population as soon as possible.¹⁷⁶ The court thus declared in this milestone verdict that the petitioners are citizens of Bangladesh and are therefore qualified and eligible to be enrolled as voters in the electoral roll.¹⁷⁷ This is the main basis for the court granting the petitioners citizenship. The court also directed the Election Commission to ensure the enrollment of the entire Urdu-speaking Community

¹⁶⁹ *Id.* at 10.

¹⁷⁰ *Id.* at 13.

¹⁷¹ *Id.* at 6.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 8.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 9.

in Bangladesh and to provide them with national identity cards.¹⁷⁸ It is further stated that the community should be mainstreamed into the Bangladesh population. Under the legislation, the option lies with a citizen to enroll as a voter.¹⁷⁹

This pivotal Supreme Court decision also requires some further discussion. In particular, the Court's reasoning states that members of the community, wherever they live in Bangladesh shall become citizens by operation of law, and no intervention of the Government is necessary.¹⁸⁰ This is because no functionary of the Republic can deny such rights to the community members who want to be enrolled as voters.¹⁸¹ With regard to the expectation of the case, the court elucidates that with respect to the maintainability of the writ petition without exhausting statutory provisions of enrollment.¹⁸² Thus, it is sufficient to say when the question of citizenship of the community is left unattended for decades on the constitutional ground that could not be resolved by individual application, it is settled that the constitutional question can be decided under Article 102 of the Bangladesh Constitution.¹⁸³ Furthermore, in the absence of any law, no citizen can be forced to register as a voter, and the Election Commission also cannot register every citizen against his / her will.¹⁸⁴ Thus, the option lies under the law for a citizen to enroll as a voter.¹⁸⁵ These show the rule of law in Bangladesh, whereby citizenship is determined and regulated by law under Article 6 of the Bangladesh Constitution.¹⁸⁶

III. ASSESSMENT OF THE COMMUNITY'S EXISTING SITUATION

This part of the paper highlights the Urdu-speakers' current situation allowing the reader to comprehend the existing political, social, and economic circumstances of the lives Urdu-speaker's living within the largest Urdu settlement, Geneva Camp, in Dhaka. Impact indicators are measured in this section, which include prejudice towards the community, how the judiciary treats them, their rights to land, exercise of citizenship, and the type of work the community finds. as they provide a helpful anchor for discerning the challenges

¹⁷⁸ *Id.* at 9.

¹⁷⁹ *Id.* at 8.

¹⁸⁰ *Id.* at 7.

¹⁸¹ *Id.* at 7, 9.

¹⁸² *Id.* at 8.

¹⁸³ *Id.* at 8.

¹⁸⁴ *Id.* at 8.

¹⁸⁵ *Id.* at 8.

¹⁸⁶ *Id.* at 3.

faced by the Urdu-speaking community. This, in turn, allows the analysis to interpret the community's legal status and understanding the standards that need to be met for the community to realize full citizenship.

It appears that the Bangladesh establishment continues to hold the opinion that the Urdu-speaking community, especially those in the age of majority during the Liberation War in 1971, must continue to share the guilt and accountability for the crimes committed during that time.

Urdu-speakers are still largely incapable of exercising their rights for two reasons: prejudice and acute discrimination. There is also a very pronounced divide in how political parties and the judiciary view Urdu-speakers. While Bangladesh's political parties do not strictly recognize Urdu-speakers as citizens and the bureaucracy and local government show very little empathy for Urdu-speakers. On the other hand, the judiciary looks at the community's situation, mostly sympathetically. Thus, the overall societal interpretation is that the community is trying to break into the mold, which has been established in Bangladesh over the last five decades.

Regarding their current housing situation and land rights, it may be suggested that, inadvertently or not, the government has artfully used legislation to disenfranchise minority people in general¹⁸⁷ including the Urdu-speaking Community. During their push for independence, Bangladesh deprived the Urdu-speakers of an essential component critical for citizenship: the right to property and permanent residence.¹⁸⁸ This deprivation was mainly implemented by the Bangladeshi administration through laws such as the *Abandoned Property (Control, Management, and Disposal) Order, Bangladesh (President's Order No. 16 of 1972)*. Today, the territorial boundaries of the Geneva Camp are still well-defined, with roughly 235,000 square feet of land and nine residential

¹⁸⁷ *The Challenges Facing Plainland Ethnic Groups in Bangladesh: Land, Dignity and Inclusion*, INT'L REP. INST. 7 (2020), https://www.iri.org/wp-content/uploads/2022/01/bangladesh-plainland-1_2.pdf. It is to be noted that this paper does not directly address this issue because this reflects on the community and how the Bangladesh government treats Urdu-speakers, despite the landmark Supreme Court ruling of 2008. Further, in Bangladesh the government has also not addressed the rights of other minority groups such as Hindus. In particular, there have been attacks on at least 80 of 32,000 makeshift temples at a Hindu festival in October 2021. See e.g., *Bangladesh: Protection of Hindus and Others Must Be Ensured Amid Ongoing Violence*, AMNESTY INT. (Oct 18, 2021), <https://www.amnesty.org/en/latest/news/2021/10/bangladesh-protection-of-hindus-and-others-must-be-ensured-amid-ongoing-violence/>; Shafi Md. Mostofa, *Minority rights at stake in Bangladesh*, <https://www.eastasiaforum.org/2021/12/04/minority-rights-at-stake-in-bangladesh/> (Dec. 4, 2021).

¹⁸⁸ Paulsen, *supra* note 5.

sectors; the government currently owns much of the land.¹⁸⁹ The Geneva Camp is prone to overcrowding, with over 25,000 community members alone.¹⁹⁰

Other subject matters pertaining to the right to exercise proper citizenship is that many Urdu-speakers are still deprived from opening bank accounts or enrolling in schools and applying for jobs because of a lack of a permanent address, since ‘Geneva Camp’ is stated by residents without a proper postal address.¹⁹¹ Most of the community does not have direct access to ownership of land.¹⁹² The lack of education is a huge problem as well since almost ninety-four percent of the community remains illiterate.¹⁹³

Typically, the Urdu-speakers are involved in different vocations in informal industries and are employed as day laborers, car mechanics, butchers, employees of food and home catering services, and other petty jobs.¹⁹⁴ Certain members are also forced to hide their ‘Bihari’ or ‘Geneva Camp’ identity to get proper jobs.¹⁹⁵ In addition, there is inadequate access to health care services and general health maintenance.¹⁹⁶

One key issue is corruption and the lack of political will in the bureaucracy to help the Urdu-speakers as public and private institutions are often inaccessible or discriminatory.¹⁹⁷ It is important to bear in mind that the rule of law cannot be ignored because it requires every person to act within the limits of the law, albeit corruption is a universal problem. In addition, state power and the capacity of law are frequently the drivers of social change.

Private organizations nevertheless offer some necessary support to the community. Out of the 3,000 or more active non-governmental organizations (NGOs) in Bangladesh, approximately ten NGOs support the Urdu-speakers through development work, education, healthcare, and technical support.¹⁹⁸

¹⁸⁹ SHOLDER, *supra* note 121, at 2.

¹⁹⁰ *Id.* at 10, 15.

¹⁹¹ Interview with Mr. Ahmed Ilias (June 4, 2016), Author, *Bihari the Indian Émigrés in Bangladesh: An Objective Analysis*.

¹⁹² *Id.* at 65.

¹⁹³ Bijoyeta Das & Khaled Hasan, *In Pictures: Plight of Biharis in Bangladesh*, AL-JAZEERA (Mar. 26, 2014), <https://www.aljazeera.com/gallery/2014/3/26/in-pictures-plight-of-biharis-in-bangladesh>.

¹⁹⁴ Interview with Mr. Ahmed Ilias (June 4, 2016), Executive Director, Al-Falah Bangladesh, Dhaka.

¹⁹⁵ Interview with Mr. Mohammad Hasan (June 6, 2016), Chief Coordinator, Al-Falah Bangladesh, Dhaka.

¹⁹⁶ *Id.* at 72.

¹⁹⁷ MacDonald, *supra* note 3, at 3.

¹⁹⁸ Interview with Mr. Ahmed Ilias (June 4, 2016), Executive Director, Al-Falah Bangladesh, Dhaka.

Interestingly, the UNHCR has a mandate that may apply to the “internally displaced” Urdu-speakers, albeit the organization does not identify the community as refugees.¹⁹⁹ The UNHCR’s authority in countries is typically reliant on the goodwill of the host. The general perspective is that the UNHCR is dependent on donor states to fund its operations and on host governments to grant permission to initiate programs in their territory.²⁰⁰

The chief barriers for the Urdu-community are mostly linked to their inability to integrate because of the social stigma of being ‘Bihari’, with poverty being a huge problem.²⁰¹ The Urdu language itself is also responsible for the cultural and social exclusion of the community living in the camps.²⁰²

IV. THE LEGAL STATUS OF THE COMMUNITY: QUESTIONS CONCERNING CITIZENSHIP

Given the Urdu-speaking community’s situation, it is necessary to address their association with Bangladesh and understand their present legal status. Although community members are citizens per the Supreme Court’s 2008 verdict, it is still imperative to look at the refugee concept. Normally, the term refugee denotes individuals forced to leave their homes, typically outside their own country’s territory, due to threats to their personal wellbeing.²⁰³ In terms of a legal definition under international law, it suggests individuals outside their actual state of origin and unwilling or unable to return to their home due to a well-founded fear of persecution.²⁰⁴ Threats of persecution can include serious harm to race, religion, nationality, participation or membership in a social group, or political opinion.²⁰⁵ One faces the absence of state protection and is outside the domestic political community in an indeterminate manner, because of possible harm perpetrated and/or tolerated by officials within the domestic territory.²⁰⁶

¹⁹⁹ HUGH MASSEY, LEGAL AND PROTECTION POLICY RESEARCH SERIES: UNHCR AND DE FACTO STATELESSNESS 39 (Apr. 2010).

²⁰⁰ Gil Loescher, *UNHCR’s Origins and Early History: Agency, Influence, and Power in Global Refugee Policy*, 33 REFUGEE 1, 77.

²⁰¹ Hussain, *supra* note 109, at 6.

²⁰² *Id.* at 6.

²⁰³ MATTHEW E. PRICE, RETHINKING ASYLUM: HISTORY, PURPOSE, AND LIMITS 17 (2009).

²⁰⁴ See GUY S. GOODWIN-GILL & JANE MCADAM, THE REFUGEE IN INTERNATIONAL LAW, (3rd ed., Oxford Univ. Press, 2007).

²⁰⁵ *Id.* at 17.

²⁰⁶ EMMA HADDAD, THE REFUGEE IN INTERNATIONAL SOCIETY, BETWEEN SOVEREIGNS 42 (2008).

This definition indicates a ‘Convention Refugee’ under the *Convention Relating to the Status of Refugees*, 1951.²⁰⁷ This definition cannot apply to everyone fleeing from oppressive regimes, unless it is determined that they are persecuted individually or as a member of a vulnerable social group.²⁰⁸ The persecution must be linked to the specific grounds listed in the definition.²⁰⁹ These grounds include five definitions that fall under the Refugee Convention namely: race, religion, nationality, membership of a particular social group or political opinion which must be the reason for persecution. Additionally, there are ‘mandate refugees.’²¹⁰ These are individuals who have lived outside Europe and are termed as such because of the events following 1951.²¹¹ In particular, between 1948 and 1951, almost 700,000 Jewish people immigrated to Israel, including two-thirds of the Jewish displaced persons in Europe.²¹²

On the other hand, a person may be identified as a refugee if they flee for one of several reasons.²¹³ These can include unlawful prosecution in the country of origin, denial to exercise fundamental rights, civil strife or conflict, poverty, food shortage, or natural disasters.²¹⁴ This second category has been termed as *de facto* or humanitarian refugees of temporary status or *non-convention* refugees because they do not fit within the legal refugee definition.²¹⁵ Furthermore, refugees may be political dissidents or ethnic minorities, but until a discrepancy or divergence occurs, which mainly entails a conflict type situation, a minority group shall continue to be firmly attached to a state. At present, the UNHCR mandate has been extended beyond refugees to include stateless people, returnees, asylum-seekers, and internally displaced persons.²¹⁶ Moreover, the current trend among Commonwealth Courts, for example the International Court of Justice, is to apply the meaning of “persecution” to

²⁰⁷ *Id.* at 29, 41–42.

²⁰⁸ Myron Weiner, *Ethics, National Sovereignty and the Control of Immigration* (1996) 30 INT’L MIGRATION REV. 171, 185 (1996).

²⁰⁹ *Id.*

²¹⁰ Sara E. Davies, *The Asian Rejection?: International Refugee Law in Asia* 52 AUSTL. J. POL. & HIST. 562, 567 (2006).

²¹¹ *Id.*

²¹² Holocaust Encyclopedia, *The Survivors*, <https://encyclopedia.ushmm.org/content/en/article/the-survivors>.

²¹³ Goodwin-Gill & McAdam, *supra* note 202.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ T. ALEXANDER ALEINIKOFF, *The Mandate of The Office Of The United Nations High Commissioner For Refugees* in RESEARCH HANDBOOK ON INTERNATIONAL LAW AND MIGRATION 394 (Vincent Chetail & Celine Bauloz eds. 2014).

international human rights law.²¹⁷ As a result, the denial of any human rights – whether caused by state officials, private actors, or merely by circumstances of economic and political structures – may constitute persecution.²¹⁸

It is important to ascertain the context in which the Urdu-speaking community has been deemed refugees in the past. Initially, persecution of Urdu-speakers was occurred in East Pakistan (subsequently Bangladesh) during the independence period between 1970 and 1971.²¹⁹ This created a foundation for applying international refugee law to establish their refugee status. The Urdu-speakers experienced fear from a subjective and objective point of view. This underscores the real persecution the Urdu-speakers endured. In December 1970, the parliamentary elections roused a strong sense of Bengali nationalism which spread throughout East Pakistan, and, in some ways, this was the driving force behind Bangladeshi independence.²²⁰ This led Bihari establishments to be frequently attacked by Bengalis who believed that they had sided with the pro-Pakistan Muslim League, even though most Bihari community members did not openly express any political leanings.²²¹ The carnage against the Bihari people, including systematic persecution and even ethnic cleansing, continued unabatedly through most of 1971.²²² Pakistan's government and regime seemed reluctant or even incapable of preventing what had occurred.²²³

Eventually, the provincial government, mainly the Sindh province, was implicated for arranging this very oppression and persecution, which ultimately led to the Bihari community's flight from Bangladesh, and the claiming of refugee status by identifying with Pakistan, where they had originally migrated from.²²⁴ The constant denial of *de jure* nationality by the Government of Pakistan was also a key reason for their persecution between 1970 and 1971.²²⁵ In this sense, the community members had a well-founded fear of persecution, which is one of the general requirements of being refugees under the Refugee Convention definition. Although the Urdu-speaking community met this condition, since one must usually cross an international border to be a refugee,

²¹⁷ Price, *supra* note 203, at 17.

²¹⁸ *Id.*

²¹⁹ *Massacre of Biharis in Bangladesh*, THE AGE (Mar. 15, 1972).

²²⁰ Howard Schuman, *A Note on the Rapid Rise of Mass Bengali Nationalism in East Pakistan*, 78 AM.J. SOCIO. 2, 290 (1972).

²²¹ Sen, *supra* note 22, at 630.

²²² YASMIN SAIKIA, *WOMEN, WAR, AND THE MAKING OF BANGLADESH: REMEMBERING 1971* at 3 (2011).

²²³ LAWRENCE ZIRING, *BANGLADESH: FROM MUJIB TO ERSHAD: AN INTERPRETIVE STUDY* 64–65 (1992).

²²⁴ Sen, *supra* note 22, at 633.

²²⁵ *Id.*

the Urdu-speakers were not considered refugees under the preview of refugee law.

Although, the term ‘refugee’ is what most of the Urdu-speaking community endured and were referred to; it is important to bear in mind that establishing past persecution is difficult because the test is future-looking. However, the Urdu-speakers’ situation in subsequent years has changed. It is evident that Urdu-speakers do not qualify for any form of refugee status under the 1951 Convention definition, since almost a half (600,000) of the entire population decided to become citizens of Bangladesh, after the Supreme Court of Bangladesh ruled for their citizenship in 1972. In addition, most community members hold valid national identity cards issued by the Bangladesh government.²²⁶ Thus, the community does not meet the burden of proof needed to establish their status as refugees in the present.

The condition with the community is that they in fact fall into the state–citizen–territory hierarchy. This indicates the correlation between how an individual falls between the hierarchy of a country and territory or namely jurisdiction. The prevalent public discourse in Bangladesh views the ‘Biharis’ as refugees, since many sections of the community have stayed isolated from the general population of Bangladesh which has severely disadvantaged the Urdu-speakers.²²⁷ Accordingly, the ‘refugee’ label is clearly inaccurate but is still being used colloquially owing to a more social factor, rather than a legal one.²²⁸

The community’s citizenship status is based on two verdicts of the Supreme Court. It is imperative to underscore the meaning of who a citizen is and what rights avail from the notion of citizenship. Ordinarily, questions regarding citizenship can be broken into three overlying categories: (i) substance of citizenship, which is the actual reference to what citizenship is; (ii) the domain of its action and territory, meaning where citizenship takes place; and (iii) the subject of citizenship, or more specifically, who is a citizen.²²⁹

There is more than one definition of citizenship. Some academic and legal scholars have defined what citizenship requires. Audrey Macklin has defined legal citizenship as something that refers to the formal status of citizenship in a

²²⁶ *Citizenship – Bangladesh*, NAMATI, <https://namati.org/ourwork/citizenship/bangladesh/> (last visited Mar. 5, 2023).

²²⁷ Arif, *supra* note 6, at 665.

²²⁸ *Id.*

²²⁹ LINDA BOSNIAK, *THE CITIZEN AND THE ALIEN: DILEMMAS OF CONTEMPORARY MEMBERSHIP* 17 (2006).

state, or membership in a nationality, as it is understood in international law.²³⁰ Social citizenship incorporates a more voluminous package of rights, responsibilities, entitlements, duties, practices, and attachments that define membership in a society and situate individuals within that community.²³¹

Immanuel Wallerstein states that all inhabitants of a country should enjoy the rights of passive citizenship, including protection of their person, property, freedom, etc. However, everyone does not have a right to play an active role in the creation of public authorities.²³² Therefore, all citizens are not active citizens. Those who contribute to the public establishment are deemed to be the “true stockholders of the great social enterprise.”²³³ The modern idea of citizenship still respects the concept of political participation and contribution, and it typically embodies an elaborate system of political representation.²³⁴ All members have legal rights to political, economic, and social benefits, and they owe legal duties and responsibilities to the state.²³⁵ Additionally, citizenship can be regulated by elements including *jus soli*, *jus sanguinis*, *jure matrimonii*,²³⁶ and naturalization.

Linda Bosniak indicates that as a normative matter, citizenship in an internal sense stands for a universalistic ethic –for the inclusion and incorporation of “everyone”.²³⁷ It encompasses formal juridical membership in an organized political community, and the enjoyment of rights under law is the dominant feature of social membership.²³⁸ Moreover, there is a difference in the enjoyment of citizenship rights among officially equal citizens, which can be related to the Urdu-speakers. Bosniak also offers a critique of ‘second-class citizenship.’ Second-class citizenship occurs where some marginalized social groups enjoy nominal citizenship status, but their members are afforded less in the way of substantive citizenship than others in society as a result of directly unequal

²³⁰ Audrey Macklin, *Who Is the Citizen’s Other – Considering the Heft of Citizenship*, 8 THEORETICAL INQUIRIES L. 2, 333–34 (2007).

²³¹ *Id.*

²³² Immanuel Wallerstein, *Citizens All? Citizens Some! The Making of the Citizen*, 45 COMPAR. STUD. SOC’Y. & HIST. 650, 651–52 (2003).

²³³ *Id.*

²³⁴ Sylke Nissen, *Political Participation: Inclusion of Citizens in Democratic Opinion-Forming and Decision-Making Processes*, in PEACE, JUSTICE AND STRONG INSTITUTIONS (2021).

²³⁵ *Id.*

²³⁶ *Jus soli* indicates birthright citizenship; *Jus sanguinis* is a principle of nationality law by which a citizenship is determined or acquired by ethnicity of one or both parents; *jure matrimonii* in simple terms means citizenship by marriage.

²³⁷ Bosniak, *supra* note 229, at 17.

²³⁸ *Id.*

treatment.²³⁹ This implies that the possession of formal citizenship status fails to protect people from exclusion directed at those who are perceived to be ‘foreign’ in character, habit, or appearance.²⁴⁰

Lastly, Christian Joppke suggests that there are at least three aspects of citizenship.²⁴¹ These encompass: (i) citizenship as status, which means formal state membership and the rules of access to it; (ii) citizenship as rights, which concerns the formal capacities and immunities connected with such status;²⁴² and (iii) citizenship as an identity, which denotes to the behavioral aspects of persons acting and conceiving themselves as members of a collectivity, classically the nation, or the normative conceptions of such behavior imputed by the state.²⁴³

Although the Urdu-speakers and the majority Bengali population share a common religion (Islam) and a common language, the Urdu-speaking community living in the country is still treated differently in terms of both citizenship and rights to identity, including social, economic, and political status.²⁴⁴ Hence, some members are not able to exercise their citizenship effectively due to the absence of rights. Ministers and officials often classify the community as “Standard Pakistanis”, denying them rights to passports and sometimes even birth certificates.²⁴⁵ Nevertheless, the Court’s 2008 decision does confer *jus soli* citizenship on to Urdu-speakers.

The community needs effective citizenship and integration. There are a few refugee concepts that have sadly shaped the citizenship status for the Urdu-speaking community. However, the notion of citizenship and especially integration may be tackled through better tolerance and acceptance. These include the infrastructure of the settlements, especially Geneva Camp, and the use of rations/relief cards and prior repatriation forms for tenancy purposes, which is strongly linked to their former status.²⁴⁶ Therefore, it may be argued

²³⁹ *Id.*

²⁴⁰ *Id.* at 30.

²⁴¹ Christian Joppke, *Transformation of Citizenship: Status, Rights, Identity*, 11 *CITIZENSHIP STUD.* 1, 37–38 (2007).

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ Das & Hasan, *supra* note 193.

²⁴⁵ *Neglected Bihari Youth Battle Stigma in Bangladesh*, IRIN NEWS (Aug. 27, 2013), <http://www.irinnews.org/report/98651/neglected-bihari-youth-battle-stigma-bangladesh>.

²⁴⁶ Interview with Mr. Mohammad Hasan (June 4, 2016), Chief Coordinator, Al-Falah Bangladesh, Dhaka.

that some Urdu-speakers are not able to exercise their actual Bangladeshi citizenship effectively due to the lack of functioning rights.

Urdu-speakers' rights are not pragmatic and do not work according to the way the Supreme Court of Bangladesh has decided. However, many community members are gradually passing as mainstream Bangladeshis (by abandoning their Pakistani heritage), which has allowed them access to basic resources like education. But the chances of the community's acquisition of citizenship documents, including passports and even birth certificates, continues to be difficult.²⁴⁷ For instance, it has been reported that in some city offices, uncooperative officials refuse most Urdu-speakers' requests for documents.²⁴⁸

The Supreme Court's decision has offered the Urdu-speakers legal and formal citizenship in Bangladesh and the opportunity for political participation (e.g. voting rights), but it has failed to reach other goals.²⁴⁹ Clearly this has impacted the community's 'economic citizenship' as many are unable to exercise the right to work.²⁵⁰ Consequently, as a group, Urdu-speakers are enjoying a nominal citizenship status but are being afforded less in terms of substantive or actual rights of citizenship.

V. BANGLADESHI NOTION OF CITIZENSHIP AND HOW IT REFLECTS TOWARDS THE COMMUNITY

A. *The Constitution and Statutory Laws*

This part identifies the rights that fundamentally have a connection to the community's situation, mainly in terms of the national law and its apparent gaps. Even though the bureaucracy is currently unable to offer a full protection of rights, the Constitution clearly applies for the entire Urdu-speaking Community.²⁵¹ So, the laws of the land are applicable to all Urdu-speakers because the Constitution of Bangladesh effectively preserves rights for all persons irrespective of whether they are citizens or not.²⁵²

²⁴⁷ *'Stranded Pakistanis' Living in Camps in Bangladesh – in Pictures*, *supra* note 9.

²⁴⁸ *Id.*

²⁴⁹ *Khan v. Chief Election Comm'r, Bangl. Election Comm'n* 2008, 37 Chancery L. Chron. [CLC] (High Ct. Div. [HCD]) (Bangl.); *Stranded Pakistanis' Living in Camps in Bangladesh – in Pictures*, *supra* note 9.

²⁵⁰ *Id.*

²⁵¹ The Const. of the People 's Republic of Bangl. Mar. 26, 1971, art. 31.

²⁵² *Id.*

Article 6(2) of the Constitution states that the people of Bangladesh are to be known as “Bangalees.”²⁵³ This language challenges the ethnic identity of distinct groups of people, particularly the Urdu-speaking Community. Article 28, which is a fundamental right, specifies that the state shall not discriminate against any citizen.²⁵⁴ With the inclusion of a nondiscriminatory clause, mainly in respect to the language provision in this analysis, may help the Urdu-speakers be recognized as a linguistic minority.

The right to work is crucial as well. Despite graduating with a degree, whether high school or university, many community members still fail to get proper jobs due to their ethnic Bihari identity.²⁵⁵ The Constitution firmly expresses the fundamental right of freedom of profession or occupation under Article 40,²⁵⁶ which should be implemented.

The right to property is also equally imperative. Article 42 of the Constitution mentions that:

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, nationalised or requisitioned save by authority of law.²⁵⁷

The majority of the Urdu-speakers’ properties during the war were declared enemy property and afterwards acquired under the *Bangladesh Abandoned Property Order (Control, Management and Disposal)*, 1972.²⁵⁸ After over five decades, the consequence of the disposal of their properties has not yet been addressed.²⁵⁹

Acquiring passports falls under *The Bangladesh Passport Order* (President’s Order No. 9 of 1973).²⁶⁰ The issue is that many Urdu-speakers are unable to meet the legal requirement of having a valid address to acquire a passport

²⁵³ *Id.* art. 6(2).

²⁵⁴ *Id.* art. 28.

²⁵⁵ Mushfique Wadud, *Neglected Bihari Youth Battle Stigma in Bangladesh*, NEW HUMANITARIAN (Aug. 23, 2013), <https://www.thenewhumanitarian.org/news/2013/08/27/neglected-bihari-youth-battle-stigma-bangladesh>.

²⁵⁶ The Const. of the People’s Republic of Bangl. Mar. 26, 1971, art. 40.

²⁵⁷ *Id.* art. 40.

²⁵⁸ See *The Abandoned Property (Control, Management and Disposal) Order*, 1972, No. 16. (Issued on Feb. 28, 1972) (Bangl.).

²⁵⁹ See Paulsen, *supra* note 5.

²⁶⁰ *The Bangladesh Passport Order*, 1973, No. 9 (Issued on Feb. 8, 1973) (Bangl.).

because authorities are not willing to issue passports to community members who have addresses within the settlements.

The issues of citizenship and law hold great weight in regard to the Urdu-speaking community. It may be suggested that the challenges of the community's right to exercise citizenship currently shows that the objective of full citizenship is not being met, which represents basic political rights along with social rights. Given the circumstances, it can also be said that social rights can be understood as actual rights of citizenship that work for the community. Social rights are the rights of participation in society, and they are a means to facilitate participation.²⁶¹ Citizenship rights are undeniably universal, but social rights are only significant when they are substantive, and substantive rights are never universal.²⁶² This is because social rights are principally contingent upon a bureaucratic basis.²⁶³

In Bangladesh, there are different methods of acquiring nationality. *Jus sanguinis*, which is citizenship by right of blood, means one may acquire the nationality of ones' parents, regardless of whether the person was born on Bangladesh sovereign territory or not, under sections 3 and 5 of the Bangladesh Citizenship Act, 1951.²⁶⁴ Citizenship is also acquired under the principle of *jus soli*, which means citizenship by right of birth within the territory, or at birth, which is noted in Section 4 of the Bangladesh Citizenship Act, 1951.²⁶⁵ Citizenship by migration (Section 6), and citizenship by naturalization (Section 9) also apply.²⁶⁶ This is reflected by the Supreme Court's 2008 decision conferring *jus soli* citizenship to the Urdu-speaking Community.

The Bangladesh government must acknowledge that if the institutions in which obligations of citizenship are exercised are designed to favor one specific group over another, then the significance of citizenship is diminished.²⁶⁷ Hence, with all Bangladeshi citizens excluding the Urdu-speakers, the very concept of

²⁶¹ KEITH FAULKS, CITIZENSHIP 4 (2000).

²⁶² *Id.*

²⁶³ *Id.*; FAULKS, *supra* note 261, at 6.

²⁶⁴ Citizenship "by blood" is not specifically addressed in the 1951 act. Section 3 grants citizenship to anyone whose parents were born in Bangladesh at the time of the act, and section 5 says the same for a person born after the commencement of the act. I rephrased this accordingly. See *Jus Sanguinis*, DICTIONARY.COM, <https://www.dictionary.com/browse/jus-sanguinis> (last visited Oct. 6, 2022); The Citizenship Act, 1951, §§ 3, 5 (Bangl.).

²⁶⁵ *Jus Soli*, DICTIONARY.COM, <https://www.dictionary.com/browse/jus-soli> (last visited Oct. 6, 2022); The Citizenship Act, 1951, § 4 (Bangl.).

²⁶⁶ The Citizenship Act, 1951, §§ 6, 9 (Bangl.).

²⁶⁷ *Id.*; FAULKS, *supra* note 261, at 6.

citizenship is inevitably debilitated.²⁶⁸ The identity of citizenship is imperative to avoid the prejudice of ethnic labeling and can be a reason for the community to be in an ultimate “quest for invisibility.”²⁶⁹

A strong sense of integration and citizenship can only be achieved when the contextual barriers to its performance are recognized and removed;²⁷⁰ so, it is mandatory upon the state that those who rule assure and guarantee that the means to exercise citizenship belongs to all recognized individuals, including minority groups like the Urdu-speaking Community. Therefore, this becomes part of the covenant between the state, the individual, and the collective called society; each of these exist because the other does and accordingly each works for others so that all will be able to benefit.²⁷¹

One existing threat against the community is that in 2017, the Cabinet of the Bangladesh government gave its final approval to draft and enact the *Citizenship Bill, 2016*, which may consolidate and repeal the existing *Citizenship Act, 1951* and the *Citizenship Temporary Provisions Order, 1972*.²⁷² Jurists and human rights activists in Bangladesh have specifically noted that there is a probable that the legislation may create statelessness for several groups of individuals, including the Urdu-speaking Community.²⁷³

A journalist of Bangladesh’s *The Daily Star* described the Urdu-speakers’ situation as follows:

Included among them are children of Bangladeshi nationals living overseas who may not be registered within a stipulated time, children born abroad to parents who are born after the commencement of the Act, foundlings in Bangladesh territory, children born to migrant women workers who have been sexually exploited, children born out of wedlock, those who may be deemed as ‘enemy aliens’ and their respective children, the naturalized citizens who ‘express disobedience towards the sovereignty or the Constitution... through any action or behaviors’, the unregistered dwellers of the recently exchanged

²⁶⁸ *Id.*

²⁶⁹ Redclift, *supra* note 120, at 31.

²⁷⁰ FAULKS, *supra* note 261, at 6.

²⁷¹ Lena Dominelli, *Critical Theories: Reflecting on Citizenship Status and Practices*, in RECONFIGURING CITIZENSHIP: SOCIAL EXCLUSION AND DIVERSITY WITHIN INCLUSIVE CITIZENSHIP PRACTICES 264 (Lena Dominelli & Mehmoona Moosa-Mitha eds., 2014).

²⁷² C. R. Abrar, *The Curious Contents of the Citizenship Law*, DAILY STAR (Jun. 4, 2016) <https://www.thedailystar.net/op-ed/politics/the-curious-contents-the-citizenship-law-1233943>.

²⁷³ *Id.*

enclaves and even more so intriguingly, existing citizens whose both parents died before 1971.²⁷⁴

As noted in the article of *The Daily Star*, Article 3 of the draft citizenship bill in particular states “Prominence of the Act. Notwithstanding anything contained in any other Act, Legal Instrument, Judgment, Decree etc., the provisions of this Act shall prevail.”²⁷⁵

Such a new law contains a provision that affirms its pre-eminence over existing legislation.²⁷⁶ This is contradictory to Article 102 of the Constitution, which gives discretionary powers to the High Court Division of the Bangladesh Supreme Court to issue orders and directions, which include court orders, including stay orders, quashing orders, mandatory orders, declarations, etc.²⁷⁷

The article of *The Daily Star* notes Article 28/2/a of the draft Act further states “Notwithstanding such repeal... citizenship of the persons who obtained citizenship under the repealed Acts shall prevail, subject to consistency with the provisions of the Act. All activities done under the Act shall be considered as legal.”²⁷⁸

The retrospective element incorporated in the proposed legislation also has dire consequences for children born of one Bangladeshi parent and nationals of SAARC countries and Myanmar who gained Bangladesh’s citizenship by virtue of one of their parents being Bangladeshi.²⁷⁹ Article 5(3) indicates that a person will be denied citizenship by descent “if her or his father or mother joins any military or quasi-military or any special force and engages or engaged in war against Bangladesh or denied the existence of Bangladesh or is engaged in any activity against Bangladesh.”²⁸⁰ This raises further concerns since “. . . penalizing people by providing retrospective effect to law is prohibited under both national and international laws.”²⁸¹ “Th[e] Article also provides for punishment of children for offences committed by their parents”, which “is in gross contravention of the principles of natural justice.”²⁸²

²⁷⁴ Abrar, *supra* note 272.

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ THE CONST. OF THE PEOPLE’S REPUBLIC OF BANGL. Mar. 26, 1971, art. 102.

²⁷⁸ Abrar, *supra* note 272.

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² *Id.*

Some parts of the draft bill may be deemed both inequitable and discriminatory and may even conflict with the Bangladesh Constitution and international treaties that Bangladesh has ratified.²⁸³ Other provisions include stripping nationality from a Bangladeshi based on actions of parents or grandparents who are deemed “enemies of the state” and may equally risk introducing arbitrary application of the law and unchecked discretion of officials involved in nationality-related matters.²⁸⁴

VI. SCOPE FOR INTERNATIONAL LAW

The principles of international law, in particular international human rights law, and the body mandated to act on it must not be ignored since international human rights protects all persons, regardless of their citizenship.²⁸⁵ In essence, human rights are not civil rights, and they cannot be taken away by anyone.²⁸⁶ At its core, these rights are based on the values of dignity, justice, respect, and equality.²⁸⁷

It is important to bear in mind that in Bangladesh a ratified treaty cannot be formally enforced in domestic courts unless incorporated into the country’s domestic laws, as established in *Hussain Muhammad Ershad v Bangladesh and Others* (2001) 21 BLD 69 (AD).²⁸⁸ Nonetheless, the international duties contained in pertinent treaties that Bangladesh is a signatory of and has acceded/ratified, may be implemented through domestic legislation that the government can potentially interpret and ultimately apply for the Urdu-speaking Community.²⁸⁹

While constitutional provisions have been generally used to preserve civil and political rights, there is no reason, in principle, why this should not be extended to economic, social and cultural rights, given that these sets of rights are mutually exclusive.²⁹⁰ This may be because the main significance has been on making basic civil and political rights meaningful for individuals whose

²⁸³ Abrar, *supra* note 272.

²⁸⁴ *Id.*

²⁸⁵ SHARRYN J. AIKEN ET AL., IMMIGRATION AND REFUGEE LAW: CASES, MATERIALS, AND COMMENTARY, 255 (2015).

²⁸⁶ *Human Rights*, U.N. GLOBAL ISSUES, <https://www.un.org/en/global-issues/human-rights> (last visited Oct. 6, 2022).

²⁸⁷ See G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR].

²⁸⁸ *Id.*; *Ershad v. Bangladesh*, 21 Bangl. Legal Decisions [BLD] 69 (App. Div. [AD] 2001).

²⁸⁹ *Id.*

²⁹⁰ MANISULI SSENIONJO, ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN INTERNATIONAL LAW 151 (2009).

human rights have less importance because of continuous prejudice and exploitation.²⁹¹

The Urdu-speakers cannot be precisely considered to fall under the conventional definition of a minority either as they are dwelling over one-hundred settlements in different parts of Bangladesh and share similarities with the rest of the population in terms of adhering to the same religion and have some similar cultural attributes, with the inclusion of the community with speaking the local Bengali dialect sometimes.²⁹² Specifically, a minority is “a national or ethnic, religious or linguistic group, fewer in number than the rest of the population, whose members share a common identity.”²⁹³

However, the Urdu-speakers do have specific legal standing as a minority, which means that the Bangladesh government has a duty to offer more human rights protections, as the community remain highly marginalized. With good governance, dialogue, and participation through local media, the citizens of a society can shape a better understanding of each other’s concerns.²⁹⁴ Hence, only through the democratic process of tolerance to cooperate can liberate societies reach understandings that embrace the twin pillars of majority rule and minority rights.²⁹⁵

However, there may be guarantees offered by the Bangladesh government to some extent. Typically speaking, the state practice has provided safeguards for the Urdu-speakers in general. In fact, there are specific provisions in the Constitution of Bangladesh concerning international law and relations. These are enumerated in Articles 25 and 145A, which mention:

25. The State shall base its international relations on the principles of respect for national sovereignty and equality, non-interference in the internal affairs of other countries, peaceful settlement of international disputes, and respect for international law and the principles enunciated in the United Nations Charter, of international disputes, and respect for international law and the principles enunciated in the United Nations Charter, and on the basis of those principles shall (a)

²⁹¹ MANOJ KUMAR SINHA, ENFORCEMENT OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: INTERNATIONAL AND NATIONAL PERSPECTIVES 310 (2006).

²⁹² Interview with Mr. Ahmed Ilias, Author, *Bihari The Indian Émigrés in Bangladesh: An Objective Analysis*.

²⁹³ U.N. High Comm’r for Refugees [UNHCR], *Minorities and Indigenous Peoples*, <https://www.unhcr.org/minorities-and-indigenous-peoples.html> (last visited Oct. 6, 2022).

²⁹⁴ U.N. World Conference Against Racism, *Multi-ethnic States and the Protection of Minority Rights*, <https://www.un.org/WCAR/e-kit/minority.htm> (last visited Oct. 6, 2022).

²⁹⁵ *Id.*

strive for the renunciation of the use of force in international relations and for general and complete disarmament; (b) uphold the right of every people freely to determine and build up its own social, economic and political system by ways and means of its own free choice; and (c) support oppressed peoples throughout the world waging a just struggle against imperialism, colonialism or racialism.

145A. All treaties with foreign countries shall be submitted to the President, who shall cause them to be laid before Parliament: Provided that any such treaty connected with national security shall be laid in a secret session of Parliament.

Hence, these offer certain guidance on how the state should regard international law in several senses including: the social, economic, and political rights of individuals, renouncing force in international relations, and supporting oppressed peoples around the world. It may still be argued that the provisions (chiefly Article 25) do not fully embody the ambit and strengths of international law. Thus, there may be barriers to equal treatment of the Urdu-speaking Community because of the dualist nature of Bangladesh legislation when it comes to the virtue and core values of international law. The Constitution acts fundamental to the governance and law making of the state, but only with some respect to interpreting international law.

Article 145A on the other hand obliges the government to act only when there is a situation affecting the “national security” of the state. The provision is ambiguous and raises further questions such as: why should it only apply in the case of national security? Thus, the foundation of the provision produces more problems without meaningful resolution. Moreover, the Constitution also does not categorically refer to any clear or specific terms for the implementation of international treaties. Notwithstanding all these signs of human rights and respect for international law, the Constitution of Bangladesh, unlike several contemporary constitutions, preserves the classic “dualist approach”, and does not recognize international human rights law as a source of domestic law.²⁹⁶

Nevertheless, on a few occasions, both the High Court and Appellate Divisions of the Supreme Court of Bangladesh have interpreted and guaranteed how international law and instruments should work in a domestic setting. The judiciary has taken the opinion towards soft law international instruments as well as binding treaties and conventions to which Bangladesh is a state party. The

²⁹⁶ LOUIS HENKIN, *INTERNATIONAL LAW: POLITICS & VALUES* 64–71 (DORDRECHT/BOSTON/LONDON: MARTINUS NIJHOFF PUBLISHERS, 1995).

view of the court in *Bangladesh National Women Lawyers Association (BNWLA) v Government of Bangladesh and Others* (2001), 40 CLC (HCD) suggests that it is now a recognized rule of judicial construction to construe municipal law in conformity with international law and conventions.²⁹⁷

The court can therefore take recourse to international law on cases where there is a vacuum of legal explanations in the domestic law, or a lack of specific laws from the national legislature.²⁹⁸ According to this decision, a discrepancy between the national laws of Bangladesh and international law should not exist.

Other judgments have similarly suggested this. In the case where a doubtful matter arises before the court and suitable domestic regulations are not found, courts can take recourse to the doctrines and principles of international instruments. This is suggested in *Anika Ali v Rezwanaul Ahsan* (2012), 17 MLR (AD) 49. The country's courts can therefore take into consideration the principles enshrined in the *Universal Declaration of Human Rights*, 1948 ('UDHR') and its covenants, including the *International Covenant on Civil and Political Rights*, 1966 ('ICCPR') and *International Covenant on Economic, Social and Cultural Rights*, 1966 ('ICESCR'). In its essence, these are guaranteed to assist the legal understanding of fundamental rights, which are expounded in the Constitution of Bangladesh.

The accession and ratification of the treaties mentioned above carry significant weight if the state applies them in practice. Article 6 of the UDHR and Article 16 of the ICCPR are important, as they require the individual to be respected as a person before the law. Acknowledging the legal personality of the Urdu-speakers as a community is a vital prerequisite to every other right of the individual; this is because it constitutes a non-derogable right. Article 11 of the ICESCR and Article 27 of the *Convention on the Rights of the Child* are substantial to assist the people with access to food and safe haven. Due to the dearth of opportunity for most people to pursue work in the job market, Article 6 of the ICESCR reflects on how to grant all persons the right to find suitable employment. The right to achieve standards of health is also important under Article 12 of the ICESCR. These guarantees consequently have a particular meaning, as Bangladesh is obliged to comply with its obligations under them, to protect the rights of every person.

²⁹⁷ *Bangladesh National Women Lawyers Association (BNWLA) v Government of Bangladesh and Others*, 40 *Chancery Law Chronicles* para. 20 (High Court Division 2001).

²⁹⁸ *Id.*

A. *Applying the Ambit of International Human Rights Law*

Although a ratified treaty cannot be enforced in Bangladesh courts unless they are incorporated into domestic laws,²⁹⁹ it is undeniable that a copious number of fundamental laws do exist in the domestic framework as the Bangladesh government has accepted instruments like the UDHR and ICCPR as legally binding agreements as governed by international law. In particular, such instruments have been specifically incorporated in the national legislation (for instance, the best interests of a child under the *Convention on the Rights of the Child* are incorporated into Section 86 of *The Children Act, 2013*), which automatically imposes obligations on the government. There is however one key predicament.

Despite the stated international instruments relied upon by Bangladesh and the agreements present status in the country, the fact is that there is no precise constitutional or statutory provision as regards the ratification of treaties in Bangladesh, and the Constitution also does not specify any clear provision for the implementation of treaties such as the ICCPR and ICESCR into domestic legislation. Hence, with a dualist system, almost all the international treaties cited above that are signed and ratified by the government essentially require implementing legislation or constitutional amendment to apply them within the domestic jurisdiction under specific circumstances, including but not limited to: involving alteration of the existing law, conferring new powers to the executive, and determining how the law might affect the right of citizens.³⁰⁰ If these specific instruments are not fully sanctioned, the likelihood of constructive changes in the national laws of Bangladesh cannot be realized.³⁰¹

Therefore, the protection mechanism for the Urdu-speaking Community in accordance with international human rights law is curious. There seems to be no occurrence of any systemic violation of the community's human rights since certain community members have been capable of claiming rights while concurrently others have not, so their rights remain unfulfilled. While equal rights are crucial to the community's recognition as real citizens, this is not

²⁹⁹ See *Hussain Muhammad Ershad v Bangladesh and Others*, 21 *Bangladesh Law Digest* 69, para. 2, 3, 12 (Appellate Division 2001). Bangladesh has generally followed the 'transformation theory', meaning that rules of international law only become part of national legislation when they have been expressly adopted by the state.

³⁰⁰ Mazharul Islam, *Absence of Legal Regime to Apply Treaties*, DAILY STAR (Sep. 8, 2015), <https://www.thedailystar.net/law-our-rights/absence-legal-regime-apply-treaties-139354>.

³⁰¹ *Id.*

happening as the community is continually confronted with obstacles due to a lack of political will.³⁰²

Apart from the issue of recognition as citizens, the entire Urdu-speaking Community is eligible to enjoy human rights. The notion of these rights extends to every person in every society, and it exists beyond any form of discrimination. This is because human rights are not civil rights, and they cannot be taken away by anybody. At its core, such rights are based on the values of dignity, justice, respect, and equality. So human rights exist only in the abstract for people everywhere have rights, but these rights only will have meaning within the legal system of states; this suggests that at the national level human rights and positive rights can coexist and reinforce each other.³⁰³

A good way to apply international human rights law is by legislating and codifying it into domestic law, as the framework exists internationally even though there is no direct international authority administering or acting on it. Naturally, it may be enforced through a 'transnational' legal process, where institutional interaction occurs, and global norms of international human rights law are interpreted and eventually internalized by domestic legal systems.³⁰⁴ This is where the signing of treaties entails meaning for compliance and protection. Pushing a state such as Bangladesh into line to follow international accepted standards by using the local courts and human rights bodies can build pressure for governments. Quasi-legal enforcement mechanisms such as the Human Rights Committee under the *International Covenant on Civil and Political Rights*, and the Human Rights Committee, and the Human Rights Council's Universal Periodic Review involve responsibility of states to improve and implement the law.

Thus, there are several domestic laws that are maintaining the Urdu-speaking Community's economic, social and cultural rights. It is obvious that some of the ICESCR's provisions are reflected in the Bangladesh Constitution, which makes a commitment to protecting the welfare and freedom of each citizen without discrimination on the grounds of membership in a community. However, there are protection gaps for violations.

To apply the treaty more effectively at the domestic level, the Committee on Economic, Social and Cultural Rights has stated that the Covenant is a legally

³⁰² "Neglected" Bihari Youth Battle Stigma in Bangladesh, *supra* note 124.

³⁰³ HADDAD, *supra* note 206 at 74.

³⁰⁴ Harold Hongju Koh, *How is International Human Rights Law Enforced?* 74 IND. L.J. 1397, 1399 (1999).

binding human rights instrument that should operate ‘directly and immediately’ within the legal system of each state party.³⁰⁵ In order to prevent abuses, a competent regulatory system must be instituted, one which includes independent monitoring, genuine public participation and the imposition of penalties for non-compliance.³⁰⁶ In an ideal sense, if authorities are to exercise their responsibilities in a judicious manner, administrative remedies would mostly be adequate as people have a legitimate expectation, based on the principle of good faith, that authorities will take account of the requirements of the ICESCR and other international obligations in their decision-making.³⁰⁷

VII. SUGGESTIONS FOR THE PATH FORWARD

A. *Case Study of the Community through a Debate on Citizenship Rights Within an International Discourse*

It may be meaningful to keep in mind that given the Urdu-speaking Community’s present situation, a brief case study of theirs in the context of a wider debate on citizenship rights within an international discourse may be necessary. Hence, the notion of citizenship in international law is an intriguing concept. For example, the idea of global citizenship is intriguing and deserves recognition. This can be reframed for understanding the idea of citizenship for the Urdu-speaking Community. This denotes an extension of national citizenship to the transnational level, with varying definitions and many national interests at cross-purposes.³⁰⁸

Typically, definitions emphasise the question of multiple rights and refer to “intercultural citizenship,” which is generally defined as “recognizing rights and status of different subgroups, divided also by gender, ethnic, linguistic and religious lines”.³⁰⁹ This definition of citizenship is expressed through informal ties and the adoption of “transnational norms and status that defy national boundaries and sovereignty”.³¹⁰ Thus, global citizenship is not the result of

³⁰⁵ SSENIONJO, *supra* note 290, at 151.

³⁰⁶ *Id.* at 111.

³⁰⁷ SINHA, *supra* note 291, at 307.

³⁰⁸ Nelly P. Stromquist, *Theorizing Global Citizenship: Discourses, Challenges, and Implications for Education*, 2 INTERAMERICAN J. EDUC. DEMOCRACY 6, 6 (2009), https://flacsoandes.edu.ec/web/imagesFTP/1266600645_global_citizenship.pdf.

³⁰⁹ *Id.* at 7.

³¹⁰ *Id.* at 8.

rights and obligations granted by a central authority, but rather a bottom-up movement most often effected through grassroots activism.³¹¹

What may emerge consequently is an increasingly de-territorialized nature of citizenship, distinct types of collectivities, and multiple rules and governance at different levels.³¹² Because it is motivated by a sincere concern to promote international understanding and the welfare of disadvantaged groups, particular attention is given especially to education and its potential in raising awareness of issues of poverty, identity and cultural difference.³¹³

Further, one can contemplate on connections to international migration debates regarding citizenship rights, although the community is internally displaced. In today's world, having one's human rights protected and enforced is usually contingent upon one's status in a state. Thus, the rights of non-citizens occasionally appear to be legitimately overlooked when no governing body or state is assigned obligations towards them in the place where they are living.³¹⁴ This can be seen usually in the case of migrants, both those moving to a country in which they will be non-citizens and those who, in being described as newcomers, are deprived of full citizenship. Migrants' rights differ according to the state within which they find themselves, and how they are categorized or classified in those states: for instance, these are reflected according to the state's current policies about these groups, and they are often detained by the authorities when they arrive in a new country or jurisdiction.³¹⁵

Organizations and international conventions on refugees make it clear that individuals recognized as refugees should enjoy generally the same rights as citizens in their country of refuge. In essence, they would receive the same rights and assistance as any other foreigner who is a legal resident, including freedom of thought, of movement, and freedom from torture and degrading treatment.³¹⁶ Nonetheless, the threshold of a grant of refugee status is awfully high, and governments frequently try to avoid these responsibilities by requiring unrealistic levels of proof of persecution or danger.

³¹¹ *Id.*

³¹² *Id.* at 22.

³¹³ Michael Karlberg, *Discourse, Identity, and Global Citizenship*, 20 PEACE REV. J. SOC. JUST. 310, 310 (2008).

³¹⁴ Laura Thompson, *Protection of Migrants' Rights and State Sovereignty*, UNITED NATIONS (Sep. 2013), <https://www.un.org/en/chronicle/article/protection-migrants-rights-and-state-sovereignty>.

³¹⁵ *Refugees, Asylum-Seekers and Migrants*, AMNESTY INT'L, <https://www.amnesty.org/en/what-we-do/refugees-asylum-seekers-and-migrants/> (last visited Oct. 21, 2022).

³¹⁶ *Protecting Refugees: Questions and Answers*, UNHCR (Feb. 1, 2002), <https://www.unhcr.org/publications/brochures/3b779dfe2/protecting-refugees-questions-answers.html>.

B. Exploring Policies: Does Political Will Matter?

With respect to the Urdu-speaking community's treatment and marginalization, political discrimination persists and continues to weaken the rule of law. As a direct result, the Urdu-speakers remain an exceptionally misunderstood and ostracized minority, which inadvertently has led to a form of 'democratic legitimacy' in Bangladesh. Thus, the government's willingness to create opportunities for development does not necessarily rest with higher officials, such as ministers; rather, it is the bureaucracy that is mostly responsible for implementing development policies.

Political will has been defined as the "commitment of actors to undertake actions to achieve a set of objectives, and to sustain the costs of those actions over time."³¹⁷ The World Bank has called for an approach to transparency in the extractives sector to help create conditions that work for resource-rich host communities.³¹⁸ It is therefore thought that if adequate political will exists to disclose critical information to the public, the regulatory systems that legitimize and conceal corruption and impede accountability will begin to crumble.³¹⁹

Further, attaining good governance requires both sustained political will and a measure of societal stability. It is likely that because of the deep-rooted history of Bangladesh as a nation, which struggled for its freedom from Pakistan, the Urdu-speakers were treated negatively in the past. It is also probable that this negative attitude still exists due to the sentiments of political parties that stem from the War of Independence of 1971. The opinions of most political parties and ministers concerning the Urdu-speaking community are not all too clear; however, it may be said that offering absolute sympathy to the community is still 'politically risky' even at present, which then deters integration prospects, especially with the continuing apathy from government officials.³²⁰

The near nonexistence of international attention to the Urdu-speaking community further hinders political will within Bangladesh. Other minority groups and refugees living in Bangladesh, such as the Rohingya, are hosted

³¹⁷ HEATHER MARQUETTE, POLITICAL WILL: WHAT IT IS, WHY IT MATTERS FOR EXTRACTIVES AND HOW ON EARTH DO YOU FIND IT? (2020).

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ IRIN NEWS, *supra* note 241.

under specific programs (including UNHCR,³²¹ UNICEF,³²² and World Vision)³²³ whereby the country continues to meet international obligations with assistance from the international community. A stakeholder report of the Universal Periodic Review signifies that there are neither quotas for education nor quotas for public jobs for Urdu-speakers unlike other minorities and indigenous peoples in Bangladesh.³²⁴

Therefore, the weak rule of law in Bangladesh diminishes the chance of gaining traction for political will in general. However, in some situations, political will may come about to effectuate a change. Building political will is somewhat challenging. Real decision-making power sometimes lies outside formal government institutions and in the hands of the elite who seek to serve their own interests rather than the well-being of society as a whole.³²⁵ Generating political support for anti-corruption reforms in situations like these is extremely difficult as a result of public officials benefitting from corrupt deals may resist the call for more transparency and accountability.³²⁶ Building political support also requires both bottom-up and top-down approaches and the creation of coalitions among the relevant stakeholders such as high-level politicians and civil society.³²⁷

Effective and sustainable governance policies therefore need to diminish the political and material resources of corruption and build normative constraints in the form of domestic collective action.³²⁸ However, a predicament arises because most anti-corruption strategies focus on increasing legal constraints, which often fail because most of these interventions are localized in societies that lack the rule of law.³²⁹ Further, national anti-corruption agencies can be critical in preventing corruption before it becomes rampant, but such agencies are difficult

³²¹ *Rohingya Emergency*, UNHCR (Jul. 31, 2019), <https://www.unhcr.org/rohingya-emergency.html>.

³²² *Rohingya Crisis*, UNICEF, <https://www.unicef.org/emergencies/rohingya-crisis> (last visited Oct. 21, 2022).

³²³ *Rohingya Refugee Response: Refugee Children Deserve Homes Too*, WORLD VISION INT'L, <https://www.wvi.org/emergency/rohingya-refugee-response> (last visited Oct. 21, 2022).

³²⁴ Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21, UNHRC, 16th Sess, U.N. Doc A/HRC/WG.6/16/BGD/3, at 10 (2013).

³²⁵ ROBERTO MARTINEZ B. KUKUTSCHKA, *BUILDING POLITICAL WILL TOPIC GUIDE*, TRANSPARENCY INT'L 6 (2014).

³²⁶ *Id.*

³²⁷ *Id.* at 9.

³²⁸ *Id.* at 12.

³²⁹ *Id.*

to set up and thus fail to achieve their goals once they become established.³³⁰ The main issue is that such agencies may be bound to the political elite that will not dare to investigate the most corrupt government officials.³³¹

C. *Significance of National Integration*

As a result of decades of stereotyping and the lack of national integration in general the Urdu-speakers are perpetual refugees in Bangladesh to this day. The Urdu-speakers need to be integrated without obstacles. All of this begs a substantial question: would going to the Supreme Court again be a feasible way to seek redress for the continuous infractions on the Urdu-speaking community's legal rights? After all, the two previous rulings were intended to be tools to overhaul the system and to make it more accommodating towards the Urdu-speakers, but the judgments are not an end in themselves. Therefore, the system still needs ongoing reforms by actually incorporating the existing two rulings.

However, it is important to remember that the decisions of the Supreme Court neither engender political will nor have any enforcement ability. In most circumstances, achieving full integration on a mass scale can take decades, and because of that fact, one of the best ways to address this is to guarantee the mobilization of the Urdu-speaking community's present legal rights. Future repatriation programs could happen if there is adequate political will and a bilateral agreement between Pakistan and Bangladesh.³³² However, such prospects are highly unlikely, since in 2015, the Supreme Court of Pakistan stated that there are no more "Stranded Pakistanis" as they are now citizens of Bangladesh.³³³ As such, Urdu-speakers no longer have any place in the Constitution of Pakistan, after the Stranded Pakistanis General Repatriation Committee of Bangladesh filed a petition in the Supreme Court of Pakistan for their repatriation.³³⁴

The preliminary phase of the Urdu-speakers' legal recognition as citizens is in fact complete, and the next and key phase is the restoration of their rights as Bangladeshi citizens. The only way to achieve this is through national integration so that they, as a community, may sufficiently enjoy their

³³⁰ Jeremy Pope & Frank Vogl, *Making Anticorruption Agencies More Effective*, IMF (June 2000), <https://www.imf.org/external/pubs/ft/fandd/2000/06/pope.htm>.

³³¹ *Id.*

³³² Malik, *supra* note 11.

³³³ *Id.*

³³⁴ *Id.*

fundamental human rights and participate fully in all respects of economic, social, and cultural life.

Integration is, after all, generally understood to be a gradual process with legal, economic, social, and cultural dimensions that impose significant demands on both the individual and the receiving society.³³⁵ Thus, obtaining the nationality of a country is the culmination of this process.³³⁶ The full realization of this is heavily dependent on the strong political will and the support of all citizens.

One positive aspect, however, is that many Urdu-speakers are integrating themselves into Bangladeshi society, and it is possible that after almost four generations, the community has closer national and social ties with Bangladesh than they do with Pakistan. Some camp residents are ethnically Bengali, so today's Urdu-speaking minority may not necessarily be the minority of tomorrow. Hence, integration practices are undoubtedly happening, and one of the ways this is happening is through the process of the Urdu-speakers voluntarily assimilating with the mainstream society by marrying Bangladeshis.

However, the community regrettably continues to pay the price for the actions of some Urdu-speakers who opposed Bangladesh's freedom when in fact most present-day community members, especially the new generation who want to integrate, had nothing to do with that opposition. Their 'refugee' label or social identity also has not subsided, resulting in barriers to both integration and citizenship rights. Hence, there is great urgency for the government to engender an understanding of Urdu-speakers among decision makers and Bangladeshi society, who must come to accept the community as fellow citizens and end the protracted socio-political stigma.

Through sustainable integration practices, the Urdu-speakers can constitute effective human capital with their knowledge, ability, and experience in Bangladesh.³³⁷ And therefore, the development of economic, social, and cultural rights for the Urdu-speakers can be catalysts for their genuine integration.

³³⁵ *Local Integration*, UNHCR, <https://www.unhcr.org/local-integration-49c3646c101.html> (last visited Oct. 21, 2022).

³³⁶ *Id.*

³³⁷ Zaglul Haider, *Rejected People in Bangladesh: If the Biharis Were Counted*, 36 J. MUSLIM MINORITY AFF. 427, 427 (2016).

The Urdu-speaking community's legal rights to property is also a crucial factor for integration.³³⁸ A settlement-specific planning process for rehabilitation could yield structurally appropriate as well as financially and socially-viable results.³³⁹ Attacks by local Bengali-speakers and forced evictions are still usual occurrences.³⁴⁰ The courts must stop evictions until the Urdu-speaking community is able to negotiate and offer suggestions to municipal corporations and local government divisions. Therefore, in this way, the settlement lands across Bangladesh could formally be transferred to the Urdu-speaking community via a ninety-nine-year land lease as per Bangladesh legislation.³⁴¹

The transfer of land to the Urdu-speaking community from private owners or the government is crucial. Another step the government could take is to assign specific house numbers and postal codes to each residential unit within the zones in Geneva Camp as well as other settlements, so that the community stops using false addresses, thus promoting their economic integration. It is recommended that the Bangladeshi government also include the community into the country's own national development strategy.

As of 2019, the government may acquire 1,000 acres of land to erect multi-storied buildings to house the Urdu-speaking community.³⁴² The settlement would be handed over to the Urdu-speaking community members in return for a monthly or yearly financial installment.³⁴³ Currently, the plan is in its initial phase, and the government is carrying out a feasibility study to evaluate the extent of its implementation. But the community remains anxious that the plan would perhaps separate them from society.³⁴⁴

In terms of social integration, improving targeted social awareness of the Urdu-speakers' present legal status by linking their integration with the wider economic, social, and cultural issues is of utmost importance, so as to remove any misconceptions about the community. Mutual and encouraging interactions among civil society organizations, human rights/development organizations, and the government are also necessary. This civil society advocacy could lead to the

³³⁸ SHOLDER, *supra* note 121.

³³⁹ *Id.* at 39.

³⁴⁰ Sen, *supra* note 44, at 64.

³⁴¹ *Id.* at 37.

³⁴² Rafe, *supra* note 18.

³⁴³ *Id.*

³⁴⁴ Interview with Mr. Ahmed Ilias (June 4, 2016), Author, *Bihari the Indian Émigrés in Bangladesh: An Objective Analysis*.

development of accountability by extending participation opportunities to the Urdu-speakers, and building this accountability into Bangladesh's own democratic system would also shape pluralism.³⁴⁵

Without a doubt, political will remains one of the major factors affecting the Urdu-speakers' integration goals, and for this the government may endorse the Supreme Court's decision in Parliament and pass bills that elevate the Urdu-speaking community to equal citizens.

It is similarly important that the Urdu-speakers can preserve their own culture amidst the prospects of their necessary integration. Amongst the community, the senior generation generally has a strong sense of collective identity and recorded history, but younger generations only retain a fragmented perception of their common heritage.³⁴⁶ This raises the question that the integration of a minority community in mainstream society offers greater prospects and political influence but usually at the expense of the minority group's culture. However, integration should not mean or lead to forced assimilation since minority cultures are a fundamental element of state identity as well.

Since some community members underscore a cultural identity that separates them from the Bengali majority, while others embrace a 'Bangladeshi' identity and seek integration through which they can mask their stigmatizing Urdu ancestry, tension between the two positions has arisen, structured in relation to the political economy of the world around them.³⁴⁷ In the Urdu-speaking community's case, proposed integration must meet the standards of participation in the institutions of the majority Bangladesh community, together with the preservation of their separate identity.

CONCLUSION

The Urdu-speaking community continues to experience societal acceptance of their disenfranchised status in Bangladesh, even over a decade after the Supreme Court of Bangladesh's 2008 landmark ruling. They have remained a politicized population throughout much of Bangladesh's inception as a country. While many Urdu-speakers are motivated to live in Bangladesh, some wish to

³⁴⁵ Taslima Yasmin, *The Enemy Property Laws in Bangladesh: Grabbing Lands Under the Guise of Legislation*, 15 OXFORD UNIV. COMMONWEALTH L.J. 121, 147 (2015).

³⁴⁶ *Local Integration*, *supra* note 335.

³⁴⁷ Redclift, *supra* note 120, at 40.

opt out by moving elsewhere such as Pakistan even though repatriation efforts have ended. Most Bangladeshis are not worried about the community, and the Urdu-speakers remain branded as 'Bihari' because of their ethnicity.

It may therefore be said that the government's political indifference towards the Urdu-speaking community should not be a justification for continuance of their deprivation. The government must ensure that the existing domestic legislation enables the fundamental principle of effective participation by the Urdu-speaking community in public life. The Urdu-speakers only have two judicial decisions in support of them. Consequently, their rights are being sacrificed every day, and it is the apparent lack of belonging of the Urdu-speaking community that makes them so exposed and vulnerable. Once the mainstream Bangladeshi population comes out of the mist of uncertainty regarding this group and are sincerely informed of their issues, constructive actions may become more feasible. Political will could make the requisite advancements to overcome the overwhelming barriers to the Urdu-speaking community's actual attainment of citizenship. Thus, a generational leap in which Bangladesh recognizes and implements the community's rights rather than neglecting their dilemmas is essential. This procedure has already begun, but must continue in a more robust way, in order to give the Urdu-speakers their much-needed rights for effective citizenship the sustainable practice of national integration.