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RESEARCH ARTICLE

THE RIGHT TO NATIONALITY & REPATRIATION UNDER INTERNATIONAL LAW: A STUDY OF BIHARIS IN BANGLADESH

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ABSTRACT

This article aims to examine the legal position of Biharis in Bangladesh and their status in international law. It also reiterates the position of the international community, repatriation rights and judicial decisions on Bihari issues. Despite giving the citizenship rights to the Biharies in Bangladesh many of them did not renounce their Pakistani citizenship and actively refused to integrate with majority Bengalis. Therefore, the Bihari people's right to get into Pakistan, their

homeland, is an internationally recognized right having the force of customary international law. The article is based on secondary data materials. The key sources of this article include textbooks, journal articles, daily newspapers and online documents. The study has also relied on international instruments and decided cases of Apex Court of Bangladesh and Pakistan. The article found that Pakistan has violated and continues to violate the Biharis international right to get into their state of nationality by refusing repatriation. Besides, the new generations of stranded Biharis have mostly rejected their forefather's stances and ideologies. Hence, the government should give them full opportunity to educate themselves to become productive citizens of Bangladesh.

Keywords: Bangladesh, Bihari, International Law, Judicial Decisions and Repatriation

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INTRODUCTION

THE ISSUE RELATING to the nationality of stranded Bihari people in Bangladesh has been one of the oldest unresolved disputes between Bangladesh and Pakistan. After the independence of Bangladesh in 1971, the Bihari people were excluded from Bangladeshi citizenship. Since then, they have been known as the 'Stranded Pakistanis'.¹ During the war of independence of Bangladesh in 1971, most of the Urdu-speaking Biharis fought against the majority Bengali population in groups and the infamous 'Al-Badr' militia group exclusively consisted of Bihari men who raped, pillaged and assisted the Pakistani military aggressors with information and logistics in their pursuit of genocide, war crimes and crimes against humanity against the Bengalis and religious minorities; especially the Hindus of Bangladesh.² By collaborating with the Pakistanis, many Biharis secured lucrative jobs in the government offices as clerks, civil servants, officers in railways and workers and supervisors in the jute mills of then East Pakistan.³

After Bangladesh gained its independence, the Biharis too became victims of mob-violence in the hands of local Bengali militias and fringe groups of the guerilla forces.⁴ They also faced societal discrimination years after 1971.⁵ Many Bihari colonies were burned

¹ Bradley, M. (2013). *Refugee repatriation: justice, responsibility and redress*. Cambridge University Press.

² D'costa, B (2013). *Nationbuilding, gender and war crimes in South Asia*. London Routledge.

³ Minority Rights Group. (2018). *Biharis*. [online] <https://minorityrights.org/minorities/biharis/> [Accessed 19 April 2020].

⁴ Bose, S. (2011). *Dead reckoning : memories of the 1971 Bangladesh War*. New York: Columbia University Press.

⁵ Rafe, R. (2019). *The neglected "Bihari" community in Bangladesh*. [online] DW.COM. <https://www.dw.com/en/the-neglected-bihari-community-in-bangladesh/a-50824994> [Accessed 19 April 2020].

right after the independence of Bangladesh and they had to be relocated to temporary refugee camps in which their descendants still live today.⁶ The Supreme Court of Bangladesh in 1972 ruled that the Biharis were eligible to get Bangladeshi citizenship.⁷ However, they had to wait many years to watch this decision materialize.

When Bangladesh became independent in 1971, about 500,000 Biharis chose to repatriate to Pakistan.⁸ Many Non-Governmental Organizations (NGOs), including the International Red Cross, assisted approximately 170,000 Biharis to repatriate to Pakistan.⁹ However, in 1989, Pakistan suddenly stopped the repatriation process and stripped the stranded Biharis in Bangladesh of their Pakistani citizenship, making the Biharis stateless.¹⁰ Such an action is a blatant violation of international law as no state has the power to make a person stateless as per Article 7 (6) of the Convention on the Reduction of Statelessness, 1961. Till this day, many Biharis remain in various slums and camps in Bangladesh, without citizenship and far away from their homeland Pakistan where they wish to repatriate.¹¹

⁶ *Supra* Note 4.

⁷ Hofmann, R., & Caruso, U. (Eds.). (2011). *Minority Rights in South Asia*. Peter Lang.

⁸ Ghazali, A.S. (2013). *Four decades of sufferings of the stranded Pakistanis in Bangladesh*. [online] www.milligazette.com. <http://www.milligazette.com/news/5953-four-decades-of-sufferings-of-the-stranded-pakistanis-in-bangladesh> [Accessed 19 April 2020].

⁹ Org, I. (2012). *Bangladesh: ICRC honoured for helping victims of 1971 conflict - ICRC*. [online] www.icrc.org. <https://www.icrc.org/en/doc/resources/documents/feature/2012/bangladesh-feature-2012-04-19.htm> [Accessed 19 April 2020].

¹⁰ *Supra* Note 3.

¹¹ Bearak, B. (2000). Stranded Pakistanis Dreaming of Deliverance. *The New York Times*. [online] 13 May. <https://www.nytimes.com/2000/05/13/world/stranded-pakistanis-dreaming-of-deliverance.html> [Accessed 19 April 2020].

HISTORICAL BACKGROUND

GENERALLY, the term 'Bihari' denotes the group of people living in the Indian state of Bihar.¹² The term itself is a Hindi word and in Bangladesh it indicates a group of non-Bengali Muslims who originally came from India's eastern state of Bihar.¹³ Historically, the state of Bihar in India, from where the Biharis originated, had a significantly large number of Muslim population, being the second largest ethnicity of the state till today.¹⁴ The state was and still is one of the poorest and backwards states of India.¹⁵ During the British period, communal clashes and violence between Hindus and Muslims were common¹⁶. When the news spread about the partition of India, in the months of October and November of 1946, it is estimated that more than 30,000 Biharis got killed in religious clashes and up to one million migrated to the part which later became East Pakistan in 1947.¹⁷ Many of these Biharis were rehabilitated in the Sindh province of what was then West Pakistan.¹⁸

The main purpose of the Bihari muslims moving into Bangladesh was to escape communal violence and to preserve the

¹² Brass, P.R. (2005). *Language, religion and politics in North India*. Lincoln, Ne: Iuniverse.

¹³ *Supra* Note 11.

¹⁴ Pedia, W. (2019). *Religion in Bihar*. [online] Wikipedia. https://en.wikipedia.org/wiki/Religion_in_Bihar#Islam [Accessed 19 April 2020].

¹⁵ Organisation, C.S. (2014). *Statement: Gross State Domestic Product at Current Prices*. [online] Archive.org. https://web.archive.org/web/20160303231836/http://mospi.nic.in/6_gsdp_cur_9394ser.htm [Accessed 19 April 2020].

¹⁶ Blitz, B.K. and Lynch, M. (2012). *Statelessness and citizenship : a comparative study on the benefits of nationality*. Cheltenham: Edward Elgar.

¹⁷ Biju, M.R. (2010). *Developmental issues in contemporary India*. New Delhi: Concept Pub. Co.

¹⁸ Ghosh, P. (2001). The Changing Discourse of the Muhajirs. *India International Centre Quarterly*, 28(3), pp.57–68.

Islamic way of life.¹⁹ Biharis in Bangladesh were always unconditional supporters of West Pakistani rulers and as their language was urdu, they opposed the Bengali language movement in 1952.²⁰ Biharis were the permanent vote bank for the Muslim League, an Islamic political party of Pakistan.²¹ Moreover, the Bihari people, due to low literacy rate, filled up many unskilled and low-skilled job vacancies in various Jute mills and factories of then East Pakistan. They were given preference by the ruling West Pakistanis as loyal urdu-speaking subjects and had their own separate colonies in every major industrial establishment of East Pakistan.²² In 1951, the official census in Pakistan recorded 699,000 Muhajirs (muslim emigrants who fled from India) in East-Bengal (now Bangladesh), the majority of which came from West Bengal, Bihar and the former Princely State of Cooch Behar.²³

CONDITION OF BIHARIS IN BANGLADESH

BEFORE 1971, Beharis enjoyed governmental sponsorship which angered the majority Bengali working class.²⁴ In many instances, during and after the war, many Bengali workers took the opportunity of chaos on their hand and set fire on Bihari establishments like houses, shops, markets, etc.²⁵ Wildly speculative rumors in many

¹⁹ *Supra* Note 5.

²⁰ Van Schendel, W. (2020). *A history of Bangladesh*. Cambridge University Press.

²¹ *Supra* note 17.

²² Tempest, R. (1986). *250,000 Stranded in Bangladesh : Biharis Long for Pakistan, a Country That Left Them*. [online] Los Angeles Times. <https://www.latimes.com/archives/la-xpm-1986-05-19-mn-5908-story.html> [Accessed 19 April 2020].

²³ Kuczkiewicz-Fraś, A. (2019). 'Stranded Pakistanis' in Bangladesh – victims of political divisions of 70 years ago. *Sprawy Narodowościowe*, 51(51).

²⁴ *Supra* Note 22.

²⁵ *Supra* Note 4.

places outside the capital city Dhaka fueled the deep rooted remorse and anger of the Bengalis and they ultimately embarked upon a mission of indiscriminate persecution through killing, destroying homes and driving out thousands of Biharis from their homes.²⁶ The newly independent country's government was inadequately equipped and mostly unwilling to protect the Biharis from public backlash. However, prompt actions and relief operations taken by some international aid agencies provided the Biharis with temporary refuge in camps sprawled all around Bangladesh.²⁷

The stranded Biharis in Bangladesh, from the beginning of their migration from Bihar have been and still remain a distinct group of people with a different language, identity, culture, religious and political ideology from the other ethnicities of Bangladesh. Partly due to these differences, the government of Bangladesh failed to implement any appropriate or lasting project to assimilate these people in the broader community.²⁸ Immediately after the independence of Bangladesh, the government of the new nation enacted a set of regulations among them- the Bangladesh Abandoned Property (Control, Management and Disposal) Order, 1972 the intention of which were to encroach upon the residential, commercial and industrial assets of the Biharis. The Biharis were deprived of their previous jobs and properties and were left without a living hopelessly into crowded refugee camps, cementing the thought that the new nation is no place for non-Bengalis into their minds.²⁹

Currently, the living condition of Biharis in Bangladesh is less than favorable. Most Biharis live in camps and slums. There are 116 Bihari camps in 13 different districts of Bangladesh. Among these,

²⁶ Gerlach, C. (2010). *Extremely violent societies: mass violence in the twentieth-century world*. Cambridge: Cambridge University Press.

²⁷ Ghosh, P.S. (2016). *Migrants, refugees and statelessness in South Asia*. Los Angeles: Sage.

²⁸ *Supra* Note 22.

²⁹ *Supra* Note 19.

there are 45 settlements at Dhaka housing approximately 100,000 Biharis in inhumane conditions.³⁰ According to Minority Rights Group 2018, the biggest of those camps, the Geneva Camp at Mohammadpur, Dhaka houses approximately 25,000 Bihari residents. In order to accommodate the growing population, they had to erect temporary brick-built structures one on top of another which are at high risk of damage in case of mild earthquake or other natural disasters.³¹ Furthermore, as the government of Bangladesh did not take any special measures to educate the Biharis, the literacy rate among Biharis are much lower than other ethnic groups in Bangladesh.³² That is why Biharis cannot find moderate or high-paid jobs and are doomed to perform low-paid jobs like that of a barber, butcher, rickshaw-puller, transport worker, automobile mechanic, etc. Even getting a passport is a huge challenge for Biharis because one must show a permanent address while most Biharis live in temporary camps and slums. It has also been reported in many news outlets that government officials and health workers often deny them basic services due to them having no identification papers and legal status in Bangladesh.³³

On 19 May 2008, the High Court Division (HCD) of the Supreme Court of Bangladesh (SC) approved citizenship and voting rights for about 150,000 refugees who were minors during the war of

³⁰ Rafe, R. (2019). *The neglected "Bihari" community in Bangladesh*. [online] DW.COM. <https://www.dw.com/en/the-neglected-bihari-community-in-bangladesh/a-50824994> [Accessed 19 April 2020].

³¹ Mahmud, A.H. (2013). Bihari camps vulnerable to collapse. *Dhaka Tribune*. 15 May.

³² Org, U. (2010). *Bangladesh: Bringing education to the Bihari minority*. [online] Refworld. <https://www.refworld.org/docid/4c7cbb2dc.html> [Accessed 19 April 2020].

³³ Haider, Z. (2018). Biharis in Bangladesh and Their Restricted Access to Citizenship Rights. *South Asia Research*, 38(3S), pp.25S-42S.

liberation in 1971.³⁴ The Biharis born after 1971 also gained the right to citizenship and the right to vote. However, there are still many Biharis without proper identification and documentation and many more live in inhumane conditions without proper governmental support.³⁵ Despite giving citizenship rights to the Biharis in Bangladesh many of them did not renounce their Pakistani citizenship and actively refused to integrate with majority Bengalis. Previously, Bihari people in their refugee camps enjoyed free utilities like electricity and gas along with aids from various international organizations. However, when the government started giving them national identification cards in 2010, it also revoked their refugee status, thus depriving them of the previous facilities and amenities they enjoyed.³⁶ Moreover, some Biharis still reject the nationality offered by Bangladesh and identify themselves as Pakistanis. They want to repatriate to Pakistan and want to keep their refugee status as long as they are in Bangladesh.

The treatment of government employees towards the Biharis remains prejudicial, despite various court directions to the contrary. Biharis are still treated as stranded foreigners (Pakistanis) especially at the crucial moment of obtaining passports and travel documents.³⁷ Still now, a significant portion of the Bihari population live in crowded camps or slums. A family of 10 persons live inside a small 8 by 8 room and approximately 90 families share a single washroom with no running water supply.³⁸ Most of the houses and buildings do not have city corporation's permits and thus the inhabitants do not

³⁴ Dhaka, R. (2008). Bangladesh court rules that young Biharis are Bangladesh citizens. *Reuters*. [online] 19 May. <https://www.reuters.com/article/idINIndia-33642420080519> [Accessed 19 April 2020].

³⁵ Wikipedia (2020). *Persecution of Biharis in Bangladesh*. [online] Wikipedia. https://en.wikipedia.org/wiki/Persecution_of_Biharis_in_Bangladesh#Citizenship_and_reconciliation_efforts [Accessed 19 April 2020].

³⁶ *Supra Note 26*.

³⁷ *Supra note 33*.

³⁸ *Supra note 35*.

have access to electricity, water, gas or sanitation services.³⁹ People living in these camps are vulnerable to contagious and viral diseases.⁴⁰ Also, crammed-up slums are mostly left unpoliced and are susceptible to becoming breeding grounds for drugs, gangs and crimes.⁴¹ These inhumane situations coupled with lack of educational opportunities not only harm the Biharis directly in attaining economic and social freedom, but also reinforces the negative stigmas against them in the broader Bengali population. Even the members of civil societies and rights groups are not vocal on the issue of maltreatment of Biharis in Bangladesh which reflects the widespread social hatred against the Biharis still prevalent in Bangladeshi society till this day.

Most certainly, the fact remains that Bangladesh itself is an undeveloped country which is unable to cater to the basic needs of its own people, let alone its refugees. However, the public sentiment towards the Biharis still remains negative. Local Bengali politicians regularly extort money in the form of subscriptions from Bihari settlements and businesses and clashes between Biharis and Bengalis often happen which almost all the time results in killing, looting and burning shops belonging to Biharis.⁴² Even in the time of worldwide Covid-19 pandemic, the government of Bangladesh did not put

³⁹ Cecconi, G. (2019). *Stranded in Geneva Camp*. [online] <https://www.himalmag.com/>. <https://www.himalmag.com/geneva-camp-bihari-bangladesh-gabriele-cecconi-2019/> [Accessed 19 April 2020].

⁴⁰ Schlein, L. (2017). *Rohingya Refugees in Bangladesh at Risk as Diarrheal Diseases Spread | Voice of America - English*. [online] www.voanews.com <https://www.voanews.com/east-asia-pacific/rohingya-refugees-bangladesh-risk-diarrheal-diseases-spread> [Accessed 19 April 2020].

⁴¹ Al Amin, M. (2019). The politics of power in Dhaka's Bihari Camp. *Dhaka Tribune*. 12 Oct.

⁴² Bd, A. (2014). Clashes at Bangladesh refugee camp kill nine. <https://www.aljazeera.com/news/asia/2014/06/clashes-at-bangladesh-refugee-camp-kill-nine-20146149134880409.html>. 14 Jun.

special emphasis on the needs of the Biharis while devising plans for aid and support to the people.⁴³

STATUS OF BIHARIS UNDER INTERNATIONAL LAW

IT HAS BEEN PROVIDED in article 15 of the Universal Declaration of Human Rights, 1948 (UDHR) that: “Everyone has the right to a nationality” and “No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality”. However, since 1971, the Bihari community in Bangladesh has been without Bangladeshi citizenship. They have also been denied basic citizenship rights and facilities to be provided by the government of Bangladesh. However, as for the Biharis that took part in the Pakistani regime’s systematic genocide, war crimes and crimes against humanity against the Bengalis in 1971, they cannot demand exemption from responsibility, nor can they demand as of right international protection as stateless persons. The 1954 Convention Relating to the Status of Stateless Persons in its article 1(2) states that: “This Convention shall not apply to persons with respect to whom there are serious reasons for considering that they have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes”.

It is an apparent fact that in 1971, a significant portion of the Bihari community in Bangladesh aided and even participated in looting, raping and murdering of Bengalis (especially minority Hindus) in the war of independence. It is also a proven fact that these people and their kins faced severe reprisal which led to an

⁴³ Abdullah, M. (2020). Coronavirus: Dhaka’s Bihari camps at risk? *Dhaka Tribune*. 11 Apr.

indiscriminate killing or 'counter-genocide'⁴⁴ of thousands of Biharis. In Bangladesh, the previous act of treachery by their ancestors is still used to arbitrarily punish the younger generation of Biharis. Facing public backlash and threat to life, many Biharis opted to relocate to Pakistan after the independence of Bangladesh. To address this situation, the government of Bangladesh passed the Bangladesh Citizenship (Temporary Provisions) Order, 1972 which recognized citizenship of Bangladesh to its residents. However, by article 2, the stranded Biharis were not given citizenship automatically, rather they were given an option to choose between Bangladeshi or Pakistani citizenship. As a result, many Biharis did not take the option to receive Bangladeshi citizenship in hopes of getting to Pakistan, and thus, lost their Bangladeshi nationality even before getting Pakistani citizenship.⁴⁵ This has in turn put them into a legal limbo, making them a *de facto* stateless people. This situation could be averted if all Biharis were given automatic citizenship by the 1972 Order. However, the High Court Division of the Supreme Court of Bangladesh has cleared the uncertainty over the citizenship of Biharis who opted for Pakistani citizenship in its landmark decision in *Mukhtar Ahmed v. Govt. of Bangladesh* (1982) 34 DLR (HCD) 29. This case effectively invalidated the position of the government that the expression of desire by the traumatized Biharis to repatriate to Pakistan after the birth of Bangladesh in 1971 was sufficient ground to terminate and deny their Bangladeshi citizenship. However, there still remain Biharis living in Bangladesh without any citizenship.

In defining a 'stateless person', article 1 of the 1954 Refugee Convention states that, a stateless person means: "A person who is not considered as a national by any State under the operation of its law". By this definition, Biharis in Bangladesh who were born after 1971 fall within the category of stateless persons. However, the status

⁴⁴ *Supra* Note 20.

⁴⁵ Rashid, H.-U. (2000) *Refugee Law*, Dhaka: Anupam Gyan Bhandar.

has now changed. Most of the Biharis have now been given citizenship of Bangladesh and the government is implementing development projects for the Bihari communities with assistance from several Non-Governmental Organizations (NGOs) and international aid agencies.⁴⁶ The current Prime Minister of Bangladesh, Sheikh Hasina has reiterated her government's plan to provide jobs, relocate the Biharis into multi-storied housing projects and establish more schools for them to get educated during the swearing in ceremony of the Mayor and Councillors of Dhaka North City Corporation in 2019.⁴⁷

After the 1972 Order, roughly half a million Biharis accepted Bangladeshi citizenship. However, around 500,000 Biharis requested for repatriation to Pakistan, thus rejecting Bangladeshi citizenship. Another reason for not taking Bangladeshi citizenship by them is the fear that Pakistan would not take them back if they had Bangladeshi ID cards. They registered their names with the International Committee of the Red Cross (ICRC) in hope of returning to Pakistan and were put into 66 camps throughout Bangladesh to ensure their protection in the meantime.⁴⁸ However, the acknowledgement receipt of the registration with the ICRC clearly stated that mere registration with the ICRC does not mean automatic repatriation, it only depends on the goodwill of the governments of Pakistan and Bangladesh. It also stated that the registration does not give rise to a right to repatriation. As per article 25(1) of the Universal Declaration of Human Rights (UDHR), 1948: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family". Nevertheless, the Biharis in Bangladesh have been deprived

⁴⁶ Humanitarian, N. (2015). *Bringing education to the Bihari minority*. [online] The New Humanitarian. <http://www.thenewhumanitarian.org/report/90304/bangladesh-bringing-education-bihari-minority>.

⁴⁷ *Supra Note 39*.

⁴⁸ Farzana, K.F. (2009). An Artificial Minority: The Stateless Biharis in Bangladesh. *Journal of Muslim Minority Affairs*, 29(2), pp.223–235.

of the amenities to sustain a standard of life for a long time after the independence of Bangladesh.

INTERNATIONAL AGREEMENTS & REPATRIATION RIGHTS OF BIHARIS

On 2 July 1972, Indian Prime Minister Indira Gandhi and the Pakistani President Zulfikar Ali Bhutto signed the 'Simla Agreement' at the Indian state of Himachal Pradesh. It was primarily a peace treaty between India and Pakistan after the liberation war of 1971 which resulted in an independent Bangladesh. This agreement also aimed to mitigate the adverse consequences of the war on both eastern and western fronts and to come to a peaceful solution through bilateral negotiations.⁴⁹ This agreement is of historic importance to Bangladesh because not only it paved the way for the diplomatic recognition of Bangladesh by Pakistan but also it provided ways for troop withdrawal and exchange of prisoners of war (PoWs).⁵⁰ Additionally, it created the opportunity for further talks among Bangladesh, India and Pakistan which was arranged in 1973 at Delhi, India.

On 28 August 1973, Bangladesh, India and Pakistan entered into a historic agreement named as the 'Delhi Agreement'. The main goal of the agreement was to solve humanitarian problems in the region. Bangladesh officially took part in the conference from 5 to 9

⁴⁹ Nair, S. (2019). *Shimla Agreement: What is Shimla agreement and how is it relevant to Trump's Kashmir mediation claim?* [online] Jagranjosh.com. <https://www.jagranjosh.com/current-affairs/shimla-agreement-what-is-shimla-agreement-how-is-it-relevant-to-trumps-kashmir-mediation-claim-1563882580-1> [Accessed 19 April 2020].

⁵⁰ Sterba, J. (1972). 2 Months After Simla. *The New York Times*. [online] 4 Sep. <https://www.nytimes.com/1972/09/04/archives/2-months-after-simla-china-and-bangladesh-seen-deflating-peace.html> [Accessed 19 April 2020].

April 1974 after Pakistan officially recognized Bangladesh as an independent state in February 1974. Among the various issues discussed, the issue of repatriation of 195 PoWs detained in India back to Pakistan in particular was given importance. Initially, Bangladesh wanted to prosecute the 195 PoWs for war crimes, genocide and crimes against humanity. However, it later agreed to not prosecute them and authorized their return to Pakistan where ultimately none of these PoWs faced any criminal charges whatsoever.

Another international agreement relating to the Bihari repatriation is the Delhi Agreement, 1973. The agreement resulted in the repatriation of a large number of Biharis to Pakistan under the supervision of the United Nations High Commissioner for Refugees (UNHCR) and the International Committee of the Red Cross (ICRC).⁵¹ The Repatriation process began in 1974 which ended in 1993. During this lengthy process of repatriation, the Behari population swelled in number due to high birth rate and the government of Pakistan upon realizing that this group cannot be fully repatriated, along with internal pressures from political groups who saw Biharis as foreign threats to their demographic vote bank, halted the program and stopped giving Biharis citizenship and thus, the process of repatriation of Bihari refugees has remained suspended till now, despite repeated requests from the government of Bangladesh.⁵²

Rights of the minority groups in a country and the rights of self-determination are interconnected with each-other. One right cannot exist without the other. According to Minority Rights Group 2018, although Pakistan took some 170,000 Biharis into its territory, they rejected the repatriation rights of approximately 400,000 Biharis stranded in Bangladesh. After Pakistan stopped taking in any more Biharis, Bangladesh requested Pakistan to resume the program because most of the Biharis did not renounce their Pakistani

⁵¹ *Supra Note 48.*

⁵² Minority Rights Group. (2018). *Biharis*. [online] <https://minorityrights.org/minorities/biharis/> [Accessed 19 April 2020].

citizenship and actively refused to integrate with majority Bengalis but this request was not respected by the state of Pakistan.⁵³ The Universal Declaration of Human Rights, despite being a non-binding UNGA resolution, sets a universally applicable code of conduct that serves as a point of reference for all subsequently adopted international and regional human rights instruments, which include:

- a) Article 5 (d) (ii) of the International Convention on the Elimination of All forms of Racial Discrimination, 1965
- b) Article 12 (4) of the International Covenant on Civil and Political Rights, 1966
- c) Article 10 (2) of the Convention on the Rights of the Child, 1989
- d) Article 22 (5) of the American Convention on Human Rights, 1969
- e) Article 12 (2) of the African Charter on Human and People's Rights, 1981

Moreover, Article 8 (c) of the Statute of the UNHCR, 1950 states that, "The High Commissioner shall provide for the protection of refugees falling under the competence of his office by assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities". Also, Article 9 of the UDHR prohibits arbitrary arrest, detention or exile and article 13 (2) of the UDHR provides that, "Everyone has the right to leave any country, including his own, and to return to his country". The right to return has also been incorporated as an absolute entitlement in article 12 (4) of the International Covenant on Civil and Political Rights (ICCPR). According to the article: "No one shall be arbitrarily deprived of the right to enter his own country". Therefore, Pakistan has violated and continues to violate the Bihari people's international right to get into their state of nationality by refusing their repatriation.

For the stranded Biharis, repatriation to Pakistan is still a viable solution, even after almost 50 years of uncertainty. International organizations like the UNHCR have been instrumental in repatriation

⁵³ *Supra* Note 34.

and rehabilitation of refugees around the world. In the year 2015, around 4,600 Angolans refugees returned to their homeland voluntarily, ending the repatriation process which saw the return of an overall 18,000 Angolan refugees since 2014.⁵⁴ In the same year, approximately 5,000 Rwandan returned home voluntarily, bringing the total number of returnees to over 160,000 since 2000.⁵⁵

UNHCR also partners with supporting international organizations in the repatriation process. The organization arranged for the return of 5,709 individuals from Kenya to Somalia between 2014-15.⁵⁶ Abrupt stoppage in the repatriation process or supposed hostile environment to the returnees do not hinder the overall endeavor as proven in the case of Mali, where the registration of returnees resumed in August 2015, with over 4,000 spontaneous returns recorded by the end of 2015, despite the fact that the northern part of Mali still remained unstable and hostile to returnees.⁵⁷ In this context, Biharis have full right in international law to repatriate to Pakistan and it is possible for UN organs like the UNHCR along with other international aid agencies to resume the repatriation of stranded Biharis with assistance from Bangladeshi and Pakistani governments. However, the issue has been pushed back in the list of priorities of both Bangladeshi government and the international community due to the ongoing Rohingya refugee crisis and the response against the pandemic Covid-19 disease.

⁵⁴ UNHCR. (2016) *Update on Voluntary Repatriation*. Executive Committee of the High Commission's Program, 66th meeting of the Standing Committee, 7 June 2016 [online] www.unhcr.org/576ba6ec7.pdf [Accessed 20 November 2020]

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

JUDICIAL DECISIONS ON BIHARI SITUATION

ACCORDING to the Citizenship Act, 1951 of Bangladesh, a person born in Bangladesh after its independence in 1971 is automatically eligible to get citizenship. On 5 May 2003, The Supreme Court of Bangladesh (SC) in the landmark case of *Md. Abid Khan and Others v Government of Bangladesh and Others*, {55 DLR (2003) 318} directed the government of Bangladesh to register Biharis as voters.⁵⁸ The Court stated: “According to the Citizenship Act of Bangladesh, they are eligible to become citizens of Bangladesh”. As a result of this decision, although the Election Commission of Bangladesh did not issue any official statement, it unofficially directed its local officers to enroll Biharis into the voter list.

Another landmark decision of the Supreme Court of Bangladesh was proclaimed on 18 May 2008 on the writ petition of *Md. Sadaqat Khan (Fakku) v Chief Election Commissioner, Bangladesh Election Commission*, {60 DLR (AD) (2008) 407}. In this decision, the Supreme Court reaffirmed that all members of Urdu-speaking community in Bangladesh were Bangladeshi nationals. It also directed the Election Commission of Bangladesh “to enroll the petitioners and other Urdu-speaking people who want to be enrolled in the electoral rolls and accordingly, give them a National Identity Card without any further delay”. Despite these directives, the government of Bangladesh did not take concentrated effort in assimilating the Biharis into their surrounding society and to make matters worse, most of the older generation of Biharis chose not to

⁵⁸ Rahman, W. (2003). Vote for “stranded Pakistanis.” *news.bbc.co.uk*. [online] 6 May. http://news.bbc.co.uk/2/hi/south_asia/3003949.stm [Accessed 19 April 2020].

register as voters lest they lose the benefits given by NGOs and the long-awaited possibility to get into Pakistan.⁵⁹

In Pakistan, a petition was filed by Advocate Rashid-ul-Haq Qazi in 2009 as a representative of the Stranded Pakistanis General Repatriation Committee and the Organization for Repatriation of Stranded Pakistanis in Bangladesh. After five years of filing the petition, in 2014, the Supreme Court of Pakistan allowed the petition for hearing and after the hearing on 31 March 2015, the Court rejected the plea on the ground of the petitioners having no locus standi (the right to bring a matter before the Court) just because the organizations did not have valid registration. Such a decision indicates that the Bihari repatriation matter has become a highly politicized issue in Pakistan and the Supreme Court of Pakistan sidestepped on this issue to maintain the existing status quo as per the wishes of their rulers.

INTERNATIONAL COMMUNITY ON BIHARI ISSUE

The UNHCR is the primary organization having the responsibility to assist refugees worldwide.⁶⁰ It also assists in implementing repatriation agreements. This global institution is also tasked with protecting the rights of refugees and to reduce their number through resettlement. The UNHCR got involved in the Bihari repatriation program in 1974 with assistance from the International Committee of the Red Cross (ICRC) and it has overseen the bulk of Biharis

⁵⁹ *Id.*

⁶⁰ UNHCR. (2020). *UNHCR Emergency Handbook*.
<https://emergency.unhcr.org/entry/55600/unhcrs-mandate-for-refugees-stateless-persons-and-idps>.

repatriated to Pakistan.⁶¹ The ICRC took initiatives to provide food, shelter and healthcare to the uprooted and displaced Bihari people during the times of turmoil and violence.⁶² It was ICRC which first took the task upon itself to register the families who wanted to leave Bangladesh and head to Pakistan.⁶³ This list was recognized to be an authentic source by all parties; including the governments of Bangladesh, India and Pakistan. Among the people in the list, Pakistan took almost 178,069 Biharis but left out about 400,000 in Bangladesh, denying them their international right to repatriate to their own nation.⁶⁴

The governments of both Pakistan and Bangladesh have consistently refused to take responsibility for the fate of the stranded Biharis. The Ministry of Foreign Affairs of Pakistan published a report on 30 March 2015 stating clearly that the remaining 'stranded Pakistanis' in Bangladesh are not the responsibility of Pakistan due to the reason that Pakistan has already repatriated a large number of non-Bengalis and many of those living in Bangladesh have received Bangladeshi citizenship and they do not want to return to Pakistan.⁶⁵ One of the reasons why Pakistan is reluctant to take back the Biharis is that it has to bear the burden of over a million Afghan refugees within its borders.⁶⁶ The socio-economic condition of Pakistan today

⁶¹ Rizvi, H.A., (2014). *Pakistan and the geostrategic environment: a study of foreign policy*. Palgrave Macmillan.

⁶² *Supra Note 9*.

⁶³ *Supra Note 23*.

⁶⁴ Crock, M. (2015a). *Refugees and Rights*. [online] CRC Press. <https://www.routledge.com/Refugees-and-Rights/Crock/p/book/9781472455796> [Accessed 19 April 2020].

⁶⁵ Malik, H. (2015). Stranded Pakistanis in Bangladesh not Pakistan's responsibility, FO tells SC. The Express Tribune. Accessed on 2 March 2019, from <https://tribune.com.pk/story/861364/stranded-pakistanis-in-bangladesh-not-pakistans-responsibility-fotells-sc/>

⁶⁶ Dey, S.K. (2019) *The neglected 'Bihari' community in Bangladesh*. www.dw.com/en/the-neglected-bihari-community-in-bangladesh/a-50824994 [Accessed 11 November 2020]

is not suitable for it to even take care of its citizens, let alone half-a-million returnees.

CONCLUSION

THE ISSUE OF STRANDED Biharis in Bangladesh has been a lingering problem since its independence in 1971. The older Biharis mostly opposed an independent secular Bangladesh and to prevent that, a lot of them took part in genocide, war crimes and crimes against humanity against the Bengali people. Consequently, they were also wrongfully persecuted and killed *en masse* (in a big number) both during and after the war of independence of Bangladesh. However, the new generations of stranded Biharis have mostly rejected their forefather's stances and ideologies and they want the opportunities to educate themselves to become productive citizens of Bangladesh. They want equal treatment and affirmative actions in education and employment. They want to participate in social activities with the Bengalis and some even opted for intermarriage between the Biharis and the Bengalis in a hope to create a lasting social bond. All of these indicate that there is no lack of enthusiasm in the part of the Biharis to integrate to the broader society and become its productive members.

Furthermore, one of the most pivotal issues relating to the Biharis in Bangladesh is current lack of equality in access to education. Also, a significant portion of the Biharis do not still possess citizenship rights. Thus, they are not given the adequate opportunity to develop any skill and to utilize their skills for the betterment of their lives and the society. However, Biharis are the citizens of Bangladesh as demonstrated by the decisions of the Supreme Court of Bangladesh and by the international law, even though they lack the possession of proper documentation. As for the Biharis who would still want to return to Pakistan, they should be repatriated, and the

process should be undertaken through bilateral agreements between Bangladesh and Pakistan. If the government of Pakistan is reluctant to enter into a binding agreement on this issue, Bangladesh should seek a third-party settlement involving international organizations (UN, OIC, etc.) or international adjudicative bodies (ICJ) to come to a viable settlement. Therefore, the following recommendations may follow by the Bangladesh government and international organizations.

This study also concluded that if the repatriation process proves to be an impracticable option, the government of Bangladesh should take a political decision and declare the Biharis as full citizens with all benefits and responsibilities. This decision will act as a 'breakthrough event' eliminating almost all of the governmental obstacles on the path towards progress and prosperity of the Bihari community. It will also demonstrate the Bangladeshi government's commitment towards rule of law and universal human rights.

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To become truly human,
one has to try and release
oneself from the shackles of
race, religion and
nationality. The quantum of
humanism one acquires is
inevitably filtered when one
limits oneself.

Ashoka Jahnavi Prasad
(Kant Lecture, 20090)

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