

Position Paper

Dual Nationality for Public Representatives

July 2012

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Preface

Dual nationality of public representatives and officials has recently become a matter of concern in Pakistan; it has been opined that dual citizenship implies divided loyalties and thus those individuals who adopt nationalities other than Pakistani should not be allowed to contest elections and represent the people of Pakistan.

Although clear Constitutional provisions exist that if a Pakistani national acquires the citizenship of another country, he or she can not be elected, or remain a member of the Parliament, its implementation has been hazy. The Pakistan Citizenship Act 1951, the Representation of People Act 1976, detail relevant measures in this regard, barring dual citizenship and also to contest in the General Elections.

Our neighbouring India, with similar legal history, does not recognize dual citizenship and the provision for an alternative form of Indian nationality, the holders of which are known as Overseas Citizens of India (OCI) get neither voting rights, nor eligibility to contest elections of Lok Sabha or take up any Government post.

This paper by PILDAT discusses the constitutional and legal position of Pakistan on this issue and also provides a comparative analysis with countries such as the UK and India along with others. It also discusses the international legal paradigm and provides a foundation for a legislative and political discourse.

The paper also puts forth PILDAT's position on the issue.

Acknowledgments

The paper benefits from background research on the subject carried out by **Ms. Juhi Javed**, student of law at the University of Warwick, UK, who worked as an internee at PILDAT during summer of 2011. The paper also benefits from a legislative brief authored for PILDAT by **Mr. Zafarullah Khan**, Barrister-at-Law, Nishtar and Zafar Law Firm, who reviewed "The Constitution (Amendment) Bill 2011," presented by **Mr. Muhammad Raza Hayat Hiraj**, MNA, (NA-156, Khanewal-I, Punjab, PML), in the National Assembly of Pakistan on April 19, 2011. The concluding position taken in the paper, however, is that of **PILDAT**.

Disclaimer

Every effort has been made to ensure the accuracy of the contents of this paper. Any omission, or error, therefore, is not deliberate.

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Executive Summary

Dual nationality of public representatives and officials has recently become a matter of concern in Pakistan. It has been opined that dual citizenship implies divided loyalties and thus those individuals who adopt nationalities other than Pakistani should not be allowed to contest elections and represent the people of Pakistan.

According to the Constitution of Pakistan, ARTICLE 63 1-C:

“A person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if:-

C. he ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign State.”

The Constitutional provisions, therefore, are clear that if a Pakistani national acquires the citizenship of another country, he or she can not be elected as a member of the Parliament. According to the Pakistan Citizenship Act 1951 (as amended in 1952, 1972, 1973 and 2000) “a citizen of Pakistan shall cease to be citizen of Pakistan if he is at the same time a citizen or national of any other country.”

However, weak implementation mechanism of this clause has resulted into lack of availability of clear information about the status of foreign nationality of citizens of Pakistan at the time of Election.

PILDAT had earlier demanded from the Election Commission of Pakistan (ECP) to amend the Election Nomination Form and add a section on foreign nationality of candidates so that in addition to declaration of other information about a candidate such as educational qualification, list of criminal cases, amount of income tax and land revenue paid and statement of assets and liabilities of the candidate, etc., candidate's status of nationality is also declared. PILDAT is grateful to the ECP for amending the form and using it in the Senate Election of 2012.

In view of the news reports that the Parliament may consider amendment to the Constitution to allow for foreign/dual nationals to contest election to become members of Parliament, PILDAT has demanded that such an amendment should not be considered and that article 63-1-c of the 1973 Constitution must be retained in its present form.

PILDAT maintains its position that only citizens of Pakistan must be qualified to represent the people in the Parliament and Provincial Assemblies of Pakistan.

PILDAT has also demanded that the bar must be enlarged and legal provisions must also be put in place to ensure that dual nationals **can not hold other high public offices such as the Judiciary, civil services, and other statutory positions.**

Outlining the reasons for retaining the Constitutional bar on being elected or chosen as, and from being, a member of the Parliament for those who either “cease to be the citizens of Pakistan or acquire the citizenship of a foreign state,” PILDAT has stated that:

- i. Under international law, countries are not obliged to recognize dual nationality. Therefore, we have countries at either end of the spectrum: those that grant the right to dual nationals to become elected representatives while holding another passport for instance, UK and Switzerland, to those who automatically revoke the citizenship on such grounds such as India and Norway to even imposing criminal sanctions (Saudi Arabia). Pakistan is tolerant of dual nationality, allowing the right to vote to dual nationals of Pakistani origin.
- ii. While the due recognition and respect is granted to dual nationals of Pakistani origin under Pakistani law, the *raison d'être* behind placing a Constitutional bar on their election as public representatives is that multiple citizenships is likely to hamper the performance of the public representatives' duty in the “interest of the sovereignty, integrity, solidarity, well- being and prosperity of Pakistan.”¹ Since citizenship of other countries sometimes requires oath of allegiance to those countries,

1. Oath of Office of the Member of National Assembly or Member of Senate, Third Schedule, Constitution of the Islamic Republic of Pakistan, as amended on February 27, 2012.

allowing dual nationals to become public representatives, and in essence hold high offices such as that of the Prime Minister, Ministers or even Speaker of the National Assembly, runs the risk of allowing those as having dual loyalty with the potential to act contrary to the interests of the State of Pakistan. With Pakistan's nascent systems, this can be extremely counter-productive.

- iii. A conflict of interest can also arise for dual nationals if they are allowed to be public representatives. Voting for or against a Parliamentary resolution on NATO supply routes is a case in point.
- iv. Another argument against allowing dual nationals to become public representatives in Pakistan is that nationality of another country is usually obtained as a convenient means of attaining improved economic opportunity, which Pakistani law recognises. In essence, however, it trivializes what it means to be a citizen of Pakistan. Dual nationals' fate is not tied to the fate of Pakistan and therefore allowing them to be put in the driving seat of making policy decisions of Pakistan can be detrimental to the interests of Pakistan. When the going gets tough in Pakistan, Pakistani citizenship can be just as easily discarded when it is no longer beneficial.
- v. Legitimate recognition for the role of overseas Pakistanis and their respect can not be synonymous with granting them with a right to represent the people of Pakistan. While Pakistan deeply appreciates the indirect support to the economy by remittances overseas Pakistanis send to their families back-home, it needs to be understood that remittances are NOT a direct contribution to the economy of Pakistan but are essentially meant for the families of overseas Pakistanis and Pakistan's economy is an indirect beneficiary of that. It must also be noted that mainly (over 58 % in 2010-11) remittances are sent from Pakistanis residing in the Middle East, a vast majority of whom are NOT dual nationals.
- vi. Pakistanis living overseas, dual nationality holders and those residing in the AJK together constitute only 4.7 million voting adults according to the number of NICOP holders at present. These 4.7 million already have a right to vote in Pakistan.
- vii. Pakistani citizens that obtain a second nationality and become residents of other countries must devote their energies towards assimilating in the political culture of their adopted countries. They can serve Pakistan much better when they are represented in institutions of their adopted countries

If the Parliament of Pakistan wishes to reconsider the bar on dual nationals to contest election, it is well within its right to do so but given the strongly held positions in Pakistan on this issue, the Parliament must refer the debate to the public before any decision. Political Parties represented in the Parliament and those outside Parliament must discuss the issue threadbare internally before they take a position on the issue. Parliament and political parties should give sufficient time to build a consensus on the issue and not hurry the process.

PILDAT has also demanded that, as provided under the Representation of People Act, the ECP should initiate the formal process for candidates in the next General Election to declare if they hold the status of **permanent residence**, such as the US green card, in any country other than Pakistan. While the permanent residence status may not disqualify any candidate, the availability of this information is important for voters who can determine on the basis of this information whether a candidate, once elected, will be available to serve the public or stay away from the constituency or the country for an extended period of time. Such public declaration and the availability of this information to public and media through the ECP website, ahead of the day of General Election, will be greatly helpful to the voters in deciding about the suitability of a candidate in the election.

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Introduction

Of late, the issue of public representatives and officials holding dual nationalities and assets abroad has become a matter of key interest in Pakistan. Although clear Constitutional provisions exist that if a Pakistani national acquires the citizenship of another country, he or she can not be elected, or remain a member of the Parliament, its implementation has been hazy.

There is, however, no international standard for such provisions/laws with respect to the dual citizenship of individuals. Individual countries follow their own rationales in establishing their criteria for citizenship. Each country has different requirements for citizenship, as well as different policies regarding dual citizenship. These laws sometimes enable the acquisition of other citizenships and do not render the original citizenship invalid, creating a possible situation for an individual to hold two or more nationalities.

Citizenship, the status of being a citizen of a specific nation state, signifies a person's legal status and carries with it numerous consequences. Among associated political rights are the right to vote, to hold public office, to own land and the right to travel with your country's official passport and protection.² Nationality law is the branch of law concerned with the questions of nationality and citizenship, and how these statuses are acquired, transmitted, or lost. Such determinations are usually made by custom, statutory law or case law (precedent), or a combination of these. In some cases, determinations of nationality are also governed by public international law; by treaties on statelessness and the European Convention on Nationality.³

Under international law, countries are not obliged to recognize dual nationality.⁴ Therefore, we have countries at either end of the spectrum; those who grant full rights to their citizens holding another passport for instance, UK and Switzerland, to those who automatically revoke the citizenship on such grounds such as India and Norway to even imposing criminal sanctions (Saudi Arabia).

Common reasons to bestow citizenship are:⁵

- At least one parent is a citizen (jus sanguinis).
- The person was born on the country's territory (jus soil).
- The person marries a person holding the citizenship (jure matrimonii)⁶
- The person becomes naturalized
- The person was adopted from another country as a minor and at least one adoptive parent is a citizen⁷
- The person makes a substantial monetary investment, e.g., Austria, Cyprus, Dominica and St. Kitts⁸

2. Virginia Leary (2000). "Citizenship, Human rights, and Diversity." In Alan C. Cairns, John C. Courtney, Peter MacKinnon, Hans J. Michelmann, David E. Smith. *Citizenship, Diversity, and Pluralism: Canadian and Comparative Perspectives*. McGill-Queen's Press - MQUP. pp. 247–264. ISBN 9780773518933. "Since the time of the Greek and Roman civilizations, the concept of 'citizenship' has defined rights and obligations in the Western world ... The concept of 'citizenship' has long acquired the connotation of a bundle of rights -- primarily, political participation in the life of the community, the right to vote, and the right to receive certain protection from the community - as well as obligations."

3. <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=166&CM=1&CL=ENG>, Retrieved on 15-07-2011

4. United States Office of Personal Management, Investigations Service, "Citizenship Laws of the World", <http://opm.gov/extra/investigate/IS-01.pdf>, Retrieved on 15-07-2011

5. Ibid,

6. Civil Code of Iran (last amended 1985), United Nations High Commissioner for Refugees, Retrieved on 16-07-20100

7. For example, this is the case in the United States. Citizenship is automatic when the adoption becomes final, with no need for the naturalization process. See "Information about the Child Citizenship Act". Intercountry Adoption. Office of Children's Issues, United States Department of State. Retrieved 2011-03-12.

8. *Citizenship by Investment*, tayloredway.com, Retrieved 15-07-2011

The Case of Pakistan

The principal legislation in this regard is the Pakistan Citizenship Act 1951 (as amended in 1952, 1972, 1973 and 2000).⁹ The Pakistan Citizenship Act 1951 states that:

- a. **Section 14:** a citizen of Pakistan shall cease to be citizen of Pakistan if he is at the same time a citizen or national of any other country. However, there are some exceptions for minors and female citizens of Pakistan married to person who is not citizen of Pakistan. If a Pakistani woman marries a foreigner and acquires his nationality, her Pakistani citizenship is withdrawn but may be restored if the marriage comes to an end and she renounces her husband's nationality. Minors are exempted provided their father remains a Pakistani citizen.
- b. However, citizen of Pakistan can also be a citizen of United Kingdom and of such other countries as the federal government may specify in this behalf. It simply means that Pakistani citizen can have dual nationality with that of the United Kingdom and some other countries which are so specified by the government. These include:

1. UK
2. USA
3. Canada
4. Australia
5. New Zealand
6. France
7. Ireland
8. Belgium
9. Iceland
10. Netherlands
11. Sweden
12. Switzerland
13. Italy
14. Syria
15. Jordan
16. Egypt

Nationals of the above mentioned countries are eligible to apply for National Identity Card for Overseas Pakistanis (NICOP) which grants full governmental protection and visa-free travel.¹⁰ Other nationals may apply for Pakistan

Origin Card (POC).¹¹

- c. **Section 15:** a person who becomes citizen of Pakistan under this Act shall have a status of commonwealth citizen.
- d. The federal government may register a commonwealth citizen or British protected person as a citizen of Pakistan.

Furthermore, there exist several references to the same in our Constitution as well as other legal documents which make a person ineligible for various offices provided they take up dual nationality. They include the following:

Constitution of the Islamic Republic of Pakistan 1973: Article 63 (1) states that "A person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if:- (c) He ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign State."

The Representation of People Act 1976: section 99 (1A) states that "A person shall be disqualified from being elected or chosen as, and from being, a member of the Parliament if:- (c) He ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign State."

The Conduct of General Elections Order, 2002: section 8D (2) states that "A person shall be disqualified to be elected or chosen as a member of a House of the Parliament or Provincial Assembly if (d) he ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign State."

As stated above, a person is deemed ineligible to compete in elections if he ceases to be a citizen of Pakistan or takes up citizenship of another country.

Former Chief Election Commissioner, Justice (Retd.) Hamid Ali Mirza had observed that a person is disqualified from being elected, or chosen as a member of parliament, if "he ceases to be a citizen of Pakistan or acquires a citizenship of a foreign state,"¹², yet it is understood that there are a number of sitting parliamentarians who are nationals of another country as well (no concrete data on the actual figure is available). Weak implementation

9. <http://www.multiplecitizenship.com/documents/IS-01.pdf>, Retrieved on 18-07-2011

10. <http://www.pakmission-uk.gov.pk/HC/nicop.asp>

11. <http://www.nadra.gov.pk/site/333/default.aspx>, Retrieved on 18-07-2011

12. <http://tribune.com.pk/story/202665/election-bar-exists-on-dual-nationality-holders-ecp/>, Retrieved on 18-07-2011

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mechanism of this clause has resulted into lack of availability of clear information about the status of foreign nationality of citizens of Pakistan at the time of Election.

PILDAT has since long demanded from the ECP to effectively implement the Constitutional and legal provisions on dual nationality holders. In addition to its repeated demands through its electoral reforms submitted to the ECP, PILDAT wrote a letter to the Secretary Election Commission on November 15, 2010 and proposed the following:

“PILDAT would like to formally propose that an additional declaration be added to the Nomination Form required to be submitted by each candidate contesting the election for the membership of the National Assembly or Senate or any of the four Provincial Assemblies. It is proposed that each candidate should declare on oath the current (at the time of filing nomination papers) status of his / her citizenship and /or permanent residency of a foreign country. The declaration may include detail of the application, if any, made by the candidate to a foreign country seeking permanent residence and /or citizenship of the foreign country.

In our opinion, this declaration is important as the voters must know the residence / citizenship status of the candidates seeking their vote and trust for such an important public office. We feel that this information will have an important bearing on the opinion of the voters.”

Secretary ECP issued a press release on December 19, 2011, directing Returning Officers to obtain a declaration on oath from all the persons filing Nomination Papers for an election to a seat in the Parliament or a Provincial Assembly. Mr. Ishtiaq Ahmad Khan further said that the ECP, according to Article 63-1-(C) of the Constitution read with Section 99 (1A) (C) of the Representation of the People Act, 1976, has observed that the Constitution and law disqualify such a person from being elected, or chosen as, and from being a member of the Parliament, if “he ceases to be a citizen of Pakistan or acquires the citizenship of a foreign state.”

Calls for new legislation also emerged on this issue in the Parliament and on April 19, 2011, Mr. Muhammad Raza Hayat Hiraj, MNA, (NA-156, Khanewal-I, Punjab, PML), presented “The Constitution (Amendment) Bill 2011,” in

the National Assembly of Pakistan. The proposed legislation introduced many additional grounds for disqualification. Under the proposed new disqualifications if a person holds a dual nationality or has a permanent resident status of any other country whether in his own name, or in the name of his spouse, children or dependents, among many other disqualifications proposed, then that person shall be disqualified from the Service of Pakistan; holding any office in any organization whether wholly or partly owned or controlled by the federal or provincial government; being member of the armed forces and judiciary; being elected or chosen as a Member of Parliament or Provincial Assembly or Local Government.

On July 5, 2011, the Secretary Election Commission of Pakistan, while addressing a Press Conference in Islamabad, said that “dual nationality holders will not be able to contest the next elections, and while Constitution does not allow dual nationals to contest elections, Parliament still needs to pass new legislation.”

The Nomination Form was amended for the use of Senate election in 2012.

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Dual Citizenship in India

The Indian Constitution does not recognize dual citizenship.¹³ If an individual acquires nationality by virtue of birth (*jus soli*), registration, marriage (*jure matrimonii*) or parentage (*jus sanguinis*), he or she will have to renounce their former citizenship. Only minors may retain their second nationality acquired involuntarily.

There exists a provision for an alternative form of Indian nationality, the holders of which are to be known as Overseas Citizens of India (OCI) but it is simply a form of hassle free travel, and affords neither voting rights, nor eligibility to contest the elections of Lok Sabha or take up any Government post. Citizens holding a Pakistani, Bangladeshi, and Afghani passport, etc. are ineligible for an OCI card.¹⁴ A person who has held an OCI card for 5 years and has resided one year out of those in India before making the application can apply under section 5(1) (g) of the Citizenship Act 1955. However, such person would have to renounce foreign citizenship.

Former Attorney General of India Soli Sorabjee¹⁵ opined at a session on 'Private International Law and the Diaspora' that: - "If we want to involve the Diaspora then we can't deny them right to vote or the right to occupy important offices." In 2003, the then Indian Prime Minister, Mr. Atal Behari Vajpayee stated that India would grant dual citizenship to certain groups of Persons of Indian Origin. Subsequently, the Indian Parliament passed a Bill to grant dual citizenship to the people of Indian origin, receiving the President's assent in January 2004. The Citizenship (Amendment) Bill 2003 simplifies the procedure to grant dual citizenship to the PIOs belonging to the following countries:

1. USA
2. UK
3. Australia
4. Canada
5. Cyprus
6. Finland
7. France

8. Greece
9. Ireland
10. Israel
11. Italy
12. Netherlands
13. New Zealand
14. Portugal
15. Sweden
16. Switzerland

However, voting rights or public sector employment rights are still not allowed.

Article 5 of the Indian Constitution confers citizenship on every person who has his or her domicile in the territory of India. Article 11 empowers the Indian Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.¹⁶ This was achieved by the Citizenship Act, enacted in 1955. Section 6 of the Citizenship Act enables the Centre to grant a certificate of naturalization to foreigners, other than those living in the Commonwealth countries and Ireland, if they seek Indian citizenship and fulfil the conditions specified in the Third Schedule of the Act.

1. The first condition is that the applicant is not a citizen of any country where citizens of India are "prevented by law or practice" of that country from becoming citizens of that country by naturalization
2. The second important condition in the Third Schedule is that if the applicant is a citizen of any other country, he or she must renounce its citizenship in accordance with the law in force there, and notify such renunciation to the Central Government.

Such restriction on dual citizenship in India stems from the nationalist moorings of the early years of the Indian republic, when undivided citizenship was considered strength and a patriotic imperative.¹⁷

The Indian Constitution does not distinguish the rights of citizens on the mode of acquisition of the citizenship. It

13. <http://www.multiplecitizenship.com/documents/IS-01.pdf>, Retrieved on 15-07-2011

14. <http://www.immihelp.com/nri/dual.html>, Retrieved on 15-07-2011

15. <http://www.legalserviceindia.com/>, Retrieved on 15-07-2011

16. www.india.gov.in/govt/constitutions_india.php, Retrieved on 15-07-2011

17. www.hindu.com/fline/fl1612/16120300.htm, Retrieved on 15-07-2011

does not create different classes or categories of citizens. Unlike its US counterpart, eligibility to the top constitutional offices of President and/or Prime Minister is not restricted to natural-born citizens.¹⁸ Eligibility, however, is restricted to Indian citizens holding an Indian citizenship only.

18. www.hindu.com/fline/fl1612/16120300.htm, Retrieved on 15-07-2011

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The United Kingdom and Dual Citizenship

David Cameron recently denounced 30 years of multiculturalism in Britain as engendering extremist sentiments;¹⁹ for the time being, however, the UK remains amongst the more tolerant countries with dual nationality recognised and protected. An individual does not have to renounce their present citizenship in order to become a British citizen.²⁰ Nor will he or she normally lose their British nationality if they become a national of another country.²¹

Britain also has special categories of citizenship which confer fewer benefits than orthodox nationality (where a person may be registered as a British Citizen if he or she has resided in the country lawfully for 5 years).²² If an individual is a British subject otherwise than by connection with the Republic of Ireland or a British protected person, he or she will lose that status on acquiring any other nationality or citizenship. If a person is to become a citizen of a country that does not allow dual nationality, they may be required to give up their British nationality. A proper procedure will ensue then; if not initiated, a person may remain a British national under the eye of the law.

Under international law, the British Government cannot give diplomatic help to a dual national in the country of their origin.²³ The British Nationality Act 1981 is the basis of British nationality law, bringing substantial amendments to the former British Nationality Act 1948, mostly pertaining to its overseas territories.²⁴ The Act also modified the application of jus soil (birthright citizenship) in British nationality. Prior to the Act coming into force, any person born in Britain (with limited exceptions such as children of diplomats and enemy aliens) was entitled to British Citizenship. After the Act came into force in 1983, it was necessary for at least one parent of a United Kingdom-born child to be a British citizen or "settled" in the United Kingdom. Other changes included allowing mothers as well as fathers to pass on British nationality to their children, and limiting right of abode in the UK to a limited number of Commonwealth citizens.²⁵

There are numerous qualifications that apply to the Members of Parliament and voters. Most importantly, one must be aged at least 18 (the limit was 21 until S.17 of the Electoral Administration Act 2006 came into force), and must be a citizen of the United Kingdom, of a British overseas territory, of the Republic of Ireland, or of a member state of the Commonwealth of Nations.²⁶ These restrictions were introduced by the British Nationality Act 1981 but were previously far more stringent: under the Act of Settlement 1701 only natural-born subjects were qualified.

Dual nationals, therefore, are eligible to contest elections, provided they are not a member of a legislature of any other country and fulfil other criteria, that of being a British or Irish or Commonwealth citizen and not employed as a public official.

19. <http://www.independent.co.uk/news/uk/politics/cameron-my-war-on-multiculturalism-2205074.html>, Retrieved on 18-07-2011

20. "UK Border Agency | How do I give up British citizenship or another form of British nationality?". [Bia.homeoffice.gov.uk](http://www.bia.homeoffice.gov.uk/britishcitizenship/givingupcitizenship/). <http://www.bia.homeoffice.gov.uk/britishcitizenship/givingupcitizenship/>, Retrieved on 18-07-2011

21. <http://www.multiplecitizenship.com/documents/IS-01.pdf>, Retrieved on 16-07-2011

22. *Ibid.*

23. <http://www.ukba.homeoffice.gov.uk/britishcitizenship/dualnationality/>

24. www.westlaw.co.uk/, Retrieved on 16-07-2011

25. *Ibid.*

26. www.parliament.uk/, Retrieved on 18-07-2011

Dual Nationality & Other Countries

As discussed earlier, there are no standard international practices with regards to the dual citizenship. Some countries that allow the dual nationally, disallow the dual nationality holders to hold any public office or to become member of the Parliament and vice versa. A few practices are briefed as follows:

- i. The **US** also allows dual citizens in the legislature, with one exception: in the US Supreme Court's ruling in *Luria v. U.S.*, 231 U.S. 9 (U.S. 1913),²⁷ the court stated that, "Under our Constitution, a naturalized citizen stands on an equal footing with the native citizen in all respects, save that of eligibility to the Presidency."
- ii. A citizen of **Australia** stands disqualified to become a Member of Parliament if he/she has dual citizenship. Article 44 of the Constitution says that any person who is under any acknowledgement of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or citizen of a foreign power, shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.
- iii. In **Malaysia**, a person is disqualified to become Member of Parliament if he/she acquires foreign citizenship.²⁸
- iv. The Constitution of **Bangladesh** disqualifies any of its citizens from becoming Member of Parliament on account of acquisition of foreign citizenship.²⁹
- v. The Nationality Law of the **Republic of China** restricts its citizens from becoming dual nationals of other countries.³⁰ Dual nationals are also restricted from holding most public offices.³¹

27. Ibid.

28. Article 48 the Constitution of Malaysia

29. Article 66 the Constitution of Bangladesh

30. Article 3 and 9 The Nationality Law of People's Republic of China 1980

31. Article 20, The Nationality Law of People's Republic of China 1980

Dual Nationality and Participation in Elections

It has been argued that holding multiple citizenships may disintegrate national identity or cohesiveness,³² and be viewed as having dual loyalty, and the potential to act contrary to a government's interests. It may impede cultural assimilation; the rise in tension between mainstream and migrant communities is cited as evidence of the need to maintain a strong national identity and culture.

Opponents of dual citizenship assert that the fact that a second citizenship can be obtained without giving anything up (e.g. the loss of public benefits, welfare, healthcare, retirement funds, and job opportunities in the country of origin in exchange for citizenship in a new country) it both trivializes what it means to be a citizen³³ and nullifies the consequential, transformational, and psychological change that occurs in an individual when they go through the naturalization process.³⁴ In effect, the self-centred taking of an additional citizenship contradicts what it means to be a citizen in that it becomes a convenient and painless means of attaining improved economic opportunity without any real consequences and can just as easily be discarded when it is no longer beneficial.³⁵

Proponents argue that dual citizenship can actually encourage political activity by providing an avenue for immigrants who are unwilling to forsake their country of origin either out of loyalty or due to a feeling of separation from the mainstream society because of language, culture, religion, or ethnicity. Patriotism cannot be gauged by one's domicile alone. The contribution that oversees citizens make to investments, commercial exports and tourism can only be strengthened by allowing dual nationals to vote and take part in elections.

However, it must be noted that legitimate recognition for the role of overseas Pakistanis and their respect can not be synonymous with granting them with a right to represent the people of Pakistan. While Pakistan deeply appreciates the indirect support to the economy by remittances overseas Pakistanis send to their families back-home, it needs to be understood that remittances are NOT a direct contribution to the economy of Pakistan but are essentially

meant for the families of overseas Pakistanis and Pakistan's economy is an indirect beneficiary of that. It must also be noted that mainly (over 58 % in 2010-11) remittances are sent from Pakistanis residing in the Middle East, a vast majority of whom are NOT dual nationals.

32. Staton, Jeffrey K. (Florida State University); Jackson, Robert A.; Camache, Damaryas: "Dual Nationality Among Latinos: What are the Implications for Political Connectedness."

33. Renshon, Stanley; "Dual Citizenship and American National Identity." Center for Immigration Studies 2001

34. "The Naturalization Oath Ceremony, and What It Means To Be a U.S. Citizen"

35. Brown, Gregg "Political Bigamy?: Dual Citizenship in Australia's Migrant Communities"

Conclusion

Article 15 of the Universal Declaration of Human Rights³⁶ states that “Everyone has the right to a nationality,” and “No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.” As noted above, “it is for each State to determine under its own laws who are its nationals,” affirmed by The Hague Convention of 1930³⁷ and as there is no universally accepted principle on what being a national of a country means, thereby there is no uniformly applied doctrine regarding dual nationals.

Given this, anomalies are sure to arise. Constitutionally (Article 95) a dual citizen (e.g. a British citizen of Bangladeshi origin) can become a Head of the Government in Peoples' Republic of Bangladesh (by becoming a High Court Judge, then a Judge of the Appellate Division of the Supreme Court, and then the Chief Justice and, upon retirement, finally by being the Head of the Caretaker Government), but he cannot contest in general parliamentary election (Article 66 (2) (c)) to become a Member of Parliament (MP). This may look awkward and inconsistent, but this is the possibility and reality under the current constitutional provisions in Bangladesh.³⁸

In 1999, the US Attorney General's office issued an official opinion that a statutory provision that required the Justice Department to employ only “citizen[s] of the United States” did not bar it from employing dual citizens.³⁹ A number of politicians are deemed dual citizens; Arnold Schwarzenegger retained his Austrian citizenship during his service as Governor of California.⁴⁰ Former Canadian Prime Minister John Turner was born in the United Kingdom and retains his dual citizenship to this day.⁴¹ However, the case of *Sue v Hill*⁴² determined that the Constitution of Australia forbade people who hold foreign citizenship from sitting in the Parliament and Senator Hill was subsequently removed. Sonia Gandhi relinquished her Italian citizenship in 1983 to fulfil Indian naturalization requirements.⁴³ Both the Estonian President Toomas Hendrik Ilves and the former Lithuanian President Valdas Adamkus had been naturalized US citizens prior to assuming their offices. Both have renounced their US citizenships as neither individual's country permitted retention of a former citizenship.⁴⁴

In India the Bharatiya Janata Party and its allies in the National Democratic Alliance (NDA), and the Nationalist Indian Congress of the expelled Congress (I) leaders have promised to amend the Constitution in their respective election manifestoes.⁴⁵ The purpose of this will be to restrict high constitutional posts such as the offices of President, Vice-President and Prime Minister to natural-born citizens of India. This move may be seen as fraught with complications as defenders of the current Indian law argue that any such distinction between natural-born and naturalized citizens would militate against equality before the law ensured by the Indian Constitution.

Dual nationality of public representatives and officials has recently become a matter of concern in Pakistan. It has been opined that dual citizenship implies divided loyalties and thus those individuals who adopt nationalities other than Pakistani should not be allowed to contest elections and represent the people of Pakistan.

According to the Constitution of Pakistan, ARTICLE 63 1-C:

“A person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if:-

C. he ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign State.”

36. www.un.org/en/documents/udhr/, Retrieved on 15-07-2011

37. www.untreaty.un.org/ilc/documentation/English/a_cn4_67.pdf, Retrieved on 15-07-2011

38. <http://www.sonarbangladesh.com/article.php?ID=4869>, Retrieved on 15-07-2011

39. Eligibility of a Dual United States Citizen for a Paid Position with the Department of Justice, Opinions of the Attorney General, August 26 1999, (Beth Nolan, Deputy Assistant Attorney General, Office of Legal Counsel)

40. <http://news.bbc.co.uk/2/hi/americas/4198633.stm>, Retrieved on 15-07-2011

41. http://www.parl.gc.ca/Content/Sen/Chamber/362/Debates/024db_2000-02-08-e.htm, Retrieved on 17-07-2011

42. www.westlaw.co.uk/, Retrieved on 16-07-2011

43. www.hindu.com/fline/fl1612/16120300.htm, Retrieved on 15-07-2011

44. http://en.wikipedia.org/wiki/Multiple_citizenship, Retrieved on 15-07-2011

45. www.hindu.com/fline/fl1612/16120300.htm, Retrieved on 15-07-2011

The Constitutional provisions, therefore, are clear that if a Pakistani national acquires the citizenship of another country, he or she can not be elected as a member of the Parliament. According to the Pakistan Citizenship Act 1951 (as amended in 1952, 1972, 1973 and 2000) “a citizen of Pakistan shall cease to be citizen of Pakistan if he is at the same time a citizen or national of any other country.”

PIL DAT believes that only citizens of Pakistan must be qualified to represent the people in the Parliament and Provincial Assemblies of Pakistan.

PIL DAT has also demanded that the bar must be enlarged and legal provisions must also be put in place to ensure that dual nationals ***can not hold other high public offices such as the Judiciary, civil services, and other statutory positions.***

Outlining the reasons for retaining the Constitutional bar on being elected or chosen as, and from being, a member of the Parliament for those who either “cease to be the citizens of Pakistan or acquire the citizenship of a foreign state,” PIL DAT has stated that:

- i. Under international law, countries are not obliged to recognize dual nationality. Therefore, we have countries at either end of the spectrum: those that grant the right to dual nationals to become elected representatives while holding another passport for instance, UK and Switzerland, to those who automatically revoke the citizenship on such grounds such as India and Norway to even imposing criminal sanctions (Saudi Arabia). Pakistan is tolerant of dual nationality, allowing the right to vote to dual nationals of Pakistani origin.
- ii. While the due recognition and respect is granted to dual nationals of Pakistani origin under Pakistani law, the *raison d'être* behind placing a Constitutional bar on their election as public representatives is that multiple citizenships is likely to hamper the performance of the public representatives' duty in the “interest of the sovereignty, integrity, solidarity, well- being and prosperity of Pakistan.”⁴⁶ Since citizenship of other countries sometimes requires oath of allegiance to those countries, allowing dual nationals to become public representatives, and in essence hold high offices such as that of the Prime Minister, Ministers or even Speaker of the National Assembly, runs the risk of allowing those as having dual loyalty with the potential to act contrary to the interests of the State of Pakistan. With Pakistan's nascent systems, this can be extremely counter-productive.
- iii. A conflict of interest can also arise for dual nationals if they are allowed to be public representatives. Voting for or against a Parliamentary resolution on NATO supply routes is a case in point.
- iv. Another argument against allowing dual nationals to become public representatives in Pakistan is that nationality of another country is usually obtained as a convenient means of attaining improved economic opportunity, which Pakistani law recognises. In essence, however, it trivializes what it means to be a citizen of Pakistan. Dual nationals' fate is not tied to the fate of Pakistan and therefore allowing them to be put in the driving seat of making policy decisions of Pakistan can be detrimental to the interests of Pakistan. When the going gets tough in Pakistan, Pakistani citizenship can be just as easily discarded when it is no longer beneficial.
- v. Legitimate recognition for the role of overseas Pakistanis and their respect can not be synonymous with granting them with a right to represent the people of Pakistan. While Pakistan deeply appreciates the indirect support to the economy by remittances overseas Pakistanis send to their families back-home, it needs to be understood that remittances are NOT a direct contribution to the economy of Pakistan but are essentially meant for the families of overseas Pakistanis and Pakistan's economy is an indirect beneficiary of that. It must also be noted that mainly (over 58 % in 2010-11) remittances are sent from Pakistanis residing in the Middle East, a vast majority of whom are NOT dual nationals.
- vi. Pakistanis living overseas, dual nationality holders and those residing in the AJK together constitute only 4.7 million voting adults according to the number of NICOP holders at present. These 4.7 million already have a right to vote in Pakistan.
- vii. Pakistani citizens that obtain a second nationality and become residents of other countries must devote their energies towards assimilating in the political culture of their adopted countries. They can serve Pakistan much better when they are represented in institutions of their adopted countries

46. Oath of Office of the Member of National Assembly or Member of Senate, Third Schedule, Constitution of the Islamic Republic of Pakistan, as amended on February 27, 2012.

If the Parliament of Pakistan wishes to reconsider the bar on dual nationals to contest election, it is well within its right to do so but given the strongly held positions in Pakistan on this issue, the Parliament must refer the debate to the public before any decision. Political Parties represented in the Parliament and those outside Parliament must discuss the issue threadbare internally before they take a position on the issue. Parliament and political parties should give sufficient time to build a consensus on the issue and not hurry the process.

PILDAT also suggested that as provided under the Representation of People Act, the ECP should initiate the formal process for candidates in the next General Election to declare if they hold the status of permanent residence, such as the US green card, in any country other than Pakistan.

While the permanent residence status may not disqualify any candidate, the availability of this information is important for voters who can determine on the basis of this information whether a candidate, once elected, will be available to serve the public or stay away from the constituency or the country for an extended period of time.

Such public declaration and the availability of this information to public and media through the ECP website, ahead of the day of General Election, will be greatly helpful to the voters in deciding about the suitability of a candidate in the election.

Appendix A

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Appendix A

Dual Nationality Provisions Internationally

The most restrictive cases are characterized by the following criteria:

1. Assignment by birth: only one citizenship possible
2. Obligation on choosing ones citizenship upon reaching maturity
3. Renunciation requirement (in some cases proof also required) upon naturalization in another country
4. Forced expatriation upon naturalization in another country

The more strictly the acquisition of a citizenship is governed by principles (1) to (4), the more restrictive the regime. Conversely, the more lenient the procedure, or the more exemptions from these requirements allowed, the more tolerant the regime.

Americas

Tolerant	Restrictive
Antigua and Barbuda	Argentina (except Spanish citizens) (4)
Barbados	Bahamas
Belize	Bolivia
Brazil (3)	Chile (2, 3, 4)
Canada	Cuba (3)
Chile (only in certain cases)	Dominican Republic (2, 3, 4)
Colombia (3)	Ecuador (except for Spanish citizens) (3, 4)
Costa Rica	Ecuador (except for Spanish citizens) (3, 4)
El Salvador	
Mexico	
Peru	
United States of America	

Europe

Tolerant	Restrictive
Bulgaria	Andorra (3)
Federal Republic of Yugoslavia	Austria (4)
Sweden	Belgium (4)
Cyprus	Croatia
France	Czech Republic (3)
Greece	Denmark (3, 4)
Switzerland	Finland (2, 3, 4)

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Serbia and Montenegro	Germany
Hungary	Iceland
Ireland	Netherlands (3, 4)
Italy	Norway (3, 4)
Latvia	Poland (3)
Portugal	Romania
Lithuania	Ukraine
Macedonia	
Malta	
Spain (only in certain cases)	
Turkey	
United Kingdom	

Africa

Tolerant	Restrictive
Benin	Algeria (4)
Burkina Faso	Angola (2, 4)
Cape Verde	Botswana (2, 3, 4)
Central African Republic	Burundi (3, 4)
Egypt	Cameroon (3, 4)
Nigeria	Congo (3, 4)
Mauritius	Djibouti (3, 4)
South Africa	Ghana
	Kenya (2, 3, 4)
	Namibia (2, 3, 4)
	Tanzania (2, 3, 4)
	Zimbabwe

Asia and Oceania

Tolerant	Restrictive
Australia	Afghanistan (1, 3, 4)
Bangladesh	Armenia (3, 4)
Cambodia	Azerbaijan
Israel	Bahrain
Jordan	Belarus
Lebanon	Bhutan
New Zealand	Brunei (2, 3, 4)
Pakistan	Burma

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Russia	China (3)
Syria	Fiji (2, 3, 4)
Tonga (only in certain cases)	India (3, 4)
West Samoa	Indonesia (3, 4)
	Iran (1)
	Japan (2, 3, 4)
	Kiribati (3)
	Korea North (1)
	Malaysia (3, 4)
	Nepal (3, 4)
	Papua New Guinea (2, 3, 4)
	Philippines (2, 3, 4)
	Singapore (2, 3, 4)
	Solomon Islands (2, 3, 4)
	Thailand (2, 3, 4)
	Vietnam (1, 3)



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