



## DOES CITIZENSHIP MATTER? AN EMPIRICAL LOOK AT THE BIHARIS IN BANGLADESH

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### Abstract:

I argue in this paper that legal, but in effective citizenship does not matter much, only effective citizenship matters. Effective citizenship can award an individual the “*right to have rights*.” Ineffective citizens do not have the “*right to have rights*” or they do not have access to many important rights associated with citizenship rights. They suffer from ineffective governance, and the State of their citizenship discriminates against them. My empirical findings show that the Biharis in Bangladesh are *de jure* citizens, but *de facto* stateless persons. In the strict legal sense, they are citizens of Bangladesh, but practically they still do not have access to many significant rights attached to the citizenship right that is essential to make their citizenship meaningful or effective. This paper suggests that to make them effective citizens of Bangladesh, the Government should extend equal rights and responsibilities to the Biharis like other citizens. Their ability to access all rights and duties attached to citizenship rights would make them effective citizens of the country, and their citizenship could be meaningful.

**Keywords:** Bangladesh, Biharis, citizenship, *de jure* and *de facto* statelessness, human rights, integration

### 1. Introduction

Does citizenship matter? This is not a so simple question to address by any scholar unless she/he understands what statelessness is. Citizenship rights are human rights, and according to the Universal Declaration of Human Rights (UDHR), every individual has the right to nationality, and the right to change nationality.<sup>i</sup> Citizenship today means an ultimate right or claims to be the “*right to have rights*”.<sup>ii</sup> Citizenship not only allows an individual to receive protections from the state but also protections from the state.<sup>iii</sup> On the contrary, a stateless person is one, who is “*destitute of nationality intentionally or unintentionally, knowingly or unknowingly*”.<sup>iv</sup> People who have lost their original nationality without acquiring another are stateless or without a country.<sup>v</sup> United Nations

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High Commissioner for Refugees (UNHCR) globally recorded approximately 3.3 million stateless people in 2012<sup>vi</sup> (annexure A). Today, a large number of people lack 'secure citizenship' due to the 'evaporation' of state protection.<sup>vii</sup> Increasing the growth of statelessness creates the necessity for an "*expanded understanding*" of statelessness.<sup>viii</sup>

This paper argues that legal, but ineffective citizenship does not matter much, only effective citizenship matters. Effective citizenship provides equal access to rights to all citizens associated with citizenship rights. Ineffective citizens suffer from ineffective governance and become victims of discrimination by the State of their citizenship. Does citizenship matter? This is the central question of this paper. To address this question, this paper explores the ideas of citizenship and statelessness. This paper also addresses why statelessness matters, and how citizenship makes a difference. Finally, it empirically looks at the legal status of the Biharis in Bangladesh and seeks to explore whether they are enjoying effective citizenship rights or not.

### 1.1. Methodology

This research adopts a law and society or socio-legal approach. This approach recognizes both legal and non-legal factors.<sup>ix</sup> This approach narrates "*legal phenomena in social terms*".<sup>x</sup> It is a scholarly way of examining the relationship between legal and non-legal types of social phenomena.<sup>xi</sup> The law and society tradition discovers law everywhere.<sup>xii</sup> This approach suggests that law can be understood by analyzing it within social contexts.<sup>xiii</sup> The law and society approach provides opportunities for undertaking interdisciplinary empirical studies, thereby transcending the confines of traditional legal scholarship.<sup>xiv</sup> It recognizes diverse methods and methodologies for researching and understanding social problems, including social science research methods such as qualitative and quantitative methods.<sup>xv</sup> Most importantly, the law and society approach is not concerned merely with what the law is, but also with what the law does in practice<sup>xvi</sup> or the impact of the law on society. From this perspective, explaining the status of the Biharis in Bangladesh, in particular the question of whether Biharis who hold citizenship are in practice able to access the rights accorded to citizens or whether they confront insurmountable barriers to accessing these rights, requires data beyond sources of legal documents such as citizenship legislation and cases.

The main source of information for this study is the views or perspectives of Biharis. The lived experiences of the Biharis and their feelings about citizenship are important to this study because these provide useful insights both into their plight in Bangladesh, and the search for durable solutions. It is essential to know what they think about their citizenship rights, whether they have access to those rights and what measures they believe would enhance their prospects of accessing important citizenship rights in Bangladesh. The other source of information came from a review of national and international documents – policy documents, reports, legislation, cases, scholarly books and articles, and unpublished work related to the citizenship rights of the Biharis in Bangladesh.

I chose to collect qualitative data because of the advantages associated with fieldwork and in-depth interviews. Fieldwork, whether short-term or ethnographic and

interviews remove the gap between the researcher and participants and this, in turn, allows the researcher to grasp an insider view of the issues. Fieldwork bridges the gap between what researchers think and what exists in the field.<sup>xvii</sup> Besides, interviewing, unlike survey questionnaires where an informant has only one option of a 'yes' or 'no' answer, may shed light on complex relationships, effects, and other dynamic processes. I conducted one-on-one interviews. I used open-ended questionnaires and took written notes. In both cases, I followed an in-depth interview method. In-depth qualitative interviews involve intensive individual interviews with a few respondents to investigate their perspectives on a particular issue<sup>xviii</sup>. It is an "*open-ended and discovery-oriented method*" which provides an opportunity for the interviewer to uncover the emotions and perspectives of the respondents.<sup>xix</sup>

This paper is primarily a product of field research. I interviewed 75 Bihari respondents in three different Camps in Bangladesh, namely the Geneva Camp, Dhaka, the Town Hall Camp, Dhaka, and the Sagor Para Camp, Rajshahi, during the Spring-Summer 2011. I have followed a convenience sampling method in selecting the Bihari interviewees, which is a non-random sampling where I have chosen the respondents on accessibility, availability, and willingness to participate as subjects. In this research, I have investigated if the Biharis have access to important rights (i.e., housing and healthy living condition, occupation, employment, income, education, healthcare, and other important rights associated with citizenship right) to understand whether the Biharis are effectively enjoying the citizenship rights or not. I have used the respondents' pseudonyms to maintain their privacy and confidentiality.

## 2. Understanding citizenship

Although citizenship is an old concept in Western political theory, it does not have any uniform definition. Generally, we define citizenship in formal, and substantive ways. The formal one is the relationship between the individual and the state, which legally provides passport or identification (ID), cards of that state to the citizens. The substantive one refers to the bundles of civil, political, and cultural rights extended to an individual for his /her belonging to the national community.<sup>xx</sup> The contents of citizenship vary from time to time. Throughout the phases of history, the definition of citizenship changes the scope of citizenship. The scopes of ancient, modern, and contemporary citizenship reflect these changes.

Greek Political thinkers Plato, and Aristotle were the pioneers of ancient citizenship. According to these philosophers, only the ruling class or governing elites were citizens, and others remain excluded from citizenship. Plato emphasized education to make an individual a citizen so that he can play a proper role in public services.<sup>xxi</sup> Like Plato, Aristotle also added equal importance to education for citizens. However, he argues that citizenship should be limited to freemen, because freemen do not need to work for a livelihood, and they can work more for the government.<sup>xxii</sup> Therefore, ancient citizenship was not universal. It was exclusive or limited to particular classes.

Among the modern thinkers, T.H. Marshall defines citizenship as the combination of civil, political, and social rights.<sup>xxiii</sup> To Hannah Arendt, nationality or citizenship is the ultimate right or 'right to have rights.'<sup>xxiv</sup> In her view, the 'right to have rights' means "to live in a framework where one is judged by one's actions and opinions and a right to belong to some kind of organized community."<sup>xxv</sup>

Among the contemporary scholars,<sup>xxvi</sup> Joseph H. Carens offers a three-dimensional theory of citizenship i.e., legal, psychological, and political.<sup>xxvii</sup> Carens argues that these three aspects of citizenship interact with each other, and through these interactions; a new form of citizenship finally takes shape, which is different from the conventional form.<sup>xxviii</sup> Bosniak classifies citizenship into four different discourses; citizenship as formal legal status, citizenship as rights, citizenship as political activity, and citizenship as identity/solidarity.<sup>xxix</sup> She argues that citizenship is an exclusive status that separates citizens from the aliens.<sup>xxx</sup>

As an alternative to the principles of *jus soli* and *jus sanguinis*, Ayelet Shachar suggests a principle of '*jus nexi*' meaning, a real and effective link to one's polity.<sup>xxxi</sup> The principle of *jus nexi* obligates the States to extend citizenship to each individual, who has a real and effective link to the polity.<sup>xxxii</sup> She asserts that citizenship is not a birthright lottery. It is not a property that an individual can inherit. Rather, a person can attain this attribute through a real link or attachment with the country of residence.<sup>xxxiii</sup> The *Nottebohm Case* in 1955<sup>xxxiv</sup> establishes this principle of effective nationality. The International Court of Justice (ICJ) in the *Nottebohm Case* defines nationality as "[...] a legal bond having its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties".<sup>xxxv</sup> *Jus nexi* originates as a new legal principle from the rootedness of the individuals with the state, which can operate alongside the established principles of *jus soli*, and *jus sanguinis* as an additional principle.<sup>xxxvi</sup>

### 3. Understanding statelessness

Statelessness is an old issue, and it existed in different phases of history in different names. Thomas J. Thompson claims that ancient civilizations were stateless.<sup>xxxvii</sup> For example, the *Harappans* were stateless people,<sup>xxxviii</sup> although they owned a great *Harappa Civilization*.<sup>xxxix</sup> To refer to stateless persons, The Helvetic Federal Constitution of 1848 used the term *heimatlos*.<sup>xl</sup> Stateless people are also identified as *Staatlos* in Germany, *apolide* in Italy, *apatride* in France, and stateless, and without a country in England, and America.<sup>xli</sup> Stateless people did not always exist as a distinct group. Before the Twentieth century, refugees, and stateless persons were identified as a similar group.<sup>xlii</sup> Statelessness emerged as a separate entity in the Twentieth century. UNHCR describes stateless persons as:

*"Often, they are excluded from the cradle to grave-being denied a legal identity when they are born, access to education, health care, marriage and job opportunities during their life time and even the dignity of an official burial and death certificate when they die."*<sup>xliii</sup>

Excluded from citizenship rights, stateless people are victims of oppression, domination, and marginalization. If citizenship means the “*right to have rights*,” statelessness is the denial of rights. Generally, a stateless person is one who is “*destitute of nationality intentionally or unintentionally, knowingly or unknowingly*.”<sup>xliv</sup> The political process does not include a stateless person. Their exclusion means they do not have access to equal citizenship right or they are victims of oppression or domination or marginalization.<sup>xlv</sup>

Whereas statelessness is classified as *de jure* and *de facto* statelessness in the literature, however, international law protects *de jure* stateless people only. International Law directly does not protect the *de facto* stateless persons.<sup>xlvi</sup> *De jure* stateless persons are those, who are not considered as nationals by any state “under the operation of its law.”<sup>xlvii</sup> On the other hand, according to UNHCR, “*de facto stateless persons are persons outside the country of their nationality who are unable or, for valid reasons are unwilling to avail themselves of protection of that country*.”<sup>xlviii</sup>

In the above definition, the UNHCR explains that persons who are *de facto* stateless cannot be inside the country of their nationality, they must be outside the country. The definition of UNHCR is exclusive. It does not consider *de facto* stateless to those persons who are discriminated against, deprived, and excluded from the rights and duties within the countries of their nationality. Therefore, the definition of UNHCR is inadequate to address the actual picture of *de facto* stateless persons. To understand *de facto* statelessness truly we need an inclusive definition, and we should go beyond the UNHCR’s definition. This means looking for an inclusive definition. This encompasses those persons, who within the country of nationality are unable to access equal rights, and duties like other citizens. Outside the country of nationality, they are unable to establish their nationality. They are unprotected by any binding recommendations of international treaty regimes like the *de jure* stateless persons.<sup>xlix</sup>

Mark Manly and Laura Van Waas describe this situation (*de facto* statelessness) as persons who formally possess a nationality, but who cannot formally exercise the rights, which flow from it.<sup>i</sup> This means that their nationality is ineffective. Technically, they have legal citizenship, but practically that is ineffective. They are unprotected at home and abroad. They are discriminated against at home, and they lack consular protections abroad. They lead a life like second-class citizens in their country of birth, although, modern citizenship rules out the concept of second-class citizens.<sup>ii</sup> Robin Cohen calls them “Helots”, because the international conventions do not protect them.<sup>iii</sup>

### 3.1. Why statelessness matters

To answer the question of why statelessness matters, Francis M. Deng writes, “*If citizenship is nothing less than the “right to have rights,” stateless people are stripped of the right to have rights*.”<sup>liii</sup> Paul Weis describes the stateless person as a “*vessel on the open sea, not sailing under any flag*.”<sup>liiv</sup> A stateless person also looks like “*a bird that flies alone or an international vagabond*.”<sup>liiv</sup>

Statelessness causes human insecurity. Although nationality does not always secure a good life, statelessness makes individuals disqualified to make claims on the

state, and *“it disrupts the state’s ability to plan and provide resources and services to the individual.”*<sup>lvi</sup> The Right to life, liberty, and equality are the fundamental elements of human rights. Stateless people are often denied most of these fundamental rights such as liberty, and equality. Stateless persons or aliens as Bosniak points out, *“are formally ineligible for many aspects of social citizenship or the public provisions of basic needs; and they are always subject to the possibility of deportation from the territory.”*<sup>lvii</sup> Despite having the legal qualifications for security, i.e., protection and empowerment, the stateless peoples intrinsically suffer from civil, political, and social security, which automatically transforms them into disempowered persons. Caroline Sawyer identifies statelessness as *“a position of detachment, exclusion and abandonment.”*<sup>lviii</sup>

Statelessness violates human rights. Being without documents, it becomes difficult for stateless persons to receive social services. Their applications for identity documents often receive a rejection. Lack of proper identification often keeps them away from acquiring jobs, receiving medical facilities, enjoying legal protection, getting birth, marriage, and death registration, and owning property. They become the victims of social harassment, such as public bullying, abuse, maltreatment, and sometimes the target of persecution. The state frequently violates the human rights of stateless people. Their feelings as expressed are: *“We can’t get regular jobs, we cannot move, we are like boats without ports.”*<sup>lix</sup> Without legal documents, if a stateless person travels beyond the border of her country of residence, she might not get her readmission there. Non-availability of identity documents prevents her from considering a person before the law, and as such, she is a legal ghost.<sup>lx</sup> Statelessness has challenged some principles of international law, and the human rights discourse that has developed over the years.<sup>lxi</sup> It is opposed to the just international order. The UN describes statelessness as, *“a legal anomaly preventing a person from accessing fundamental civil, political, economic, social and cultural rights.”*<sup>lxii</sup>

### 3.2. Does citizenship make any difference?

Effective citizenship can make a big difference. That is why citizenship still exists as an institution. Citizenship distributes membership to persons with rights, and obligations in a given society.<sup>lxiii</sup> Therefore, citizenship is an inclusive term, which encompasses both rights, and obligations.<sup>lxiv</sup> Citizenship is a key to a host of other rights including education, health care, employment, and equality before the law.<sup>lxv</sup> The interest in citizenship is gradually growing because it provides status, and a tradition that *“can unite members of a polity under a challenge from above and below.”*<sup>lxvi</sup> It prevents any over or under-inclusion of its citizens. It also fosters social cooperation and identification that secures the state from ethnic, religious, and racial divisiveness.<sup>lxvii</sup>

Citizenship provides the right to have other rights. With the loss of these rights or without these rights, many people faced catastrophic human sufferings after the First, and Second World War periods. Those sufferings include both physical dangers, and discrimination associated with exclusion from citizenship. In the United States, this happened in the 1940s in the case of Asians before the amendment of the naturalization law.<sup>lxviii</sup> According to Paul Weis, *“abolition of statelessness can only be a humanely satisfactory remedy if nationality warrants the enjoyment of fundamental human rights by all nationals.”*<sup>lxix</sup>

Therefore, nationality or citizenship guarantees rights and provides nationals with benefits.

Marshall states, "*citizenship is a status bestowed on those who are full members of a community. All who possess the status are equal with respect to the rights and duties with which the status is endowed.*"<sup>lxx</sup> Marshall's thesis establishes the fact that citizenship provides full membership and establishes equality among the members of the community. A 'Hill Tamil' person who got citizenship in 2003 expresses how citizenship makes a difference, "*I was thankful when the national Identity Card arrived, because it allowed me to travel to Colombo and find work here. I am earning much more than I would have if I stayed on the estate*".<sup>lxxi</sup>

Citizenship simultaneously extends the right to receive protection from the state of nationality both within, and outside the country of nationality. These protections involve access to consular protection, diplomatic protection, various political rights associated with citizenship, and the rights to economic, social and cultural protection.<sup>lxxii</sup> The right to diplomatic protection signifies that "*whoever ill-treats a citizen indirectly injures a state.*"<sup>lxxiii</sup> States must protect their citizens when other states' injure or harm them. Diplomatic protection is the right of a citizen, and it is at the discretion of the State.<sup>lxxiv</sup>

Citizenship further provides equality without discrimination. In addition to rights, citizenship obligates certain duties including allegiance to the country of nationality, and duties imposed upon the citizens by law. Citizenship provides full membership to individuals in the community. Because of citizenship, they have the right to political participation. Political participation includes "*right to vote, right to be voted*", and right to access the public services. Aleinkoff calls this "*government of the citizenry, by the citizenry, and for the citizenry.*"<sup>lxxv</sup> Non-citizens are not qualified to vote in a state or federal election in any country. While non-citizens live like guests and are not entitled to social benefits,<sup>lxxvi</sup> they are ineligible for any state, or federal appointments, and do not deserve any of the opportunities in the private spheres that are prohibited for the aliens.<sup>lxxvii</sup> Comparing citizens with noncitizens, Jacqueline Bhabha points out that "*citizens have a role in shaping the society they live in that is radically different from noncitizens.*"<sup>lxxviii</sup> Besides, the most significant entitlement of citizenship today is the guarantee of non-deportability regardless of the criminal offense or treason of a citizen.<sup>lxxix</sup>

#### 4. Biharis in Bangladesh

The Biharis in Bangladesh are the products of the partition of India in the 1940s. During this period, violence was used as an effective strategy for transferring Muslims from India, and Hindus from Pakistan.<sup>lxxx</sup> On the eve of the partition of India in 1947, a total number of 7.2 million Muslim refugees moved from India to Pakistan, the number of Muslims who moved to East Pakistan (Bangladesh) was approximately 699,079, and 6.5 million migrated to West Pakistan (Pakistan).<sup>lxxxi</sup> These Urdu-speaking Muslim people migrated to former East and West Pakistan from the riot-centric areas, to preserve their Muslim identities as well as to escape the communal bloodshed.<sup>lxxxii</sup> Apart from avoiding violence, many of them also moved to Pakistan to avail better opportunities in the new

nation, where job opportunity for skilled, and semi-skilled people like the Biharis was enormous.<sup>lxxxiii</sup> Among the Muslim refugees in East Pakistan, many chose to come here, because it was very close to Bihar, and convenient to move. Given the situation, most refugees in East Pakistan came from Bihar, and the others from different parts of India. The name of these Urdu-speaking people is Biharis in Bangladesh. Following the partition of India, the Biharis settled in the urban or suburban areas of East Pakistan and remained as a distinct ethnolinguistic and cultural minority.

Politically, most of the Biharis opposed the freedom struggles of the Bengalis in the 1950s, 60s, and 70s, and supported the ruling elites of Pakistan to aggrandize their own political and economic interests. During the Liberation War of Bangladesh in 1971, they mostly welcomed the Pakistan army, and some of them allegedly took part in war crimes.<sup>lxxxiv</sup> After the birth of Bangladesh on 16 December 1971, the Biharis collectively became unwanted, unsecured, and stateless people. Massive violence occurred against them. Given this dreadful situation, the Urdu-speaking Biharis fled their homes and sought sanctuary in some 66 Red Cross camps (now extended to 116 settlements) where they were waiting for repatriation to Pakistan.<sup>lxxxv</sup>

#### 4.1. Bihari repatriation

In the aftermath of the birth of Bangladesh, about one million Biharis seriously suffered to survive, because “*their properties were confiscated, services terminated, rights abrogated and working places burnt.*”<sup>lxxxvi</sup> In 1972 under the supervision of the International Committee of the Red Cross (ICRC) half a million of them wanted to stay in Bangladesh and immediately obtained Bangladeshi citizenship, and the remaining half a million opted for repatriation to Pakistan.<sup>lxxxvii</sup>

With the spirit of the *Simla Accord* of 1972, India, and Pakistan signed the Delhi Agreement with the concurrence of Bangladesh on 28 August 1973.<sup>lxxxviii</sup> The Delhi Agreement provided for simultaneous three-way repatriation: Pakistani prisoners of war from India, Bengali detainees from Pakistan, and Biharis opted for repatriation to Pakistan from Bangladesh.<sup>lxxxix</sup> Under the Delhi Agreement, massive repatriation started in 1973, and ended in April 1974 under the auspices of the ICRC. A total number of 178,069 Biharis officially repatriated to Pakistan out of 534,792, who opted for repatriation through the ICRC.<sup>xc</sup> An estimated 100,000 Biharis moved to Pakistan unofficially through India, Nepal, and Burma,<sup>xc</sup> and 250,000-300,000 are still living in Bangladesh.<sup>xcii</sup> They live in 116 camps across the country.<sup>xciii</sup>

Three different views exist in Pakistan regarding the repatriation of the Biharis. First, the *Muhajir Quami Movement* (MQM) believes that the Biharis are genuine Pakistanis, and they want their repatriation to Pakistan. They argue that the Pakistani government is responsible for their miserable plight. The drops of blood of the Bihari martyrs had laid down the foundation stone of Pakistan. Now Pakistan has forgotten them callously.<sup>xciv</sup> Secondly, the native *Sindhis* seriously oppose the Biharis’ repatriation to Pakistan. They believe that it will strengthen the idea of the so-called *Muhajirstan* that the *Muhajirs*’ proposed to establish separating Karachi from Sindh. The *Sindhis* hate the blueprint of *Muhajirstan* supported by the Biharis transferred from Bangladesh.<sup>xcv</sup> They

argue that the repatriated Biharis would prefer to settle with their kith and kin in the big cities of the Sind province. That will make the local Sind population a minority in their ancestral home.<sup>xcvi</sup> Finally, the Pakistan Government also does not accept the rehabilitation and repatriation of the Biharis, because it would be an economically expensive project. It would involve a huge amount of financial expenditure, which is difficult for Pakistan to afford with its vulnerable economy.<sup>xcvii</sup>

#### 4.2. The legal status of the Biharis in Bangladesh

In the strict legal sense, the Biharis are not refugees. The 1951 Refugee Convention does not cover them.<sup>xcviii</sup> According to Article 1 A (2) of the 1951 Refugee Convention:

*"[...] owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."*<sup>xcix</sup>

According to the above definition, the Biharis are not refugees, because they have not fled the country of their residence. Rather, the territory of their residence has seceded from the mother country and became a separate sovereign and independent state.

The Biharis not only disqualified as Convention refugees, but they do not fulfill the criteria for *de jure* stateless persons under the 1954 Convention relating to the Status of the Stateless People also. Art.1, of the 1954 Convention states, "... the term stateless person means a person who is not considered as a national by any state under the operation of its law."<sup>c</sup> Under this definition, the Biharis are not *de jure* stateless persons, because, *de jure* stateless persons are not nationals of any state.<sup>ci</sup> However, the Biharis' have Bangladeshi citizenship. Thus, they are *de jure* citizens, not *de jure* stateless persons.<sup>cii</sup>

Article 3(d) of the Bangladesh Citizenship Act, 1951 provides citizenship to those, "Who before the commencement of this Act, migrated to the territories now included in Bangladesh from any territory in the Indo-Pakistan subcontinent outside those territories with the intention of residing permanently in those territories."<sup>ciii</sup> Art., 2 of the Bangladesh Citizenship (Temporary Provisions) Order, 1972 (President's Order 149 of 1972)<sup>civ</sup> was passed to recognize the citizenship of residents in the newly created state. It stipulates:

*"Notwithstanding anything contained in any other law, on the commencement of this order, every person shall be deemed to be a citizen of Bangladesh, i. Who or whose father or grandfather was born in the territories now comprised in Bangladesh and who was a permanent resident of the territories now comprised in Bangladesh on the 25<sup>th</sup> March, 1971, and continued to be so resident; or ii. Who was a permanent resident of the territories now comprised in Bangladesh on the 25<sup>th</sup> day of March 1971 and continues to be so resident and is not otherwise disqualified for being a citizen by or under any law, for the time being in force."*<sup>cv</sup>

The above order does not discriminate between the Bengali and non-Bengali populations in Bangladesh. It is therefore equally applicable to all residents who fall within its provisions. Utilizing the advantage of this provision more than half a million Biharis accepted Bangladesh citizenship in 1973. Article 2B (1) of the Bangladesh Citizenship (Temporary Provisions) Amendment Ordinance 1978 includes a disqualification clause that states that a person shall not be qualified to be a citizen of Bangladesh, if he or she “owes, affirms, or acknowledges, expressly or by conduct, allegiance to a foreign state.”<sup>cv</sup>

It seems that those who opted to go to Pakistan disqualify for Bangladeshi citizenship. This law does not disqualify the Biharis for Bangladesh citizenship simply because they wanted repatriation to Pakistan.<sup>cvii</sup> The *Mukhtar Ahamed Case* decision erases any such uncertainty or confusion regarding the Biharis’ citizenship.<sup>cviii</sup> The Court decision invalidates the argument that the option given by the traumatized Biharis to express their desire to return to Pakistan through the ICRC immediately after the birth of Bangladesh is sufficient grounds to terminate their Bangladesh citizenship. The President’s Order 149/1972 did not also authorize any power to disqualify a citizen on the ground of alleged collaboration with the Pakistan army.<sup>cx</sup>

*Bangladesh v. Professor Golam Azam Case* recognizes the citizenship of the Biharis in Bangladesh.<sup>cx</sup> In this case, the Court examines whether Professor Golam Azam is a citizen of Bangladesh or not. The Court concludes that there is nothing in the law that can deny the citizenship of Professor Golam Azam on the grounds of his collaboration with the Pakistan Army.<sup>cx</sup> The landmark verdict of *Golam Azam case* establishes the fact that under the Bangladesh citizenship law, the Biharis are entitled to Bangladesh nationality. Their option to go to Pakistan, collaboration with the Pakistani occupation army, and their persistent demand for repatriation to Pakistan are not sufficient grounds for denying their right to Bangladesh citizenship.<sup>cxii</sup>

In 2003, the High Court decision on *Abid Khan v. Government of Bangladesh*<sup>cxiii</sup> makes a significant breakthrough towards securing Bangladeshi citizenship for the Biharis. In this case, the petitioners, ten of Bihari descent have asked the Court to recognize their voting rights when they remain unregistered by the Election Commission on the ground that they were residents of the Bihari settlement known as Geneva Camp in Dhaka. In the decision, the Supreme Court of Bangladesh (High Court Division) holds that the ten Urdu-speaking petitioners born both before, and after 1971 were Bangladeshi citizens according to the Citizenship Act of 1951,<sup>cxiv</sup> and the Bangladesh Citizenship (Temporary Provisions) Order of 1972<sup>cxv</sup>, and thereby directed the Government to register them as voters.

The Court states that residents of the camps and settlements had not “attained any special status so as to be excluded from the operation of the laws of the land,” and hence “mere residence” in the camps does not mean allegiance to another State.<sup>cxvi</sup> The effect of the *Abid Khan* decision was limited to the ten petitioners only. Later, on 18 May 2008 in *Sadakat Khan*,<sup>cxvii</sup> the Supreme Court of Bangladesh (High Court Division) declares that everyone in the Urdu-speaking community who was born after the birth of Bangladesh, and who

was a minor during the Liberation War of Bangladesh is a national of Bangladesh following the laws of Bangladesh.<sup>cxviii</sup>

Although this verdict does not cover those who were adults in 1971, this does not disqualify them either. The existing citizenship law P.O.149/1972 that is reflected in the *MukhterAhmed Case* covers them. Since 1971, all Biharis living in Bangladesh have retained their Bangladesh citizenship, because they never lost their citizenship status on the ground of the option for repatriation. The government of Bangladesh also did not denationalize them, or they did not renounce their Bangladesh citizenship. They never obtained citizenship in any other country. Therefore, the Bangladesh citizenship of all the Biharis is still valid.

### **4.3. The situation of the Biharis in Bangladesh: an empirical look**

My interviews show that the Biharis living in the camps remain unprotected in Bangladesh. Currently, they are living in the camps in extreme poverty, and without access to basic human rights. Most of them are illiterate, engaged in menial labor, and suffering from malnutrition, unemployment, and discrimination. Some scholars note:

*“Biharis in Bangladesh, particularly those living in camps, are facing social exclusion and severe discrimination in every aspect of life -education, employment, health services, business, access to justice, development, etc. Their living condition in the camp is not sub-standards, but also inhuman.”<sup>cxix</sup>*

Their deplorable living condition not only is inconsistent with citizenship theory (i.e., right to have rights), but also incompatible with the Constitution of Bangladesh, i.e. fundamental principles, and fundamental rights. The followings are some important rights that the Bihari respondents are unable to access or they have limited access to these rights. However, access to these rights is important for making their citizenship meaningful.

#### **4.3.1. Right to life**

Article 31 of the Bangladesh Constitution protects the *“life, liberty, body, reputation or property of any person [...]”<sup>cx</sup>* Mahmudul Islam argues, *“Life’ within the meaning of Art. 31 means something more than mere animal existence. It includes the right to live consistently with human dignity and decency [...]”<sup>cxxi</sup>* The absence of a decent life also violates social rights. Although judicially unenforceable, social rights are included in the fundamental principles, under part II of the Constitution of Bangladesh.<sup>cxvii</sup>

In my interviews with 75 respondents, I find that the Bihari camp dwellers live in subhuman conditions. They suffer from gross human rights violations. An average of six to eight people live in eight feet by ten feet of room and in many cases, 12-15 people live in the same space. Privacy is the most vital problem that they are facing in the camps. My fieldwork demonstrates that the respondents living in the camps do not have privacy for sleeping or changing clothes. The privacy question further aggravates when girls or boys get married. To give the newly married couples some private time and space, the male

members of the family go to the Mosque, and female members go to some neighbouring houses for night spending. Another study finds that to maintain conjugal privacy some camp residents also partition their very small rooms with *sarees*.<sup>cxiii</sup> One empirical study (2003) reports:

*“Rasulan Bibi, aged eighty years is an inhabitant of Balures Camp, Saidpur[...] living with her son and four daughters with their husbands in a single room of 8 feet by 8 feet. Rasulan Bibi makes a desperate effort to guarantee the conjugal privacy of her daughters by making partitions with sarees. She condemns herself as she thinks that her mere presence in that tiny room is an intrusion into her daughters’ private life.”*<sup>cxiv</sup>

In the Camps generally, older people (especially parents) sleep in yards under the open sky. Young couples sleep on the bed at home, and the children sleep under the bed.<sup>cxv</sup> Such a situation demonstrates how miserable life is in the camps. Kaberi (age 35) says, *“Your (Bengali’s) bathroom is bigger than our entire house.”*<sup>cxvi</sup> Unsecured and insufficient washrooms and bathing facilities also pose serious privacy and security threats. This degraded form of citizenship status is not consistent with the concept of citizenship.

Theoretically, citizens are entitled to enjoy civil rights, such as privacy, and security, which are absent in the Bihari camps. My field investigation shows that approximately 30,000 people use 272 toilets in the Geneva camp, and many of those are out of service. My findings show that 110 people use one toilet approximately. Most alarmingly, the use of the same toilet by both male, and female dwellers often causes very unpleasant situations. At night, the use of toilets appears to be extremely dangerous and scary for women, and children. Incidents of sexual assault occur very often.<sup>cxvii</sup>

This deplorable living condition without privacy and security is not consistent with citizenship theory constructed on the *“right to have rights,”* where rights like privacy and security are important civil rights. It is further incompatible with the *“right to life and personal liberty,”* one of the fundamental rights guaranteed by the Constitution of Bangladesh (Art. 32). The right to life means a meaningful life with dignity, but the Biharis’ cannot access some important rights essential for their transition from a degraded to meaningful citizenship.

#### 4.3.2. Right to shelter

Housing or adequate shelter is one of the basic human needs for the existence of human beings. It provides security to people. Shelter or housing is *“a place of their own, an identity, a place to come back to a place to call home and a place to have a family life.”*<sup>cxviii</sup> This is a fundamental human right essential for the life, security, and dignity of a citizen. It provides a sense of belonging to its owner. The minimum requirements for adequate shelter or housing include the security of tenure, capacity to protect from nature, utility services like safe drinking water, sanitation, and other essential services and finally, it should be affordable and accessible.<sup>cxix</sup> Hannah Sholder finds in her study in 2011, that the majority of the Bihari camp dwellers aspire to live in *“a single-family apartment with a*

*private bath, kitchen and facilities, such as running water, gas connection and electricity.*"<sup>cxix</sup> The Bihari camp dwellers' aspiration is consistent with the United Nations declaration:

*"Adequate shelter means more than a roof over one's head. It also means adequate privacy; adequate space; physical accessibility; adequate security; security of tenure; structural stability and durability; adequate lighting, heating, and ventilation; adequate basic infrastructure, such as water supply, sanitation, and waste-management facilities; suitable environmental quality and health-related factors; and adequate and accessible location with regard to work and basic facilities: all of which should be available at an affordable cost."*<sup>cxixi</sup>

The National Housing Policy of the Bangladesh Government also adopts the principle of affordable housing for all.<sup>cxixii</sup> However, the housing situation of the Bihari interview subjects is deplorable. My fieldwork on 75 Bihari camp dwellers demonstrates that they are living in inhuman conditions. Averages of six to eight people live in eight feet by ten feet rooms without civic amenities. Sometimes more people live in this tiny space in the case of a joint family. A study conducted at Khalispur Bihari Camp in Khulna (1989) reveals that the living space inside a house for each individual is 1.4 sq. meters or only 15.07 feet.<sup>cxixiii</sup> The camp dwellers identified many problems, which undermine their basic human needs and human rights. Among these, privacy is the number one problem. They do not have a minimum level of privacy. In a small room where six to eight family members live together, privacy for intimate relations between couples is also completely absent. Aziz (age 57) says,

*"I have two children and my parents live with me. My wife is young. I have forgotten when we had physical relations. I believe it is a curse. In front of my parents, and two young children, how can we do that? We are fed up with this horrible life."*<sup>cxixiv</sup>

Such an inhuman situation in the Bihari camps not only contravenes the civil rights of a citizen but also contradicts the right to life and liberty, a fundamental right of citizens of Bangladesh. Furthermore, it violates some social rights incorporated in the fundamental principles of state policy about the necessities of life, i.e. food, clothing, shelter, education, and healthcare. In short, the deplorable living conditions of the Biharis in the camps are inconsistent with citizenship theory (social and civil rights), fundamental state principles, for example, Article 15 (a), and fundamental rights i.e., the right to life, and liberty incorporated in the Art. 32 of the Bangladesh Constitution.<sup>cxixv</sup>

### 4.3.3. Right to education

The right to education is a fundamental human right recognized in the Universal Declaration of Human Rights (UDHR) in 1948. Article 26 of the UDHR states: *"Everyone has the right to education."*<sup>cxixvi</sup> The right to education obligates the state to ensure non-discriminatory and quality education to meet the challenges of time. Among the South Asian countries, Nepal<sup>cxixvii</sup> the Maldives,<sup>cxixviii</sup> India<sup>cxixix</sup> and Pakistan<sup>cxl</sup> recognize the right to education as a fundamental right. In Sri Lanka, the right to education is not a

fundamental right, but the fundamental principle of state policy is to eradicate illiteracy and to ensure the right to universal and equal access to education at all levels.<sup>cxli</sup>

The right to education is not a fundamental right in the Constitution of Bangladesh. It appears in Part II of the Constitution as a fundamental principle of state policy and emphasizes compulsory education for all children. It incorporates the provision of universal education as a directive principle of state policy under article 17, and pledges to establish “*a uniform, mass-oriented, and universal system of education*”, which extends free and compulsory education to all children in Bangladesh.<sup>cxlii</sup> The state is obligated to ensure the right to education according to the provision of Article 8(2) of the Constitution, which urges the state to follow the fundamental state principles as fundamental to governance.<sup>cxliii</sup> The National Education Policy provides that primary education is free and compulsory for all up to grade eight.<sup>cxliv</sup> Although the right to education is an unenforceable social right, it is rooted in the fundamental rights or legal rights incorporated in the Constitution of Bangladesh. The right to education flows from the right to liberty protected by article 31 of the Constitution of Bangladesh.<sup>cxlv</sup>

Access to education is a human right because it enhances human dignity through its “*fruits of knowledge, wisdom, and understanding.*”<sup>cxlvi</sup> Bihari children have hardly any access to education. Most school-age children do not have access to school. My fieldwork shows that out of the 75 respondents, 60 are illiterate. It is also evident that of the 75 respondents, 50 respondents have school-age children, and among them, 35 still do not attend any schools, which means that the majority of the Bihari children are illiterate. Although Bangladesh has a system of compulsory, and free primary education, this is not equally applicable to the Bihari children. My findings show that among the 50 Bihari respondents, who have school-age children; only 10 respondents can send their children to public schools. This implies that due to many formal and informal barriers, the remaining Bihari children do not have entry into public schools. Most Bihari children do not fulfill the admission requirements in public schools i.e., nationality documents, home addresses, parents’ occupations, etc.

Hafiz (age54) claims that Urdu-speaking students receive a denial in admission to the public schools when the authorities know that they live in the camps.<sup>cxlvii</sup> Among those, who have enrolled in public schools, many of them identified themselves as ethnic Bengalis. They hid their Bihari identity to avoid discriminations that exist against them. It is easier for the Biharis to hide their ethnic identity because they are “*physically indistinguishable from the ethnic Bengalis, and many of them, especially the younger generation, speak the Bengali language well*”<sup>cxlviii</sup> Apart from discrimination, continuous bullying from teachers and classmates discourages Bihari children from attending schools.<sup>cxlix</sup> Khalid Hossain, the President of the Young Generation of the Biharis narrates:

*“[...] Still I remember my first day of school. All the Bengali students were looking at us as if we were strangers and they were whispering to each other that we are Bihari and that we live in dirty camps. [...] Not only that, other students did not want to sit with us. [...] we had to sit in a separate row. When we try to speak Bangla, which is not our native*

*language and we read the textbook they were making fun of us due to the way we speak and our difficulty. [...] we had to face constant intolerant attitudes [...]."*<sup>cl</sup>

Discrimination against Bihari children in their admission to public schools undermines their right to education. It is an important social right of a citizen as Marshall points out, *"The right to education is a genuine social right of citizenship [...]."*<sup>cli</sup> Discrimination toward Bihari children in education is also inconsistent with the fundamental rights of "equality" and "non-discrimination" incorporated into the Arts. 27, and 28 of the Constitution of Bangladesh. Art. 27, guarantees that all citizens are equal before the law, and are entitled to equal protection of the law. Besides, Art. 28, prohibits discrimination against any citizen on the grounds of religion, race, caste, sex or place of birth for access to any place of public entertainment or resort, or admission to any educational institution.<sup>clii</sup>

#### 4.3.4. Right to healthcare

The right to life and liberty means living a healthy and hygienic life. The responsibility of the state is to provide affordable and accessible health services to all.<sup>cliii</sup> Extending health service to all including poor, and marginalized people, increase health benefits, and reduces health inequities. This helps with capacity building of the health system of the state and secures the right to health. My fieldwork shows that although the Bihari camp dwellers do not enjoy many important rights attached to citizenship rights, public health is an exception, where 57 out of the 75 respondents admit that they receive free health services from government hospitals and health centers. This is a positive contribution of the Government of Bangladesh to the Bihari community.

The common reasons most respondents narrate for their access to public health care are that public hospitals are open to all. It does not require any charges but a very nominal entry fee. Hospital authorities generally provide all available and free services to all patients. Ethically, the physicians and nurses treat the patients equally. There is no room for discrimination on the grounds of ethnicity, religion, or language. It is a humanitarian service.<sup>cliv</sup> On the contrary, 18 respondents complain that they do not receive care from public hospitals or health centers. They categorically mention that the influence of the *Dalals* (intermediaries between the hospital authority and patients), and bribe-seeking by the *Dalals* create the main barriers on the way of the admission of Bihari patients to public hospitals.<sup>clv</sup> Overall, an ever-growing Bihari population suffers from meager resources, poor sanitation, and a lack of clean water, which also cause communicable diseases. Camp dwellers experience daily an appalling environment where even the minimum civic amenities are absent. The merger of water and sewerage, an acute shortage of latrines, and clean water, all pose a constant threat to public health.

The right to health is a social right in Bangladesh, and the improvement of public health is one of the primary duties of the state as mentioned in the fundamental principles of state policy.<sup>clvi</sup> Art. 18 (1), provides that the improvement of public health is the responsibility of the State. It states, *"The State shall regard the raising of the level of nutrition and the improvement of public health as among its primary duties [...]."*<sup>clvii</sup> Although the right

to health is not a fundamental right directly, it is implicit in the right to life in article 31, a recognized fundamental right in the Constitution of Bangladesh. The right to life means living a healthy life. Unfortunately, most Bihari citizens of Bangladesh cannot enjoy a healthy life. This is inconsistent with citizenship rights or citizenship theory based on the “right to have rights,” where health is the most essential social right. The Biharis’ unhealthy, and unhygienic living conditions are not even compatible with the fundamental state principle under article 18 (improvement of public health) and fundamental rights under Arts. 31, and 32 (right to life, and liberty), of the Bangladesh Constitution.<sup>clviii</sup>

In *Dr. Mohiuddin Farooq and Another vs. Government of Bangladesh*, 1997, the High Court Division of the Bangladesh Supreme Court observes that the right to life includes the right to decent and healthy living in hygienic conditions.<sup>clix</sup> Explaining the right to life enshrined in Art., 32 the Court says, “It includes everything which is necessary to make it meaningful and worth living.”<sup>clx</sup> The Court categorically says: “[...] among others maintenance of health is of utmost importance, and preservation of the environment and hygienic condition are of paramount importance for such maintenance of health, lack of which may put the life of the citizen at naught.”<sup>clxi</sup> Arts., 31, and 32 of the Bangladesh constitution guarantee a right to life, which does not merely mean life, but a decent, and meaningful life in a healthy environment.<sup>clxii</sup>

#### 4.3.5. Right to employment and income generation

Employment means “the state of having paid work.”<sup>clxiii</sup> The equality of employment means similar and just treatment to all equally qualified candidates in the process of employment, and in the enjoyment of rights, and benefits in public office.<sup>clxiv</sup> Employment or profession enables a person to attain power, prestige, dignity, and livelihood. It also helps achieve each individual’s professional efficiency. On the contrary, unemployment is a socio-economic and political condition that produces “income inequality, poverty, crime, and other disparities.”<sup>clxv</sup> The right to employment is an important social right of an individual according to Marshall’s social element of citizenship:

*“By the social element, I mean the whole range from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilized being according to the standards prevailing in the society.”<sup>clxvi</sup>*

Through employment, an individual who works for the country creates an attachment to the country and pays taxes to the country. These transactions of rights and responsibilities create meaningful citizenship. The Constitution of Bangladesh guarantees a fundamental right to all citizens of the country under Art., 40 to practice any profession or to engage in any occupation, trade, or business.<sup>clxvii</sup> A fundamental state principle of the Bangladesh Constitution is to secure the basic needs of its citizens. Art. 15(a) of the constitution of Bangladesh provides that it shall be the fundamental responsibility of the state to secure the needs of life, including food, clothing, shelter,

education, and healthcare.<sup>clxviii</sup> Art. 15(b) emphasizes the right to work, which means the right to guaranteed employment with a reasonable wage.<sup>clxix</sup>

The Constitution of Bangladesh upholds equality of opportunity as a fundamental right of the citizens of Bangladesh. Art. 29(1) states, “*There shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic.*”<sup>clxx</sup> Similarly, Art. 29(2) says, “*No citizen shall, on grounds only of religion, race, caste, sex or place of birth, be ineligible for, or discriminated against in respect of, any employment or office in the service of the Republic.*”<sup>clxxi</sup> If any aggrieved person thinks that state discrimination violates her/ his fundamental right, she or he may file a Writ Petition before the High Court Division of the Supreme Court under Article 102.<sup>clxxii</sup> In *Carew and Company vs. Labour Court*,<sup>clxxiii</sup> the High Court division observes that the failure of the nationalized company in providing the benefits of an agreement to some of its employees violates Article 29. Freedom of profession implies that every citizen has a right to practice any profession, or the right to have any occupation, trade, or business. This right is conditional and governed by the legal order.

However, my fieldwork demonstrates that the Bihari citizens of Bangladesh suffer the most in the areas of employment, and occupation. Although one million people who constitute around one-third of the formal sector employment are working in the public sector,<sup>clxxiv</sup> none of the 75 Bihari respondents has a government job. Matin (age 21) says: I passed the Secondary School Certificate (SSC) examination in 2009. I applied for the position of Police Constable in 2010. I had the requisite qualification to apply. My mailing address was my camp address. I did not receive an interview card. This is how things happen. The camp address is our main disqualification.<sup>clxxv</sup>

Aside from administrative discrimination, a lack of adequate education with impoverished economic conditions provides limited opportunities to the Biharis for employment. Therefore, many have the only option of menial labor, and in some cases, helpless men and women start begging, young boys engage in child labor, and young girls opt for early marriage or other illegal forms of work to earn a living.<sup>clxxvi</sup>

**Table 1:** Occupational background of Bihari respondents

Occupation	Number
Teachers	2
Service holders (private)	9
Technicians	5
Day laborers	5
Rickshaw pullers	12
Small businessmen/women	26
Housewives	12
Drivers	2
Others	2*
Total	75

\*Of the two respondents, one was a paramedic, and the other was a non-government organization (NGO) worker. They were unemployed when interviewed.

My fieldwork suggests that all 75 Bihari respondents live in extreme poverty (Table 2). If a person lives on less than \$1.90 per-day, he or she is considered to be in extreme poverty.<sup>clxxvii</sup> Even the member of the highest income group who earns US\$7.07 per day could not overcome the extreme poverty line, because a family of an average of eight members (Table 2) shares this amount. Heffernan also finds in his study (2002) that earning a living is exceedingly difficult for the Biharis. If they manage to have a job, they get less pay. They cannot challenge this discriminatory policy because of their vulnerability.<sup>clxxviii</sup> An informal restriction on the Biharis for living outside the camps limited their access to employment, education, and healthcare which automatically threaten their physical integrity.<sup>clxxix</sup>

Table 2 indicates that of the 75 respondents, the annual family income<sup>clxxx</sup> of 26, ranges from 51,000 to 99,000 Bangladeshi Taka (BDT), the national currency of Bangladesh, or between US\$645 and US\$1278. This translates into a daily family income of US\$1.77 -- US\$3.50 shared by eight dependent family members (Table 2). Another 26 respondents' annual family income is between 100,000--150,000 BDT, or between US\$129--US\$1,936. The daily income of this group is US\$3.56 -- US\$5.30 shared by seven family members. Only three respondents' annual family income ranges from 151,000--200,000 BDT, or between US\$1,949--US\$2,581. The per-day family income of this group is between US\$5.34--US\$7.07, shared by eight family members.

Among the 75 respondents, 18 have a daily family earning between less than one dollar and just above one dollar. In other words, 18 respondents' family income is only between 1,000 --50,000 BDT annually or only between US\$13--US\$645, which translates to US\$0.36 -- US\$ 1.77 daily, and is shared by six members (Table 2). Above all, among the 75 respondents, two have no family income at all. In all cases, six to eight family members share the daily family income of the respondents, which demonstrates that all 75 Bihari respondents live in extreme poverty (Table 2). If a person lives on less than \$1.90 per day, she or he considers being in extreme poverty.<sup>clxxxi</sup> Even a member of the highest income group, who earns US\$7.07 per day, is also not able to overcome the extreme poverty line, because a family of an average of eight members (Table 2) shares this amount.

**Table 2:** Annual income of the Bihari respondents  
(in Bangladeshi taka and US dollars (BDT, and US\$\*))

Annual income	Number	Average dependents** on the total family income
TK. 1,000 - 50,000 (\$13-- 645).	18	6
TK. 51,000 - 99,000 (\$645--1278).	26	8
TK. 100, 000 - 150,000(\$1291 –\$1936).	26	7
TK. 151,000 - 200,000 (\$1949- \$2, 581).	3	8
TK. 200,001 - 500,000 (\$2,582-\$6,454).	0	nil
TK. 0 (\$ 0)	2	7

\*One US\$ =77.47TK. The amounts in the brackets indicate US\$. \*\*Dependent refers to children, parents, and spouses who have no income, and live on the earning member(s) of the family.

My fieldwork shows that although legally the Biharis are citizens of Bangladesh most of them cannot access all rights associated with citizenship. They are subject to discrimination in the job market. In some cases, they get a job usually doing manual labor. Respondents report that they do not get equal pay for equal work done. They have truly little or no bargaining power because the common perception about the Biharis is that they are not Bangladeshi citizens (which is wrong), and given the situation, no option remains for them, but to accept any job offer at any rate just to survival.

Such discrimination and maltreatment toward the Biharis in workplaces go against the spirit of the concept of citizenship. Indeed, participation in work represents democratic citizenship.<sup>clxxxii</sup> On the contrary, inequality, and discrimination toward the Biharis in employment are not consistent with the fundamental rights of equality in employment, and non-discrimination guaranteed in the Constitution of Bangladesh.<sup>clxxxiii</sup> It is further incoherent with the fundamental principle of state policy, i.e. improving the standard of living of people, and meeting the basic needs of life indicated in the Constitution of Bangladesh.<sup>clxxxiv</sup> Although the fundamental principles are non-enforceable, these are fundamental to the governance of Bangladesh, especially in making laws, and legal interpretations.<sup>clxxxv</sup> These fundamental principles morally obligate the state to take effective measures to improve the quality of life of its citizens.<sup>clxxxvi</sup>

#### **4.3.6. Right to have other rights**

Most of the respondents are unable to enjoy the benefits of meaningful citizenship rights because they cannot access some important rights associated with citizenship rights, or the 'right to have rights.' My interviews with the 75 respondents reflect that the Biharis, in general, were denied passports to travel abroad or driver's licenses. As a non-Bengali population, it is difficult for them even to rent a house. They have limited or no access to other rights associated with citizenship. My field investigation reveals that among the 75 Bihari respondents although 72 of them are registered voters, and received voter ID cards, still denied other rights associated with citizenship. Among 75 respondents, only seven persons applied for passports, and all seven applicants received rejections.<sup>clxxxvii</sup> Such refusals prevent other camp residents from applying for passports, and other legal documents.

One recent example shows that a person born to Bihari parents in Bangladesh in 1978 was denied a passport by the Bangladesh High Commissioner in London in 2015 on the ground that the applicant was a stranded Pakistani national.<sup>clxxxviii</sup> An application for a passport in Bangladesh requires a valid address<sup>clxxxix</sup> that the Bihari camp dwellers do not have. Authorities do not recognize the Bihari camp as a valid address. Hence, many Biharis do not meet the requirements for obtaining passports. Although living in the camp should not be a disqualification for obtaining a passport, they are still discriminated in the name of being 'stranded Pakistanis,' which is wrong, and unlawful. In the *Mukhtar Ahamed case*, the Court clearly states that the Biharis did not attain any special status simply by being confined in camps, and the camp is not a place where Bangladeshi law is not in operation.<sup>cx</sup> Although all 75 Bihari camp dwellers claim that purchasing a piece

of land or owning a piece of land is not a problem (if they have money), they still do not want to purchase land outside the camp due to their uncertain future, insecurity, and lack of economic ability.

Among the 75 Bihari respondents, all of them believe that they suffer from exclusion in mainstream Bangladeshi society. Socially, and politically they receive maltreatment, denial, and deprivation. They are un-integrated with and alienated from mainstream society. In the *Sadakat Khan case*, the Court directed the government to integrate the Biharis with the mainstream, but that Court Verdict remains unimplemented.<sup>cxci</sup> The Government did not take any initiatives to make any laws in parliament. On the contrary, despite having the Court decision in favor of their citizenship, the Government of Bangladesh still calls them Stranded Pakistanis.<sup>cxcii</sup> A lack of 'political will' from the Government to recognize their Bangladeshi citizenship is evident.<sup>cxci</sup> Even civil society and human rights groups are seemingly not concerned about the Biharis' rights.<sup>cxci</sup>

Discrimination against the Biharis in Bangladesh by the State and non-State actors goes against the legal rights stated in citizenship theory, i.e. equality, non-discrimination, legal protection, etc. It further contradicts the fundamental principles of the State policy of Bangladesh such as the emancipation of toiling masses from all sorts of exploitation, basic needs of life, and the right to work.<sup>cxci</sup> Discrimination is also conflicting with fundamental rights such as equality before the law and non-discrimination on grounds of religion, race, and caste.<sup>cxci</sup>

The Biharis are citizens under article six of the Bangladesh Constitution.<sup>cxci</sup> In article six, two laws dealing with the citizenship of Bangladesh, namely the Citizenship Act, 1951<sup>cxci</sup> and the Bangladesh Citizenship (Temporary Provision) Order, 1972 (President's Order no.149 of 1972) referred to as P.O. No.149 of 1972.<sup>cxci</sup> The evidence from my fieldwork demonstrates that of the 75 respondents, a majority (67) are citizens of Bangladesh by birth. The remaining eight were born in former British India; they migrated to former East Pakistan in 1947 and later obtained Pakistani citizenship under the Pakistan Citizenship Act of 1951.<sup>cc</sup> Among 67 who were citizens of Bangladesh by birth, 39 were born in Bangladesh after the Liberation War, and 28 were born in former East Pakistan. Others are also entitled to Bangladeshi citizenship because the Government never revoked their citizenship, or they never renounced their citizenship voluntarily. Their wishes to go to Pakistan in 1972-73 do not *ipso facto* disqualify them for Bangladeshi citizenship according to the verdict of the Bangladesh Supreme Court.<sup>cci</sup>

Although the Biharis are entitled to Bangladeshi citizenship, most of them are unable to enjoy citizenship rights, because the Government of Bangladesh failed in its obligation to ensure that they enjoy equal citizenship right as the Bengalis. Three generations of the Biharis have been the worst victims of political and ideological conflicts in South Asia. Despite having judicial decisions from the highest court to grant access to the rights associated with citizenship rights to the Biharis, still, the Government did not take any visible action to implement the Court decision. In addition to legal obligations, Bangladesh is also morally obliged to respect the human rights of the Biharis, particularly basic human rights such as housing, education, health, and employment. The

situation of the Biharis suggests that the State is reluctant to ensure their access to accompanying rights of citizenship rights. By declaring them citizens in 2008, the apex Court of Bangladesh proved that the state's actions of deliberate discrimination against the Biharis for many years were wrong.

## 5. Conclusions

From the above discussion, it is unfolded that despite having *de jure* citizenship in Bangladesh, the Biharis are still *de facto* stateless persons, because their citizenship is ineffective. They are *de facto* stateless for a couple of reasons; first, they are unable to demonstrate their *de jure* statelessness, and secondly, they are unable to enjoy their effective nationality, i.e., they do not enjoy important state protection from Bangladesh like the mainstream Bengali citizens. Under the situation of current *de facto* statelessness, the Biharis are going through protracted insecurity and violation of human rights. Their lack of access to important citizenship rights is inconsistent with citizenship theory (the right to have rights i.e., civil, political, and social rights), existing citizenship laws, and the Constitution of Bangladesh, i.e., fundamental principles, and fundamental rights. In a strictly legal sense, although the Biharis are citizens of Bangladesh, their citizenship is not meaningful or effective. They are still unable to access many important rights needed to make their citizenship meaningful. My fieldwork suggests that the Biharis living in the camps remain unprotected. Currently, they are living in the camps in extreme poverty, and without access to basic human rights.

Despite having their rootedness, bondage, or real link with Bangladesh through their birth, and bringing up in the environment, culture, and society, the members of the Bihari community feel that they are being deprived, and denied important rights, and duties. They do not enjoy effective citizenship status. My empirical findings uncover the fact that the Biharis in Bangladesh are still un-integrated with the national system. Generally, national integration is the process of creating a unified nation through unity, cohesion, and stability.<sup>ccii</sup> The national integration of a nation depends on the successful accommodation of various ethnic, linguistic, and religious groups within a national system.<sup>cciii</sup> It occurs when diverse groups and discrete elements of societies come together and co-exist in a national system for making a nation.<sup>cciv</sup> It provides a common sense of nationality to citizens. The situation of the Biharis reveals that they are alienated from mainstream Bangladesh society. They are the “*un-integrated elements within an integrated nation*”,<sup>ccv</sup> says, Talukder Maniruzzaman, an eminent political scientist of Bangladesh. At the vertical level, their extreme poverty, and inability to access the resources, and at the horizontal level, their ethnolinguistic differences keep them un-integrated with the mainstream.<sup>ccvi</sup> Formally, although they are citizens of Bangladesh, practically, many of them still do not have access to important legal and social rights. For example, legal rights such as owning a passport, driver's license, birth certificate, etc. and social rights such as shelter, education, employment, and healthcare, etc.

The *de facto* statelessness or ineffective citizenship status of the Biharis may cease to exist through an accommodative political decision of the Government. Among other

things, it requires a public announcement on the part of the government stating that they are effective citizens of Bangladesh and entitled to equal rights, and responsibilities as other citizens. Simultaneously, the government must need to demonstrate its *'political will'* by removing all unofficial /hidden barriers on the way of their effective citizenship. Their effective citizenship may give them effective rights, and responsibilities. Ultimately, this may enhance their participation in nation-building and may consolidate the national integration of Bangladesh, strengthening its society, polity, and economy. No matter how small the Biharis are in number, their participation matters in the nation-building process.

**Annexure A: Worldwide Statelessness, 2012**

State	Persons under UNHCR's statelessness mandate	State	Persons under UNHCR's statelessness mandate
Albania	7,443	Ireland	73
Armania	35	Israel	14
Austria	542	Italy	470
Azerbaijan	3585	Japan	1,100
Belarus	6,996	Kazakhstan	6935
Belgium	3,898	Kenya	20,000
Bosnia & Herzegovina	4,500	Kuwait	93,000
Brazil	1	Kyrgyzstan	15,473
Brunei Darussalam	21009	Latvia	280,759
Burundi	1302	Lichtenstein	5
Hong Kong / Sar, China	1	Lithuania	4,130
Columbia	12	Luxembourg	177
Côte d'Ivoire	700,000	Russian Federation	178,000
Iraq	120 000	Saudi Arabia	70,000
Serbia	8,500	Portugal	553
Slovakia	1,523	Qatar	1,200
Slovenia	4	Republic of Korea	179
Spain	36	Republic of Moldova	1,998
Sweden	9,596	Romania	248
Switzerland	69	Croatia	2,886
Syrian Arab Republic	221,000	Czech Republic	1,502
Tajikistan	2,300	Denmark	1,623
The former Yugoslav Republic of Macedonia	905	Egypt	60
Thailand	506,179	Estonia	94,325
Turkey	780	Finland	2,017
Malaysia	40,001	France	1,210
Mexico	7	Georgia	1,156
Mongolia	220	Germany	5,683
Montenegro	3,383	Greece	154
Myanmar	808,075	Honduras	1
Netherlands	2,005	Hungary	111
Nicaragua	1	Iceland	119

Norway	2,313	Turkmenistan	8,947
Philippines	6,015	Ukraine	35,000
Poland	10,825	United Kingdom	205
Vietnam	11,500	<b>Total</b>	<b>3,335,777</b>

**Source:** UNHCR, *Global Trends, 2012*. Data used from Table 1, Refugees, asylum seekers, internally displaced persons (IDPs), returnees (Refugees and IDPs), stateless persons, and others of concern to UNHCR by country/territory of asylum /end-2012. See, online: [http://unhcr.org/globaltrends/june2013/UNHCR%20GLOBAL%20TRENDS%202012\\_V08\\_web.pdf](http://unhcr.org/globaltrends/june2013/UNHCR%20GLOBAL%20TRENDS%202012_V08_web.pdf).

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The author declares no conflicts of interest.

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- <sup>cxxix</sup> Article 21A of Indian Constitution secures free and compulsory education to all children between the ages of six and fourteen years. This constitutional obligation came into force through passing of the Right of Children to Free, and Compulsory Education (RTE) Act 2009. See the 86th amendment of the Constitution of India accessed 21 June, 2019. <http://righttoeducation.in/what-86th-amendment>.
- <sup>cxl</sup> Art. 25-A of the Constitution of Pakistan stipulates, 'State shall provide free and compulsory education to all children of the age of 5 to 16 years', See, *Right to Free and Compulsory Education in Pakistan: Enforcement of Article 25-A of the Constitution of Pakistan*, June 2011 accessed, 22, June 2019. <http://www.pildat.org/publications/publication/EFA/RighttoFreeandCompulsoryEducationinPakistanBackgroundpathper.pdf>
- <sup>cxli</sup> Sarath Mathilal de Silva, "Constitutional Protection of Human Rights," *Daily News*, [Sri Lanka] accessed 7 March 2017. <http://www.dailynews.lk/2017/03/07/features/109622/constitutional-protection-human-rights>
- <sup>cxlii</sup> Bangladesh Constitution, Art. 17.
- <sup>cxliii</sup> Art. 8(2), says that fundamental principles shall be fundamental to the governance of Bangladesh. See, *ibid*, Art. 8(2).
- <sup>cxliv</sup> S. M. Zakir Hossain, "Education as a Fundamental Right" *The Daily Star* [Bangladesh], January 19, 2011.
- <sup>cxlv</sup> Mahmudul Islam, *Constitutional Law of Bangladesh*, 156.
- <sup>cxlvi</sup> Richard Pierre Claude, "The Right to Education and Human Rights Education: Questions for Reflection and Discussion," in *Human Rights in the World Community: Issues and Actions*, edited by Richard Pierre Claude, and Burns H. Weston (Philadelphia: University of Pennsylvania Press, 2006) pp. 211-222
- <sup>cxlvii</sup> The author interviewed Hafiz, a Geneva Camp resident, on May 20, 2011 (translated by the author).
- <sup>cxlviii</sup> Eric Paulsen, "The Citizenship Status of the Urdu-Speakers Biharis in Bangladesh," *Refugee Survey Quarterly* 25, no. 3 (2006): 54-69

- <sup>cxlix</sup> Council of Minorities and Namati, *Inhuman Camp Life of Bihari Urdu-speaking Linguistic Minority of Bangladesh: Patterns of inequality, discrimination, political and social marginalization of the Bihari Urdu-Speaking Bangladeshis*, accessed September 18, 2019, <https://static1.squarespace.com/static/5895825c8419c20eb9f0ae37/t/59e06cf890bade2c5804f19e/1507880187893/UPR-Bangladesh-2018-COM-Namati-Joint-Submission.pdf>.
- <sup>cl</sup> Khalid Hossain's voice, accessed January 10, 2020, <http://www.un.org/durbanreview2009/pdf/Khallid%20Hussain.pdf>.
- <sup>cli</sup> Marshall, *Citizenship and Social Class*, 25.
- <sup>clii</sup> Bangladesh Constitution, *Arts. 27*, and 28.
- <sup>cliii</sup> Simeen Mahmud, "Citizen Participation in the Health Sector in Rural Bangladesh: Perception and Reality," *IDS Bulletin* 35, no. 2 (2004): 11-18
- <sup>cliv</sup> This is the common perception of most of the respondents for their better access to public health care system compared to the poor access to other rights.
- <sup>clv</sup> This is the common view of most respondents who claim that they do not have access to public health care system.
- <sup>clvi</sup> Art. 31 states, '[...] no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law,' See, *Bangladesh Constitution*, Art. 31.
- <sup>clvii</sup> *Ibid.* Art. 18 (1).
- <sup>clviii</sup> Art. 32 states, 'No person shall be deprived of life or personal liberty save in accordance with law.', see, *ibid.* Art. 32.
- <sup>clix</sup> The Supreme Court of Bangladesh, *Dr. Mohiuddin Farooq and Another vs. Government of Bangladesh*, 1997, 50 DLR (HCD) (1998) 84
- <sup>clx</sup> *Ibid.*
- <sup>clxi</sup> *Ibid.*
- <sup>clxii</sup> Lain Byrne, and Sarah Hossain, "South Asia" in *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*, edited by Malcolm Langford (Cambridge: Cambridge University Press, 2008) pp.125- 143.
- <sup>clxiii</sup> *Oxford English Dictionary* accessed, 10 October 2019, <https://en.oxforddictionaries.com/definition/employment>.
- <sup>clxiv</sup> Afroza Begum, "Equality of Employment in Bangladesh: A Search for the Substantive Approach to Meet the Exceptional Experience of Women in the Contemporary Workplace," *Journal of the Indian Law Institute* 47, no. 3 (2005): 326-350
- <sup>clxv</sup> V. Gray, G.S. Johnson, H.T. Gibrill, and W.H. Boone, "American Recovery and Re-investment Act. Of 2009: A Political Analysis of Its Impact on Black and Latino Unemployment in the United States," *Race, Gender and Class* 22, no.3-4 (2015): 1-29
- <sup>clxvi</sup> Marshall, *Class, Citizenship and Social Development*, 11.
- <sup>clxvii</sup> *Bangladesh Constitution.*, Art. 40.
- <sup>clxviii</sup> *Ibid.* Art. 15 (a).
- <sup>clxix</sup> *Ibid.* Art. 15 (b).
- <sup>clxx</sup> *Ibid.* Art. 29 (1).
- <sup>clxxi</sup> *Ibid.* Art. 29 (2).
- <sup>clxxii</sup> *Ibid.* Art. 102.
- <sup>clxxiii</sup> The Supreme Court of Bangladesh, *Carew and Company vs. Labour Court*, 50 DLR (HCD) (1998) 396.
- <sup>clxxiv</sup> David Lewis, "Exchanges of Professionals between the Public and Non-Governmental Sectors: Life-work Histories from Bangladesh," *Modern Asian Studies*, 45, no. 3 (2011): 735 -757
- <sup>clxxv</sup> The Author interviewed Matin, a resident of the Geneva Camp on 13 May May 2011 (translated by the author).
- <sup>clxxvi</sup> Based on the Bihari respondents' interview with the author, April-August 2011(translated by the author).
- <sup>clxxvii</sup> Max Roser and Esteban Ortiz-Ospina, "Global Extreme Poverty" accessed 28 Dec. 2019, <https://ourworldindata.org/extreme-poverty>.

- clxxviii John W. Heffernan, Being Recognized as Citizens: A Human Security Dilemma in South Asia and South-east Asia accessed 21 November 2019.  
[http://gmandal.weebly.com/uploads/7/7/7/8/7778263/being\\_recognized\\_as\\_citizens\\_a\\_human\\_security\\_dilemma\\_in\\_south\\_and\\_south\\_east\\_asia.pdf](http://gmandal.weebly.com/uploads/7/7/7/8/7778263/being_recognized_as_citizens_a_human_security_dilemma_in_south_and_south_east_asia.pdf).
- clxxix Ibid.
- clxxx Family income means the total income of a family. In some cases, earning member of a family is only one person, and in some other cases, other members may contribute something to the family income. The respondents did not disclose who earns what amount of money.
- clxxxi Max Roser & Esteban Ortiz-Ospina, "Global Extreme Poverty."
- clxxxiii Linda Bosniak, "Citizenship and Work," *North Carolina Journal of International Law and Commercial Regulation* 27, no. 3 (2002): 497- 506
- clxxxiii *Bangladesh Constitution*, Arts. 29, 31, 32, and 40.
- clxxxiv Ibid. Art. 15.
- clxxxv Ibid. Art. 8.
- clxxxvi Ibid. Art. 15.
- clxxxvii Based on interviews (translated by the author).
- clxxxviii Cited in Ridwanul Hoque, *Report on Citizenship Law: Bangladesh*, European University Institute, 14 (2016): 1-32
- clxxxix Bangladesh Passport Order (President's Order No. 9 of 1973). (HCD) 29.
- cxci *Sadaqat Khan*. cxci The verdict of *Mukhtar Ahmed* case states, 'The mere fact that he filed an application for going over to Pakistan cannot take away his citizenship [ ...]. The petitioner having not acquired the citizenship of any other country, his citizenship of Bangladesh which he acquired long before cannot evaporate and he continues to be a citizen of this country.' See, The Bangladesh Supreme Court, *Mukhtar Ahmed v. Govt. of Bangladesh et al.* (1982) 34 DLR
- cxcii The State Minister for Foreign Affairs Mr. S. Alam comments that Bangladesh continues diplomatic efforts for the repatriation of the stranded Biharis to Pakistan. See, "Geneva Camper Biharira" (The Biharis living in the Geneva Camp) in the *Amadershomoy.com* [Bangladesh], 4 December 2014, accessed 16, December 2018. <http://www.amadershomoy.biz/unicode/>
- cxciiii Most respondents made this remark about the 'political will' of the Government of Bangladesh.
- cxciiv Most interviewees disclosed this information.
- cxci v *Bangladesh Constitution*, Arts. 14-15.
- cxci vi Ibid. Arts. 27, 28, 29, 31, 32, and 36.
- cxci vii Art. Six of the Bangladesh Constitution provides that 'the citizenship of Bangladesh shall be determined and regulated by law... and the citizens of Bangladesh shall be known as Bangladeshi'. See, *Bangladesh Constitution*, Part 1, Arts. 6(1), and 6(2).
- cxci viii Under the Citizenship Act, 1951, one may be a citizen of Bangladesh by birth, by a descendant, and or by migration or by registration, and incorporation of territory. See, *Sadaqat Khan*.
- cxci x Art. 2, The Bangladesh Citizenship (temporary provisions) order, 1972.
- cc See, The Pakistan Citizenship Act 1951 (Act No. II of 1951), Article 6 (1), accessed December 19, 2018, <http://www.refworld.org/pdfid/3ae6b4ffa.pdf>
- cc i See, *Sadaqat Khan*.
- ccii Ijaz Hussain, "The Dilemma of National Integration in Pakistan: Challenges and Prospects," Institute for Strategic Studies, Research and Analysis (ISSRA) Papers 2009, accessed November 3, 2019, [http://www.ndu.edu.pk/issra/issra\\_pub/articles/issra-paper/ISSRA-Paper-Vol-I-2009/04-The-Dilemma-of-National-Integration.pdf](http://www.ndu.edu.pk/issra/issra_pub/articles/issra-paper/ISSRA-Paper-Vol-I-2009/04-The-Dilemma-of-National-Integration.pdf).
- cciii Rounaq Jahan, *Pakistan: Failure in National Integration* (New York: Columbia University Press, 1972), 3
- cciv Howard Wriggins, "National Integration," in *Modernization: The Dynamics of Growth*, edited by Myron Weiner (New York: Basic Books Inc., 1966) pp. 181-191
- ccv The author of this paper interviewed Talukder Maniruzzaman on 10 August 2011 in Dhaka, Bangladesh.

<sup>ccvi</sup> For vertical, and horizontal integrations, see, Talukder Maniruzzaman, "National Integration and Political Development in Pakistan," *Asian Survey* 7, no. 12 (1967): 876-885.