

## Discrimination in Nationality Laws: A case study of Pakistan

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### Abstract:

Citizenship is one of the fundamental human rights mentioned in Article 15 of the Universal Declaration of Human Rights. Pakistan ratified the declaration in 1948. However, Pakistan is still lagging behind in achieving the objectives of the Convention on Human Rights and gender-based discrimination persists in the Pakistan Citizenship Act. Under section 10 of Citizenship Act 1951, a married Pakistani man is allowed to obtain Pakistani citizenship for his foreigner wife, but there is no parallel provision for the female citizen of Pakistan to transfer her nationality to her foreigner spouse. Pakistan ratified also the convention on the elimination of all kind of discrimination against women in 1996, but there is not satisfactory implementation in terms of equal rights. The researcher aims to highlight the legal protection of women's rights in Pakistan and to identify the area of inequality and discrimination in the Pakistan Citizenship Act. The article analyzes that many political, social, cultural and religious factors are contributing to this situation and, with such complexities, the fabricated right involved is also partial to grant equal rights to women. The research shows that the less number of women legislators, lack of awareness, low status of women in Pakistan, stereotypical division of labor, misinterpretation of the teachings of Islam and Koran, nationalist ideologies and interests, are some of the factors responsible for the promulgation of discriminatory laws in the country. The study is qualitative in nature and the reference cases and judgments involved have been taken to highlight the situation of victims to analyze the effects of such laws on female citizens. At the end, this study proposes some recommendations for legislatures to ensure equality and repeal or amend discriminating laws against women in Pakistan.

**Key words:** Pakistan, Gender discrimination, Nationality law, Equality

### 1. Introduction and background:

The privilege to a nationality is of central significance to the acknowledgment of other basic human rights. Ownership of a nationality confers with it the stipulated parented security of the country and is additionally a legitimate or down to earth prerequisite for the activity of principal rights. Therefore, the nationality right has been portrayed as the "right to have rights." (Rajmi, Nogales, 2015). People who do not have a nationality or a powerful citizenship are consequently among the most vulnerable against human rights infringement.

The provisions of the articles 15<sup>th</sup> and 16<sup>th</sup> of the universal declaration of human rights implies that "every person has a right to nationality and no one shall be arbitrarily deprived of his/her nationality nor denied the right to change his nationality". (Committee, 1948)<sup>1</sup> The majority of the countries are signatory of such human right conventions but unfortunately, there is no strict implementation of these international conventions and laws. The main theme of all of conventions is the equal access of basic rights for all human beings and there must be no discrimination on the basis of sex and gender. But the reality is almost contradictory and there is widespread violation of the rights on the basis of sexual differences.

Many countries in the world contain discriminatory nationality laws that don't grant equal rights to all citizens. According to the 2016 report of the equality now<sup>2</sup>, there are 53<sup>3</sup> countries in the world that have discriminatory

<sup>1</sup> See the convention UNHR: Committee, D. (1948). *Universal Declaration of Human rights*. Palais de Chaillot, Paris. Access on June 10<sup>th</sup> 2017.

<sup>2</sup> An organization working for equal citizenship rights in all over the world.

<sup>3</sup> These 53 countries are mentioned in the Equality now report 2016. See: Now, E. (2016). *The state we are in: Ending sexism in Nationality Laws*.

nationality laws, out of which 27% countries have sexist nationality laws, 48 countries are those in which women cannot transfer their citizenship to their spouses on equal basis with men, and 26 countries have discriminatory citizenship rights for children<sup>1</sup>.

Pakistan is also one of the countries that don't allow women to transfer their nationality to foreigner husband. Pakistan enforced its first citizenship Act on 13<sup>th</sup> of April 1951. Pakistan was part of the British colony in sub-continent until 1947. Pakistan has adopted numerous procedural and substantive laws as colonial legacy. However, the British-India colony had no law on the question of citizenship. The 1951 citizenship Act was particularly drafted to oblige diverse group of individuals then dwelling in Pakistan. The Law has characterized the different methods of acquiring citizenship and structured cases of loss of citizenship. Since 1951, the law has been revised several times to adapt to the embryonic political landscape of the country.

The citizenship as a legislative subject falls exclusively under the jurisdiction of Federal Legislature and therefore, all amendments in the Act are also passed by it. The section 10 of the citizenship act of Pakistan<sup>1</sup> is considered as discriminatory because it does not allow the equal right of citizenship transference to foreigner spouses of male and female citizens of Pakistan. According to section 10 the female foreigner spouse of the male citizen of Pakistan is allowed to obtain Citizenship of Pakistan but this section doesn't have the same parallel clause that extend the same right to female citizens. The section 10 of Citizenship Act 1951 violates Article 2A and 25 of Constitution of the Islamic Republic of Pakistan 1973 (herein after Constitution of Pakistan 1973)<sup>2</sup>.

The Constitution of Pakistan 1973 is considered the supreme law in the country. It contains a chapter on fundamental rights with provisions that ensure the equal rights to all nationals, regardless of sex and gender. The chapter also guarantees the fundamental rights to women without any discrimination. Under this chapter, women have the constitutionally entrusted right of protection. The Constitution has a long list of fundamental rights that are equally applicable to men and women.

### **1.1 Efforts made by previous governments and courts to combat discrimination in citizenship act of Pakistan:**

Since the promulgation of the Pakistan Citizenship Act 1951, efforts have been made by some authorities to challenge the discriminatory clauses in the said Act.

Before 2000, section 5 of Pakistan Citizenship Act was also discriminatory, it contained that the children of Pakistani men were allowed the citizenship by descent but this was not equally applicable to children of Pakistani women.

This issue was addressed by the commission on the status of women in Pakistan in 1997, and the amendments in section 5 and 10 of the said act were requested. Finally in 2000, during the government of General Pervez Musharraf, amendment in section 5 was made and the right of citizenship was also granted to children of female citizens. However, the issue of section 10, the citizenship of foreigner husband of Pakistani women has not been solved yet. (Shah, 2016)

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Access from [https://www.equalitynow.org/sites/default/files/NationalityReport\\_EN.pdf](https://www.equalitynow.org/sites/default/files/NationalityReport_EN.pdf)  
dated : 10 june 2017.

<sup>1</sup> See Section 10: (1) any woman who by reason of her marriage to a 8 [British subject] before the first day of January, 1949, has acquired the status of a British subject shall, if her husband becomes a citizen of Pakistan, be a citizen of Pakistan. (2) Subject to the provisions of sub-section (1) and subsection (4) a woman who has been married to a citizen of Pakistan or to a person who but for his death would have been a citizen of Pakistan under section 3, 4 or 5 shall be entitled, on making application therefore to the Federal Government in the prescribed manner, add, if she is an alien, on obtaining a certificate of domicile and taking the oath of allegiance in the form set out in the Schedule to this Act, to be registered as a citizen of Pakistan whether or not she has completed twenty-one years of her age and is of full capacity. Accessed on 1 june 2017.

<sup>2</sup> See Article 2A( objective resolution) and 25( equality of citizens) of Constitution of Pakistan . Accessed on 12 june 2017 from: <http://www.pakistani.org/pakistan/constitution/>

After the amendment of section 5 of the said Act, on June 27, 2007, Federal Sharia Court of Pakistan, by exercising its *Suo Moto* power granted by constitution, took notice to examine whether the section 10 of the said Act is discriminatory and repugnant to the injunctions of Islam and violates principles of democracy, equality and social justice as per Islamic Sharia. (Hasnaat Malik October 22, 2014)

After taking into consideration, arguments of all the relevant stakeholders, full bench of the federal Shariat Court concluded;

*"We are of the view that Section 10 of the Citizenship Act is discriminatory, negates gender equality and is in violation of Articles 2-A and 25 of the Constitution of Islamic Republic of Pakistan 1973 and also against international commitments of Pakistan and most importantly is repugnant to the Holy Quran and Sunnah."* (Shariat court, 2007) The court ordered the government to amend section 10 (2) of the Citizenship Act of 1951 within six months to obtain a procedure for granting Pakistani citizenship to a foreigner married to a Pakistani women.

However, this decision was challenged by the government on December 12, 2007. But it took seven years to take it up. the Government standpoint was that the FSC's judgment in its *suo motu* jurisdiction, does not fall under the Article 203-D of the Constitution and added that FSC does not have the power to declare section 10 of Citizenship Act 1951 discriminatory under Article 25 of the Constitution. The case is still pending before the Supreme Court of Pakistan.<sup>1</sup>

At various occasions attempts have also been made by different political parties to amend this discriminatory law. In 2008<sup>2</sup>, 2010 and most recently in 2017<sup>3</sup> bills were presented in the Parliament of Pakistan for the amendment of discriminatory provisions against women but unfortunately all those attempts have been rejected by the state government on the following reasons:

The most important point mentioned is the issue of the national security of the country. According to the government this amendment can also be used by any foreign country to plant their agents in Pakistan and it will create the issue of national security. This amendment would provide the legal way to large number of immigrants to stay in the country and this would cause an increased unemployment ratio in the country. In addition, a foreigner would be free to terminate the marriage and can move freely within the country. The government is apprehended that this amendment would be a tool for majority of the illegal immigrants who are living in Pakistan and don't want to return to their countries. The government sustained that citizenship rights, like right to vote, job opportunities and equal opportunities in matters of public appointments, may be contemplated with their political and national interests. Furthermore, the government added that the said amendment may be gauged on the benchmark of Indo-Pak relations. It would provide legal access to Indian male citizens into Pakistan".

There exists discrimination in the basic nationality law that's why courts are unable to provide equal justice as mentioned in the supreme law (constitution) of Pakistan. The question to consider is that what are the factors that are promoting this injustice and what should be the way forward to review such discriminatory laws?.

## 2. Nationality Rights in International Law

The legal benefit of nationality has two dimensions, one is internal and the other is international. Internally or nationally, most citizens are entitled to citizenship. On the other hand, internationally, nationals enjoy specific protection that international law requires the state to provide. Although the international rights are important among communities but the domestic rights are of enormous importance in daily lives of individuals, such as; the right to vote, the right to permanent residency, the right to property, the right to public education and health services, and the right to employment etc.

<sup>1</sup> See the case judgment: (Judgment , No 1/K of 2006 (SC 2006) Accessed on 25 june 2017

<sup>2</sup> See (Zaman Vardag Law Associates, 2012) : Retrieved on 7 /13/2017, from PAKISTANI LAW FIRM: <https://pakistanilaws.wordpress.com/tag/pakistan-citizenship-amendment-bill/>

<sup>3</sup> See the amendment bill 2017: (Government of Pakistan: Senate, 2017) Accessed on August 2017, from : [http://www.senate.gov.pk/uploads/documents/1489403368\\_183.pdf](http://www.senate.gov.pk/uploads/documents/1489403368_183.pdf)

In history, it was considered the matter of the sovereignty of the state to grant or expel the nationality of an individual. But, with the development of international human rights laws and conventions, the traditional view of the sovereign states has changed. At that time, only states were considered the subjects of the international law, but now the trend has changed and the citizenship has been provided to persons with a legal relationship to state and thus a link with international law.

Since the end of the 20th century, many national and international organizations have been working to reform discriminatory nationality laws in different countries. These organizations have organized campaigns, dialogues and meetings to solve this problem. Many international multilateral conventions have also been ratified by most countries to end gender discrimination and promote the rule of law.<sup>1</sup>

Due to these efforts, a number of countries have reformed their nationality laws e.g Senegal<sup>2</sup>, Bahamas<sup>3</sup>, Austria<sup>4</sup>, Jordan<sup>5</sup>, Vanuatu<sup>6</sup>, Denmark<sup>7</sup>, Suriname<sup>8</sup> and Niger<sup>9</sup>. Although some of the countries still have the

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<sup>1</sup> See the following instruments address the right to a nationality:

- i. 1954 Convention relating to the Status of Stateless Persons
- ii. 1961 Convention on the Reduction of Statelessness
- iii. 1951 Convention relating to the Status of Refugees and 1967 Optional Protocol relating to the Status of Refugees
- iv. Universal Declaration of Human Rights (art. 15)
- v. International Covenant on Civil and Political Rights (art. 24(3))
- vi. Convention on the Elimination of all Forms of Racial Discrimination (art. 5(d)(iii))
- vii. Convention on the Rights of the Child (arts. 7 and 8)
- viii. 1997 European Convention on Nationality
- ix. Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession
- x. American Declaration of the Rights and Duties of Man: art. 19
- xi. American Convention on Human Rights (art. 20)
- xii. Convention on the Elimination of All Forms of Discrimination against Women (art. 9)
- xiii. African Charter on the Rights and Welfare of the Child (art. 6)
- xiv. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (art. 6(g) and 6(h))
- xv. Arab Charter on Human Rights (art. 24)
- xvi. Convention on the Rights of Persons with Disabilities (art. 18)

<sup>2</sup> See Senegal: On 25 June 2013, Parliament amended the law to grant Senegalese women the same rights as men to transfer their nationality to their husband and children. Accessed from: <http://citizenshiprightsafrika.org/theme/gender/>

<sup>3</sup> See Bahamas: On 8 July 2013, the Constitutional Committee recommended that the new Constitution, yet to be voted on, include "the amendment of the citizenship provisions to achieve gender-neutrality and full equality between men and women with respect to the acquisition or transmission of their nationality." *ibid*

<sup>4</sup> Austria: On 1 August 2013, changes to the nationality law came into effect so that the unmarried father of a child born to a non-Austrian national can now transmit his Austrian nationality without fulfilling additional requirements beyond proof of paternity. The requirement now is for paternity to be recognised by the father or a court within eight weeks of the birth of the child, but if this is not done there is also a provision for easier acquisition by the child of Austrian citizenship. *Ibid*

<sup>5</sup> Jordan: On 12 January 2014, the Government of Jordan gave approval for regulations to grant the foreign spouses of Jordanian women and their children certain rights or "privileged services" (Mazaya), including residence permits and improved access to state medical care facilities, education and work in the private sector. However, for the most part, the improvements have yet to be implemented. No changes have been proposed to amend the still discriminatory nationality law.

<sup>6</sup> Vanuatu: On 16 January 2014, Parliament granted married women the right to pass their nationality to their foreign spouse on the same terms as married men.

<sup>7</sup> Denmark: On 25 June 2014, the Government granted unmarried fathers the same rights as unmarried mothers to transfer their nationality to their children born abroad after 1 July 2014

<sup>8</sup> Suriname: On 10 July 2014, Suriname's National Assembly passed legislation granting Surinamese women the same rights as men to pass their nationality to their children and spouses. Available in dutch: [http://dna.sr/media/69673/wet\\_op\\_de\\_nationaliteit\\_en\\_ingezetenschap\\_1.pdf](http://dna.sr/media/69673/wet_op_de_nationaliteit_en_ingezetenschap_1.pdf)

<sup>9</sup> See: Niger: On 8 December 2014, Law No. 2014-60 of 5 November 2014 modifying the Nationality Code came into effect

discrimination in nationality laws such as Bangladesh, Egypt, Iraq, Korea, Mozambique, Pakistan, Swaziland, Tanzania, Thailand and Zambia. A few nations in Africa, including Togo, Madagascar and Liberia have rolled out critical responsibilities to improvement, and the African Commission on Human and Peoples' Rights (the "African Commission") settled in May 2014 to address the issue. The African Commission's report, *The Right to a Nationality in Africa*, prescribes that African States give a privilege to nationality to all women, men and young children and guarantee that privilege is free from discrimination including on the premise of sex. In July 2015 the African Commission received another Protocol on the Rights to Nationality, which ought to be consulted at the African Union in 2016.<sup>1</sup>

Despite the fact that nationality has changed significantly from nation to nation yet the discrimination in nationality laws for the most part takes one of a few forms. Initially, women confront segregation when she weds to an outsider, in light of the fact that numerous nations restrain the capacity of the women to confer their nationality to their spouses. In many countries this restriction is just applicable to women not men. A man can confer his nationality to his wife. At long last a few nations additionally constrain the capacity of women to transfer their nationality to children; even those take birth in the mother's region of roots. Same is the case in Pakistan where initially the women if marry to foreigner are even unable to transfer their nationality to both of their children and husband. For last two decades women rights organizations have been engaged in demanding equal legal status of foreigner male and female spouses of Pakistani citizens.

### **3. Women's rights and legal system of Pakistan:**

The status of women in Pakistan is contrary to what was the ideology and inherited by the founder of Pakistan, Muhammad Ali Jinnah. As he said in one of his speeches;

*"No nation can rise to the height of glory unless their women are side by side with them...It is crime against humanity that our women are shut up with in the four walls of the houses as prisoners. There is no sanction anywhere for the deplorable condition in which our women have to live."...Muhammad Ali Jinnah, 10 March, 1944.*<sup>2</sup>

The situation of women in Pakistan is unsatisfactory. According to the World Economic Forum's Global Economic Gap Report 2016, Pakistan ranks 143 countries out of 144 in the Gender Inequality Index.<sup>3</sup> This report covers the access to four dimensions i.e economic empowerment, political participation, education and health to measure the gender gap. The report states that the Pakistan ranked 122 out of 144 in the area of legislators, senior officials, and managers, and contains 3 female and 97 males out of 100. This shows the very low ratio of females in higher positions as legislators, senior officials and managers. The less ratio of the access of women in such important areas is one of the reason of gender imbalance in the policies and laws of our country. More than 75% live in rural areas, often in poverty; an overwhelming majority has rare knowledge of real Islamic laws and values, let alone their rights as citizens of the Pakistan.

In the Report of the Commission of Inquiry for Women states that:

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so that married women can now pass their nationality to their foreign spouse on an equal basis with men. Accessed from: equality now report, 2016. Dated August/20/2017

<sup>1</sup> Ibid

<sup>2</sup> Speech at a meeting of the Muslim University Union, Aligarh (10 March 1944). Accessed from: <http://www.desitwist.com/general-knowledge/quaid-e-azam-muhammad-ali-jinnah-quotes-sayings-6076.html> Google Scholar. Dated: July/5/2017

<sup>3</sup> Report on Global gender gap 2016, (RICHARD SAMANS, SAADIA ZAAHIDI, Klaus Schwab, Till Alexander, Leopold Vesselina Ratcheva, Ricardo Hausmann, Laura D'Andrea Tyson, 2016) (The report captures progress towards parity between men and women in four areas: educational attainment, health and survival, economic opportunity and political empowerment). Accessed on July/25/2017.

*“There is a widespread misconception about the place Islam accords to women, which is not just a distortion spread in the West but it exists even among the Intelligentsia in the Muslim World, including Pakistan. It is believed that Islam relegates women to an inferior status; it confines them inside the four walls of their homes; and it restrains them from taking up employment outside their homes or running their own business. This is wholly contrary to fact. Muslim scholars are agreed that Islam accords women virtually the whole gamut of rights, including the rights to property, to work and wages, to choice of spouse, to divorce if marriage does not prosper, to education and to participation in economic, social and political activity. These are guaranteed to Muslim women by Shariat (Islamic laws).” (Commission of Inquiry for Women, 1997: ii)*

The Constitution of Pakistan 1973 is considered to be the supreme law of the State and provides legal guarantees, ensuring the rights of both sexes without discrimination under Articles 4, 8, 14, 25, 26, 27, 34, 35, 37 and 38<sup>1</sup>.

The above discussion shows that even there are some laws to protect the equal human rights but unfortunately due to some biases there is not proper implementation of such laws in Pakistani society. Nationality law itself has an inequality clause and discriminates female citizens to enjoy full rights as compared to Pakistani Males. The author discusses some of the background factors that cause gender discrimination in Citizenship Act of Pakistan.

#### **4. *Why gender discrimination in nationality laws?: Factors responsible for discrimination in gendered laws in Pakistan:***

Nationality laws often discriminate against women; because, they cannot pass on their nationality to their spouses or children, and may even lose their own nationality when marrying a stranger. The discriminatory nationality laws stereotype women in subordinate status and diminish their value as nationals. Such laws may be particularly oppressive for women who are widowed, divorced and avoid marrying to foreigners because their children are not entitled to citizenship in their mother's countries. (Rebecca J. Cook and Simone Cusack, 2010).

A question arises from the above discussion that why there is so pervasive gender discrimination in the nationality laws of some important countries. The answer to this question is not so easy because every country has its own culture and laws. Some consider sharia laws and religious extremism as a base to these discriminatory laws and some have cultural bases for such laws.

According to Niaz. A Shah, religious fundamentalism poses the most serious problems for women's equality. This is very true in the laws of the Islamic State practiced in many Muslim jurisdictions in which men and women are treated unequally. (SHAH, 2006)

The late Ernest Gellner wrote that Islam has provided a common moral language that has unified disparate communities in the past (GELLNER, 1983, p. 33) its propensity to do so now and in the future, its ability to questioning, renewing and reforming one's values - *islah* (reform) and *tajdid* (renewel) - are questioned on several fronts, the most important of which concerns women's rights.

Basically, there are different positions of Muslim states and scholars divided into two broad categories i-e, the conservative and the liberal /reformists.(Niaz.A.Shah, ) most of times Muslim states including Pakistan follows the conservative interpretation of Islamic laws and that is why most Muslim countries have taken the position that international human rights law is not applicable or partially applicable in their national jurisdictions.

As explained previously, even the Sharia Court in 2007, declared the section 10 of the citizenship act of Pakistan discriminatory, and the Federal Sharia Court took a suo motu notice of the issue of discrimination in the Citizenship Act.

Besides the contradiction made between the Islamic laws and international laws some other socio-political factors are solely responsible for such type of gender discrimination in nationality law in Pakistan. To abate

gender discrimination from the laws it is mandatory first to deeply understand factors and the ideologies behind such discriminatory laws. Nationalist ideology is also one of these ideologies. Nationalist ideology generally rest on the ideas of sexual difference and male superiority. State has dominant governance structure. It reinforces cultural norms and values and the nationalist ideology in nation-state do the same. Citizenship, culture and origin are three basic dimensions which are crucial to understand nationalist ideology in Pakistan. Nation is considered as collective community which remains constant and homogenous and people living as one nation share common ideologies, customs and traditions etc. but the concept of nation also faces much critique by feminists. (Mayer, Tamar, Eisenstein, Zillah., Anderson, Benedict, Mostov, Julie, 2002, 2000, 1991, 2000). They do not consider nation as natural but it is constructed basis on the hegemonic ideologies of some prominent people. There is need to understand the relationship between the gendered citizenship and nationalism. Zillah argues that nationalism intimidates women's physical safety, rights and freedoms, and citizenship. (Eisenstien, 2000)

She argues that nations *reinforce and support male privilege and in any country* when the nation imagines itself as a patriarchal family, and citizenship is imagined as a fraternity, women are excluded from positions of power and there is no equal sisterhood in citizenship. She writes: "Nations are made up of citizens and fiction here requires that everyone be of the nation". (Eisenstien, 2000)

Women have become symbols of the nation, since the status of women represents the progress of the nation as a whole. Through this process of homogenization, individual women are silenced, their identities lost. Their bodies have become sites to see the nation, sites of debates around tradition and sites where the nation is rejuvenated. The bodies of women are fetishists in nationalist discourses and the boundaries of female bodies combine with the borders of the nation. Nationalist discourse therefore seeks to protect and maintain the integrity of the national / female body boundaries of the invasion / penetration of "foreign" citizens / nationalists, demonstrating once again the racist nature of nations. The maintenance of the racial and ethnic integrity of the nation can be clearly seen in the practice where nations have control over the sexuality and reproduction of their own women and other nations. One of the feminist, Sara Ruddick (1997) argues that the association of motherhood with nation and fatherhood with state is dangerous, conveying in "the worst of fatherhood: a right, often conjoined with real power, to intrude, humiliate, exploit, and assault" (p. 213). She further argues that the radical ideas of fatherhood and motherhood are used to judge and to exclude (Ruddick, 1997, p. 217). While the forms of patriarchy change, the connection of woman/mother to nation and man/father to state reinforces the production of gendered hierarchy and expedites the harmonization of gendered citizenship in state building projects. (Ruddick, S. (1997).

After examining and closely observing several cases and petitions filed by different subjects relevant to section 10 of the Pakistan citizenship Act, and reviewing the relevant literature, these are some facts which are somehow responsible for the gender discrimination in Citizenship Act of Pakistan;

- Pakistan is a Patriarchal society dominated by men, and women have subordinate status as compared to men in our Society.
- Status of women in Pakistan is not satisfactory as the literature above shows that Pakistan lies at bottom lines in terms of gender equality and contains very less number of women as law makers, officials and manager at public institutions.
- The less ratio of the access of women in such important areas is one of the reason of gender imbalance in the policies and laws of our country.
- One of the reasons of such pervasive gender discrimination is the misinterpretation of Islamic teachings and Koran.
- The conservative Koranic interpretation represents the patriarchal and masculine bias of the interpreters. Society and the lay followers of Islam are made to believe that women belong solely to the boundaries of home with responsibility for child-bearing and rearing and household chores.
- Governments always seek popular support for their policies on issues of national concerns and take into consideration the religious feelings and perceptions of the public. As many people believe or are made to believe in the conservative interpretation of the Koran, the government incorporates it into official policy.

- The misconception about the real teachings of Islam is also one of the reasons that women have placed subordinate status in our society. Koranic misinterpretation epitomizes the patriarchal and masculine bias of the interpreters. Society and lay supporters of Islam are led to believe that women belong exclusively to the household with responsibilities for children and domestic tasks.
- It is believed in Pakistani society that Islam is supposed to place women in a lower status; it confines them to the four walls of their houses; and prevents them from going out of the home or doing their own business. This is completely contrary to the facts. Muslim scholars agreed that Islam offers women virtually the full range of rights, including property rights, labor rights and wages, choice of spouse, divorce if marriage does not prosper education and participation in economic, social and political rights. This is guaranteed to Muslim women by Sharia (Islamic laws). Niaz A. Shah also justifies the misconception and misinterpretation of Islamic teachings and Koran in his book “*Women, The Koran and International Human Rights*” (Shah, N. A. (2006).
- Governments are still seeking popular support for their policies on issues of national interest and taking into account religious feelings and public perceptions. As many people believe or are made to believe in the conservative interpretation of the Koran, the government integrates it into official policies. Another political dimension of integrating conservative interpretation into state policies is that politico-religious organizations are generally strong resistance to any governmental initiative to move away from traditional religious thought.
- As discussed earlier the case of Federal Sharia Court that took suo moto notice against the discriminatory section 10 in the Pakistan citizenship act. Basically it is the duty of Supreme Court and federal sharia court to direct government to declare the legal provision unconstitutional if it is against Islamic teachings and in violation of constitution. Although courts have been playing their role positively but there is still need to direct the government to amend such discriminatory sections from the laws. This is the era of the promulgation of rule of law throughout the world and it is difficult for Pakistan to produce positive results in this field with such gender biased Laws.
- Nationalist ideology is also one of these ideologies which are responsible for the discrimination in nationality laws. Nationalist ideology generally rest on the ideas of sexual differences and male superiority.
- Nations reinforce and support male privilege and in any country when the nation is imagined as a patriarchal family, and citizenship is imagined as a brotherhood, women are excluded from positions of power and there is no equal sisterhood in citizenship.
- The connection of woman/mother to nation and man/father to state reinforces the production of gendered hierarchy and expedites the harmonization of gendered citizenship in state building projects.
- A number of the discriminatory nationality laws still rely on stereotypes which, in turn, reinforce stereotypical roles for both women and men. As in Pakistan, a woman, once married, loses her independent identity and becomes dependent on her husband in all aspects of her life.
- The stereotypical division of labor also subordinates the status of women in Pakistani society. In Pakistani society woman is consider as breadwinner and man as the bread earner. Under such patriarchal system women are the signs of honor for all men and they consider them as their private property. In case of citizenship act of Pakistan, a woman is allowed to marry a foreigner but if she does so then her family will face some serious consequences. This type of social behavior is also responsible for the gender discrimination in laws.

## 5. Implications of the research

After examining the cases, amendments bills and the courts judgments, there are some implications for the Pakistani government to amend and review the Section 10 of the Pakistan citizenship Act 1951.

- It is suggested that the words ‘woman’ or the plural expression ‘women’ in the citizenship act should be replaced by the terms ‘person’ or ‘persons’. In this way, the law will not be gender specific and will have same rights and procedures for everyone.



- The legislators could make an amendment in this way that they allow a foreign husband of a Pakistani lady to apply for citizenship after temporary residence of at least five years immediately before filing a citizenship application.
- The government has a fear that a foreigner can stay even after the separation of a couple and it could be dangerous for the national security of the country. But government should set up such mechanism through which after separation, the case of citizenship of such foreigner may be subject to revision.
- The government should consider the amendment policies of other countries that have recently amended the nationality laws especially relevant to the section 10 of Pakistan citizenship act.

## 6. Conclusion

As the author mentioned earlier that discrimination in nationality laws is prevalent in many countries and causing many problems for women and their families. During the past 60 years many governments have been amending their nationality laws and allow women to confer their nationality to their spouses and children. But still there are some countries in the different regions of the world that have not amended their nationality laws yet and gender discrimination is still present in their laws. Pakistan also lies in the list of the countries whose citizenship law contains discrimination against women. Different sources of international law prohibit such discrimination. Although the international law does not explicitly prohibit such discrimination, it is a constantly evolving juridical body which can prohibit sex discrimination in nationality laws, since nationality is more widely accepted as human rights and the principle of non-discrimination based on sex gets international acceptance. Treaty-based legislation and mechanisms for the implementation of international human rights treaties are a second source. Section 10 of the Pakistan citizenship act is unable to fulfill the international laws and obligations and also against the article 25 of the constitution of Pakistan which ensures the equality of all citizens. The low status of women in Pakistan, the wrong interpretation of Islamic teachings and the myths related to women are some main causes of such discriminatory sections in our laws. Pakistani superior courts should take actions to direct government to amend or review these laws as a matter of urgency and ensure the real practice of the rule of law in the country. This step will ensure the access of civil, political, economic, social and cultural rights that a citizen of any country deserve.

**Note:** This paper has been accepted in The Fifth International Conference on Asian Studies 2017 held on 17-18 June 2017 at the Saint Paul University. Ottawa, Canada.

## 7. References and Bibliography

Article 2A( objective resolution) and 25( equality of citizens) of Constitution of Pakistan . Accessed from: <http://www.pakistani.org/pakistan/constitution/>

Rebecca J. Cook and Simone Cusack. (2010). *Gender Stereotyping: Transnational Legal Perspectives*. Pennsylvania: university of Pennsylvania press.

(Government of Pakistan: Senate, 2017) Accessed on August 2017, from : [http://www.senate.gov.pk/uploads/documents/1489403368\\_183.pdf](http://www.senate.gov.pk/uploads/documents/1489403368_183.pdf)

Judgment , No 1/K of 2006 (SC 2006).

Zaman Vardag Law Associates. (2012, April 17). Retrieved 7 13, 2017, from PAKISTANI LAW FIRM: <https://pakistanilaws.wordpress.com/tag/pakistan-citizenship-amendment-bill/>

Committee, D. (1948). *Universal Declaration of Human rights*. Palais de Chaillot, Paris.

Eisenstien, Z. (2000). *Writing Bodies on the Nation for the Globe*. (M. A. Sita Ranchod-Nilsson, Ed.) London: Routledge.

GELLNER, E. (1983). Muslim Society. In E. GELLNER, *Muslim Society* (p. 247). Cambridge University Press.

Hasnaat Malik October 22, 2. (2014, October 22). *SC issues notices over FSC judgement on citizenship act*. Islamabad, Pakistan: THE EXPRESS TRIBUNE Pakistan.

Now, E. (2016). *The state we are in: Ending sexism in Nationality Laws*.

SHAH, N. A. (2006). *WOMEN, THE KORAN AND INTERNATIONAL HUMAN RIGHTS*. LEIDEN/BOSTON: MARTINUS NIJHOFF PUBLISHERS.

Shah, W. A. (2016, September 19). *VIEW FROM THE COURTROOM: Pakistan's citizenship law in the limelight*. Islamabad, Pakistan: Dawn News.

Speech at a meeting of the Muslim University Union, Aligarh, Muhammad Ali Jinnah (10 March 1944).<http://www.desitwist.com/general-knowledge/quaid-e-azammuhammad-ali-jinnah-quotes-sayings-6076.html> Google Scholar. Dated: july/5/2017

*Report of the Commission of Inquiry for Women, Pakistan Law Commission 1997: ii)*

RICHARD SAMANS, SAADIA ZAAHIDI, Klaus Schwab, Till Alexander, Leopold Vesselina Ratcheva ,Ricardo Hausmann, Laura D'Andrea Tyson. (2016). *The Global gender Gap* . World Economic Forum.

Ruddick, S. (1997). *The idea of fatherhood. Feminism and families, 205-220*.

UNHR: Committee, D. (1948). *Universal Declaration of Human rights*. Palais de Chaillot, Paris.