



Citizenship and Belonging in the Subcontinent

A Conceptual and Contextual Exploration

29/03/2019

Rohit Sarma

Supervisor – Renata Uitz

L.L.M./C.C.L. Short Thesis

Central European University – Department of Legal Studies

Abstract

This thesis explores the nature of citizenship through an analysis of the legal systems of India, Bangladesh, and Pakistan. In doing so, it seeks to argue that the citizenship rules of a state are influenced by the actions of a multiplicity of actors and that therefore, a simplistic analysis of the concept which assumes that it is designed by the political leadership and imposed upon the people does not suffice. On the contrary, it seeks to defend the claim that the citizenship rules of a state are born out of continuous negotiations between the institutions of the state and the people residing therein. While making this claim, this thesis firstly unbundles certain key characteristics of the concept of citizenship as it developed in Europe and its colonies. Thereafter, it utilises these characteristics to provide a conceptual framework while describing the history of the concept in the Subcontinent. Emphasis throughout this description is placed on the factors and actors responsible for its development with the objective of bringing placing both the citizen as well as the aspiring citizen in the centre of politics regarding citizenship.

Table of Contents

TABLE OF CONTENTS	3
INTRODUCTION.....	4
UNBUNDLING CITIZENSHIP: A CONCEPTUAL EXPLORATION.....	7
A. Citizenship as a legal form of exclusion	8
B. State sovereignty and the control over citizenship.....	11
C. Citizenship as an instrument of state action.....	14
D. Citizenship as a domain for contestation	16
E. Concluding remarks	18
MAPPING CITIZENSHIP: A CONTEXTUAL EXPLORATION.....	20
Navigating the legal landscape.....	23
i. India	25
i.i. Initial developments following Independence.....	27
i.ii. Subsequent changes over the years	32
ii. Pakistan	35
ii.i. Initial developments following Independence.....	36
ii.ii. Subsequent changes over the years	39
iii. Bangladesh.....	42
iii.i. Initial developments following Independence.....	44
iii.ii. Subsequent changes over the years	45
CONCLUSION BY WAY OF ANALYSIS: CONTEXTUALISING THE CONTENT- EMPTY CONCEPT.....	47
BIBLIOGRAPHY	50

Introduction

Recent controversies regarding citizenship have captured the public's imagination in the Subcontinent. In Pakistan, talks are currently underway for the grant of citizenship to Afghani refugees who have been residing in the state since 1979.¹ In Bangladesh, pressure is being imposed on the government to grant citizenship to the children of Rohingya refugees who were born on Bangladeshi soil.² In India, in the state of Assam, following decades of struggle the drafting of a National Record of Citizenship for the purpose of identifying illegal immigrants from Bangladesh is currently underway.³ Simultaneously, at the all-India level, attempts are being made to introduce an amendment to the Citizenship Act for the purpose of expediting the process of granting citizenship to non-Muslims. These controversies have evoked strong reactions from the public. Take for the example, the widescale protests in Assam against the introduction of the Citizenship (Amendment) Bill, 2019 which, in its own way, contributed to government's inability to pass the bill in the Upper House.⁴

This thesis aims to unbundle the concept of citizenship through an analysis of its history in the Subcontinent in order to form a conceptual framework to better understand these controversies. While doing so, it seeks to explore the actors and factors which influenced the development of the citizenship rules in these states. In the process, it seeks to contribute to the growing literature

¹ Sarah Hyder, *Steering the refugee debate*, DAWN, March 29, 2019, Available at: <https://www.dawn.com/news/1440342/steering-the-refugee-debate> (last visited Oct 21, 2018); Memphis Barker, *Pakistan's Imran Khan pledges citizenship for 1.5m Afghan refugees*, THE GUARDIAN, September 17, 2018, Available at: <https://www.theguardian.com/world/2018/sep/17/pakistan-imran-khan-citizenship-pledge-afghan-refugees> (last visited Mar 29, 2019).

² RIDWANUL HOQUE, REPORT ON CITIZENSHIP LAW : BANGLADESH (2016), Available at: <http://cadmus.eui.eu/handle/1814/44545> (last visited Mar 22, 2019).

³ Sanjib Baruah, *THE MISSING 4,007,707* THE INDIAN EXPRESS (2018), Available at: <https://indianexpress.com/article/opinion/columns/assam-nrc-draft-list-names-citizenship-5287213/> (last visited Dec 15, 2018); Tanweer Fazal, *NRC: Tested frequently since Partition, the Indian theory of citizenship has faltered once again*, SCROLL.IN, August 25, 2018, Available at: <https://scroll.in/article/890206/nrc-tested-frequently-since-partition-the-indian-theory-of-citizenship-has-faltered-once-again> (last visited Dec 15, 2018).

⁴ BJP drops citizenship bill amid protests, BBC NEWS, February 13, 2019, Available at: <https://www.bbc.com/news/world-asia-india-47226858> (last visited Mar 29, 2019); Citizenship amendment bill on hold over Assam protests, THE TIMES OF INDIA, November 28, 2018, Available at: <https://timesofindia.indiatimes.com/india/citizenship-amendment-bill-on-hold/articleshow/66836283.cms> (last visited Dec 1, 2018).

on citizenship which has, as Victoria Redclift argues, been largely pre-occupied with Western political thought.⁵

In light of these aims, the selection of India, Bangladesh, Pakistan as comparators is justified for three reasons. Firstly, the abovementioned states have had unique post-colonial histories which were in many ways similar yet different from one another, thereby providing a fertile ground for comparison in light of the contextual peculiarities which motivated the citizenship rules in each state. Secondly, citizenship in these three states was used as tool to introduce a ‘new’ vision of nation-state following independence which failed to materialise, owing to the re-emergence of the ‘old’ within the ‘new’.⁶ Consequently, charting the history of citizenship and its failure in achieving this ‘new’ vision provides a comprehensive account of the possibilities and limitations of the concept in light of the actors and factors influencing its development. Lastly, as these three states adopted the concept of citizenship from Europe, an analysis of their rich experience with the concept adds layers of complexity which cannot be captured through an analysis of its history in Europe alone.⁷

The methodology adopted for engaging in this comparison has been divided into two steps which can be found in Chapters II and III, respectively. Chapter II unbundles the concept of citizenship through an analysis of its developments in Europe and its colonies. In doing so, it acknowledges the debt the Subcontinent owes to Europe in developing the concept through its exploits in both mainland Europe and especially its colonies.⁸ Thereafter, Chapter III places the conclusions drawn from Chapter II within the context of the Subcontinent through a

⁵ VICTORIA REDCLIFT, *STATELESSNESS AND CITIZENSHIP: CAMPS AND THE CREATION OF POLITICAL SPACE* 32 (2013); see also VAZIRA FAZILA-YACOOBALI ZAMINDAR, *THE LONG PARTITION AND THE MAKING OF MODERN SOUTH ASIA: REFUGEES, BOUNDARIES, HISTORIES* 6 (2007).

⁶ Upendra Baxi, *Outline of a “Theory of Practice” of Indian Constitutionalism*, in *POLITICS AND ETHICS OF THE INDIAN CONSTITUTION* 92–118 (Rajeev Bhargava ed., 2009).

⁷ See generally Dipesh Chakrabarty, *Introduction: The Idea of Provincializing Europe*, in *PROVINCIALIZING EUROPE: POSTCOLONIAL THOUGHT AND HISTORICAL DIFFERENCE* 3–27 (2000).

⁸ See generally Upendra Baxi, *Constitutionalism as a Site of State Formative Practices*, 21 *CARDOZO LAW REV.* 1183–1210 (1999).

description of the history of its developments in the region. In doing so, it attempts to provide a narrative of citizenship which places emphasis on the influences behind its developments and the reasons for its failure in achieving its initial objectives. The conclusions derived from Chapters II and III are thereafter synthesised in Chapter IV which lists the inferences that can be drawn regarding citizenship as a concept. The primary inference which this thesis will seek to defend is that the citizenship rules of a state are influenced by the actions of multiplicity of actors and that therefore, a simplistic analysis of the concept which assumes that citizenship is designed by the political leadership and imposed upon the people does not capture its complexities in practice.

Unbundling Citizenship: A Conceptual Exploration

The Black's Law dictionary defines citizenship as the 'status of being a citizen', and a citizen as 'a person who, by either birth or naturalisation, is a member of a political community, owing allegiance to the community and being entitled to enjoy all its civic rights and protections.'⁹

Three aspects of citizenship are identifiable from this definition (a) citizenship is a political status accorded to a person; (b) citizenship provides access to rights; and (c) there exists a correlation between citizenship and belonging.

While the abovementioned definition provides an overview of the concept, it leaves the question of the content of citizenship unanswered. Content here refers to the actual rules on the basis of which citizenship is accorded by a state. Scholarship from the area of citizenship studies is divided on this issue of content.¹⁰ Scholars who position the locus of citizenship within the state argue in favour of either an ethnicity-based model in which citizenship is seen to be concomitant with ethnicity or a civic model in which citizenship is premised on the common praxis of politics amongst citizens as opposed to a shared ethnic identity.¹¹ Drawing from either of these two schools of thought, certain scholars argue in the favour of recognising the existence of differences within a community either in the form of culture¹² or politics¹³, thereby calling for the provision of group differentiated rights through the recognition of the special needs of certain groups. Another branch of scholarship argues that the locus of citizenship should not rest within the state, but within the sphere of international law and its

⁹ BRYAN A. GARNER, BLACK'S LAW DICTIONARY 278 (9th ed. 2009).

¹⁰ Ronald Beiner, *Why Citizenship Constitutes a Theoretical Problem in the Last Decade of the Twentieth Century*, in THEORIZING CITIZENSHIP (Ronald Beiner ed., 1995).

¹¹ Jürgen Habermas, *Citizenship and National Identity: Some Reflections on the future of Europe*, in THEORIZING CITIZENSHIP (Ronald Beiner ed., 1995).

¹² WILL KYMLICKA, MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS 174–175 (1996).

¹³ Iris Young, *Polity and Group difference: A critique of the Ideal of Universal Citizenship*, in THEORIZING CITIZENSHIP (Ronald Beiner ed., 1995).

institutions.¹⁴ It argues that citizenship should be freed from the shackles of state sovereignty which they identify as the root cause of its injustice.¹⁵

Notwithstanding which theory of citizenship one subscribes to, the fact that in practice a state's rules on citizenship rarely align with any of these theories in a neat fashion calls for the need to look beyond these theories while trying to understand the nature of citizenship in practice. As will be argued through the course of this chapter, citizenship rules of a state are contextually motivated¹⁶ and fluid¹⁷ thereby intermingled elements of these theories and giving rise to new and unique formulations.¹⁸

A. Citizenship as a legal form of exclusion

*'Citizenship is a form of "legalised discrimination"'*¹⁹ —Maarten Vink²⁰

Scholars in the field of citizenship studies typically date the history of citizenship to the ancient Greek and Roman empires.²¹ While the Greeks characterised citizens²² as male-persons who were detached from the material world and therefore capable to devoting their undivided attention to the act ruling, the Romans characterised citizens as property-owners who were subject to the law, though not the makers of it. The common characteristic of these two models of citizenship, which scholars in the West continue to revere,²³ is that they were premised on the exclusion of a large section of society from the arena of politics. While the Greeks excluded

¹⁴ Seyla Benhabib, *Conclusion: Cosmopolitan Federalism*, in *THE RIGHTS OF OTHERS: ALIENS, RESIDENTS, AND CITIZENS* 213–221 (2004).

¹⁵ James Bohman, *Citizens and Persons: Legal Status and Human Rights in Hannah Arendt*, 4 in *HANNAH ARENDT AND THE LAW* (Marco Goldoni & Christopher McCorkindale eds., 2012).

¹⁶ NIRIJA GOPAL JAYAL, *CITIZENSHIP AND ITS DISCONTENTS: AN INDIAN HISTORY* 6 (2013).

¹⁷ REDCLIFT, *supra* note 5 at 170.

¹⁸ JAYAL, *supra* note 16 at 12.

¹⁹ ANDREAS WIMMER, *ETHNIC BOUNDARY MAKING: INSTITUTIONS, POWER, NETWORKS* 74 (2013).

²⁰ Maarten Vink, *Comparing Citizenship Regimes*, in *THE OXFORD HANDBOOK OF CITIZENSHIP* (Ayelet Shachar et al. eds., 1st edition ed. 2017).

²¹ J. G. A. Pocock, *The Ideal of Citizenship Since Classical Times*, in *THEORIZING CITIZENSHIP*, 1 (Ronald Beiner ed., 1995).

²² The use of the term 'citizen' here is anachronistic for the term did not exist in the vocabulary of the ancient Greek and Roman empires. However, it has been used in the scholarship due to the similarities it shares with the practice of citizenship in the modern era.

²³ Ryan Balot, *Revisiting the Classical Ideal of Citizenship*, in *THE OXFORD HANDBOOK OF CITIZENSHIP* (Ayelet Shachar et al. eds., 1st edition ed. 2017).

slaves and women, the Romans excluded all property-less persons. This aspect of citizenship, as being a legal form of exclusion, continues to ring true till this date and is often seen as an inescapable characteristic of citizenship.²⁴ In this section, this characteristic will be illustrated through the case of the colonial ‘Citizen-Subject’.²⁵

To understand citizenship in the colonies, it is important to draw a distinction between imperial subjecthood and colonial citizenship.²⁶ Imperial subjecthood refers to the status of all subjects as members of the British Empire.²⁷ It includes subjects from the far reaches of the empire which expanded from Asia to North America. It represents the site where the subjects raised claims for their equal treatment vis-a-vis other subjects of the empire, especially the subjects in the dominions. On the other hand, colonial citizenship refers to the status of the colonial subjects as members of the colonial state. It includes only those subjects which reside within the boundaries of a single colonial state. In the case of the British colony of India, these subjects included persons from the current territories of India, Bangladesh, and Pakistan. This relationship was marked by the recognition of political rights for certain subjects, thus creating the self-perception of citizenship amongst individuals. Understood as such, these two types of citizenship are distinct in terms of the addressee of the claims, the bearer of rights, and the content of the claims.²⁸

Imperial citizenship was inclusive in the formal sense,²⁹ but stratified in reality. The contours of imperial citizenship can be drawn through an analysis of the differentiated treatment of (a) the white-dominions from the non-white colonies within the empire and (b) the Europeans from

²⁴ Liav Orgad, *Illiberal Liberalism Cultural Restrictions on Migration and Access to Citizenship in Europe*, 58 AM. J. COMP. LAW 53–105 (2010); Vink, *supra* note 20.

²⁵ The term ‘Citizen-Subject’ used here as articulated by NIRJIA GOPAL JAYAL, *The Subject-Citizen: A Colonial Anomaly in CITIZENSHIP AND ITS DISCONTENTS: AN INDIAN HISTORY* (2013).

²⁶ *Id.* at 28.

²⁷ The word ‘subjecthood’ is used here because the British used the term over the more commonly used term of ‘citizenship’. The arguments made regarding ‘subjecthood’ however equally apply to ‘citizenship’ and therefore the two can be read as synonyms for the purpose of this essay.

²⁸ JAYAL, *supra* note 16 at 28.

²⁹ Sec. 1, British Nationality and Status of Aliens Act, 1914(Britain).

the non-Europeans within the colonies. Starting from the 1870s, the self-governing dominions of Canada and Australia were accorded the power to grant the rights of naturalised British subjects within their colonies.³⁰ This power was further extended in 1914 through the introduction of the British Nationality Status of Aliens Act, which provided the dominions the autonomy to make immigration and naturalisation laws within their own territory.³¹ More importantly, it allowed the dominions to treat different classes of subjects differently. This right was of course never extended to the non-white dominions including India. This created a scenario similar to ancient Greece and Rome as certain groups of people were excluded from the exercise of full citizenship which could be argued to include the right to self-governance.³² Secondly, within the colonies, divisions were made on the basis of race through the identification of two stratified classes of subjects. The first class comprised of the non-European British subjects and British Protected Persons. For these persons, becoming fully naturalised subjects of the British empire and in the process gaining political equality was made impossible.³³ By contrast, European persons, including but not restricted to Britishers, were treated as British citizens and were granted the right to naturalise.³⁴ By stratifying two classes and making the boundaries between the two impermeable, the British recognised exclusion of an entire class of persons as one of the defining features of subjecthood.

Unlike imperial citizenship which purported to be inclusive in the formal sense, colonial citizenship never made such claims even though rhetorical inclusion for the purpose of safeguarding the colony was often employed. As mentioned previously, even though this form of citizenship had no impact on the formal status of the subject, it went a long way in

³⁰ JAYAL, *supra* note 16 at 30.

³¹ *Supra n.* 31 at Sec. 8.

³² India here is understood as the British Colony of India which includes the current day India, Bangladesh, and Pakistan.

³³ JAYAL, *supra* note 16 at 31.

³⁴ *Id.* at 31.

recognising a certain class of subjects as ‘important’.³⁵ These important classes included landlords, businessmen, and the articulate elite whom the British appointed to represent certain indigenous voices. To give these classes a controlled platform for airing their concerns, political rights in the form of the right to vote was accorded to them, thereby transforming them from subjects to putative-citizens.³⁶ Consequently, certain classes of Indian subjects were excluded from the domain of putative citizenship thereby cementing exclusion as an inherent characteristic of citizenship.

From the discussion above, one can conclude that despite the differences between Greek, Roman, imperial, and colonial citizenship, each of them shared the common characteristic of being exclusionary. This aspect of exclusion forms the basis of citizenship and continues to haunt its practice till date.

B. State sovereignty and the control over citizenship

‘Theoretically, in the field of International Law, it has always been true that the sovereignty is nowhere more absolute than in matters of “emigration, naturalisation, nationality and expulsion” – Hannah Arendt³⁷

Hannah Arendt while describing the nature of citizenship argued that following the French revolution, two axes of sovereignty were created – ‘Man’, understood as the rational-enlightened being, became the only sovereign in matters of law, whereas, ‘the people’ became the only sovereign in matters of government.³⁸ As can be inferred from the definition of citizenship provided in the beginning of this chapter, the grant of citizenship fits into neither of these two domains of sovereignty as it is neither a question of law, nor a question of government. Citizenship is, on the other hand, a question of who ‘the people’ are, which in its

³⁵ *Id.* at 38.

³⁶ *Id.* at 43.

³⁷ Lawrence Preuss, *International Law and Deprivation of Nationality*, 23 GEORGETOWN LAW J. 250–276 (1934) as cited in HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 278 (1966).

³⁸ ARENDT, *supra* note 37 at 291.

very essence precedes the question of law or government. It is only when who ‘the people’ are is determined that one can proceed onto securing legitimacy from the people or making laws for them.³⁹ By fitting into the sovereign domain of neither ‘Man’ nor ‘the people’, citizenship is left within the exclusive domain of the sovereignty of the state. In other words, the state is accorded the sole authority in determining who its citizen.⁴⁰ Flowing from the same, as Arendt argues, plight of the stateless is not that the law is unequally applied in her case, but that no law applies to her in the first place and no government exists against whom any such demand for rights can be made.⁴¹

This aspect of the sovereignty is maintained by international law till date. At its core, international law is based on the idea of state sovereignty. Therefore, any claim made regarding the capacity of international law must be underscored by its inability to imagine an alternative where state sovereignty plays no role in politics.⁴² The inescapable role of state sovereignty can be illustrated through the provision for the right to asylum in Article 14 of the Universal Declaration of Human Rights.⁴³ The Article states that ‘Everyone has the right to seek and to enjoy in other countries asylum from persecution...’. Despite guaranteeing the right to asylum to all persons, it does not impose an obligation upon any state to grant the same thereby leaving internal policies regarding refugee protection at the sole discretion of the state. More recently, the Global Migration Pact which is being celebrated as a victory for refugee and migration law also affirms the principle of state sovereignty in determining internal policies on migration.⁴⁴ This aspect of state sovereignty is true in the case of citizenship as well, wherein international law is seen to accord absolute sovereignty to the state in determining its rules on citizenship.⁴⁵

³⁹ Vink, *supra* note 20 at 1.

⁴⁰ OPPENHEIM’S INTERNATIONAL LAW, 413 (Robert Jennings, Arthur Watts, & Lassa Francis Lawrence Oppenheim eds., 3. Dr. ed. 1992).

⁴¹ ARENDT, *supra* note 37 at 293.

⁴² SEYLA BENHABIB, THE RIGHTS OF OTHERS: ALIENS, RESIDENTS, AND CITIZENS 69 (2004).

⁴³ Art. 14, UN General Assembly, *Universal Declaration of Human Rights*, 10 Dec. 1948, 217 A(III)

⁴⁴ Resolution 15. United Nations, GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION (2018).

⁴⁵ OPPENHEIM’S INTERNATIONAL LAW, *supra* note 40 at 413.

Furthermore, as evidenced from these treaties, international law has been concerned with either issues relating to the treatment of disenfranchised humans by the community of states or the treatment of already recognised citizens by independent states.⁴⁶ It has however not raised concern regarding the obligations of states towards persons claiming citizenship and the rules regulating the same thereby leaving the actual design of citizenship provisions within the sovereign domain of the state.⁴⁷

Another consequence of upholding state sovereignty is that it requires states to opt-in to treaty obligations thereby making the enforcement of a treaty against a state conditional upon its interest. As a consequence of the opt-in model, India, Bangladesh, and Pakistan have not ratified a single agreement regarding the rights of refugees thereby reducing these documents to futile texts that have no effect on the actual politics of citizenship and refugee protection.⁴⁸

While statutes regulating citizenship clearly outline the rules concerning the grant of citizenship within a state, as this section has argued there exist no restriction upon a state in determining on what basis these rules are to be defined. By leaving the design of citizenship within the exclusive domain of state, both the theory and the practice of citizenship enable the state to design its citizenship rules in whatever manner it deems fit.

⁴⁶ Samantha Basson, *The Right to Have Rights : From human Rights to Citizens Rights and Back*, 4 in HANNAH ARENDT AND THE LAW (Marco Goldoni & Christopher McCorkindale eds., 2012).

⁴⁷ See for example UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaties Series, vol. 189, p. 137.

⁴⁸ United Nations Treaty Collection, Available at: https://treaties.un.org/pages/Treaties.aspx?id=5&subid=A&clang=_en (last visited Feb 15, 2019).

C. Citizenship as an instrument of state action

‘If it should be asked, “Who needs a theory of citizenship?” my answer would be, “The state.” But there must first be a theory of the state to inform the citizen.’

– G. A. Kelly⁴⁹

The exclusionary nature of citizenship when combined with the states sovereign right over its determination creates the perfect tool in the hands of a state. This aspect of citizenship as an instrument of state action can be illustrated through its history in Subcontinent and in metropolitan Europe following the First World War.

As highlighted in the Section A of this chapter, during the colonial era, imperial subjecthood was used to regulate subjects through racially-determined statuses.⁵⁰ By making separate rules for the dominions and the colonies as well as the Europeans and non-Europeans, the British created two empires divided on the basis of race within the larger British empire.⁵¹ This aspect of racial segregation was not restricted to the written laws but was often perpetuated through executive decision-making. Take for example the case of the countless slaves, or ‘Coolies’ as they were known in the British colony of India, who were transported to distant colonies where they were mistreated with absolute impunity despite their claims for subjecthood on equal terms.⁵² Therefore, even though imperial citizenship was not supposed to have any the impact on equal protection of the laws as all subjects were legally—though not the politically—equal, in practice, the non-white subjects were treated very differently from white subjects. This aspect of instrumentalisation applied equally in the case of colonial citizenship. By creating hierarchies amongst the subjects within the colony for the purpose of pacifying the elite and

⁴⁹ George Armstrong Kelly, *Who needs a theory of Citizenship?*, in *THEORIZING CITIZENSHIP*, 31 (Ronald Beiner ed., 1995).

⁵⁰ Kamal Sadiq, *Postcolonial Citizenship*, in *THE OXFORD HANDBOOK OF CITIZENSHIP* (Ayelet Shachar et al. eds., 1st edition ed. 2017).

⁵¹ JAYAL, *supra* note 16 at 38.

⁵² *Id.* at 33.

legitimising their own rule, the British transformed concepts such as citizenship into weapons for domination and exploitation.⁵³

Instrumentalisation became a feature of citizenship in the metropolis when, to rephrase Edmund Burke, the ‘breakers of law in India’ became the ‘makers of law in England’.⁵⁴ Describing the influence of the strategies adopted in the process of colonialism, Hannah Arendt argued that through colonialism, ‘[the Colonisers] saw with their own eyes how people could be converted into races and how simply by taking initiative in this process, one could push one’s people in the master race’⁵⁵ The instrumentalisation of the citizenship to fulfil the interests of the white-male-bourgeoisie-coloniser transitioned into the lawlessness of Europe following the First World War.⁵⁶

Tracing the history of the nation-state and citizenship in post-WW1 Europe, Arendt argued that through instruments such as the minority treaty, a scenario was created whereby the nascent belief that only nationals could be citizens was cemented.⁵⁷ In terms of the political outcome of the same, the coming together of the nation-state and the instrumentalisation of citizenship led to countless denaturalisations undertaken for the purpose of achieving national homogeneity. The denaturalised persons were left without a home, a government, or any place they could call their own.⁵⁸

Citizenship however need not only be instrumentalised for the purposes of nationalism and nation-building. As was the case in ancient Greece and Rome, the exclusion of women and slaves was undertaken to ensure that only property-owning-males could participate in politics. This act of exclusion had nothing to do with nationality understood as an ethno-linguistic

⁵³ ARENDT, *supra* note 37 at 206.

⁵⁴ BURKE EDMUND, 24 REFLECTIONS ON THE FRENCH REVOLUTION (Elior Charles Williams ed., 3 ed. 1909).

⁵⁵ ARENDT, *supra* note 37 at 206.

⁵⁶ SEYLA BENHABIB, “The right to have rights”: Hannah Arendt on the contradictions of the nation-state, THE RIGHTS OF OTHERS: ALIENS, RESIDENTS, AND CITIZENS (2004).

⁵⁷ ARENDT, *supra* note 37 at 275.

⁵⁸ *Id.* at 297.

community as was the case in the colonies or the post-WW1 Europe. In other words, citizenship can be instrumentalised for any purpose the state deems fit.⁵⁹ In being such a concept, the citizenship rules of a state are highly contextual as they directly correspond to the policy objectives a state wishes to accomplish. This also makes the concept extremely fluid as its contents are bound to transform with the changing political ambitions of the state.

D. Citizenship as a domain for contestation

‘The right to have rights, or the right of every individual to belong to humanity, should be guaranteed by humanity itself. It is by no means certain whether this is possible.’ – Hannah Arendt⁶⁰

The exclusionary nature of citizenship and the possibility of its instrumentalisation creates the need for analysing the possibility of challenging its basis of exclusion. This need is extremely pertinent considering the sheer number of non-citizens that could exist amongst citizens in any given state. These non-citizens could be either passive citizens, such as women in Ancient Greece, or the complete stateless, such as those that were left on the ‘wrong side’ of the border following the independence of Bangladesh in 1971.⁶¹ To unpack the possibility of the challenging the basis of exclusion of these persons, one must unbundle the nature of citizenship claims and their effect on the citizenship rules of a state.

Ever since Hannah Arendt described citizenship as the ‘right to have rights’, scholars have adopted her description to explain the nature of citizenship claims.⁶² This description ought to be understood within her broader framework of the rise of the two axes of sovereign power as discussed in Section B of this chapter. Understood from that perspective, one can clearly

⁵⁹ Kelly, *supra* note 49.

⁶⁰ ARENDT, *supra* note 37 at 298.

⁶¹ The plight of these stateless persons, known as the Urdu-speaking-Bihari community will be discussed at length in Section dedicated to Bangladesh.

⁶² JAYAL, *supra* note 16 at 87; Gautam Bhatia, *In the court of last resort*, THE HINDU, October 3, 2018, <https://www.thehindu.com/opinion/lead/in-the-court-of-last-resort/article25105456.ece> (last visited Mar 21, 2019).

distinguish between the first and the second ‘right’ in Arendt’s description.⁶³ Here, the first ‘right’ refers to the right of every human to be included in a state. Seyla Benhabib describes this right as a moral right to inclusion as opposed to a legal right, as the latter creates an obligation upon the state to recognise the claimant as a citizen, whereas the former enforces no such obligations.⁶⁴ On the other hand, the second ‘right’ refers to the rights that are guaranteed to those persons who have already been recognised as citizens. This ‘right’ is distinctly legal in nature, as the state is obligated to guarantee the same.

The fact that the first right is a moral as opposed to a legal right does not suggest that it is not important. As argued by Joseph Raz, legal rights are moral rights recognised by law as sufficiently important to generate ‘moral duties’⁶⁵. Therefore, claims to citizenship, which are in essence premised on claims of belonging, are integral to defining and redefining the rules of citizenship in a state.

Implicit in the formulation of citizenship as a moral right is the claim that political action can exist outside the formal domains of citizenship. Political action here refers to any demand made for inclusion by an individual or a group of individuals. These demands could be made through formal avenues such as the judiciary or through informal sources such as protests of both violent as well as non-violent nature. During the British colonial rule of the Indian Subcontinent, claims of equal citizenship formed the backdrop of the anti-colonial movement. These claims were in particular made in favour of the equal treatment of those Indians who were treated as slaves and transported to the far reaches of the empire. Gandhi’s first *Satyagraha* in South Africa between 1907 and 1909 was motivated by the same.⁶⁶ These claims made by persons who were not full citizens, exemplifies the possibility of political action

⁶³ ARENDT, *supra* note 37 at 296.

⁶⁴ BENHABIB, *supra* note 42 at 56.

⁶⁵ Joseph Raz, *Legal Rights*, 4 OXF. J. LEG. STUD. 1–21 (1984).

⁶⁶ JAYAL, *supra* note 16 at 33.

outside the sphere of formal citizenship. The mere fact that claims for inclusion can be made outside the formal sphere of citizenship does not however imply that these claims will be recognised and reciprocated by the state. During the colonial era, the claims for equal citizenship made by the participants in the anti-colonial movement often fell on deaf ears. The possibility of making such claims and their translatability into legal rules exemplifies the contested nature of citizenship which can be re-shaped depending on the veracity and the strength of the claims made. The non-citizen, when understood from this perspective exists neither outside the state nor inside, but somewhere in between, thereby constantly challenging the notion of inside and outside.⁶⁷ The non-citizen, from these ‘cites of marginality’, challenges the ‘unintelligibility and opacity of citizenship’ and produces ‘moments of transformation’.⁶⁸

As argued through the length of this section, this aspect of citizenship as being a domain for contestation adds further layers of contextuality and fluidity by making its design sensitive to the response provided by the state to claims made by the non-citizens.

E. Concluding remarks

Taking cue from Anupama Roy’s formulation of citizenship as an ‘essentially contested concept’,⁶⁹ this chapter has argued that underlying the broad concept of citizenship as a relationship between the citizen and the state, there exist numerous contestations which define and re-define its content. Through an analysis of four key characteristics of citizenship, this chapter has argued that citizenship at its very core is exclusionary in nature and that the right to exclude rests solely in the hands of the sovereign state. This exclusion can be instrumentalised by the state for any purpose it deems fit. However, political action on the part

⁶⁷ James Barbour, *Between Politics and Law: Hannah Arendt and the Subject of Rights*, 4 in HANNAH ARENDT AND THE LAW (Marco Goldoni & Christopher McCorkindale eds., 2012).

⁶⁸ ANUPAMA ROY, GENDERED CITIZENSHIP: HISTORICAL AND CONCEPTUAL EXPLORATIONS 32 (2005).

⁶⁹ *Id.* at 2.

of aspiring citizens can act as an effective check on the same. These four characteristics account for citizenships fluid and its contextually-motivated nature.

Mapping Citizenship: A Contextual Exploration

Scholars have, more often than not, applied ideas of nationalism and citizenship from the Global North to the Global South in modular fashion thereby categorising the latter as the perpetual consumer of Western knowledge.⁷⁰ In the case of nationalism, scholars such as Partha Chatterjee have challenged this notion and argued that such modular application is historically inaccurate.⁷¹ However, in the case of citizenship this aspect of borrowing has some truth attached to it, though not in the manner the scholarship suggests. This chapter will argue that the post-colonial states of India, Bangladesh, and Pakistan adopted the concept of citizenship with all its complexities as described in the previous chapter. However, they imagined the content of these rules in a *de novo* fashion while responding to the specificities of the context at hand. In doing so, the history of citizenship in these states challenges the assumption that the newly-independent states of the 20th century based their models of citizenship on one of the ideal types already imagined in Europe.⁷² It also challenges the notion that citizenship can be grafted onto a given political society without considering the unique structure of the polity that exists therein or the demands made by non-citizens and the citizens regarding its contours.

Sudipta Kaviraj while discussing the legacy of the European state in the Subcontinent argues that the modern state as imagined in Europe and deployed in the colonies succeeded in its ambition to act as an instrument of political action while simultaneously positioning itself as an ideal form of political organisation.⁷³ With the odd exception of Gandhi and Tagore, he argues that the nationalist leaders in the newly-independent states of India and Pakistan adopted the modern state as imagined by the West with all of its institutions and practices.⁷⁴ Further, as

⁷⁰ See for example BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* (4. impression ed. 1987).

⁷¹ PARTHA CHATTERJEE, *Whose Imagined Community?*, *EMPIRE AND NATION: SELECTED ESSAYS* (2010).

⁷² Joya Chatterji, *South Asian Histories of Citizenship, 1946–1970*, 55 *HIST. J.* 1049–1071, 1051 (2012).

⁷³ Sudipta Kaviraj, *A State of Contradictions: The Post-colonial State in India*, in *THE IMAGINARY INSTITUTION OF INDIA: POLITICS AND IDEAS* 210–234, 210 (2010).

⁷⁴ *Id.* at 211.

Dipesh Chakrabarty notes, these nationalist leaders who came from elite educated backgrounds and spoke the language of liberty and democracy as spoken in the West could imagine no other form of politics than that which they were accustomed to under British rule.⁷⁵ As illustrated through the desperate attempts made by Nehru and Patel to achieve an Indian state with a strong centre,⁷⁶ these leaders wanted for themselves a state akin to the one the colonisers had, but one which they could call their own.

The primary obstacle that these leaders faced while attempting to achieve their ambition was that of the linearity of history which placed the colonised in the ‘waiting room’ of history which was reserved for those who were not enlightened enough to handle the challenges that came with self-government.⁷⁷ By responding to the ‘not now’ of the coloniser with the ‘now’ of the nationalist movement, the leaders were able to stake a claim over the newly independent states without challenging the very concepts that acted as tools of oppression that gave rise to their predicament.⁷⁸ Imperial subjecthood which was described in the previous chapter as being inherently exclusionary and conducive to instrumentalisation was one such concept which was adopted wholeheartedly by the post-colonial state in its new avatar of citizenship.

As argued previously, while the concept of citizenship was adopted from Europe, its content was influenced by a multiplicity of factors which were inextricably local. Noting the influences behind postcolonial citizenship, Kamal Sadiq argues that there existed two contradictory forces at play in its formulation.⁷⁹ On the one hand, there existed power differentials inherent to colonial rule which promoted the fragmentation of society thereby increasing heterogeneity.

⁷⁵ Chakrabarty, *supra* note 7 at 4.

⁷⁶ Sugata Bose & Ayesha Jalal, *1947: memories and meanings*, in *MODERN SOUTH ASIA: HISTORY, CULTURE, POLITICAL ECONOMY* 157–167, 159 (2nd ed. 2004).

⁷⁷ Chakrabarty, *supra* note 7 at 8.

⁷⁸ Uday Mehta, *Constitutionalism*, in *THE OXFORD COMPANION TO POLITICS IN INDIA* 15–28, 22,23 (Niraja Gopal Jayal & Pratap Bhanu Mehta eds., 2014).

⁷⁹ Sadiq, *supra* note 50 at 2.

On the other, there existed strong nationalist movements that sought to redefine the political community in order to promote national unity. In such a setting, citizenship rules become a byproduct of the dialectical relationship between these two opposing forces. The differing perspectives on the content of postcolonial citizenship immediately following independence alludes to the relative importance given to these two opposing forces. In the context of India, Scholars such as Kamal Sadiq and Anupama Roy argue that following independence, the drafters designed citizenship rules in an inclusive manner to accommodate the demands of equality flowing from the nationalist movement that successfully cut across regional, linguistic, and ethnic differences.⁸⁰ Nirija Gopal Jayal, on the contrary, argues that the tension between the inclusionary principle of *Jus Soli* and the exclusionary principle of *Jus Sanguine* was present at the very moment of state formation owing to the religious divides that led to the Partition of 1947.⁸¹

Notwithstanding their differences, these scholars agree that within the space of a few years, these laws became exclusionary in nature through the introduction of *Jus Sanguine* within its definition. Analysing the changes introduced in the north-east of India, Sanjib Baruah argues that elements of *Jus Sanguine* were introduced in the law to give certain regionally concentrated ethnic, tribal, and religious groups priority in regional claims regarding identity and economy.⁸² Joya Chatterji accords this change to the threats posed by postcolonial migration across the Indo-Pak border and the violence that accompanied it. She argues that the large-scale migration coupled with the claims of belonging made by the migrants and the local population was instrumental in making the laws more exclusionary.⁸³ Lastly, Kamal Sadiq

⁸⁰ ANUPAMA ROY, *MAPPING CITIZENSHIP IN INDIA* (2010); KAMAL SADIQ, *PAPER CITIZENS: HOW ILLEGAL IMMIGRANTS ACQUIRE CITIZENSHIP IN DEVELOPING COUNTRIES* (2008).

⁸¹ JAYAL, *supra* note 16.

⁸² Sanjib Baruah, *Citizens and Denizens: Ethnicity, Homelands, and the Crisis of Displacement in Northeast India*, 16 J. REFUG. STUD. 44–66 (2003).

⁸³ Chatterji, *supra* note 72.

argues that the inherent need for forging a national identity amongst incompatible groups led to the rise of *Jus Sanguine* as a means of political recognition. This means of forging a national identity steamrolled all differences in a bid to manufacture unity.⁸⁴

Two quintessential features of citizenship that can be identified from the discussion above are its embeddedness in the context in which it is deployed and its inherent fluidity which as argued in the previous chapter are biproducts of the four characteristics identified therein. The following section of this chapter will analyse the history of citizenship in India, Pakistan, Bangladesh while paying close attention to the context and the actors that motivated its design and subsequent changes therein.

Navigating the legal landscape

Mapping the citizenship rules of India, Bangladesh, and Pakistan is a messy affair as there exist numerous statutes which establish its contours. These statutes have further been amended time and again thereby adding additional layers of complexity. Aside from the statutes, there exist a plethora of judicial decisions and executive pronouncements which in their own way re-formulated the counters. This complexity can be traced to the role citizenship played in the formative practices of the state.

Upon achieving independence, the newly partitioned states of India and Pakistan were left without a dominant nationalist narrative. In India, the nationalist discourse was fragmented on all levels including that of the nationalist elite.⁸⁵ At the most, mainstream nationalism was ‘more successful in achieving a semblance of unity against the colonial presence than in transforming itself into an internally coherent and consensual movement representing the concerns of all Indians.’⁸⁶ Similarly, if not more strikingly, Pakistan lacked an ideation of

⁸⁴ Sadiq, *supra* note 50.

⁸⁵ Ayesha Jalal, *Nationalism in South Asia*, in *ENCYCLOPAEDIA OF NATIONALISM*, 10 (Alexander Motyl ed., 2000).

⁸⁶ *Id.* at 5.

nationalism pre-Partition. As Jalal argues, Jinnah, who is remembered as the *Quaid-e-Azam* ('The Great Leader'), never desired to achieve an independent State of Pakistan.⁸⁷ On the contrary, he wished for the recognition of the nation of Pakistan within the territory of India along with certain guarantees that would flow from the same. In pursuance of this agenda, he strategically avoided the task of defining the nation.⁸⁸ Consequently, the pre-Partition nation of Pakistan in its de-territorialised formulation had little to do with the formation of the nation-state post-Partition Pakistan. On the contrary, as Jalal argues, Pakistan's formation ought to be attributed to the peculiarities of the Muslim-majority provinces in the British colony of India,⁸⁹ the insistence of Nehru and Patel in inheriting a strong central government for independent India,⁹⁰ and the political realities which accompanied the process of decolonisation.⁹¹ For an anti-colonial movement which premised on the idea of *Swaraj* ('self-rule'),⁹² it is ironic that the two partitioned states severely lacked a unified understanding of the self.

With independence, an attempt was made to envision a new nation. This nation in the context of India was born out of silencing alternative formulations of itself such as that of Gandhi. It was premised on the idea of securing unity and equality, both of which were absent at the time of independence.⁹³ Consequently, the nation was conceived as a project which could 'only be a projection onto the future.'⁹⁴ Evidence regarding the preoccupation with unity and equality can be found in the preamble which recognised fraternity and equality as its core objectives.⁹⁵

The argument can be extended to Pakistan which in its preamble recognises equality, social

⁸⁷ Sugata Bose & Ayesha Jalal, *The partition of India and the creation of Pakistan*, in MODERN SOUTH ASIA: HISTORY, CULTURE, POLITICAL ECONOMY 135–157, 145 (2nd ed. 2004).

⁸⁸ *Id.* at 146.

⁸⁹ *Id.* at 155.

⁹⁰ *Id.* at 149.

⁹¹ *Id.* at 154.

⁹² ANANYA VAJPEYI, *RIGHTEOUS REPUBLIC: THE POLITICAL FOUNDATIONS OF MODERN INDIA* Preface: The Search for the Self in Modern India (2012).

⁹³ Mehta, *supra* note 78 at 17.

⁹⁴ *Id.* at 17.

⁹⁵ THE CONSTITUTION OF INDIA, Preamble (1950).

and economic justice, and the resolve to protect national and political unity as its core objectives.⁹⁶ The vestiges of the past however often resurfaced to haunt the formulation of the future, thereby giving rise to what Anupama Roy refers to as the ‘paradox of the transformative’.⁹⁷ In the context of citizenship, this past resurfaced in the form of alternative narratives of the nation, some of which went on to affect the dominant narrative thereby giving it a reformed identity. The same arguments can also be extended to Bangladesh which upon achieving independence after a prolonged nationalist movement accompanied by extreme amounts of violence imagined a future which distanced itself from its past.⁹⁸ Following independence however, the remnants of the past resurfaced thereby re-shaping the nationalist imagination held by certain elite at the time of independence. The following sections will analyse the abovementioned argument in the context of the citizenship laws of the three countries.

i. India

‘A moment comes, which comes but barely in history, when we step out from the old to the new, when an age ends, and when the soul of a nation, long suppressed, finds utterance.’ ... ‘Are we brave enough and wise enough to grasp this opportunity and accept the challenge of the future.’ – Jawaharlal Nehru, Tryst with destiny (1947)⁹⁹

‘The general right of citizenship under these fundamental rights should be so broad-based that anyone who reads our laws cannot take any other view than that we have taken an enlightened modern civilised view.’ – Vallabhbhai J. Patel (1947)¹⁰⁰

Nehru’s historic ‘tryst with destiny’ speech marked the end of an age and the start of another.

This new age, as argued in the previous section, was in many ways grafted onto the existing

⁹⁶ CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, Preamble (1973).

⁹⁷ Mehta, *supra* note 75 as cited in ROY, *supra* note 65 at 17.

⁹⁸ Anwar A. Khan, *Bangabandhu’s 7th March Speech Determines Our Destiny*, DAILY SUN, March 7, 2018, Available at: <http://www.daily-sun.com/home/printnews/293639>.

⁹⁹ Jawaharlal Nehru, CONSTITUENT ASSEMBLY DEBATES (1947), Available at: https://cadindia.clpr.org.in/constitution_assembly_debates/volume/5/1947-08-14 (last visited Mar 25, 2019).

¹⁰⁰ Vallabhbhai J. Patel, CONSTITUENT ASSEMBLY DEBATES (1947), Available at: https://cadindia.clpr.org.in/constitution_assembly_debates/volume/3/1947-04-29 (last visited Mar 25, 2019).

realities of the state. The citizenship provisions accompanying it were therefore not representative of the past or the present which was characterised by deep fissures on the lines of race, religion, and ethnicity,¹⁰¹ but based on a commitment towards the ‘principle of democracy’.¹⁰² The provisions regarding citizenship in the Constitution exhibit this commitment. With the exception of article 8 which accorded citizenship to persons of Indian origin who either voluntarily or under duress were forced to migrate to other parts of the British empire,¹⁰³ citizenship per the Constitution was accorded on the basis of domicile or birth which as recognised in Article 5.¹⁰⁴ Other important Articles were 6 and 7 which were designed specifically to deal with the migration following Partition;¹⁰⁵ and Article 11 which vested complete discretion in the hands of the Parliament while making laws regulating citizenship.¹⁰⁶ Taken together, the citizenship model in India immediately following independence could be characterised as civic model for it viewed its citizens as forming a political as opposed to an ethnic community.

By merely adopting a civic model of citizenship, however, earlier formulations of the nation-state could not be forgotten. As Vazira Zamindar notes, prior to Partition, Vallabhbhai Patel who became one of the champions of the civic model argued that ‘the Hindus and Sikhs cannot be seen as aliens in India’¹⁰⁷ as he considered them to be a ‘natural part of the Indian nation’.¹⁰⁸ Understandings of the nation-state in these terms continued to persist amongst the people, the politicians, the executive, and the judiciary during and following Partition. As Nirija Gopal Jayal points out, in the Constituent assembly itself, members routinely referred to the Hindus

¹⁰¹ Jalal, *supra* note 85 at 26.

¹⁰² K.M. Munshi, CONSTITUENT ASSEMBLY DEBATES (1947), Available at: https://cadindia.clpr.org.in/constitution_assembly_debates/volume/3/1947-04-29 (last visited Mar 25, 2019).

¹⁰³ THE CONSTITUTION OF INDIA, *supra* note 95 at Art. 8.

¹⁰⁴ *Id.* at Art. 5.

¹⁰⁵ *Id.* at Art. 6-7.

¹⁰⁶ *Id.* at Art. 11.

¹⁰⁷ VALLABHBHAI J. PATEL, SARDAR PATEL’S CORRESPONDENCE, 1945-50 289 (Durga Das ed., 1973).

¹⁰⁸ ZAMINDAR, *supra* note 5 at 53.

as refugees and Muslims as migrants thereby colouring the discourse on citizenship on the lines of religion.¹⁰⁹ The persistence of these different understandings of the nation and its people reshaped the ‘civil’ model by including elements of ‘ethnic’ model through executive action and judicial decision making. Critical to this process were Articles 6 and 7 which differentiated migrants from refugees and in doing so cemented the national borders of India and Pakistan by dividing the once-unified people.¹¹⁰

i.i. Initial developments following Independence

Article 6 was introduced to manage the citizenship status of those persons who migrated to the territory of India from Pakistan prior to the commencement of the Constitution.¹¹¹ It laid down two requirements for the grant for citizenship to such persons – (1) Their parents had to be born in the territory of the British colony of India as recognised in the Government of India Act, 1935, and (2) If they migrated to India after the 19th of July, 1948, they had to make an application to be registered as a citizen in the manner prescribed by the government. Article 7, on the other hand, dealt with those persons who had migrated from the territories of India to the territories of Pakistan following the Partition.¹¹² This article held that such persons would not be deemed to be citizens of India unless they returned to India with a valid permit.

The second requirement provided for in Article 6 and the proviso to Article 7 are indicative of the fact that the Constitution was neither the first, nor the only document regulating the grant of citizenship. Even before the enactment of the Constitution, temporary ordinances such as the Emergency property Ordinance, 1947,¹¹³ the Influx from Pakistan (Control) Ordinance,¹¹⁴

¹⁰⁹ JAYAL, *supra* note 16 at 58.

¹¹⁰ ZAMINDAR, *supra* note 5 at 3.

¹¹¹ THE CONSTITUTION OF INDIA, *supra* note 95 at Art. 6.

¹¹² *Id.* at Art. 7.

¹¹³ Chatterji, *supra* note 72 at 1058.

¹¹⁴ INFLUX FROM PAKISTAN (CONTROL) ORDINANCE (NO. XVII OF 1948), PT. I 976, 1948 (India).

the Permit system rules,¹¹⁵ and the Evacuee Property Ordinance, 1949¹¹⁶ laid down the foundations of the citizenship rules in India. Some of these laws were later transformed into statutes such as the Evacuee Property Act, 1950¹¹⁷ and the Influx from Pakistan (Control) Act,¹¹⁸ while others such as the Permit system rules were replaced by the Passport Rules, 1950.¹¹⁹ Together, these acts and rules provided substance to the citizenship provisions under Article 6 and 7. They were also the domain where most of the contestations regarding citizenship took place immediately following Partition. Take for example the contestations surrounding the Emergency Property Ordinance, 1947 which was extended to Delhi following the influx of Hindu and Sikh migrants from Pakistan.¹²⁰ These migrants forcefully acquired the houses of Muslims in Delhi while claiming that as Hindus and Sikhs, they belonged to India and were therefore entitled to these properties.¹²¹ In response to these demands and to protect the property rights of the Muslim inhabitants of Delhi, the 1947 Ordinance employed a certain custodians of Evacuee property who were empowered to declare the such forceful occupation as illegal. However, the custodians were also empowered to allow the refugees to continue to reside in these houses till they were able to acquire alternative accommodation.¹²² On being either overpowered by the Hindu and Sikh refugee,¹²³ or being overwhelmed with the belief that the Hindus and Sikhs were the rightful owners of these properties,¹²⁴ the custodians more often than not allowed the Hindus to continue to reside in these houses at the expense of their original inhabitants.¹²⁵ The elite politicians were however not innocent by-standers to this

¹¹⁵ RULES REGARDING PERMIT SYSTEM INTRODUCED BETWEEN INDIA AND PAKISTAN, Notification no. n (55)/48-General GAZETTE OF INDIA, 1948, (India).

¹¹⁶ AN ORDINANCE TO PROVIDE FOR THE ADMINISTRATION OF EVACUEE PROPERTY AND CERTAIN MATTERS CONNECTED THEREWITH, MEAI, F. 17-39/49-AFRI GAZETTE OF INDIA.(India)

¹¹⁷ THE ADMINISTRATION OF EVACUEE PROPERTY ACT (ACT No. 31), 1950.(India)

¹¹⁸ INFLUX FROM PAKISTAN (CONTROL) (ACT, XXIII OF 1949), 1949.(India)

¹¹⁹ THE PASSPORT (ENTRY INTO INDIA) RULES, 1950.(India)

¹²⁰ ZAMINDAR, *supra* note 5 at 28.

¹²¹ Chatterji, *supra* note 72 at 1061.

¹²² ZAMINDAR, *supra* note 5 at 28–29.

¹²³ Chatterji, *supra* note 72 at 1062.

¹²⁴ ZAMINDAR, *supra* note 5 at 22.

¹²⁵ Chatterji, *supra* note 72 at 1062.

entire process as they furthered the communal divide by constantly demanding the loyalty of the Muslim minority and treating them with suspicion.¹²⁶ Resigned to accept the fate of the Muslims who had been forcefully evacuated from their houses without the possibility of re-acquiring them, the central government, despite Nehru's initial apprehensions, introduced the Influx from Pakistan (Control) ordinance in order to stem the flow of persons attempting to return to their houses in Delhi from Pakistan.¹²⁷ This ordinance which was soon replaced by the Permit System Rules, 1948 laid down a convoluted process which relied heavily on the inefficient bureaucracy to ensure that Muslims find it difficult to return to India once they left. It also put into action the Judiciary which in its own way reformulated the laws and gave them a distinct identity.

In the case of *Badruzzaman v. The State*,¹²⁸ the Allahabad High Court upheld the conviction of the petitioner under the Influx from Pakistan (Control) Act for overstaying the temporary permit on which he had come to India from Pakistan. The petitioner contended that he was an Indian citizen and that he never intended to give up his Indian citizenship when he was forced to migrate to Pakistan amidst heightened communal violence. He argued that he had acquired a temporary permit as opposed to a permanent permit to return to India only because he was not able to acquire the latter on short notice. The court while recognising intent as the primary determinant of citizenship held that in the present case, the petitioner did not display sufficient intent to remain a citizen of India despite his solemn claim regarding the same. The court opined that since the petitioner had left India around the time of the great exodus of Muslims from the country, an inference could be drawn that he had an intention to forego his Indian citizenship and acquire the citizenship of Pakistan. Similarly, in the case of *Mandhara Jakab*

¹²⁶ Haimanti Roy, *Citizen and the Nation*, in PARTITIONED LIVES: MIGRANTS, REFUGEES, CITIZENS IN INDIA AND PAKISTAN, 1947 - 1965 (2012).

¹²⁷ Chatterji, *supra* note 72 at 1063; ZAMINDAR, *supra* note 5 at 79.

¹²⁸ *Badruzzaman v. The State*, AIR 1951 All 16.

Khalak Dana and Others v. Kutch,¹²⁹ the Judicial Commissioner in Kutch upheld the conviction of the petitioners who were arrested while returning from Pakistan to their home in Kutch without any permit. The petitioners claimed that they routinely moved to a region which now fell in Pakistan in order to escape droughts which were a common occurrence in Kutch at the time. Without giving due regard to justifications provided by the petitioners, the court held that they moved to Pakistan in order to make a living and that therefore they should not be allowed to acquire Indian citizenship under the proviso to Article 7 as they had forgone the same when they decided to migrate. In an even more bizarre case, the Madhya Pradesh High Court in the case of *Iqbal Ahmed v. State of Bhopal*¹³⁰ upheld the conviction of the petitioners' brother who had been arrested under the Influx from Pakistan (Control) Act for allegedly traveling to Pakistan with the intention of permanently settling there. The petitioner contended that his brother had never left Madhya Pradesh and that his entire family and life were situated in Bhopal, Madhya Pradesh. The government in response maintained that the petitioner had left for Pakistan with the intention gaining Pakistani citizenship and had returned to India without a valid permit under the aforementioned act. When pressed to provide evidence regarding the same, the government contended that they secured evidence 'from an independent source gathered by a secret system' that the petitioner had returned to India from Pakistan through Dhaka in East Pakistan on either May or June 1952. As the evidence was confidential, the government claimed that it could not admit it in court. The court, while assessing the evidence, held that while it cannot be conclusively proved that the applicant went to Pakistan. However, the court nonetheless held that the applicant violated section 7 the Influx from Pakistan (Control) Act as the aforementioned section merely required the existence of reasonable suspicion regarding the violation of any section of the Act.¹³¹ In the instant case as

¹²⁹ *Mandhara Jakab Khalak Dana and Others v. Kutch*, AIR 1951 Kutch 38 (H)

¹³⁰ *Iqbal Ahmed v. State of Bhopal*, 1954 CriLJ 602.

¹³¹ INFLUX FROM PAKISTAN (CONTROL) ACT, *supra* note 111 at Sec. 7- Without prejudice to the provisions contained in Section 5, the Central Government may, by general or special order, direct the removal from India

reasonable suspicion could be made out against the petitioners' brother, his sentence was upheld. Section 7 of the Influx Act was later challenged in the Supreme Court 1954 in a case of *Ebrahim Vazir Mavat v. The State of Bombay*.¹³² The Court in its majority opinion in this case struck down the Section for violating of Articles 19(1)(d) and 19(1)(e) which guarantee the freedom of movement and residence, respectively. The court, however, added that its decision is only applicable to citizens of India and not illegal migrants for whom the provision would continue to be applicable. By not providing a general rule applicable to all persons, the court in the instant case left open the possibility of discrimination on the part of the executive which was seen in those years to be a common practice.

From the discussion above, one can conclude that despite the 'civic' nature of the citizenship as prescribed in the Constitution, in its actual working citizenship was largely accorded on the basis of religion. Not only were the experiences of all Muslims generalised on the basis of their religious identity, their religion was taken as a marker of desired national identity. The same could not be said about the Hindus and the Sikhs who claimed to be and conversely were treated as being natural members of the Indian nation. Even though the Supreme Court in 1963 went on to re-affirm the fact that citizenship was not coterminous with nationality as the former was based on a 'civic' understanding of the state,¹³³ in practice citizenship was often seen as synonymous with nationality understood narrowly on the basis of the claimant's religious identity.

of any person who has committed, or against whom a reasonable suspicion exists that he has committed an offence under this Act, and thereupon any officer of Government shall have all reasonable powers necessary to enforce such direction.

¹³² *Ebrahim Vazir Mavat v. The State of Bombay*, AIR 1954 SC 229.

¹³³ *State Trading Corporation of India v. Commercial Tax Officer*, AIR 1963 SC 1811.

i.ii. Subsequent changes over the years

While the administration of citizenship around the time of Partition indicates the failure in materialising of the vision of the ‘new age’, with changing political scenarios, the ‘new age’ itself transformed as a consequence of amendments to the citizenship laws. As previously discussed, Article 11 of the Constitution accorded the legislature complete discretion to introduce laws regulating citizenship.¹³⁴ In pursuance of the same, the legislature introduced the Citizenship Act, 1955 with the objective of consolidating the laws on citizenship.¹³⁵ In 1985, this legislation was amended after prolonged protests demanding the expulsion of illegal immigrants from Bangladesh in the state of Assam.¹³⁶ The protesters led by the All Assam Students Union (AASU) claimed that over the years scores of illegal immigrants from the current territory of Bangladesh had infiltrated the porous borders of Assam. They argued that these migrants did not belong to Assam and that their presence amounted to threat to the demographic balance of the state by transforming the ‘indigenous Assamese’ people in a minority community within their own state.¹³⁷ To stem the flow of these illegal migrants and to take strict action against those who were already present in the state, the AASU demanded amendments to the citizenship laws. After years of peaceful protests which culminated in the brutal Nellie Massacre in 1983, the central government was strong-armed into signing the Assam Accord on 15th August 1985.¹³⁸ The Accord laid down the foundation for the amendment to the Citizenship Act which followed shortly after. This amendment introduced Section 6A which established three categories of persons – (i) Those that had entered the State of Assam prior to the 1st of January 1966 and continued to reside in the state, (ii) Those who entered between the 1st of January 1966 and the 25th of March 1971, and (iii) Those who entered

¹³⁴ THE CONSTITUTION OF INDIA, *supra* note 95 at Art. 10.

¹³⁵ CITIZENSHIP ACT, (ACT NO. 57 OF 1955), 1955.(India)

¹³⁶ CITIZENSHIP (AMENDMENT) ACT, 1985, Statement of Objectives and Reasons. (India)

¹³⁷ ASHNA ASHESH & ARUN THIRUVENGADAM, REPORT ON CITIZENSHIP LAW: INDIA (2017), Available at : <http://cadmus.eui.eu/handle/1814/47124> (last visited Mar 22, 2019).

¹³⁸ Accord between AASU, AAGSP, Central and State Government on the Foreigner Problem Issue, (1985).

after the 25th of March 1971.¹³⁹ Persons falling in the first category were accorded citizenship as a matter of right. Those falling in the second category were allowed to gain Indian citizenship so long as they registered themselves as Indian citizens upon being detected as foreigners. Lastly, those falling in the third category were not accorded any protection under the aforementioned section and were therefore liable to be detected and expelled in accordance with the law. The law regulating the same, which was subsequently struck down by the Supreme Court in the case of *Sarbananda Sonowal v. Union of India*,¹⁴⁰ was the Illegal Migrants (Determination by Tribunals) Act, 1983.¹⁴¹

In the aforementioned case, the petitioner maintained that the law in question had failed to serve its purpose as he claimed that the ‘detection/expulsion of illegal migrants under the IMDT Act, has been extremely dismal.’ The court while agreeing with the petitioner held that in accordance with Article 355 it was the responsibility of the Union to protect the States from external aggression which in this case was extended to the act of illegal migration.¹⁴² It argued that migration amounted to external aggression for three reasons – (1) Firstly, citing the scholarship of Zulfikar Ali Bhutto and Shiekh Mujibar Rehman the court concluded that both Pakistan and Bangladesh wished for Assam to be included within their own sovereign territory. Mujib for example wrote in his book titled ‘Eastern Pakistan’ – ‘Because Eastern Pakistan must have sufficient land for its expansion and because Assam has abundant forests and mineral resources, coal, petroleum etc., Eastern Pakistan must include Assam to be financially and economically strong’.¹⁴³ (2) Secondly, the court, citing Dr Nagendra Singh’s speech at the

¹³⁹ CITIZENSHIP ACT, (ACT NO. 57 OF 1955), 1955 *supra* note 137 at Sec. 6A.

¹⁴⁰ *Sarbananda Sonowal v. Union of India*, 2005 AIR SC 2920.

¹⁴¹ ILLEGAL MIGRANTS (DETERMINATION BY TRIBUNALS) ACT, (NO. 39 OF 1983), 1983.(India)

¹⁴² THE CONSTITUTION OF INDIA, *supra* note 95 at Art. 355 Duty of the Union to protect States against external aggression and internal disturbance It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution.

¹⁴³ SHIEKH MUJIBUR REHMAN, PAKISTAN: ITS PEOPLE, DETERMINATION AND ECONOMICS (1946) *as cited in* *SARBANANDA SONOWAL V. UNION OF INDIA*, *supra* note 130.

General Assembly in 1971 wherein he mentioned that the ‘invasion of unarmed men in totally unmanageable proportions...[could] threaten the states very existence... [and would therefore] have to be categorised as aggression’, argued that modern warfare may involve entire populations and not merely armed forces of belligerent states. (3) Lastly, the court argued that Pakistans ISI had been actively training militants in Bangladesh who were being sent across the border to Assam to cause disturbance in the state. On the basis of the abovementioned reasons, the court concluded that Union government had failed to protect the state of Assam from external aggression owing to the inefficiencies of the IMDT Act. Therefore, the court opined that the IMDT Act must be held to be unconstitutional.

Veracity of the abovementioned arguments aside, the Supreme Court’s judgement in the instant case can be seen to be alluding to the narrative on the politics in the state of Assam in the decade preceding Partition without making a direct reference to the same. As Udayon Misra has argues, in years preceding Partition the Muslim League was seen to be making a concerted effort to violate the colonial line system which was in place in the State of Assam by promoting the migration of Bengali Muslims into the region in order to tilt the demographic balance in favour of the Muslims, thereby allowing the League to stake a claim on the state in the eventuality of Partition.¹⁴⁴ Therefore, as in the case of post-Partition politics described earlier in this sub-section, in the case of Assam as well elements of its past continued to burden its present thereby preventing the ‘new age’ from grafting itself upon the old.

The two sets of examples discussed in this sub-section carry a common link insofar as they bring back the past within the domain of the present despite, the elite leaderships’ claim that with Partition the earlier age ended, and a new age began. As evidenced from the examples

¹⁴⁴ UDAYON MISRA, BURDEN OF HISTORY: ASSAM AND THE PARTITION - UNRESOLVED ISSUES *The Critical Forties* I (2018).

above, this element of the old was brought back through the actions of persons making claims regarding citizenship, be it migrants immediately following Partition or the leaders of the Assam agitation during the early in 1980's. Though their claims did not always materialise into a change in the citizenship law as was the case with the claims made by the Muslim refugees, it was through negotiations with their claims that the citizenship gained the identity that it did. The following sub-sections discuss the same tendency within the contexts of Pakistan and Bangladesh.

ii. *Pakistan*

'You are free; you are free to go to your temples, you are free to go to your mosques or any place of worship in the State of Pakistan...You may belong to any religion or caste or creed – that has nothing to do with the business of the State...We are starting in the days when there is no discrimination, no distinction between one community and another, no discrimination between one caste or creed and another. We are starting with this fundamental principle that we are all citizens of one State. - Muhammad Ali Jinnah, Constituent Assembly Opening address (1947)¹⁴⁵

In a manner similar to Nehru's tryst with destiny speech, Jinnah's opening address in the Constituent Assembly marked a departure from the 'old' and the arrival of the 'new'. This new acknowledged the existence of the old with its intra-religious divides, communal tensions, and inter-regional conflicts, but characterised it as roadblocks to success which had to be overcome in order to achieve the vision of the nation-state.¹⁴⁶ Fundamental to this vision was a 'civic' identity for the state with a citizenship model based primarily on birth. In pursuance of new this vision of the territorially-defined state, Jinnah urged the Muslims who found themselves on the wrong side of the border after Partition to 'stick to their respective homelands' and avoid the 'temptation' of migration.¹⁴⁷ However, at the same time, the leadership felt strongly about

¹⁴⁵ Muhammad Ali Jinnah, CONSTITUENT ASSEMBLY OF PAKISTAN (1947), Available at: <http://www.na.gov.pk/en/content.php?id=74>.

¹⁴⁶ *Id.*

¹⁴⁷ Jinnah's speech "Those who gave great sacrifices", 9 June 1947 as cited in Chatterji, *supra* note 72 at 1055.

the plight of Muslims who lived in the Subcontinent in whose name the nation of Pakistan was imagined. By officially referring to the refugees fleeing from the current territories of India as *Muhajirs*, which was the term used to describe the migrants that fled from Mecca to Medina in A.D. 622, the leadership presented a broad claim that ‘Pakistan would be a home for the Muslims’ and that it was the duty of ‘local Muslim inhabitants to receive the displaced’.¹⁴⁸ The differences between the two positions mentioned above was a source of great tension in Pakistan’s formative years. While trying to reconcile this tension the minister for refugees and rehabilitation, Ghazanfar Ali Khan, argued that ‘...we have no right to close the doors of Pakistan on the refugees who migrated from India to Pakistan...[I]t will be our duty to drag to the roof every flood-stricken person, but so many should not be taken on the roof that it should collapse and all be lost in the floods...Pakistan is not only his home, but the home of all the Musalmans of the world.’¹⁴⁹ This tension lay at the forefront of Pakistan’s search for a national identity and in its own way, brought back elements of the ‘old’ within the ‘new’.

ii.i. Initial developments following Independence

Unlike India which was able to enact a Constitution as early as 1950, Pakistan was not able to do so until 1956.¹⁵⁰ Consequently, citizenship was regulated solely by the Pakistan Citizenship Act of 1951.¹⁵¹ Following suit from Jinnah’s vision, the Act accorded citizenship primarily on the basis of birth in a manner similar that of India.¹⁵² Exceptions to the principle of birth were included through – (1) the proviso to Section 4 which maintained that any person born in Pakistan whose father is an ‘Enemy Alien’ will not be accorded citizenship by birth,¹⁵³ and (2) Section 5 which allowed persons born outside Pakistan to parents born in Pakistan to acquire

¹⁴⁸ ZAMINDAR, *supra* note 5 at 45.

¹⁴⁹ *Id.* at 98.

¹⁵⁰ SADAF AZIZ, *THE CONSTITUTION OF PAKISTAN: A CONTEXTUAL ANALYSIS* (2017).

¹⁵¹ THE PAKISTAN CITIZENSHIP ACT, (No. II OF 1951), 1951. (Pakistan)

¹⁵² *Id.* at Sec. 3.

¹⁵³ *Ibid.* at Sec. 3.

citizenship by registering at a Pakistani Consulate or Mission.¹⁵⁴ Additionally, the Act also included Sections 3¹⁵⁵ and 7¹⁵⁶ which in a manner similar to Articles 6 and 7 of Indian Constitution provided the rules for acquiring and forgoing citizenship pursuant to migration either to or from the territories of post-Partition Pakistan. However, in a manner similar to India, the aforementioned statute was not the only statute regulating citizenship. Other ordinances and statutes such as the Pakistan (Control of Entry) Ordinance, 1948, Pakistan (Protection of Evacuee Property) Ordinance 1948, and the Sind Economic Rehabilitation Bill played a critical role in laying down the foundations of citizenship and establishing the contours of the newly founded nation.¹⁵⁷

As discussed in the previous sub-section, following Partition and under threat from violent mobs of Hindu and Sikh refugees, scores of Muslims abandoned their houses and moved to the newly founded nation-state of Pakistan. As Zamindar notes, these refugees who proudly referred to themselves as *Muhajirs* believed that they belonged to Pakistan and Pakistan belonged to them owing to the sacrifices they made for its formation.¹⁵⁸ To accommodate these refugees' ordinances such as the Sind Economic Rehabilitation Bill were passed.¹⁵⁹ The aforementioned legislation allotted abandoned houses of Hindus and Sikhs in the state of Sind to the incoming *Muhajirs*. However, owing to the fact that the number of houses were not infinite, and the number of Hindus leaving was far lesser than the number of Muslims entering, the government faced a stiff challenge to accommodate the incoming *Muhajirs*.¹⁶⁰ Amidst this crisis, angry *Muhajirs* who were frustrated at the end of their futile journey from India resorted

¹⁵⁴ *Id.* at Sec. 5.

¹⁵⁵ *Id.* at Sec. 3.

¹⁵⁶ *Id.* at Sec. 7.

¹⁵⁷ ZAMINDAR, *supra* note 5.

¹⁵⁸ *Id.* at 173.

¹⁵⁹ *Id.* at 59.

¹⁶⁰ *Id.* at 57.

to forceful occupation of houses owned by Hindus and Sikhs thereby engulfing otherwise peaceful cities such as Karachi in Sind ‘in a wave of fear and panic’.¹⁶¹

The government was, however, determined to retain as many Hindus as possible. Even though at first glance such a move seems to be influenced by the state’s newfound secular identity, as Zamindar notes, this move was in fact deeply communal.¹⁶² Acknowledging the fact that Pakistan could not cater to all Muslims in India owing to the economic instability currently underway in the state, the leadership in Pakistan resorted to strong-arming the Indian government into treating the Muslims in India with greater care in exchange for the proper treatment of Hindus in Pakistan.¹⁶³ The government was aware of the fact that the ill treatment of Hindus in Pakistan would agitate the Hindus in India.¹⁶⁴ Therefore, by making the just treatment of Hindus in Pakistan conditional upon the just treatment of Muslims in India, the rights of the Muslims in India could be secured. In doing so, the government essentially transformed Hindus into hostages within their own country in exchange for securing the rights of Muslims in India, who, as Jinnah and others maintained, were not their own.

The deployment of this tactic showed stark similarities to those employed by Jinnah pre-Partition. As Jalal notes, Jinnah vehemently opposed the ‘maimed, mutilated, and moth-eaten’¹⁶⁵ version of Pakistan awarded by the Partition committee as he was at the very least determined to secure the states of Bengal and Punjab in their entirety.¹⁶⁶ In his opinion, securing these two states which had sizable populations of Hindus and Muslims would ensure that Pakistan included within its territory sufficient number of Hindus who could be instrumentalised in ensuring the protection of the Muslims who would continue to reside in India post-Partition.

¹⁶¹ *Id.* at 54.

¹⁶² *Id.* at 75.

¹⁶³ *Id.* at 75.

¹⁶⁴ Roy, *supra* note 126.

¹⁶⁵ Bose and Jalal, *supra* note 87 at 147.

¹⁶⁶ *Id.* at 150.

Even though Jinnah dropped this ambition following the Partition committee's insistence on dividing the states in the manner in which it did,¹⁶⁷ as evidenced from the discussion above, in post-Partition Pakistan this tactic resurfaced through the administration of citizenship laws. In this manner elements of the 'old' which were inspired by the idea of a non-territorial nation of Pakistan comprising of all the Muslims in the Subcontinent resurfaced within the new which attempted to move away from such an understanding by adopting a strictly territorial understanding of the state. Therefore, as was the case in India, in Pakistan, despite the radical formulation of the new state which sought to distance itself from its past, the past resurfaced within the present through the administration of the state's citizenship laws.

ii.ii. Subsequent changes over the years

In a manner similar to India, with changes in the political scenario, the citizenship laws were amended while desperately trying to hold on to their civic identity. One such momentous change took place in 1978 when an Amendment was introduced to the Citizenship Act in response to the 'separation' (*sic*) of East Pakistan from West Pakistan in 1971.¹⁶⁸ Despite there existing numerous persons within the newly-formed state of Bangladesh who claimed to be Pakistani and wanted to return to Pakistan,¹⁶⁹ the Citizenship Amendment Act which introduced Section 16-A persisted with a 'civic' model of citizenship that required domicile within the territories of Pakistan for a grant of citizenship.¹⁷⁰ A proviso was introduced in favour of those persons whom the Pakistani government had agreed to repatriate. This proviso maintained that those persons whose repatriation had been agreed by the Federal Government and who have not yet been repatriated, would continue to be citizens of Pakistan. However, as Redcliff notes, the Pakistani government only accepted a few people through the repatriation

¹⁶⁷ *Id.* at 154.

¹⁶⁸ PAKISTAN CITIZENSHIP (AMENDMENT) ORDINANCE, PLD 1978 CENT. ST P 74, 1978. (Pakistan)

¹⁶⁹ REDCLIFF, *supra* note 5 at 19.

¹⁷⁰ THE PAKISTAN CITIZENSHIP ACT, *supra* note 151 at Sec. 16-A.

scheme and even lesser eventually got an opportunity to migrate.¹⁷¹ Consequently, a vast majority of persons who were primarily from the Urdu-speaking Bihari community continued to reside in Bangladesh in a state of dire statelessness.¹⁷²

The same commitment to civic citizenship was however not extended to the Afghani refugees who fled to Pakistan following the Soviet invasion of Afghanistan in 1979.¹⁷³ Many of these refugees made claims for Pakistani citizenship which were vehemently denied by government on the basis of either the Foreigners Act, 1946¹⁷⁴ or the proviso to Section 4 described previously. The governments denial was challenged in court on numerous instances. In the case of *Ghulam Sanai v. The Assistant Director National Registration Office, Peshawar*, the Peshawar High Court denied the citizenship claim made by an Afghani refugee born on Pakistani soil.¹⁷⁵ The petitioner claimed that since he was born on Pakistani soil he deserved citizenship under the Section 4 which recognised the principle of birth as the primary basis for granting citizenship. The court however denied his claim by holding that since his parents were ‘alien enemies’ as provided for in the proviso to Section 4 of the Act, he could not claim citizenship by birth.

An exception to the principle of birth was however introduced for the migrants from Jammu and Kashmir via the 1973 amendment to the Act.¹⁷⁶ The Amendment Act introduced two sections which treated migrants from Pakistan as a separate class of persons. Section 8(2) maintained that any subject from the state of Azad Jammu and Kashmir (i.e. the self-governing part of Kashmir that falls within the administrative unit of Pakistan) who holds a Pakistani passport would be deemed to be a Pakistani citizen regardless of where she resides. Section 14-

¹⁷¹ REDCLIFT, *supra* note 5 at 19.

¹⁷² *Id.*

¹⁷³ Zain Noorani, *THE GENEVA ACCORDS AND AFGHANISTAN*, 41 PAK. HORIZ. 50–69, 51 (1988).

¹⁷⁴ THE FOREIGNERS ACT, (NO. XXXI OF 1946), 1946.(Pakistan)

¹⁷⁵ *Ghulam Sanai v. The Assistant Director National Registration Office, Peshawar*, PLD (1999) Peshawar 18.

¹⁷⁶ PAKISTAN CITIZENSHIP (AMENDMENT) ACT, (NO. XXXIX OF 1973), 1973.(Pakistan)

B on the other hand maintained that any person who has migrated from Indian Occupied Kashmir to Pakistan with the intension of residing therein shall be accorded citizenship without prejudice. The Supreme Court of Pakistan in the case of *Akhtar Husain Jan v. Governor of Pakistan*, while interpreting the abovementioned sections held that the petitioner being a Kashmiri had to fulfil no requirement except for expressing an intension to reside in Pakistan.¹⁷⁷ Upon expressing such intention, the state was obligated to grant citizenship to such person as a matter of right. The special treatment accorded to migrants from Kashmir was challenged by an Afghan refugee in the case of *Abdul Majeed and Anr. v. The S.H.O. Police Station Nalukha, Lahore*.¹⁷⁸ The petitioner in the instant case contended that the State had an obligation to treat him in a manner similar to the *Muhajirs* coming to Pakistan at the time of Partition and the migrants arriving from Kashmir for whom the state had carved exceptions in the Citizenship Act. The court however dismissed this claim on the ground that the state had categorically distinguished the case of the Afghan refugees from that of the Partition and the Kashmiri refugees for whom specific provisions of the Act had been introduced. As the same was not extended to the Afghan refugees, their claim to citizenship was denied.

As can be evidenced from the aforementioned amendments and cases, Pakistans civic model of citizenship was selectively applied in furtherance of its own national agenda. Moreover, as in the case of the Kashmiri migrants, this selective application could be traced back to Pakistans pre-Partition commitment towards acquiring Kashmir, the nationally prescribed narrative behind which is Kashmir's primary Muslim population that naturally should have belonged to Pakistan.¹⁷⁹

¹⁷⁷ *Akhtar Husain Jan v. Governor of Pakistan*, 1995 SCMR 1554.

¹⁷⁸ *Abdul Majeed and Anr. v. The S.H.O. Police Station Nalukha, Lahore*, PLD 1989 Lahore 223.

¹⁷⁹ Ashutosh Varshney, *India, Pakistan, and Kashmir: Antinomies of Nationalism*, 31 ASIAN SURV. 997–1019 (1991).

The two sets of examples discussed in this sub-section, in a manner similar to those discussed in the context of India, carry a common link insofar as they represent the states attempts at negotiating between the new and the old. Additionally, in a manner similar to that of India, the primary actors on whose behest this negotiation took place were the people who making claims for the grant of citizenship, be it the incoming *Muhajir*, the Kashmiri migrant, or discontented Afghani refugee.

iii. Bangladesh

'From today there are no tribal sub-groups in Bangladesh; everyone is a Bangalee' - Sheikh Mujibur Rahman (1973)¹⁸⁰

Within the first decade of independence, Pakistan witnessed political and economic dominance by the Punjabis.¹⁸¹ The Punjabis enforced Urdu as the official language of the Pakistan even though the Bengalese, who didn't speak a word of Urdu, outnumbered the total population of West Pakistan. The imposition of Urdu sparked the 'language movement' of 1952 which characterised the Urdu-speaking-Punjabi-centric idea of Pakistan as a threat to the economy and culture of the Bangalee people.¹⁸² Over the next two decades, language-based Bangalee nationalism grew to such an extent that it successfully displaced the homogenising power of Islamic nationalism which was touted as the binding element of the nation-state of Pakistan.¹⁸³

With independence, the Constitution gave due regard to the affect nationalism had on the formation of the nation-state by recognising it as one of fundamental principles of the Constitution through the Preamble.¹⁸⁴ Further, it included 'Nationalism' as a directive principle of state policy through Article 8,¹⁸⁵ which was further defined in Article 9 as 'The Unity and solidarity of the Bangalee nation, which, deriving its identity from its language and culture,

¹⁸⁰ As quoted in REDCLIFT, *supra* note 5 at 89.

¹⁸¹ *Id.* at 10.

¹⁸² AHMED ILLIAS, *THE INDIAN ÉMIGRÉS IN BANGLADESH: AN OBJECTIVE ANALYSIS* (2003).

¹⁸³ M.G. Kabir, *Religion, Language and Nationalism in Bangladesh*, 17 J. CONTEMP. ASIA (1987).

¹⁸⁴ CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH, Preamble (1972).

¹⁸⁵ *Id.* at Art. 8.

attained sovereign and independent Bangladesh through united and determined struggle in the war of independence, shall be the basis of Bangalee nationalism.’¹⁸⁶ This ideation of Bangalee nationalism which was promoted by Mujib amongst others was characterised as being inclusionary in nature owing to its ability to cut across lines of religion, caste, class and ethnicity.¹⁸⁷

This ideation of nationalism as an inclusive force was however distinct from the nationalism practiced in the pre-independence era. The old nationalism strategically excluded against those persons whom it considered pro-Pakistan.¹⁸⁸ One of the worsts, if not the worst, affected communities of this exclusionary practice were the Urdu-speaking-Bihari Muslims. Between 1947 and 1971, this community enjoyed consistent support from West Pakistan owing to their cultural and linguistic affinity to the Punjabi community.¹⁸⁹ Consequently, large sections of the Bihari community were anti-liberation. This naturally angered the Bangalee nationalists who branded the Bihari community as enemy collaborators post-independence.¹⁹⁰ Thousands of Bihari’s were massacred while others fled for their safety. Many went on to reside in temporary camps such as the Geneva Camp in Dhaka which was constructed by the International Committee of the Red Cross.¹⁹¹ By 1972, as many as 10,08,680 Biharis were recorded as residing in these camps which were scattered across the country. A sizable proportion of these persons applied to be repatriation following the Agreement signed by the Bangladeshi and the Pakistani government.¹⁹² However, as described in the previous sub-section, hardly any

¹⁸⁶ *Id.* at Art. 9.

¹⁸⁷ Afsan Chowdhury, *Sheikh Mujib and historical identity of the margin*, NEW AGE, Available at: <http://www.newagebd.net/article/68425/sheikh-mujib-and-historical-identity-of-the-margin> (last visited Mar 28, 2019).

¹⁸⁸ REDCLIFT, *supra* note 5 at 12.

¹⁸⁹ *Id.* at 10.

¹⁹⁰ *Id.* at 12.

¹⁹¹ *Id.* at 12.

¹⁹² Sumit Sen, *Stateless Refugees and the Right to Return: The Bihari Refugees of South Asia - Part I*, 11 INT. J. REFUG. LAW 625–645 (1999).

repatriations in fact took place. Consequently, the Biharis came to be seen as ‘stranded Pakistanis’ who were forced to live in Bangladesh against their will.¹⁹³

iii.i. Initial developments following Independence

Accompanying the ‘new’ idea of nationalism, the newly independent state also attempted to give the Constitution a civic identity through its citizenship laws. In Article 6, it made a distinction between a national and a citizen, with the former being a Bangalee and the latter being a Bangladeshi.¹⁹⁴ Rights were subsequently accorded only on the basis of citizenship or personhood, and not nationality. Further, the state adopted the Pakistani Citizenship Act, 1951 which, as argued in the previous sub-section was designed with the intension of promoting a civic model for the state by upholding birth as the primary principle upon which citizenship was accorded. This Act was later accompanied by the Bangladesh Citizenship (Temporary Provisions) Order which retained the civic identity of the Pakistani Citizenship Act.¹⁹⁵ The coming together of inclusive nationalism and civic citizenship formed the imagination of post-independence Bangladesh as a modern yet non-Western state.

This new imagination however could not hold ground for long, as the old with its exclusionary practice of nationalism, re-emerged within the new. In 1973, the Bangladesh Citizenship Order was amended to introduce Section 2B which maintained that any person who ‘owes, affirms or acknowledges, expressly or by conduct, allegiance to a foreign state’ shall not be deemed to be a citizen of Bangladesh.¹⁹⁶ While this provision did not single out any specific community, in practice, it was used by the executive to target the Urdu-speaking-Bihari community who were known sympathisers of the Pakistani government during the East Pakistan era.¹⁹⁷ In pursuance

¹⁹³ *Id.*

¹⁹⁴ CONSTITUTION OF THE PEOPLE’S REPUBLIC OF BANGLADESH, *supra* note 186 at Art. 6.

¹⁹⁵ BANGLADESH CITIZENSHIP (TEMPORARY PROVISIONS), ORDER, (Presidents Order No. 149 of 1972), 1972.(Bangladesh)

¹⁹⁶ *Id.* at Sec. 2B.

¹⁹⁷ See for example the case of *Bangladesh v. Professor Golam Azad*, 1994 CLC 23 (1994) wherein section 2B was not invoked despite the respondent’s own admission that he was anti-liberation.

of this Section members from the community were required to take an oath of allegiance to the state of Bangladesh to acquire citizenship.¹⁹⁸ While scrutinising the genuineness of the oaths, two groups of persons were created – (a) the ‘outsiders’ who left the refugee camps and were believed to be making a concerted effort of intermingling with the nations Bangalee identity, and (b) the ‘insiders’ who continued to reside in the camp and were believed to still be active supporters of Pakistan. Till 2003, the state only accepted the oaths taken by the ‘outsiders’. In the case of *Mokhtar Ahmed v Government of Bangladesh*,¹⁹⁹ the Supreme Court held that the petitioner, who was an outsider, would not lose his citizenship upon registering for repatriation with the Red Cross at a time of distress, as he was already reconsider as a citizen of Bangladesh owing to the oath of allegiance he had taken previously. Such liberal treatment was however not extended to the ‘insiders’ who were by mere virtue of their residence within the camps assumed to owe allegiance to Pakistan.

iii.ii. Subsequent changes over the years

In 2003, however, a significant shift in attitude emerged when the Court in the case of *Abid Khan and Anr. v. Govt. of Bangladesh* accepted the citizenship claim made by ten petitioners residing in the Geneva camp in Dhaka.²⁰⁰ The Court in the instant case argued that the Geneva camp ought not to accord a special status in law by mere virtue of the high concentration of Urdu-speaking-Bihari Muslims residing therein. Consequently, the court held that the petitioners would not be assumed to be owing allegiance to Pakistan under Section 2B. In 2008, the court further extended this holding by applying it to all persons residing in the refugee camps through the case of *Sadaqat Khan and Anr. v. The Chief Election Commissioner*.²⁰¹ In the instant case, the petitioners who were residents of one such camp in Mirpur, argued for

¹⁹⁸ RIDWANUL HOQUE, REPORT ON CITIZENSHIP LAW: BANGLADESH (2016), Available at: <http://cadmus.eui.eu/handle/1814/44545> (last visited Mar 22, 2019).

¹⁹⁹ *Mokhtar Ahmed v. Government of Bangladesh*, 23 DLR (1979) 8.

²⁰⁰ *Abid Khan and Anr. v. Government of Bangladesh*, 55 DLR (2003) 318.

²⁰¹ *Sadaqat Khan and Anr. v. The Chief Election Commissioner*, 60 DLR (2008) 407.

their recognition as citizens of Bangladesh along with the right to vote which would flow therefrom. The court while acknowledging the growing sentiment in favour of the Urdu-speaking-Bihari community held that members of this community wherever they may reside would be deemed to be citizens of Bangladesh if they fulfilled the qualifications provided under Section 2 of the Citizenship Act. It further clarified that such persons shall be deemed to have acquired Bangladeshi citizenship by the operation of law and that therefore governmental intervention was not required. In doing so, the court effectively nullified the requirement of taking an oath of allegiance for the Bihari community while retaining the provision under Section 2B.

As can be evidenced from the discussion above, in Bangladesh, in a manner similar to India and Pakistan, elements of the old which were strategically exclusionary, resurfaced within the new which desired to be inclusionary. Moreover, this old, as in the case of India and Pakistan during their formative years, did not emerge through direct legislative intervention but through executive and judicial decision making which capitalised on the ambiguity left by the legislative design. Lastly, significant change in this regard was achieved through claims made by persons who were affected by draconian instrumentalisation of the citizenship laws and not through the benevolence of the government.

Conclusion by way of analysis: Contextualising the Content-empty

Concept

As stated in the introduction, this thesis sought to explore the concept of citizenship through an analysis of its history in the Subcontinent. While doing so, it acknowledged the debt the newly-independent states of India, Bangladesh, and Pakistan owed towards Europe in developing the concept of citizenship through its exploits in its colonies and in the metropolis. Therefore, before presenting a narrative of its history in the Subcontinent, an attempt was made in Chapter II to identify some of the key characteristics of citizenship as they developed till the end of the colonial era 1947. The characteristics identified therein were – (1) its exclusionary nature, (2) the state's sovereign command over it, (3) its amenability to being instrumentalised, and (4) its openness to contestations by those affected by its application. Amongst these characteristics, the third was argued as being a by-product of the first and the second rule, while the fourth was considered a means of providing a reality check to the third. Taken together these characteristics were argued to lend to citizenships a fluid and contextually motivated nature.

Chapter III thereafter argued that the independent states of India, Bangladesh, Pakistan adopted the concept of citizenship with all the characteristics described above. However, in light of the specificities of the political context following independence in these three states the citizenship models adopted by them took unique shapes. Following suit from this historical position, the chapter went on to detail the history of the concept in the three states while analysing the objectives behind their initial design. As argued in this chapter, the three states designed their citizenship provisions in order to achieve a 'new' vision of the state which marked a departure from the realities of the 'old'. In the case of India and Pakistan, it was argued that the states attempted to promote a civic identity for the state pursuant to which citizenship rules were designed primarily on the basis of birth or domicile. Bangladesh, on the other, attempted to

promote a civic identity for the state which was tethered to an inclusive understanding of Bangalee nationalism pursuant to which it also adopted a citizenship model primarily based on birth or domicile. However, as was noticed in this chapter, notwithstanding the objectives with which the citizenship models were instrumentalised by these states following independence, elements of the ‘old’ resurfaced within the ‘new’ thereby giving the laws a unique character. In the case of India, immediately following independence the citizenship rules were seen to disproportionately benefit the Hindu and Sikh community at the expense of the Muslim community. In Pakistan on the hand, these rules were seen to work to the disadvantage of both the *Muhajirs*, whose citizenship claims were turned down, as well as the Hindus and the Sikhs, who were reduced to hostages in their own homes. In Bangladesh, these rules were instrumentalised soon after independence to institute revenge against the Urdu-speaking-Bihari community who found themselves on the wrong side of Pakistan prior to Bangladesh’s independence. In the years following independence, these laws were amended or re-interpreted by the courts in order to give them a new meaning. In India, responding to the claims made by members of the Assam agitation, the citizenship rules were amended in 1985 to give effect to the Assam Accord which sought to expel illegal immigrants from Bangladesh post-independence. In Pakistan, in light of the ongoing conflict with India regarding Jammu and Kashmir, changes were introduced to the citizenship laws in 1973 to expedite the process of according citizenship to persons from Jammu and Kashmir. Lastly, in Bangladesh, the Supreme Court in 2008 altered the legal position of the Urdu-speaking community by deeming all of them as Bangladeshi citizens.

Essential to both the time periods discussed in this chapter were the actions of individuals on whose behest the aforementioned changes took place. These individuals included the partition refugees and protesters from Assam in India; Partition, Afghani, and Kashmiri refugees in Pakistan; and Urdu-speaking Biharis in Bangladesh. Through the claims made by these

individuals the states were forced to either reinforce or reformulate their citizenship rules. By placing the individual in the centre of political change, this chapter argued that citizenship in the aforementioned states was formulated through the interactions between the state and people both citizens, as in the case of Assam, as well as non-citizens, as in the case of Urdu-speaking community in Bangladesh.

Based on the above discussion the following conclusions can be drawn regarding citizenship in Subcontinent – (1) Citizenship played an essential in the states formative practices as it encoded the ‘new’ vision of the nation-state as imaged by the nationalist leadership; (2) Despite its capacity to introduce change, citizenship in these states was not an adequate instrument in realising the states vision as elements of the ‘old’ resurfaced within the new; (3) Both citizens and non-citizens play a central role in negotiating the contours of citizenship thereby discounting the assumption that citizenship is imposed from above upon the people. This should not be taken to imply that the state’s role is not significant in determining citizenship for it is the state who finally legislates or adjudicates on citizenship. However, this act of legislation or adjudication is met with or responds to actions by individuals thereby making the final product, one which is discursively formulated through the interactions of individuals and the state.

The abovementioned conclusions do not provide an answer to the controversies enlisted in the introduction to this thesis. They do, however, lend clarity regarding the process through which these controversies have been negotiated in the past. These processes could very well apply to any part of the world owing to the fact that the concept of citizenship adopted by these three states was borrowed from Europe. Therefore, the conclusions enlisted above ought to be taken as a contribution to the understanding of citizenship as whole thereby calling for further research in testing these conclusions mentioned above in the context of other states.

Bibliography

- Abdul Majeed and Anr. v. The S.H.O. Police Station Nalukha, Lahore , PLD 223 (Lahore High Court 1989).
- Abid Khan and Anr. v. Government of Bangladesh , 55 DLR 318 (Supreme Court - High Court Division 2003).
- Accord between AASU, AAGSP, Central and State Government on the Foreigner Problem Issue.* (1985, August 15).
- Akhtar Husain Jan v. Governor of Pakistan. , SCMR 1554 (Supreme Court 1995).
- An ordinance to provide for the administration of evacuee property and certain matters connected therewith. , MEAI, F. 17-39/49-AFRI Gazette of India §.
- Anderson, B. (1987). *Imagined communities: reflections on the origin and spread of nationalism* (4. impression). London: Verso.
- Arendt, H. (1966). *The Origins of Totalitarianism*. Harcourt Brace & Company.
- Ashesh, A., & Thiruvengadam, A. (2017). *Report on citizenship law: India* (Country Report No. RSCAS/EUDO-CIT-CR 2016/14). Retrieved from European University Institute website: <http://cadmus.eui.eu/handle/1814/47124>
- Aziz, S. (2017). *The constitution of Pakistan: a contextual analysis*. Oxford: Hart.
- Badruzzaman v. The State. AIR 16 (Allahabad High Court 1951).
- Balot, R. (2017). Revisiting the Classical Ideal of Citizenship. In A. Shachar, R. Bauböck, I. Bloemraad, & M. P. Vink (Eds.), *The Oxford handbook of citizenship* (First edition). Oxford: Oxford University Press.
- Bangladesh Citizenship (Temporary Provisions), Order.* , Presidents Order No. 149 of 1972 § (1972).
- Bangladesh v. Professor Golam Azad. , CLC 23 (Supreme Court - Appellate Division 1994).
- Barbour, J. (2012). Between Politics and Law: Hannah Arendt and the Subject of Rights. In M. Goldoni & C. McCorkindale (Eds.), *Hannah Arendt and the Law*. Hart Publishing.
- Barker, M. (2018, September 17). Pakistan's Imran Khan pledges citizenship for 1.5m Afghan refugees. *The Guardian*. Retrieved from <https://www.theguardian.com/world/2018/sep/17/pakistan-imran-khan-citizenship-pledge-afghan-refugees>
- Baruah, S. (2003). Citizens and Decizens: Ethnicity, Homelands, and the Crisis of Displacement in Northeast India. *Journal of Refugee Studies*, 16(1), 44–66.
- Baruah, S. (2018, August 2). The missing 4,007,707. Retrieved 15 December 2018, from The Indian Express website: <https://indianexpress.com/article/opinion/columns/assam-nrc-draft-list-names-citizenship-5287213/>

- Basson, S. (2012). The Right to Have Rights : From human Rights to Citizens Rights and Back. In M. Goldoni & C. McCorkindale (Eds.), *Hannah Arendt and the Law*. Hart Publishing.
- Baxi, U. (1999). Constitutionalism as a Site of State Formative Practices. *Cardozo Law Review*, 21, 1183–1210.
- Baxi, U. (2009). Outline of a ‘Theory of Practice’ of Indian Constitutionalism. In R. Bhargava (Ed.), *Politics and Ethics of the Indian Constitution* (pp. 92–118). Oxford, New York: Oxford University Press.
- Beiner. (1995). Why Citizenship Constitutes a Theoretical Problem in the Last Decade of the Twentieth Century. In R. Beiner (Ed.), *Theorizing citizenship*. Albany, NY: State Univ. of New York Press.
- Benhabib, S. (2004a). Conclusion: Cosmopolitan Federalism. In *The Rights of Others: Aliens, Residents, and Citizens* (pp. 213–221). Cambridge University Press.
- Benhabib, S. (2004b). *The Rights of Others: Aliens, Residents, and Citizens*. Cambridge University Press.
- Bhatia, G. (2018, October 3). In the court of last resort. *The Hindu*. Retrieved from <https://www.thehindu.com/opinion/lead/in-the-court-of-last-resort/article25105456.ece>
- BJP drops citizenship bill amid protests. (2019, February 13). *BBC News*. Retrieved from <https://www.bbc.com/news/world-asia-india-47226858>
- Bohman, J. (2012). Citizens and Persons: Legal Status and Human Rights in Hannah Arendt. In M. Goldoni & C. McCorkindale (Eds.), *Hannah Arendt and the Law*. Hart Publishing.
- Bose, S., & Jalal, A. (2004a). 1947: memories and meanings. In *Modern South Asia: history, culture, political economy* (2. ed, pp. 157–167). New York: Routledge.
- Bose, S., & Jalal, A. (2004b). The partition of India and the creation of Pakistan. In *Modern South Asia: history, culture, political economy* (2. ed, pp. 135–157). New York: Routledge.
- British Nationality and Status of Aliens Act 1914. (n.d.). Retrieved 12 February 2019, from <http://www.legislation.gov.uk/ukpga/Geo5/4-5/17/enacted>
- Chakrabarty, D. (2000). Introduction: The Idea of Provincializing Europe. In *Princeton Studies in Culture/Power/History. Provincializing Europe: postcolonial thought and historical difference* (pp. 3–27). Princeton, NJ: Princeton Univ. Press.
- Chatterji, J. (2012). South Asian Histories of Citizenship, 1946—1970. *The Historical Journal*, 55(4), 1049–1071. Retrieved from JSTOR.

Chowdhury, A. (n.d.). Sheikh Mujib and historical identity of the margin. *New Age*. Retrieved from <http://www.newagebd.net/article/68425/sheikh-mujib-and-historical-identity-of-the-margin>

Citizenship Act, 1955 (Act No. 57). , (1955).

Citizenship (Amendment) Act. , (1985).

Citizenship amendment bill on hold over Assam protests. (2018, November 28). *The Times of India*. Retrieved from <https://timesofindia.indiatimes.com/india/citizenship-amendment-bill-on-hold/articleshow/66836283.cms>

Constitution of the Islamic Republic of Pakistan. , (1973).

Constitution of the Peoples Republic of Bangladesh. , (1972).

Ebrahim Vazir Mavat v. The State of Bombay. , AIR 229 (Supreme Court 1954).

Edmund, B. (1909). *Reflections on the French Revolution* (3rd ed.; E. Charles Williams, Ed.). In (3rd ed.). New York: P.F. Collier and Sons.

Fazal, T. (2018, August 25). NRC: Tested frequently since Partition, the Indian theory of citizenship has faltered once again. *Scroll.In*. Retrieved from <https://scroll.in/article/890206/nrc-tested-frequently-since-partition-the-indian-theory-of-citizenship-has-faltered-once-again>

Garner, B. A. (2009). *Black's Law Dictionary*. West.

Ghulam Sanai v. The Assistant Director National Registration Office, Peshawar. , PLD 18 (Peshawar High Court 1999).

Habermas, J. (1995). Citizenship and National Identity: Some Reflections on the future of Europe. In R. Beiner (Ed.), *Theorizing citizenship*. Albany, NY: State Univ. of New York Press.

Hoque, R. (2016). *Report on citizenship law: Bangladesh* (Country Report No. RSCAS/EUDO-CIT-CR 2016/14). Retrieved from European University Institute website: <http://cadmus.eui.eu/handle/1814/44545>

Hyder, S. (2019, March 29). Steering the refugee debate. *DAWN*. Retrieved from <https://www.dawn.com/news/1440342/steering-the-refugee-debate>

Illegal Migrants (Determination by Tribunals) Act, 1983. , (No. 39 of 1983). § (1983).

Illias, A. (2003). *The Indian émigrés in Bangladesh: an objective analysis*. Saidpur: Shamsul Huque Foundation.

Influx from Pakistan (Control) Act. , XXIII of 1949 § (1949).

Influx from Pakistan (Control) Ordinance XVII of 1948. , Pt. I § (1948).

Iqbal Ahmed v. State of Bhopal. , CriLJ 602 (Madhya Pradesh High Court 1954).

- Jalal, A. (2000). Nationalism in South Asia. In A. Motyl (Ed.), *Encyclopedia of Nationalism*. Academic Press.
- Jayal, N. G. (2013). *Citizenship and its Discontents: An Indian History*. Harvard University Press.
- Jennings, R., Watts, A., & Oppenheim, L. F. L. (Eds.). (1992). *Oppenheim's international law* (3. Dr.). Harlow: Longman.
- Jinnah, M. A. (1947, August 11). *Constituent Assembly of Pakistan*. Retrieved from <http://www.na.gov.pk/en/content.php?id=74>
- Kabir, M. G. (1987). Religion, Language and Nationalism in Bangladesh. *Journal of Contemporary Asia*, 17(4).
- Kaviraj, S. (2010). A State of Contradictions: The Post-colonial State in India. In *The imaginary institution of India: politics and ideas* (pp. 210–234). New York: Columbia University Press.
- Kelly, G. A. (1995). Who needs a theory of Citizenship? In R. Beiner (Ed.), *Theorizing citizenship*. Albany, NY: State Univ. of New York Press.
- Khan, A. A. (2018, March 7). Bangabandhu's 7th March Speech Determines Our Destiny. *Daily Sun*. Retrieved from <http://www.daily-sun.com/home/printnews/293639>
- Kymlicka, W. (1996). *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Retrieved from <http://www.oxfordscholarship.com/view/10.1093/0198290918.001.0001/acprof-9780198290919>
- Mandhara Jakab Khalak Dana and Others v. Kutch. , AIR 38 (Judicial Commissioner-Kutch 1951).
- Mehta, U. (2014). Constitutionalism. In Niraja Gopal Jayal & P. B. Mehta (Eds.), *The Oxford companion to politics in India* (pp. 15–28).
- Misra, U. (2018). *Burden of history: Assam and the partition - unresolved issues*.
- Moktar Ahmed v. Government of Bangladesh. , DLR 8 (Supreme Court(High Court Division) 1979).
- Mujibur Rehman, S. (1946). *Pakistan: Its People, Determination and Economics*.
- Munshi, K. M. (1947, April 29). *Constituent Assembly Debates*. Retrieved from https://cadindia.clpr.org.in/constitution_assembly_debates/volume/3/1947-04-29
- Nehru, J. (1947, August 14). *Constituent Assembly Debates*. Retrieved from https://cadindia.clpr.org.in/constitution_assembly_debates/volume/5/1947-08-14
- Noorani, Z. (1988). THE GENEVA ACCORDS AND AFGHANISTAN. *Pakistan Horizon*, 41(3), 50–69. Retrieved from JSTOR.

- Orgad, L. (2010). Illiberal Liberalism Cultural Restrictions on Migration and Access to Citizenship in Europe. *The American Journal of Comparative Law*, 58(1), 53–105. <https://doi.org/10.5131/ajcl.2009.0004>
- Pakistan Citizenship (Amendment) Act. , Pub. L. No. PLD 1973 cent. St. P 484, XXXIX of 1973 (1973).
- Pakistan Citizenship (Amendment) Ordinance. , Pub. L. No. F 24 (1) 78, Pub in Gaz of Pakistan Extd. Pt, PLD 1978 Cent. St P 74 (1978).
- Partha Chatterjee. (2010). Whose Imagined Community? In *Empire and Nation: Selected Essays* (pp. 23–36). Columbia University Press.
- Patel, V. J. (1947, April 29). *Constituent Assembly Debates*. Retrieved from https://cadindia.clpr.org.in/constitution_assembly_debates/volume/3/1947-04-29
- Patel, V. J. (1973). *Sardar Patel's Correspondence, 1945-50* (D. Das, Ed.). Ahmedabad: Navajivan Publishing House.
- Pocock, J. G. A. (1995). The Ideal of Citizenship Since Classical Times. In R. Beiner (Ed.), *Theorizing citizenship*. Albany, NY: State Univ. of New York Press.
- Preuss, L. (1934). International Law and Deprivation of Nationality. *Georgetown Law Journal*, 23, 250–276.
- Raz, J. (1984). Legal Rights. *Oxford Journal of Legal Studies*, 4(1), 1–21.
- Redclift, V. (2013). *Statelessness and citizenship: camps and the creation of political space*. In *Routledge Explorations in Development Studies: Vol. 5*. London: Routledge.
- Roy, A. (2005). *Gendered Citizenship: Historical and Conceptual Explorations*. Orient Blackswan.
- Roy, A. (2010). *Mapping Citizenship in India*. Oxford, New York: Oxford University Press.
- Roy, H. (2012). Citizen and the Nation. In *Partitioned lives: migrants, refugees, citizens in India and Pakistan, 1947 - 1965*. New Delhi: Oxford Univ. Press.
- Rules regarding permit system introduced between India and Pakistan. , Notification no. n(55)/48-General Gazette of India § (1948).
- Sadaqat Khan and Anr. v. The Chief Election Commissioner. , 60 DLR 407 (Supreme Court - Appellate Division 2008).
- Sadiq, K. (2008). *Paper Citizens: How Illegal Immigrants Acquire Citizenship in Developing Countries*. Oxford, New York: Oxford University Press.
- Sadiq, K. (2017). Postcolonial Citizenship. In A. Shachar, R. Bauböck, I. Bloemraad, & M. P. Vink (Eds.), *The Oxford handbook of citizenship* (First edition). Oxford: Oxford University Press.
- Sarbananda Sonowal v. Union of India. , AIR 2920 (Supreme Court 2005).

- Sen, S. (1999). Stateless Refugees and the Right to Return: The Bihari Refugees of South Asia - Part 1. *International Journal of Refugee Law*, 11(4), 625–645.
- State Trading Corporation of India v. Commercial Tax Officer. , AIR 1811 (Supreme Court 1963).
- The Administration of Evacuee Property Act*(Act No. 31). , (1950).
- The Constitution of India*. , (1950).
- The Foreigners Act. , (XXXI of 1946) § (1946).
- The Pakistan Citizenship Act. , II of 1951 § (1951).
- The Passport (Entry into India) Rules*. , (1950).
- United Nations. (2018, July 11). *Global Compact For Safe, Orderly and Regular Migration*. The General Assembly of the UN.
- United Nations Treaty Collection. (n.d.). Retrieved 15 February 2019, from https://treaties.un.org/pages/Treaties.aspx?id=5&subid=A&clang=_en
- Vajpeyi, A. (2012). *Righteous republic: the political foundations of modern India*. Cambridge, Mass.: Harvard Univ. Press.
- Varshney, A. (1991). India, Pakistan, and Kashmir: Antinomies of Nationalism. *Asian Survey*, 31(11), 997–1019. <https://doi.org/10.2307/2645304>
- Vink, M. (2017). Comparing Citizenship Regimes. In A. Shachar, R. Bauböck, I. Bloemraad, & M. P. Vink (Eds.), *The Oxford handbook of citizenship* (First edition). Oxford: Oxford University Press.
- Wimmer, A. (2013). *Ethnic Boundary Making: Institutions, Power, Networks*. Retrieved from <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199927371.001.0001/acprof-9780199927371>
- Young, I. (1995). Polity and Group difference: A critique of the Ideal of Universal Citizenship. In R. Beiner (Ed.), *Theorizing citizenship*. Albany, NY: State Univ. of New York Press.
- Zamindar, V. F.-Y. (2007). *The Long Partition and the Making of Modern South Asia: Refugees, Boundaries, Histories*. Columbia University Press.