

**DUAL NATIONALITY IN PAKISTAN; A COMPARATIVE STUDY
OF NATIONAL AND INTERNATIONAL LEGAL INSTRUMENTS**



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Supervised by
Syed Amjad Mehmood

Submitted By
Sikandar Abbas
125-FSL/LLMIL/F09

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Faculty of Shariah and Law
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APPROVAL SHEET

This is to certify that we evaluated the thesis entitled "Dual Nationality in Pakistan; A Comparative study of National and International Legal Instruments" submitted by Sikandar Abbas, Reg. No. 125 FSL/LLMIL/F09 in partial fulfillment of the award of the degree of LLM International Law. The thesis fulfills the requirements in its core and quality for the of degree.

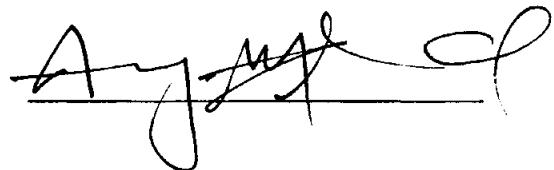
Master's (LLM) Committee

Supervisor

Syed Amjad Mehmood

Assistant Professor/Head Department of Law

Faculty of Shariah and Law, IIUI.

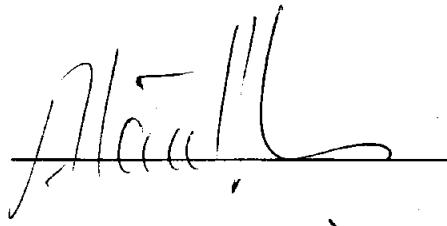


Internal Examiner

Atta Ullah Khan Mehmood

Assitant Professor of Law,

Facutly of Sharia and Law,IIUI



External Examiner

Mr. Khurram Siddique

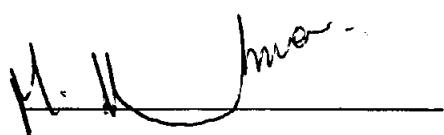


TABLE OF CONTENTS

DECLARATION	I
DEDICATION	II
ACKNOWLEDGMENT	III
LIST OF ABBRIVIATIONS	IV
ABSTRACT	V

CHAPTER NO. 1 FACTORS LEADING TO DUAL NATIONALITY

1. INTRODUCTION	1
1.1 LEGAL AND HISTORICAL BACKGROUND OF DUAL NATIONALITY	3
1.1.1 European States.....	3
1.1.2 Other States.....	4
1.2 DIFFERENT WAYS OF ACQUISITION OF DUAL NATIONALITY.....	4
1.2.1 Migration.....	5
1.2.2 Emigration.....	5
1.2.4 Globalization.....	6
1.3 NATIONALITY.....	7
1.3.1 Nationality and Citizenship.....	9
1.4 DUAL NATIONALITY.....	10
CONCLUSION.....	14

CHAPTER No. 2 DUAL NATIONALITY AND THE INTERNATIONAL PRACTICE

2. INTRODUCTION.....	15
2.1 LEGAL AREAS FOR ACQUISITION OF DUAL NATIONALITY.....	17
2.1.1 Nationality by Birth	17
2.1.2 Nationality by Naturalization	19
2.2.3 Nationality by Immigration	21

2.2	TOLERANCE OF DUAL NATIONALITY PRACTICE.....	22
2.3	REGULATION OF DUAL NATIONALITY UNDER INTERNATIONAL LAW.....	23
2.3.1	Early Multilateral Attempts to Regulate Dual Nationality	24
2.3.1.1	Hague Convention, 1930.....	24
2.3.1.2	Harvard Draft Convention, 1930.....	25
2.3.1.3	Importance of Dual Nationality in Stateless Status.....	26
2.4	DUAL NATIONALITY IN THE WORLD.....	26
2.5	BENEFITS OF DUAL NATIONALITY	27
2.5.1	Economic Benefits	28
2.5.2	Inter-State Easy Movement	28
2.5.3	Strengthening Culture and Tradition	28
2.5.4	Dual Diplomatic Protection.....	29
2.6	LOSS OF NATIONALITY	29
2.7	GROUNDS FOR LOSS OF NATIONALITY.....	29
2.7.1	Involuntary Loss of Nationality.....	30
2.7.2	Naturalization of Parents in Alien State.....	30
2.7.3	Loss through Expatriation.....	30
2.7.4	Loss by Discretion of State.....	31
2.7.5	Voluntary Renunciation by Citizens.....	32
2.8.6	Termination by Action of State.....	32
	CONCLUSION.....	34

Ch. 3 LEGAL STATUS OF DUAL NATIONALS IN PAKISTAN

3.	INTRODUCTION	36
3.1	DUAL NATIONALITY IN PAKISTAN	37
3.2	PROVISIONS REGARDING DUAL NATIONALITY AND POLITICS.....	38

3.2.1	THE CITIZENSHIP ACT, 1951	38
3.2.2	The Representation of the People Act, 1976.....	40
3.3	DUAL NATIONALITY AGREEMENTS OF PAKISTAN	41
3.4	DIVISION OF LOYALTY UNDER DUAL NATIONALITY.....	42
3.4.1	Litigations about Dual Nationality and Politics in Pakistan.....	43
3.5	BENEFITS OF DUAL NATIONALITY IN PAKISTAN.....	45
3.5.1	Remittances: The Contribution of Dual Nationals in the Development of Pakistan.....	45
3.6	DUAL NATIONALITY: KEY POSTS AND POLITICS IN PAKISTAN.....	47
	CONCLUSION.....	48
CHAPTER No. 4 DUAL NATIONALITY: POLITICAL PRACTICES IN THE WORLD		
4.	INTRODUCTION	49
4.1	VOTING RIGHTS IN TO DUAL NATIONALS IN IMMIGRATION STATES.....	49
4.2	HISTORICAL PARTICIPATION OF DUAL NATIONALS IN POLITICS.....	50
4.3	DUAL NATIONALITY: POLITICAL PRACTICE IN THE WORLD.....	51
4.3.1	Politics of dual nationals in the United States (US).....	51
4.3.2	Politics of Dual Nationals in Canada.....	52
4.3.3	Politics of Dual Nationals in New Zealand.....	53
4.3.4	Judgment of Australian Court.....	54
4.3.5	Practice in India.....	54
	CONCLUSION.....	55
CONCLUSION AND RECOMMENDATIONS		56
BIBLIOGRAPHY		61
APPENDIX-A.....		72
APPENDIX-B.....		74

DECLARATION

I hereby, declare that this thesis is original and has never been presented in any other university or institution. I also declare that this thesis has not been copied and some sort of secondary information also been used.

SIKANDAR ABBAS

125-FSL/LLMIL/F09

(August, 2014)

DEDICATION

This thesis is dedicated to the students and teachers of Faculty of Shariah & Law International Islamic University Islamabad and my precious and beloved parents, who made me able to reach this stage, my siblings and my friends who helped me at every stage. May Allah always shower special blessings upon them.

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List of Abbreviations

CA	Citizenship Act, 1951
ECP	Election Commission of Pakistan
ECN	European Convention on Nationality, 1997
EUDO	European Union Development Organization
ICJ	International Court of Justice
INA	Immigration and Nationality Act, 1986
NICOP	National Identity Card for Overseas Pakistanis
NRIs	Non-residential Indians
PIOs	Persons of Indian Origin
SC	Supreme Court of Pakistan
UDHR	Universal Declaration on Human Rights, 1948
UN	United Nations

ABSTRACT

This thesis discusses the dual nationals in Pakistan. It gives brief history of dual nationals with reference to their participation in elections.

This thesis has assessed the performance of dual national citizens and their benefits in comparison to legal instruments which provide their rules and rights in accordance with law of that country.

After being compared, some recommendations are listed for concerned authorities to take some steps to improve and ensure the protection of dual nationals' interest in true sense. In a nutshell it is recommended that some regulations may be included in the Pakistani dual nationality laws and constitution to allow representation of dual nationals in and out of state. It may also more helpful for development of state through remittances and good image of state in foreign state.

Chapter No. 1

DUAL NATIONALITY AND ITS CAUSES

INTRODUCTION

The term “Dual Nationality” has been emerged in the age of globalization. Citizens acquire dual nationality for easy travel and business benefits in the state of nationality i.e. the United States grants tax facilities to its nationals.

Dual nationality means holding of nationalities of two or more states at the same time. Certain States have allowed dual nationalities but there is no accurate data about such states. Dual nationality is a growing phenomenon that has been expanding excessively for many years. There are many causes of dual nationality which include marriage, naturalization, and migration.

Nationality of any country is governed by specific law of the state which not only formulates their rights but also grant them fundamental rights. Some rights have been given under law that is right to get job, education, and life, etc. In addition, there is also a concept of “Diplomatic Protection” which was introduced by United States under Bancroft Treaty.¹

Under the said treaty “Diplomatic Protection” is defined as:

“Protection by a state of citizens by channelizing diplomatic resources.”

Practice of dual nationality in Pakistan is established but Pakistan has restricted rights and duties in relation of political participation. Dual nationals in Pakistan are not permitted to contest elections. The Citizenship Act, 1951 (herein after called “the Act”) has accepted dual nationals as citizens of Pakistan only when the citizens acquire nationality of states allowed by

¹ Bancroft treaties (1868-1937) introduced by Bancroft, the US Ambassador to Persia in 19th and 20th Centaury

government of Pakistan.² But Constitution of Islamic Republic of Pakistan 1973 (herein after called “The Constitution”) has restricted to contest election due to threat of division of loyalty and sharing of secrets with other state.³

The concept of dual nationality is not only beneficial to dual nationals in terms of rights available to them under the law but also play an important role in terms of remittances in both countries. They understand customs and traditions of both states, thus, they can make good deal for investment; they can be good ambassadors of the state by good behavior and representing calm and peaceful image of state; they can earn good reputation of the state. These are major advantages of dual nationals which prevent to presume that they are disloyal to the state.

The concept of dual nationality has been accepted under International Human Rights law⁴, because States want to use human labour as source of development.⁵

Pakistan is party of *Hague Convention, 1930* under which persons are permitted to keep dual nationality. As per clause of the Constitution dual nationals are considered threat to the security of state; their loyalty be questioned despite of their good services in immigration states; single nationality the only scale to measure their loyalty or it a secondary thing.

² Citizenship Act, 1951, Section. 14

³ The Constitution of Islamic Republic of Pakistan, 1973, Article. 63

⁴ Dimitry Kochenov, “*Double Nationality in EU: An Argument for tolerance: Double Nationality in EU*”, European Law Journal, 05/2011

⁵ Shachar, Ayelet, “*Picking winners: Olympic Citizenship and the global race for talent*”, Yale Law Journal, June 2011

1.2 Legal and Historical Background of Dual Nationality

Dual Nationality is very old concept that is traced from Greece and Roman era. Later, it developed with the passage of time where different states rejected and accepted dual nationality principle according to situation. Modern concept of dual nationality emerged from Europe and enhanced to other states.

1.2.1 European States

In 18th century *jus soli* was dominating in the Europe. It had some feudal traditions because state granted nationality to those who took birth in their soil. Later on as a result of French revolution the feudal traditions were suspended with the introduction of Civil Code in 1804 based on the primordial tradition of Rom of *jus Sanguinis*. The current Continental Act was presented that was based on “*jus soli and jus sanguinis*”.⁶ In *nineteenth century* the Europe and its colonies also rapidly hold the principle of *jus sanguinis*. British also maintained their customs and traditions by applying *jus soli* in their colonies. They first applied this principle in first colony that was United States and later they included in their charter. When the 19th century ended *jus soli* became the basic standard in regular laws of many states. The next century was a remarkable shift of nationality laws and its enhancement after World War II.⁷

The political scientists and legal scholars had significantly contributed in the development of nationality laws who were considered as the pioneer of work on nationality laws.

⁶ Graziella Bertocchi, “*International Laws and International Migration in historical Perspective*”, (Italy: University Modena e Reggio Emilia: 2004)

⁷ Ibid.,

They defined the membership within nation-state boundaries coupled with common cultures that were rapidly outdated.⁸

1.2.2 Other States

There are some classic lands of immigrants i.e. US, Canada and Australia which have maintained *jus soli* for a considerable time period and Europe had maintained contacts with individuals by approving *jus sanguinis*. It reflected that both concepts *jus sanguinis* and *jus soli* were applicable in various states in accordance with their application of laws. Some states of *jus soli* i.e. UK and Australia are now changing their restrictive policies to gain nationality by birth place.⁹ In recent development, Europe has added double *jus soli* in its legislation, UK and Ireland has also added *jus sanguinis* in their nationality principles.¹⁰

Nationality privileges are attached with the enjoyments of wellbeing profits which are determined through voting. However, the nationality policy is attached to the state's welfare. When it comes to the broader sense of states wellbeing i.e. Scandinavian or the Germany those states are showing a probable barrier to the implementation of *jus soli*.¹¹

1.3 Different Ways and Means of Acquisition of Nationality

Acquisition of nationality is not simple but an ambiguous process. There are following conditions to acquire nationality:

⁸ T.S. Marshall, "Citizenship and Social Class", (Cambridge: Cambridge University Press: 1950)

⁹ Samantha Besson, "Introduction: Future challenges of European Citizenship? Facing a wide-open Pandora's box", European Law General, 9/2007

¹⁰ Ibid.,

¹¹ Joppoke. C, "Challenge to the Nation-State: Immigration in Western Europe and the United States", (Oxford: Oxford University Press: 1998)

www.cidob.org (last accessed on 12 may 2014)

1.3.1 Migration

Migration means the movement of public from one area to another for stable or semi-stable home e.g.; “semi-stable home” is a migrant’s cyclic movements for labor. People may voluntary change their states or involuntary that may be by force.¹²

Migration is an important part of history that begins from East Africa where a group of African origin moved to their original residence. Migration is of various scales that may be international migration between continents and inter-continental. It may also causes between states of same continent or inter-regional.¹³ Another most important migration is from rural and urban area that is micro level migration.

1.3.2 Emigration

Nationality depends upon migration policies of states because they have different policies with regard to the acquisition of original nationality or pass through descendants.¹⁴ Fifteen European-Union states changed their practice with regard dual nationality. The purpose behind shifting policies was to assist the emigrants to maintain their original nationality by naturalizing overseas.¹⁵

Development was made by Sweden in 2001, Finland 2003 and Belgium 2007 and Netherlands has introduced more exceptions in nationality policies. While, Spain introduced in

¹² *OECD International Migration Outlook 2007*, Paris: OECD Publications, (2007) (www.absoluteastronomy.com)

¹³ Peter Stalker. *No-Nonsense Guide to International Migration*, New Internationalist, second edition, (2008). (www.absoluteastronomy.com)

¹⁴ Baubock, R. E, Ersboll, K. Groendedijk and H. Walrauch, “*Acquisition and loss of nationality*”, *Comparative analysis*”. Amsterdam: Amsterdam University Press: (2006b). Vol. 1(www.europarl.europa.eu)

¹⁵ De Hart, B and R, Van Ores, “*EU trends in Nationality Law*” (2006). In Baubock, R. E, Ersboll, K. Groendedijk and H. Walrauch, “*Acquisition and loss of nationality*”, (Amsterdam: Amsterdam University Press, 2006b). 317-357 (www.europarl.europa.eu)

2002 that citizens had to express their intentions to keep nationality of Spain at the time of naturalizing abroad.¹⁶

1.3.3 Globalization

Globalization is not a simple and limited concept but it extends according to the time. It cannot be expounded to certain people but it is valid to every person in every station.¹⁷ The term is not specific to monetary but it is a process of international integration which is desired by international trade, instrument, information and technology leaving its effect on culture and economic development. A global perception of revolution is established with a global market that may be free from socio-political control.¹⁸

“Globalization is relevant to the progress, development, stability, integration, and cooperation.

Despite of these purposes the term has some hidden agendas. The political ideology of an individual, geographic location, cultural background, social status, religious and ethnic affiliation gives the background idea that how globalization is interpreted.”¹⁹

¹⁶ H. Waladrauch, “*Loss of Nationality*”, (2006). In In Baubock, R. E, Ersboll, K. Groenedijk and H. Waldrauch, “*Acquisition and loss of nationality*”, (Amsterdam: Amsterdam University Press: 2006b). 183-219 (www.europarl.europa.eu)

¹⁷ Methema, cain, “Globalization as Defined in the West”. Chronicle (Bulawayo, Zimbabwe). Accessed on 14 May, 2014

¹⁸ P.V. Niktini, J.E, Elliot, “Freedom and the Market (An analysis of the Anti-globalization movement from the perspective of the theoretical foundation of the evaluation of the dynamics of capitalism by palanyi, Hayek Keynes)”, The forum for social economics, 2000: pp.1-16; p. 14. In G. Gambaro and E. O’Boyle, for Evaluating Economic Globalization”, International Journal of Social Economics, Vol.30, No. ½, 2003, pp.95-118. (university of Hong Kong)

¹⁹ *ibid*

By its nature globalization provides multilateral views about communities' disciplines and cultures. There are some pieces of viewpoints about globalization one of the idea says; "Globalization is the representation of the capitalist world's economy that is attached mutually by worldwide labor division."²⁰ The second view is, "It is the process which connects people of the world into a single society."²¹

However, globalization is a modern technique of dual nationality. Dual nationals acquire two or more nationalities to keep contacts and easy travel in other states. An American Scholar of Law *Keinchi Ohmae* says, "Globalization is the beginning of world without borders".²²

1.4 Nationality

Nationality is a legal status that awards rights and duties to nationals in states. From various ways to acquire nationality one of them is birth place principle that is also known as "*jus soli*" which means the land where one takes birth.²³ Another is the blood line principle that is known as "*jus sanguinis*" which means the transfer of rights through generations or parents. The third way to acquire nationality is by second-generation immigrants. For example the child born in the first-generation immigration state can get nationality of *jus soli* automatically. However, nationality is inherited in *jus sanguinis* through parents which is independent from birth place.

²⁰ Immanuel Wallerstein, "The Modern World System: Capitalist Agriculture and the Origins of the European World Economy in the Sixteenth Century", New York: Academic Press: 1974. In R.J. Holton, "Globalization and the Nation-State", London: Macmillan Press: 1998), p. 11 (www.gcsp.ch)

²¹ Martin Albrow, E. King, "Globalization, Knowledge and Society" London: Sage Press: 1990. P.8 (www.gcsp.ch)

²² Keinchi Ohmae, "The Borderless World: Power and strategy in the Global Market place", London: Harpercollins, 1992). In Rawoo Netherlands Development Assistance Research Council, "Coping with globalization: The Need for Research Concerning the Local Response to Globalization in Developing Countries", Publication N0. 20, 2000, p. 14 (scholar.googleusercontent.com)

²³ Iseult Honohan, "Jus Soli Citizenship", European University Institute, EUDO Citizenship Policy Brief No. 1 (2010)

<http://eudo-citizenship.eu>

Individual keeps their contacts with state's territory through nationality. When states acknowledge individuals in their territories, other states automatically pay respect and regard to them. It is primary duty of states to protect their individuals from any issue, they face anywhere in the world. Nation-state system has implement rights and liabilities over its nationals with regard to civil and military services, payment of taxes and trials against criminal activities. It is the sole duty of states to distribute burden over its nationals equally according to Human Rights Law, 1948.²⁴

There is also another category of individuals known as stateless persons who have not attached to any state and treated as unprotected persons. The nationality gives status to a person and provides a chance to contribute in national and international decisions and enjoy administration of states, legal acknowledgments and fundamental rights. However, a stateless person is deprived of such benefits.²⁵

In relevancy to nationality there is a third status that is dual nationality. It means a person holds multiple nationalities to get multiple diplomatic protections because when a state registers an individual her member, the state is under legal duty to protect rights and duties of that individual. Dual nationals hold maximum responsibilities in states and feel burden to fulfill their duties. But in such relation they may be discriminated in relation to taxes, civil and military services.²⁶

²⁴ Myres S. McDougal, Harold D. Lasswell, Lung Chu Chen, "Nationality and Human Rights: The Protection of the Individual and External Arenas", Yale Law Journal, (1974)

²⁵ Ibid.,

²⁶ Ibid.,

1.4.1 Citizenship and Nationality

Meaning of Nationality is the legal status or membership of a person in the state. Nationality of interstates role clearly defines the people with relative territories and protect the states against outsiders at the time of hostility in the globe. The domestic role of population is to be determined through duties & rights of affiliated persons. According to criteria of domain reserves, each state has to determine its self determination to access nationality criteria. One from those conditions is to keeps close ties to the state and genuine link with it.²⁷

However, citizenship concerns two borders dimensions with some conditions,

1. The legal status of individuals is equal liberty which implies paradoxical unity between governing and governed in democracy²⁸ without democratic procedures guiding citizenship political self determination, citizenship only amount to members of political communities being subject of sovereign.

2. Citizenship requires some affinity to political community with a distinct collective identity. Otherwise, there is no trust and solidarity which underlie citizen's entitlements.

The constitution of modern states describes human rights and fundamental rights belonging to citizens as legal status. In general, citizens' rights fall under various realms, i.e. civil or negative rights to liberty, rights of political participation such as right to vote and to associate, social rights such as education, and entitlement to services in sickness, and unemployment.²⁹

²⁷ Rittsteig, Helmut, "Deppelte Staatsangehörigkeit im Volkerrecht, Neue Juristische Wochenschrift," 43: 1401-1405 (cmd.princeton.edu)

²⁸ Aristotle, "The Poitics" London: Penguin Books: 1962. (1274b32-1257b21)

²⁹ T.H. Marshall, "Citizenship and Social Class" London: Pluto Press: 1992 (www.fd.uc.pt)

1.5 Dual Nationality

Dual nationality is a status in which an individual has nationalities of multiple states simultaneously. All states have same but different pre-requisites for acquisition of dual nationality. Technically speaking colloquial speech refers to the holding dual nationality but each state claim over its nationals. So, it is possible that a person may have one, more or no country's nationality.

Each state has different rules for acquisition and losing dual nationality. Sometime, it happens that a person acquires nationality of the second state without leaving the previous one and other times a person may contains nationality of two states and the person is forced to leave the previous one. Indeed an individual may fulfill the requirement of more than one state simultaneously without leaving his original nationality. This situation allows dual nationals to hold more than one nationality at the same time. Here are some common reasons to allow dual nationality:

1. At least one of the parents must be citizen of *jus Sanguinis* principle. Mostly states are observing this principle to grant dual nationality.³⁰
2. Another common reason for nationality is the birth in the state under law of *jus soli*. From the developed states only few of them grant unconditional birth right nationality. However some states have abolished birth tourism policy. But some states i.e. Australia, Germany, France, Ireland, New Zealand, UK and South Africa all of these customized *jus soli* principle. It means that there must be at least one parent who must have been permanent legal resident for several years

³⁰ Vink. M, G.R de Groot, "Birth right citizenship: Trends and Regulations in Europe", A comparative report on EUDO. Cit- Comp., Florence. EUDO Citizenship observatory (2010), 35 (eudo-citizenship.eu)

in the state. Many Latin American states still grant unconditional birth right nationality.³¹

3. When person marries to citizen in "*jure matrimony*" then he will acquire nationality. By marrying a person may shorten the time for acquisition of nationality of naturalization. But few states grant nationality on the day of marriage like Iran.³²
4. When a person becomes naturalized, he can acquire nationality.
5. When a person is adopted from another state and at least one parent must be a national of the state and permanently reside in US.³³
6. A person may also acquire nationality of a state by investing a substantial amount in the state i.e. Austria, Cyprus, Dominica and St. Kitts and Nevis.³⁴
7. There are few states which grant nationality only by their religious attachments. For example Israeli law of returns defines that all Jews possessing an Oleh's certificates shall become national of Israel and subsequently allow staying in Israel. Such certificates automatically convert nationality on arrival in Israel. In 1970s law of return was further amended that wife, children and grand children were also eligible for the law of return. They were eligible for Oleh's certificate except the request was made on behalf of Jews should not practice willingly

³¹ Ibid.,

³² Civil Code of Iran, 1928. (Amendment on, 1985), Article, 976

³³ Citizenship Act, 2000. Section. 320, 322

³⁴ HP, Henley and Partner, "Citizenship by Investment", <https://www.henleyglobal.com/citizenship-by-investment/> (last accessed on 5 June, 2014)

any other religion except Judaism.³⁵ Moreover, Algerian Nationality Law, 1963 grants nationality only to those people who are Muslims or those whose father, grandfather has Muslim personal status in their new state.³⁶

8. Nationality can also be granted to those persons who hold an important office (*jus officioli*). The Pope holds the Vatican Nationality, cardinal living in the conurbation. Nationality of Vatican is ended with finishing time of service. Moreover, this nationality is not inherited from parents to the children. Nationality of the Vatican is time limited, so it allows dual nationality of Switzerland. However, a citizen can acquire automatically the nationality of Italy after stateless person by losing nationality of Vatican nationality. Vatican law has allowed permanent residency after March 1, 2011.³⁷

When a state allows nationality it may require or may not intended to denial of the nationality to become legal. Some states have conditionally allowed dual nationality that the applicant should renounce his first nationality. This may not be considered under the law of renounced state but the person in question still can have the nationality of both states despite of the technological reality that she or he may have unequivocally renounce one state nationality prior to the other executives.

For example rule implemented by the Chief justice of the United States “Jhon Rutledge” that an individual may have the privileges of nationality of two states

³⁵ The law of Returns of Israel, 1950

³⁶ Algerian Nationality Law, 1963, Section, 34

³⁷ Article, 1 of Legge Sula Cittadinanza La residenza E l'accesso, CXXXI, 2011

simultaneously³⁸ despite of the reality that United States' nationality law demands the renunciation of all prior nationalities before taking oath of allegiance.³⁹

In case of British citizenship, UK government honors when original nationality is renounced before their competent authorities. Consequently, British nationals in US remain British nationals before government of Britain yet they relinquish British commitment for approval of United States establishment.⁴⁰

The Ireland Republic has applied their nationality regulations to the adjacent islands with their extension to the piece of United Kingdom and the Northern Ireland. Consequently, anybody whose birth was in Northern Ireland and fulfilled its necessities for acquisition of nationality of Ireland by heredity on Ireland would acquire nationality. A baby born outside the Irish jurisdiction however he qualified for nationality through his parents, here he had rights to enjoy privileges given only to Irish nationals that included travelling with Irish passport. If any person did not fall under this category he was not eligible to acquire their nationality. According to British nationality laws, a person takes birth in Northern Ireland is a national of UK on the same footing as a citizen born in British. People born in Northern Ireland are free to choose anyone of Ireland or UK or both nationalities.

Conclusion

The concept of dual nationality has been adopted in Europe, U.S.A, U.K, Canada and Australia. Evolution of dual nationality came out from the consequent of migration of citizens which

³⁸ Talbot Vs Jonson, 3 U.S. 133 (1795)

³⁹ A guide to naturalization, US citizenship and immigration services. (responsibilities, page 2)

⁴⁰ Arthur L. Money, "Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign preference adjudicative guideline", 16 August, 2000. Last accessed on 14 may, 2014 (www.dod.mil)

usually done due to basic needs, security and commercial activities. People moved for searching their basic needs from one state to another state that divided population into local and foreigners, which highlighted the concept of migration in the world. Such activities resulted into formation of globalization and transformation of world into globe village.⁴¹

⁴¹ Ibid.,

CHAPTER NO. 2

DUAL NATIONALITY AND THE INTERNATIONAL PRACTICE

2.1 INTRODUCTION

The term "dual nationality" refers to a number of complications, conflicts and complexities that go along describe phenomena. Everybody tries to control challenging situations for the good if they cannot get rid of it. However, international law and general laws of states towards dual nationality are neutral for avoiding complications of diplomatic protection, civil statuses and military services. This goal is not easily achievable because every state has its own criteria to grant dual nationality⁴² and customary international law also does not prohibit the states on nationality.⁴³ However, a number of people holding multiple nationalities are increasing worldwide even in the existence of doubts and dissatisfactions.⁴⁴

The theory appears to be inconsistent with the reality of ever changing world that recently stimulated a boom in international discourse on this topic.⁴⁵ In such suspicious climate a reasonable development has been made by approving comprehensive treaty on nationality⁴⁶, that is European Convention on Nationality, (herein after called "ECN"), 1997⁴⁷.

⁴² Hoffman, Rainer, "Nationality Status. In. the. New. Europe," (London: Sweet & Maxwell, 1998) 5-19 (www.unhcr.org)

⁴³ Eudo. Citizenship. Eu. "Report on Multiple Nationalities: European Convention on Nationality", EST: 166. <http://conventions.coe.int/Treaty/EN/Reports/Html/166.htm> (last accessed on 26 March 2014) (eudo-citizenship.eu)

⁴⁴ Kozyr, Victoria, "Dual citizenship Laws of Ukraine in historical and international contexts: National security detent", *Transnational law and contemporary problem*, (2007). Last accessed on 12 April 2014

⁴⁵ Linda, Bosniak, "Multiple Nationalities and Post national Transformation of Nationality," Virginia Journal of International: (VAJIL), (2002) [http://www.bit.mah.se/imer_pub.nsf/0/4E089B9982FC0F84C1256B5E0030A517/\\$File/013.pdf?OpenElement](http://www.bit.mah.se/imer_pub.nsf/0/4E089B9982FC0F84C1256B5E0030A517/$File/013.pdf?OpenElement) (last accessed on 26 March 2014)

⁴⁶ Two different terms ("nationality" and "nationality," derivative from "citizen" and "national," respectively) are employed in legal texts to describe more or less the same concept – lawful link between a state and the citizen. However, differences between these terms still exist, but are extremely rare, so they are often used interchangeably,

ECN, 1997 under article 2(b) provides definition of “multiple nationality”, which “means possession of nationalities more than one simultaneously by the same person.”⁴⁸ In its turn, nationality is a legal tie between a state and person.⁴⁹ There are many definitions of nationality⁵⁰ of which some are worth to be quoting here. Thus, “Nationality is a legal relation between an individual and the state, through which a state holds jurisdiction over its citizens.”⁵¹

The International Court of Justice (herein after called “ICJ”) has observed in a case “The Nottebohm” nationality is a legal relation that has foundations in a social issues, a real alliance of subsistence, advantages and sentiments, with continuation of ordinary rights and duties. A person is closely connected with the states which confers nationality rights either directly or by process of law.⁵²

There are some commonalities in these definitions of nationality that refers nationality as a kind of “tie” and “bond”, etc. a thing that connects an individual with states. Preferably, a state should have authority over persons but nothing is perfect. Due to multiple nationalities several states can claim their jurisdiction over them.

For the sake of uniformity and consistency of terminology the author hereof has chosen to cling to the term “nationality” and use it throughout this thesis, unless sources cited apply the other one.

⁴⁷ European Convention on Nationality, Strasbourg: E.T.S, 166 (1997), <http://conventions.coe.int/Treaty/en/Treaties/Html/166.htm> (last accessed on 26 March 2014) (www.bioethics.ie)

⁴⁸ *Ibid*

⁴⁹ *Ibid*, Article 2(a).

⁵⁰ Donner, Ruth, “*The Regulation of Nationality in International Law*” (N.Y.: Transnational Publishers, Inc., 2004) AND *The Universal Declaration of Human Rights: A Common Standard of Achievement*, (The Hague/ Boston/ London: Martinus Nijhoff Publishers, 1999) 297-323 (www.kheops-konferencia.hu)

⁵¹ “Principles drawn from the treaty provisions on state responsibility for interference with navigation on the high seas”, Hamburg studies on Maritime affairs, (2007)

⁵² 1955, I.C.J, 4

2.2 Nationality and Legal Areas for Acquisition

Nationality is a membership of individual in a state for participation in national and international decision making policies. It gives protection, respect and honour before other states. There are some pre-requisites to acquire nationality e.g. when a person takes birth in a state, acquires nationality through parents, or by immigration for different purposes. However, different states have distinguished criteria to award nationality according to their local laws.

2.2.2 Nationality by Birth

How newborn children acquires nationality is a factor in the policies of states regarding nationality. However, scholars have divided acquisition of nationality between two principles based on “*jus soli*” (The law of the soil) and the “*jus sanguinis*” (the law of hereditary). The former principle indicates the vesting of nationality through birth in the state, while later relates to the acquisitions of nationality through ancestors. Moreover, many a states are practicing one or both principles but mostly states are observing “*jus sanguinis*” the law of hereditary only. The implementation of law is examined on second or third immigrants when a child born in an alien state and acquires the nationality of that state involuntary. However, states are practicing “*jus soli*” in various behaviors:

1. States award nationality without considering status of immigrants’ parents as lawful or unlawful in the state.
2. Although certain states strictly observe conditions for awarding nationality.

The apparent difference is between the states that allows “*jus sanguinis*” and “*jus soli*”. In fact the granting of birth nationality reflects the tolerant policy of states towards the nationality policies.

Birth rights of citizens are followed by only few developed states. The example is found only from United States and Canada that are following *jus soli* principle.⁵³ European states have been avoiding *jus soli* principle since 2004.⁵⁴ However, total thirty two out of 193 states of United Nation members have confirmed the principle of *jus soli* for acquisition of nationality.⁵⁵ Those states are as following:

Antigua and Barbuda	Argentina
Belize	Bolivia
Barbados	Brazil
Canada	Costa Rica
Dominica	Ecuador
El Salvador	Fiji
Grenada	Gautemala
Guyana	Honduras
Jamaica	Lesotho
Mexico	Nicaragua
Venezuela	Panama

⁵³ Ronald D. Rotunda, "Birthright nationality benefits the country" *Chicago Tribune*, (2010)

⁵⁴ Gilbertson, Greta., *Nationality in a Globalized World* (Migration Policy Institute), January 2006)

⁵⁵ Feere, Jo, "Birthright Nationality in the United States: A Global Comparison". Center for Immigration Studies, (2010) (www.cis.org)

Tuvalu	United States
Saint Kitts and Nevis	Paraguay
Peru	Trinidad and Tobago
Saint Lucia	Uruguay
Saint Vincent and the Grenadines	Pakistan

2.2.3 Nationality through Naturalization

Naturalization is defined as:

“Granting nationality to aliens by formal pieces of work and services”.

This is also a mode to acquire nationality. There are distinctive reasons to grant naturalization i.e. ranging from services for states or ethnic or other groups affiliations to residences. This is the most common reasons for acquisition of voluntary nationality. Local laws are different not only with regards of conditions for acquisition but it also distinguishes frequently between the naturalization and also naturalization as an individual rights but naturalization by discretion. European Union has changed trends with the changes of human rights implications about nationality. They have granted certain categories to foreign individuals regarding nationality which is judicially enforceable under naturalization. However, ECN is very careful about interpreting the acquisition of nationality that is given under Article 6 of ECN, 1997.⁵⁶ Moreover, Article 12 of the ECN, 1997 says that the

⁵⁶ Article 6, European Convention on Nationality, 1997

judiciary and the administration have right to grants retention, losses or recoveries of nationality.⁵⁷ Convincingly, it does not change important obligations laid down under Article 6 of ECN, 1997. It describes that states have not sole discretionary power regarding nationality but an individual may challenge their decisions.

The criteria to grant nationality by naturalization sometimes create conflicts to claim nationality. It has also other criteria such as long-term residence, adoption, marriage and some important links including immigration with intention of permanent residence can be sufficient ground for acquisition of nationalities. Sometimes conflict arises with connection of states to give diplomatic protections to certain persons on grounds of their temporary residences with intent to individuals to associate them with states. A famous “Nottetbohm” case⁵⁸, the ICJ has developed a theory of genuine link as a pre-requisite for state to grant diplomatic protections to individuals against another state. The court demands legitimate links of subsistence, importance and sentiments collectively with the survival of mutual rights and duties as prerequisites to obtain internationally acknowledged claim by nationals. So, the rule of “genuine link” clearly reflects that states have unlimited freedom to lay down rules for own nationals. However, the best way to enter into accord with different states of different demographics is based on the competency of states. On the other perspective a state cannot assert the implementation of its policies on the other states except to acts upon the rules to make in conformity with laws for the protection of its citizens against other states.

⁵⁷ Article 12, ibid

⁵⁸ Nottetbohm case, (Liechtenstien V. Guatemala); second phase, I.C.J. Reports 1955, p-4, General list No. 18, (Last accessed on 18 May, 2014) (www.unhcr.org)

It is asserted that as matter of principle a state may grants nationality only to those citizens who have certain links to recognize state practices. Moreover, Federal Constitutional Court in Germany held in 1952 that a state can only confers rights of nationality to the persons who have close connection to the states.⁵⁹

2.2.4 Nationality by Immigration

Nationality rules include whether a state permits to acquire dual nationality or not. The key difference is about naturalized citizens or those who born in alien states; the states grant them dual nationality. There are many states that permit first-generation immigrants to hold naturalized citizenship with holding existing nationality. In other words there is an amicable distinction in what might be called “emigrant dual nationality” which effects to the sending states. It often serves to promote and maintain strong linguistic and cultural connection to the permanently residing people of another state. Moreover, “immigrant dual nationality” that permits for assimilation to aliens as naturalized citizens who have decided permanently residing and working in host states. The distinction is crucial with relation to the historical emigrant states like Greece, Germany, Italy, Ireland, the Netherland, Spain, United Kingdom and Portugal. All these states are promoting Diasporas and ethnic heredity who are residing in other states and also striving for maintaining their original nationality. But few states have extended their immigration policies within their borders. Awarding dual nationality to immigrants has become higher standard that is associated to more liberal nationality policy.⁶⁰

⁵⁹ Generally Leibholz, The Federal Constitutional Court in Germany and the "Southwest Case," 46 Am. POL. SCI. REv. 723 (1952); Von Mehren, Constitutionalism in Germany-The First Decision of the New Constitutional Court, 1 Am. J. Comp. L. 70, 78-79 (1952). (www.anayasa.gen.tr)

⁶⁰ P. Weil, *“Access to Nationality: A Comparison of Twenty-Five Nationality Laws”*. (Los Angeles: University of California, 2001) 17-35. (aei.pitt.edu)

There are three basic principles which mostly states follow for nationality. These are as under:

1. Nationality by birth;
2. Nationality by naturalization; and
3. Accepting dual nationality for immigrants.

These are coded separately and systematically in a comprehensive form to achieve more clear and precise picture of disparity within EU states that have been collected through various case studies, edited volumes and detailed policy analysis. There are certain limitations over tolerating many exceptions and qualifications specifically to nationality policies. In the social world one is able to promote various intricate categories for comparing across the world.⁶¹

2.3 Tolerance for Dual Nationality

Dual nationality has been tolerated by many states in the world.⁶² This practice counters the hostility toward dual nationality among European states. The “Convention Strasburg, 1963” on cases for the reduction of multiple nationalities and military services in case where multiple nationals indicate that states do not agree to approve dual nationality because it refers to national identity, membership and conflict of two states citizenship. A considerable development in the members of dual citizens of states has been made.

1. The increasing dual nationals are legitimating their rights under convention on human rights.

⁶¹ Ibid.

⁶² R. Baubock, E. Ersboll, K. Groenendijk and H. Waldrauch (eds.), “Acquisition and Loss of Nationality: Comparative analysis Policies and Trends in 15 European States”, Vol. 2, (Amsterdam: Amsterdam University Press, 2006) (aei.pitt.edu)

2. The gender non-discrimination of citizenship means the married women are free to get nationality which they can render to their descendants.⁶³

Consequently, the ECN, 1997 is impartial on issue of dual nationality.⁶⁴ There are different factors, i.e. society, economics and politics which affect the acceptance or resistance dual nationality. Only a few states like UK, U.S.A, Canada etc. are not paying heed to dual nationality and allow dual nationals to participate in public and government services.⁶⁵ Nationality has been classified into three major types:

1. Immigration;
2. Emigrant;
3. Finally the overlapping category of emigrants are member states in Eastern and Central Europe who have liberalized their dual nationality policy for awarding or reviving nationality to diasporas and relations minorities residing foreign states.⁶⁶

2.4 Regulation of Dual Nationality in International Law

States were reluctant to grant dual nationality in past. However, later on international law took steps to legislate and allowed dual nationality according to the status of persons on case to case bases. States were entered into treaties and concluded Hague Convention, 1930, Harvard Convention, 1930. These conventions were milestones in the history of dual nationality that

⁶³ B. De Hart and R. Van Ores, "European Trends in Nationality Law", (Amsterdam: Amsterdam University Press, 2006), 317-357 (aei.pitt.edu)

⁶⁴ K. Hailbronner, "Germany Country Report. Eudo Citizenship Observatory", (2009) <http://EUDO-Citizenship.eu/does/country reports/ Germany.pdf> (vecchiocontinentenuovicittadini.edu) (last accessed on 23 May, 2014)

⁶⁵ B. De Hart and R. Van Ores, "European Trends in Nationality Law", (Amsterdam: Amsterdam University Press, 2006), 317-357 (www.cidob.org)

⁶⁶ Baubock et al. 2007

eradicated all confusions about status of married women with foreign nationals and dual nationals.

2.4.2 Early Multilateral Attempts to Regulate Dual Nationality

Initially, considering the factor of loyalty, states were reluctant to accept reality of dual nationality. Later, on international community realized sensitivity of the issues and entered into different conventions and treaties to approve status of dual nationality. Nationals were losing their fundamental rights because when a citizen acquired dual nationality he automatically lost the nationality of first state. So, they became second class citizens that international community decided to change accordingly and signed number of treaties.

2.4.2.1 The Hague Convention, 1930

In 20th century, several attempts were made to reduce or resolve conflicts on dual nationality. The first attempt was made by organizing “The Harvard Draft” that was presented in “Hague Conference” which prevented states to practice dual nationality. Another conference was held on dual nationality that was known as “League of Nations”; the league for codification of agreed rules. The league achieved major success by concluding treaty on conflict of nationality laws.

The Conference had three basic agendas to be discussed:

1. Nationality laws of various states;
2. Territorial waters; and
3. Responsibility of the state to protect life and property of aliens in states.

Article 10 of Hague Convention states that every individual has the right to one or more nationalities based on *Jus soli* and *jus sanguinis*.⁶⁷ Article 12 of the Convention articulates that a person must have only one nationality after the age of 23 years. If he has two or more than two nationalities, he must retain the nationality of the state where he habitually resides.⁶⁸

2.4.2.2 The Harvard Draft Convention, 1930

There are some provisions which are reluctant to award dual nationality unless and otherwise provided under the convention. When a naturalized person gets nationality of another state, consequently he will lose his first nationality.⁶⁹

Moreover, it is stated that when a state or part of the state acquires nationality, the citizens of predecessor state will acquire nationality of the successor state unless they relinquish by their own.⁷⁰

“The Convention on Certain Questions Relating to the Conflict of Nationality Laws, 1930” under Article, 2 says that states can award nationality to each and every person despite of multiple nationalities.⁷¹ Article, 3 of the Convention further states that a person is a national of all those states of which he possesses the nationality.⁷² Article, 5 states that if a person has more than two nationalities, his latest nationality will be considered or where he habitually resides.⁷³

It should be permitted in provisions that a person may possess one or more nationalities. The Convention also states that a person can hold nationality of his choice. However, if a person

⁶⁷ Hague Convention, 1930. Article, 10

⁶⁸ Harvard Draft Convention on Nationality, 1930, Article, 12

⁶⁹ Ibid, Article, 13

⁷⁰ Ibid, Article, 18

⁷¹ The Convention on Certain Questions Relating to the Conflict of Nationality Laws, 1930, Article, 2

⁷² Ibid, Article, 3

⁷³ Ibid, Article, 5

surrenders his one of the nationality by using his legal authority, his authorization cannot be refused on any ground. His nationality which is surrendered will be accepted.⁷⁴

2.4.2.3 Importance of Dual Nationality in Stateless status

Nationality is a legal bond between a person and a state but a stateless person is free from any such bond. The status of statelessness is very harmful for world where every stateless person is not bound by any law and does not enjoy protection of any state. It is violation of human rights which is prohibited under Article 15, of the Universal Declaration of Human Rights, 1948 (UDHR) states that every individual has the right of a nationality.⁷⁵ UDHR does not determine the nationality of which state but focuses on acquisition of nationality of any state.

Dual nationality is not harmful because dual national has legal bond with two states simultaneously and enjoys states protections. They obey laws of states and dealt accordingly under those laws. It is also one of the ways to reduce statelessness in the states. The Convention on the Reduction of Statelessness, 1961 states under Articles 5 to 7 that if a person acquires nationality of another state, he should not renounce before acquisition of another nationality. No individual is allowed to be a stateless person even for a moment.⁷⁶

2.5 Dual Nationality in the World

Dual nationality occurs when a person holds nationality of two or more states at the same time. There are three sources for holding dual nationality:

1. By birth;
2. By marriage; and
3. By naturalization.

⁷⁴ Ibid. Article. 6

⁷⁵ Universal Declaration of Human Rights, 1948, Article. 15

⁷⁶ The Convention on the Reduction of Statelessness, 1961, Articles, 5-7

The proliferation of dual nationality arises by high level of immigration to certain states or some people who are economic ladders are used to live foreign states. In fact, all three sources as mentioned above are inevitable bases for dual nationality. Simultaneously dual nationality by naturalization is magnified by changing laws. A number of states have explicitly expressed that a person who holds naturalized citizenship of other states he cannot lose his previous nationality. In order to address the issues with regard to retention of previous nationalities many states have amended their laws i.e. Canada-1977, Portugal-1981, Elsalvador-1983, Trinidad and Pakistan-2002, Colombia-1991, Tobago-1988, , Italy-1992, Brazil-1996, Hungary-1993, Costa Rica and Ecuador-1995, The Dominican Republic-1994, Sweden-2001, Mexico-1996-1998, Philippines and Australia-2003. Many other states are ready to legislate on dual nationality such as Finland. Moreover, India has passed a bill in 2003 to grant nationality to the PIOs anywhere in world.⁷⁷ However, South Korea is also supporting the same amendments. The only Czech Republic has strictly forbidden dual nationality to its citizens since 1993.

2.6 Benefits of Dual Nationality

Different states have sought to liberalize their dual nationality laws to take benefits i.e. Philippines, India and Mexico.⁷⁸ These states have realized benefits of dual nationality due to

⁷⁷ "The citizenship amendment bill approved on December 2003, that allows citizenship in sixteen states like, (Sweden, Israel, Switzerland, Portgal, Cyprus, Greece, France, New Zealand, Australia, Finland, The Netherlands, Italy, Ireland, Canada, United Kingdom and United States."

(Francesca Maggolari, "*Determinants of Naturalization: The Role of Dual Citizenship Laws*", San Diege: University of California press, (2005), 6

⁷⁸ Renny Demayanti Mallon, "*Dual Citizenship Benefits*", (2014)

<http://www.petisidkindonesia.com/dual-citizenship-benefits/> (last accessed on 12 May 2014)

which they are introducing various ways to keep nationals under their authority as India has introduced Non-Residential Indians (NRIs).⁷⁹

2.6.1 Economic Benefits

Dual nationality is sought for economic benefits in business transactions. Mostly states are offering low taxes to its nationals which attracts to foreign businessmen to acquire dual nationality for getting economic benefits.⁸⁰

2.6.2 Easy Inter-State Movement

Dual nationality is also very helpful in easy travel from one state to another state. A national of one state can get visa easily without any hardships and hindrances which is helpful for businessmen to expand their business in the world.⁸¹

2.6.3 Strengthening Culture and Tradition

Teaching culture and tradition is also one of the benefits of dual nationality. Dual nationals travel from one state to another state with their customs and traditions which is helpful for next state to understand different cultures. They can be ambassadors of the states which leave good impact for people and their traditions. It also gives rights and good picture of the state without any ambiguity. It is also very helpful for children to seek different cultures with relation

⁷⁹ <http://indiandiaspora.nic.in/diasporapdf/chapter36.pdf> (last accessed on 12 May, 2014)

⁸⁰ Renny Demayanti Mallon, “*Dual Citizenship Benefits*”, (2014)
<http://www.petisidkindonesia.com/dual-citizenship-benefits/> (last accessed on 12 May 2014)

⁸¹ Renny Demayanti Mallon, “*Dual Citizenship Benefits*”, (2014)
<http://www.petisidkindonesia.com/dual-citizenship-benefits/> (last accessed on 12 May 2014)

to different states. A child can be more mature and healthy with his connection to multicultural states.⁸²

2.6.4 Dual Diplomatic Protection

One can also enjoy dual diplomatic protection by holding dual nationality. In case of any trouble both states may help to their nationals.⁸³ However, “The Convention on Certain questions relating to the conflict of nationality laws” has prohibited that a state cannot help its nationals against the state whose dual nationality he obtains because it creates conflicts of laws to which international law has tried to remove.⁸⁴

2.7 Loss of Nationality

Loss of nationality is of no importance in nationality laws than acquisitions of nationality. The most important aspects of loss of nationality that are much considered under international law are relating to a numbers of stateless status of citizens because international law does not encourage this status. By keeping in view the issue of stateless persons, states have various ways to loss of nationality.⁸⁵

For example European Union has limited scope in loss of nationality. It has widely recognized the voluntarily acquisition of nationality does not mount to automatic loss of genuine nationality.

⁸² ibid

⁸³ ibid

⁸⁴ Convention on Certain Questions Relating to the Conflict of Nationality laws, 1930. Article. 4. (www.unhcr.org)

⁸⁵ Shachar, Ayelet, “Picking winners: Olympic Citizenship and the global race for talent”, Yale Law Journal, (2011) <http://eudo.citizenship.eu> (last accessed on 12 May, 2014)

The primary source for loss of nationality in a state is a lack of genuine connection by a foreigner. However, many states also cancel nationality of a citizen when he acquires nationality through fraud or misrepresentation. For example UK, U.S, Pakistan has such provisions when a person by fraud or misrepresentation acquires nationality, he will lose his nationality and charge in criminal law. A national may also deprives of from nationality when he expresses his disloyalty towards the state.

2.8 Grounds for Loss of Nationality

There are following ways to loss of nationality:

2.8.1 Involuntary

1. Loss of nationality by involuntary action or at the edge of the state.
2. Voluntary renunciation of nationality by the citizen.

Involuntary loss of nationality involves the genuine connection of recognition is missing or sanction for specific behaviour is missing.

States practices for the loss of nationality are as under:

2.8.2 Naturalization of Parents in Alien State

Canada gives different ways to loss of nationality. It may be due to naturalization of parents, naturalization in alien states, and long term disappearance from Canada. A citizen may also lose nationality when he starts his military services in foreign states.⁸⁶

⁸⁶ Section. 8, Citizenship Act, 1947

2.8.3 Loss through Expatriation

Every citizen has the right to retain U.S nationality until he renounces voluntarily. If any U.S citizen commits any expatriate act against the state, he will lose his nationality. The expatriate is an activity that cannot be tolerated in any case because expatriating means lose all rights and duties within state.⁸⁷ According to Supreme Court of U.S, if any citizen voluntarily commits any expatriating act, the government will decide the intention of the expatriating. If he has committed expatriating with intention of relinquishes the nationality, he will lose it voluntarily.⁸⁸

2.8.4 Loss by Discretion of State

There are twelve states that have maintained grounds for loss which are Denmark, The Czech Republic, Germany, Lithuania, Spain, Austria, Norway, Slovakia, and Estonia. Some states automatically cancel their nationality, while in other cases states have discretionary powers to withdrawal of nationality. For example Ireland applies this procedure only to naturalize citizens and Latin. Moreover, some states have significant exceptions to the rule i.e. Spain, Germany and The Netherland.⁸⁹

⁸⁷ INA 1952, Section 349

⁸⁸ Afroyin V. Rusk, Vance V. Terrazas

⁸⁹ Gerard Rene de Groot and Marten, “Loss of Citizenship”, EUDO Citizenship policy brief No. 3, Maastricht University and Iseult Honohan.

<http://eudo.citizenship.eu> (last accessed on 12 May, 2014)

2.8.5 Voluntary Renunciation by Citizens

However, loss of nationality can only be resulted by the voluntary actions of the citizens.

If nationality is terminated without voluntary action of citizens, it will be against fundamental rights and freedoms of citizens.⁹⁰

2.8.6 Termination of Nationality by Actions of States

Despite the actions of the citizens the states have discretion to terminate nationality by various ways;

- a) There are many states like Finland, Cyprus, France, Belguim, Denmark, Iceland, Malta, Spain, Norway, Netherland, Switzerland and Sweden renounce the nationality due to permanent residence abroad. This is applied to the states where citizens previously lived in the state and now have immigrated to another state or who acquires nationality by descent and never lived in the state in question. Certain states like Romaina, Turkey, Greece, Italy, Bulgaria, Hungary, Poland, Slovakia, and Moldova do not provide loss of nationality on the ground of either voluntary acquisition of another state or through permanent residence.⁹¹
- b) Loss of nationality by fraud or non-renunciation of nationality is also the cause for loss of nationality. There are certain states that have provisions regarding fraud. They say that a person will loses nationality when he acquires through fraud or misrepresentation. Some

⁹⁰ Immigration and Nationality Act amendment 1986, U.S. Pub., L. No. 99-653, S-18, 100, stat.3655

⁹¹ Gerard Rene de Groot and Marten, “Loss of Citizenship”, EUDO Citizenship policy brief No. 3, Maastricht University and Iseult Honohan.

<http://eudo.citizenship.eu> (last accessed on 12 May, 2014)

states have no provisions regarding fraud those states include Iceland, Poland, Sweden, Croatia, Italy, Slovakia and the Czech Republic.⁹²

- c) A citizen may also lose his nationality when he voluntary joins military services and foreign non-military public services. For example, France, Germany, Austria, Spain, Moldova, Estonia, Lithuania, Latvia terminate nationality of those citizens who have military services. Some states provide withdrawal will be determined by the states only. There are some states that have approved loss of nationality by joining any public service in alien states i.e. Turkey, Italy, Slovenia, Greece, Austria, Estonia and France.⁹³
- d) Serious prejudicial behavior towards the states is also one of the causes for loss of nationality. This cause is very problematic because it depends upon the discretion of authority but it applies very rare.⁹⁴
- e) A nationality of children may also be lost when they are adopted by their foreign parents or by nullifying the nationality of parents.⁹⁵
- f) There are many states that do not extend the loss of nationality from parents to minor children e.g. UK, Cyprus, Lithuania, Italy, Estonia, Spain, Portugal, Germany, Hungary, Malta, France, Greece, and Moldova. However, European Convention on Nationality has applied this principle in cases when parents voluntarily renounce their nationality. States

⁹² Ibid.,

⁹³ Ibid.,

⁹⁴ Ibid.,

⁹⁵ Ibid.,

that have loss of nationality from parents to minor voluntarily are Norway, Austria, Netherlands, Belgium and Denmark.⁹⁶

- g) When a state has some conditions to maintain nationality but a citizen fails to fulfill those conditions, he will lose his nationality. For example Germany has provisions that foreign parents can retain their nationality by surrendering the nationality between the age of 18 and 23.
- h) A person who permanently resides abroad and acquires their nationality then he has to renounced his previous nationality.⁹⁷

Many a states have demanded to renounce nationality with some conditions against protecting the statelessness. While some states cancel nationality of persons by simple declaration. However, some other European states are not ready to relinquish their citizens. So, they have refused to release their immigrants from different states i.e. Arabs, several Asian states and Latin America. They may not renounce nationality of their origin when they apply for naturalization in United States. So, these are exceptional cases when dual nationals are accepted.

Conclusion

This chapter clearly indicates that nationality is important factor to award rights and privileges. So, nationality is awarded with some conditions that are necessary. When a person acquires nationality of more than one state it is called dual nationality. It gives benefits to dual nationals by easy travel; strengthen cultures and traditions and diplomatic protection. Moreover, dual

⁹⁶ Ibid.,

⁹⁷ Article 8, European Convention on Nationality, 1997

nationals may also lose their nationality on various grounds from a state because it is not necessary for both states to have laws with compatible to other states' laws.

CHAPTER No. 3

LEGAL STATUS OF DUAL NATIONALS IN PAKISTAN

INTRODUCTION

Before 1951 dual nationals were not considered nationals of Pakistan. Later on Pakistan realized the importance of nationals, and overseas Pakistanis and decided to own and gives them protection. Pakistan has always encouraged their role in economics development by sending remittances. By this reason Pakistan has passed Citizenship Act, 1951 (herein called “The Act”) and determines the acquisition of nationality and dual nationality. The Act enumerates various sources to acquire and renunciation of nationality.

Issue of dual nationality has fiercely been emerged in Pakistan since, 2011 when petitioners approached Supreme Court (SC) of Pakistan for the implementation of Article 63 of The Constitution. In such era of legal regime SC observed that dual nationality divides the loyalty and causes dual nationals to lose some rights e.g., right to file suits against states for public interest. But the petitioner can only file petition relating to his personal interests.⁹⁸

Indeed they demanded that the immigrants should not be allowed to dual nationality because immigrants of dual nationality retain their nationality to the birth states.⁹⁹ But this has been paid a little heed in constitutional petition by Supreme Court of Pakistan that benefits of dual nationality are more because they are sending remittances in Pakistan annually that is a major source for reduction of poverty in the state.¹⁰⁰ Dual nationals are also good ambassadors of

⁹⁸ PLD 2013 SC 413

⁹⁹ Francesca Mazzolari, “Naturalization and its determinants among immigrants from Latin America: The role of dual citizenship rights”, *Latinos and the Economy*, (2011)

¹⁰⁰ Dilip Ratha, “*Migration Policy Institute*” Vol. 8, (2013), (last accessed on 8 March 2014)

the states and they can communicate their customs and traditions like an ambassador of a state. They can leave good images on behalf of other nationals to second state and attracts their investment.

Dual nationality is demanded for easy travel, business benefits, and economics development. There are dual national Pakistanis who are living abroad but their hearts and souls are always with Pakistan. They are more concerned and anxious for Pakistan. However, there is no any reason to doubt on their loyalty only on the ground of their pledge to other states.

By shifting relationships between nation states the emergence of democracies, the development of international trades and commerce, and diminishing prospects of war, more than half of the world has now tolerated some kinds of dual nationality.

Pakistani law allows Pakistani citizens to have dual nationality with some limitations to contest elections and cast votes. This means that all rights guaranteed under the Constitution, including the right to votes, fundamental rights, participation in matters of public importance and access to courts, have become available to them but lacks of representation in the Parliament. Law of nationality in Pakistan that governs nationality rules was passed on 13th April 1951 as an Act.¹⁰¹

3.2 Dual Nationality in Pakistan

Dual nationality is a very old concept that is traced to nation-state system. Modern dual nationality is inherited to Pakistan at the time of independence when dual nationals also kept political posts. First, dual national of Pakistan was Plenipotentiary Minister to U.S. Muhammad Asad in 1952. He was national of Austria and Pakistan. However, prohibition for the

¹⁰¹ <http://embassyofpakistanusa.org/dual.php> (last accessed 13 march 2014) 2:30 pm

parliamentarians to acquire dual nationality and their disqualification was enacted in Article 63 of the Constitution.¹⁰²

Since independence, increase in Pakistani nationals in Europe, Middle East and North America has caused to numerous amendments in Pakistani laws of nationality.¹⁰³ However, dual nationality has been permitted under the Act, 1951.¹⁰⁴

Since 14th August 1947, citizens of Pakistan have been migrating to many states of "Middle East, Europe, and America" for employment. Citizenship Act, 1952 allows dual nationality with some restrictions because many a states have allowed it. Now the Act clearly describes that a person having dual nationality of those states that have been allowed by the Government of Pakistan through special treaty will remain citizens of Pakistan.¹⁰⁵ On the other hand, article 63 of the Constitution prohibits dual nationals to contest elections or to represent the country.¹⁰⁶

3.3 The Citizenship Act, 1951 and Provisions Regarding Politics

The Act has passed on April 13th, 1951 to determine dual nationality of Pakistanis. The citizenship Act has been amended many times since its enforcement, 1951. However, this act describes the acquisition and loss of nationality. The Act contains 23 sections but will discuss only relevant provisions of nationality and dual nationality.¹⁰⁷

¹⁰² Ayesha Ijaz Khan, "Targeting Dual Nationality" (last accessed on 13 March 2014) <http://www.ayeshaijazkhan.com/docs/Targeting%20dual%20nationals.pdf>, 2:30 pm

¹⁰³ Martin Baldwin Edwards, "Migration in the Middle East and Mediterranean" Greece: GCIM, (2005).

¹⁰⁴ Pakistani Nationality Act, 1951, <http://embassyofpakistanusa.org/dual.php> (last accessed 13 march 2014), 2:30 pm

¹⁰⁵ Section 14 (3) of Citizenship Act, 1951,

¹⁰⁶ The Constitution of Islamic Republic of Pakistan, 1973, "ARTICLE 63

¹⁰⁷ Amendments of Citizenship Act, 1951 on 1952, 1972, 1973, 2000.

The main sections to get nationality are as follows;

Section 3 of the Citizenship Act, 1951 describes that every citizen will be considered the citizen of Pakistan since 13th April 1951 whose parents and grandparents born in Pakistan or India since 31 March, 1937. The provision has also classified those naturalized British in Pakistan will be nationals of Pakistan.¹⁰⁸ Moreover, it has been given under citizenship Act, 1951 that any person if naturalized in Pakistan after enactment of the Act, he will be the citizen of Pakistan except his father should not be enemy of Pakistan.¹⁰⁹

Moreover, Section 5 and 6 of the Act describes the acquisition of nationality. These provisions express the “nationality by descent” when parents of children are nationals of Pakistan, their children will automatically be the nationals of Pakistan.¹¹⁰ It later describes that nationality can be obtained through migration by a person from India to Pakistan before January 1952. Those immigrants will acquire nationality of Pakistan.¹¹¹

Section 7 of the Act, 1951 discusses the reasons to lose the nationality; if a person migrates to any states like India, he will permanently lose nationality of Pakistan except when he returns to Pakistan for permanent residence with permission of legal authorities.¹¹²

¹⁰⁸ According to Pakistan Citizenship Act,1951 “*Section 3*”

¹⁰⁹ Ibid, “*Section 4*”

¹⁰⁹ Ibid, “*Section 5*”

¹¹⁰ Ibid, “*Section 5*”

¹¹¹ Ibid, “*Section 6*”

¹¹²Ibid, “*Section 7*”

Section 14 of the Act is about denial of nationality and acquisition of dual nationality. The provision says that nationality of Pakistan is granted to persons when he relinquishes his nationality of another state, if any, because the Act only permits single nationality except the state has permitted to get another nationality from contracting states.¹¹³ Indeed, under section 14A of the Act deals with the renunciation of nationality when a person pledges his allegiance to another state, he will be deprived of nationality except the child under the age of 21 years. A child can resumes nationality after the age of 21 years when he leaves his second nationality.¹¹⁴

Deprivation of nationality is also discussed under section 16 of the Act that says that a person who acquires nationality by false information, he will lose his nationality. Even if his loyalty is doubted or he is engaged in a war against the state, he will lose his nationality accordingly.¹¹⁵ Provision of the Act, 16-A discusses about persons who have voluntarily left Pakistan for Bangladesh or have stayed in Bangladesh after 16th December, 1971.¹¹⁶

3.3.1 The Representation of People Act, 1976

The Act clearly indicates that a person cannot be elected Member of Parliament if he holds dual nationality.¹¹⁷ The Act has its meaning according to the constitution of Pakistan that also prohibits dual nationals to represent the state. Pakistan has enacted laws to stop dual nationals' interference in politics of Pakistan that is yet to implement because of influence by dual nationals on parliamentarians.

¹¹³ Ibid, “Section 14

¹¹⁴ Ibid, “Section 14A

¹¹⁵ Ibid, “Section 16

¹¹⁶ Ibid, “Section 16A

¹¹⁷ The Representation of the People Act, 1976, Section, 9

3.4 PAKISTAN'S DUAL NATIONALITY AGREEMENTS

Initially, Pakistan completely prohibited acquisition of dual nationality. It was stated in Citizenship law if any person acquired nationality of another state, would renounce nationality of Pakistan. But in 2010 Pakistan has amended law and entered into treaty with thirteen states that allows citizens to acquire nationality of these states without losing previous one. The citizens who acquire nationality from any of the state, he can apply for National Identity Card for Overseas Pakistanis (NICOP).¹¹⁸ Following are the states with which Pakistan has dual nationality agreements:

United Kingdom	United States
Canada	Australia
New Zealand	France
Ireland	Belgium
Iceland	Netherlands
Sweden	Switzerland
Italy	Syria
Jordan	Egypt

¹¹⁸<http://www.Pakmission.Uk.gov.pk/HC/nicp.asp> (retrived on 18 march 2014) 04:15, pm

3.5 Loyalty and the Concept of Dual Nationality

Loyalty is a pledge of allegiance that a person makes to another person or state. Loyalty is divided when a person pledges his allegiance to two or more persons or states. Loyalty to one state can be helpful for the citizens to protect the country in trouble. Dual nationality divides loyalty for states because it is presumed that dual nationals can share secrets of states with other states when they hold important office in first any state.¹¹⁹

Supreme Court (SC) of Pakistan has disqualified a number of parliamentarians due to their division of loyalty because they hold dual nationality in 2012 and 2013. The main reason behind disqualification is division of loyalty of parliamentarians due to their multiple nationalities. Some parliamentarians have taken oath of two or more states at the same time and affirm on oath to protect respective states against any attack. But in case of war between two states that have granted nationality to a person, the question rises to whom the national will supports. This is the main question which has forced judges to disqualify the parliamentarians from their offices.¹²⁰

A national of Canada takes oath of pledge allegiance to the Queen of Canada and affirms to protect the state in trouble. However, the same person if holds nationality of Pakistan and also pledges his allegiance to the state and declares that he will protect the state whenever the state needs.¹²¹ In such condition dual nationals fail to decide their loyalty to which state they should protect. The division of loyalty creates hindrances to permits dual nationality and contest elections.

¹¹⁹ PLD 2012 SC 1089

¹²⁰ PLD 2013 SC 413

¹²¹ Ibid.,

3.5.1 Litigations about Dual Nationality in Pakistan

Series of litigations have been started in Pakistan in last few years. There were many cases regarding dual nationality e.g., Syed Mahmood Akhtar Naqvi versus Federation of Pakistan, Nawabzada Iftikhar Ahmad Khan Bar vs. CEC (Chief Election Commission) and Tahir Ul Qadri Vs Federation of Pakistan. Many parliamentarians were disqualified due to their dual nationality under the Constitution of Pakistan, 1973.

Dr. Tahir Ul Qadri, "a religious scholar" is one of those dual nationals who have more than one nationality, one of Pakistan and the other is Canada. He filed writ in Supreme Court for reconstitution of Election Commission of Pakistan (herein after called ECP). Chief Justice Iftikhar Chaudry of SC heard the case and dismissed on ground of his dual nationality. Supreme Court observed the applicant had pledged to Canadian Queen and taken oath for her loyalty. His loyalty has been divided due to double nationalities and he can travel around the world with passports of both countries. Even Dr. Qadri has not any stake and interest in the country because he has come few days before long march to Islamabad. Moreover, petitioner cannot prove his fundamental rights are violated due to non-implementation of the Constitution. Supreme Court declares the nationals of Pakistan have rights to hold dual nationality without losing first one. But in accordance with article, 63 of the Constitution, the person is debarred in participating political activities or to contest elections due to dual nationality. With respect of vote casting, Article 51 (2)(c) of the Constitution and Section, 6 of the Electoral Rolls Act, 1974 declares that a dual national cannot cast vote unless his name is incorporated in the electoral rolls. On such grounds Supreme Court dismissed petition.¹²²

¹²² PLD 2013 Supreme Court 413

Another petition was filed by Mahmood akhtar Naqvi against holders of political offices by dual nationals. That petition was against senators and parliamentarians who were holding offices due to their nationalities pre and post elections. According to honorable judges, if any citizen of Pakistan holds dual nationality before elections, he will be ineligible to submit his nomination papers. Even if parliamentarians have been elected and later found to holds dual nationality of any foreign country, they will be disqualified accordingly. Supreme Court further says that Article 63 is about dual nationals to be ineligible to submit their nomination papers. Further, Article 63-A says that all those who have been elected as members of Majlis-a-Shura but they have more nationalities will be disqualified to become members of parliament.¹²³

In above precedents Supreme Court pointed out the foremost and important points about division of loyalty due to two nationalities. A citizen pledges allegiance to both states and take oath for the protection accordingly.

In judgments of Supreme Court of Pakistan about dual nationality, judges fail to provide evidences that can prove a dual national is disloyal to the country. There are many examples about the loyalty of dual nationals like “Farah Naaz Isfahani” (ex-parliamentarian) whose forefathers have played key role for independents movement of Pakistan. She has donated her house to the embassy of Pakistan in the United States her loyalty is also questioned by SC. Only dual nationality is not issue for division of loyalty but intention of a person counts. When a person renounces dual nationality and holds political and constitutional post is not a justification for his recovery of loyalty. Governor Muhammad Sarwar in Punjab is an example; because he was dual national of UK and Pakistan, before holding Governorship he renounced his nationality

¹²³ PLD 2012 SC 1089

of UK. When we accept his loyalty then we can also accept loyalty of dual nationals also. Despite of criticism on dual nationals CJ admired the performance of Rehman Malik (interior minister) for his services in counter terrorism and keeping peace and security in the state. So, contradiction aroused in presumption of CJ where on one hand he was criticizing dual nationality and on other hand admiring performance of their and their forefathers for Pakistan.¹²⁴

So, all this is hypothesis that a dual national can be harmful for the country. But actually single nationals can also damage the country i.e. Dr. Shakeel Afridi has played anti-state role in “Osama Bin Laden” operation in Abbottabad.

3.6 Benefits of Dual Nationality in Pakistan

There are millions of Pakistanis who have dual nationalities in various states. They are supporting Pakistan in all ways through which they can do. Dual nationals are diamonds for developing states that sends their earnings to their families in Pakistan through remittances which contributes in development of economy of states. They also support different welfare foundations for contributing good services in their homeland. Moreover, dual nationals protect the state's interest in foreign states in case of any trouble in home land. The benefits are given in detail below;

3.6.1 Remittance: The Contribution of the Dual Nationals in the Economic Development

There is no particular definition of Remittances but some scholars have tried to define it. Remittances means a cross border, person to person payment is called remittances.¹²⁵

¹²⁴ Ibid.,

¹²⁵ EU accountability report 2013 on financing for development. Review of progress of the EU and its members states, Volume. 1, Commission staff working document accompanying the communication beyond 2015: Toward a

Remittances play key function in the developments of the state financial systems. The role of remittances has been increased in recent years. According, to estimates of World Bank, the migrants have sent remittances in the developing states the amount in US dollars is about 401 billion in the fiscal year 2012.¹²⁶ But it is estimated that figure will increase to 114 billion US dollar in next fiscal year. The estimated amounts\ of remittances is three times greater than the amount of development support funds to developing states. Indeed this amount is equal to half of the foreign direct investment.¹²⁷ Moreover, in few countries that amount is equal to 20% of the gross domestic product.¹²⁸

Remittances have also key role in the development of Pakistan. A large number of overseas Pakistanis are working and sending remittances in Pakistan every year. Such remittances are great source of foreign exchange and reduce maximum dependence over foreign loans of politically deficient states. Moreover, remittances are also contributing in reduction of poverty and unemployment from the states. A major portion of remittances is invested in productive activities i.e. importing goods, domestic production of goods and services.¹²⁹

In fiscal year 2013 Pakistan has received 13.92 billion in US dollars from different states i.e. The U.S.A, the U.K, Saudi Arabia, UAE, Oman, Qatar, Bahrain and many other states. Only from European Union Pakistan has been remitted the amount of 357.37 million US dollars

comprehensive and integrated approach to financing poverty eradication and sustainable development. SWD (2013) 273, Final Volume. 1, (2013)

¹²⁶ The World Bank, "Migration and development brief 20".

¹²⁷ ibid

¹²⁸ Ibid

¹²⁹ Dilshad, Waqas Bin, "Impact of workers' Remittances on Economic growth; An Empirical study of Pakistan's Economy", International Journal of Business and Management, (2013)

during fiscal year 2014. Moreover, Pakistan has received remittances from different states till April in the fiscal year 2014 the amount of 1311.83 million US Dollars.¹³⁰

Hence, remittances play major role in the development of Pakistan. Contribution of remittances reduces poverty and unemployment. When overseas Pakistanis are assisting from outside then state how creates doubts on their loyalty. They are financially, morally and ethically supporting the state.

3.7 Dual Nationality: Key Posts and Politics

Similar to other states, Pakistan had also been avoiding dual nationality for a long time. But later on Pakistan has accepted dual nationality principle and accepted them citizens of Pakistan.¹³¹ However, Constitution of Pakistan prohibits contesting elections by dual nationals¹³². Basic purpose is to avoid any risk to states because dual national's loyalty also divides and they can share secrets of states. Despite of all such threats Pakistan has many examples of dual nationals who have worked whole heartedly for Pakistan only. For example Moeen Qureshi and Muhammad Ali Bhogra were also dual nationals who came to Pakistan for holding premiership and went back after completion of their terms. Dr. Abdul Qadeer Khan the hero of atomic weapons was dual national of Pakistan and Dutch, even his wife is only German national.¹³³ The former Prime Minister Shaukat Aziz was also dual national of Canada and Pakistan. Even dual nationals hold key posts in Pakistan like, Pakistan High Commission to UK,

¹³⁰ State Bank of Pakistan statistics and DWH Department (Report 2014). (www.sbp.org.pk) (last accessed on 12 May 2014)

¹³¹ Citizenship Act, 1951, Section, 14

¹³² Constitution of Islamic Republic of Pakistan, 1973, Article, 63

¹³³ Syed Atiq-Ul-Hassan, “Issue of Dual nationality of Pakistan”, (22 Feb, 2013). Last accessed on 12 June, 2014 [“http://tribune-intl.com/?p=1857”](http://tribune-intl.com/?p=1857)

Wajid Shamas Ul Hassan, Petroleum Minister Dr. Asim Hussain, Auditor General of Pakistan Buland Akhtar Rana, executive director at World Bank and Asian Development Bank Javed Talat and Siraj Shamsu Din also hold dual nationality. So, these dual nationals have not harmed the state due to their dual loyalties and they have not share their secrets with other states.¹³⁴

Conclusion

Hence, Pakistan is one of those states who have tolerated dual nationality under the Citizenship Act, 1951. But Pakistan is avoiding granting them any authority to represent in political offices. So, dual nationals were prohibited to contest elections under the Constitution of Pakistan and the Representation of the People Act, 1976. Moreover, CEP has not taken any action against dual nationals despite of prohibitions under constitution to contest elections. But in 2013 SC took action and directed to CEC to disqualify all dual national parliamentarians. Later, it was followed in elections and Article 63 of the Constitution was fully observed and presumed divisions of loyalty and threat to security of Pakistan. But dual nationals are sending remittances and governing welfare institutions, so there loyalty should not be observed only on the ground of dual membership but some other factors should also be considered.

¹³⁴ Umar Cheema, “Several notables come under focus as dual nationals”, (5th June, 2012) [“http://www.thenews.com.pk/Todays-News-13-15121-Several-notables-come-under-focus-as-dual-nationals”](http://www.thenews.com.pk/Todays-News-13-15121-Several-notables-come-under-focus-as-dual-nationals) (last accessed on 12 June, 2014)

CHAPTER NO. 4

STATUS OF DUAL NATIONALITY IN OTHER STATE PRACTICES

INTRODUCTION

The concept of dual nationality is old as the concept of state and citizenship that has changed according to the principle of states. There was a time when people were living in communities and tribes where they had not concept of nationality because they migrated from one area to another without any legal boundaries. After the emergence of nation-state system nationality was introduced in the states. Every individual was bound to get nationality for his rights and protection. States introduced a specific institution for the protection of their nationals in foreign countries and named as embassy. An ambassador was also appointed with vested powers of head of the state. His sole purpose was only to protect his citizens in foreign states and remain in contact in every condition. However, term dual nationality was introduced due to contacts among different political states and groups. But the issue rose whether dual nationals can contest election and represent their public in political offices. Different states had law to prohibit them to join political office but states tolerated because of their good services to public.

4.2 Voting Rights in Foreign States by Dual Nationals

Voting is very important element which gives rights and stakes to citizens in political community. Various states have taken steps to allow dual nationals to cast votes wherever they are living in the world. States have various benefits in allowing voting rights in form of

extending, organizing their influences and reestablishing immigrant ties to home countries. Cast vote is not simply issue of vote only but it is also a process of campaign.¹³⁵

There are many evidences that different states have given voting rights to citizens; American constitution and court expressly gives rights to caste vote. The expansion of voting rights is very critical in the United States because it also extends to non-property holders in America. It is stated that;

“Almost sixty states have permitted expatriate or migrants to vote via absentee, ballots including Venezuela, Colombia, Brazil, and Honduras.¹³⁶ Immigrants of these countries are in number of millions in the United States. This does not embroils the United States in unwanted disputes with other states where their citizens prefer to American interests while casting votes.”¹³⁷

Increasing number of states are allowing dual nationals to cast vote that is beneficial in context of political and economics. States holds their influence over its overseas citizens and encourages their remittances.¹³⁸

4.2 Historical Participation of Dual Nationals in Politics

Dual Nationality was discouraged in early history before Nineteenth century. So, historically we do not find any example where dual nationals hold political office. But after tolerating dual nationality, states allowed dual nationals to hold political office with certain conditions i.e. the United States allows to become President a naturalized dual national living in

¹³⁵ SC 383 U.S. 663, 1966

¹³⁶ Bruce fein, “*Dual Citizenship folly*”, The Washington Times; March 1, 2005.

¹³⁷ Schuck and Munz, “*Introduction; Germany is sharply divided on this Question*”, 1998. Last accessed on 02-11-2014

¹³⁸ A. Portes, “*Conclusion: towards a new world-the origins and effects of transnational activities*”, Ethnic and Racial studies, 22(2), p. 467

US from last ten years, while UK allows to dual nationals to become parliamentarian who is residing in UK for last five years. So, a large number of states are tolerating dual nationals to hold political office i.e. US, UK, and California.

4.3 Dual Nationality: Political Practice in the World

Dual nationality principle has been accepted in many states despite of some opposition from many states. All those states who have permitted dual nationality are not agree to grant right to contest elections or political representation in their states. There are certain states who have legally prohibited contesting election but their courts give ruling in favour of their political representation. Few examples have been given below.

4.3.1 Dual Nationals' Politics in United States

Supreme Court of United States rejected many applications to prevent dual nationals to contest election. In different applications against President of US Obama was demanded to prevent to hold office of president. But applications were rejected on ground of article under Constitution of United States, 1787 that a person who is born citizen of US can contest election.¹³⁹

According to Mr. Donofrio's retired attorney at US stated that a person born in United States and hold dual nationality consequently can become the President of US under Constitution, 1787. However, all those citizens who acquire dual nationality of US are precluded to contest elections and cannot become president of US. So, President Obama was natural born

¹³⁹ Constitution of United States, 1787, Article, 2, Section 1, Cl. 5

citizen of US and he acquired nationality of Kenya later. So, he cannot be precluded to hold office of presidency.¹⁴⁰

US government has recognized dual nationality since 1875 in certain circumstances. Court held in a case that child born to Chinese parents cannot acquire nationality by birth and cannot become natural born citizen of US.¹⁴¹

In another case, the Court held that a citizen cannot lose his US citizenship unless he voluntarily relinquishes it.¹⁴² However, for acquisition of nationality US has imposed many limitations like, for acquisition of nationality the parents must be physically present in the territory for ten years. There were at-least five years after they attained the age of fourteen. But now it has been changed with five years physically present and two years when they attained the age of fourteen years.¹⁴³

4.3.2 Dual Nationality in Canada

Dual nationals are participating in national politics of the world. Now this practice has been increasing rapidly. There were many examples when dual nationals were heads of different states. Like Canada, United States, New Zealand, Pakistan etc. Dual nationality was considered a harmful infection to the state due to some reasons like division of loyalty, security reasons and lack of interest in one state by a dual national. Main examples of dual nationals as politicians and head of state are as following:

¹⁴⁰ Wrotnowski. v. Bysiewicz., (2008).

¹⁴¹ ibid.,

¹⁴² Ibid.,

¹⁴³ INA, 301 (g), 8 USC and 1401 (g)

Canadian Prime Minister Jhon Turner was dual national of UK and Canada during his premiership. Moreover, former head of Liberal Party of Canada Stephane Dionne also holds dual nationality. He was national of French and Canada spontaneously. When he was official opposition leader then he never indicated to renounce his dual nationality.¹⁴⁴

Moreover, Michacli Jean was Governor General of Canada in 2005. She married a filmmaker of France Mr. Jean Daniel Laford and acquired nationality of France with addition to nationality of Canada. When she becomes Governor General of Canada, her nationality was cancelled by French authorities because under article, 238 of French Civil Code, if any person holds office or any political post in foreign state he will automatically lose his French nationality. So, Michacli Jean did not renounce her nationality and became Governor General of Canada.¹⁴⁵

4.3.3 New Zealand

New Zealand Electoral Act, 1955 permits dual nationals to be elected MPs.¹⁴⁶ However, a controversy started in New Zealand when Harry Duynhoven MP of Labour party applied for renewal of his nationality but his nationality was temporarily suspended due to some amendment in Dutch nationality law.¹⁴⁷ But later after amendment in their law, Harry Duynhoven enables to retain his nationality and hold his political office.¹⁴⁸

¹⁴⁴ CBC news, “Dion would Sacrifice His dual nationality,” on December 2008 (Last accessed on 16 May, 2014), 4:05 pm

¹⁴⁵ CBC news, “New Governor General to give up French citizenship”, September, 2005 (last accessed on 16 May 2014), 4:25 pm

¹⁴⁶ New Zealand Electoral Act, 1955: Section 55

¹⁴⁷ Herald news, “Ties of Dutch Minister put ties in bind house”, New Zealand: (July 2004) Last accessed on 16 May, 2014. 4:55 pm

¹⁴⁸ ibid

4.3.4 Decision of Australian Court

Australian Constitution law explicitly disqualifies the dual national to become Member of Parliament.¹⁴⁹ But according to Australian High Court, dual nationality is not enough to disqualify from sitting in parliament. But individual acts of aliens will be considered to put bar on political participation. However, the citizen must make reasonable effort to renounce his foreign nationality. If revocation process is very difficult or having such complications that make impossible to renounce nationality then individual cannot be disqualified to hold political office.¹⁵⁰

4.3.5 Practice of India

India strictly banned dual nationality till 2005. But in 2005 Indian Parliament passed a bill to award dual nationality to the Persons of Indian Origin (PIOs).¹⁵¹ They decided to grant them status of Overseas Citizenship of India (OCI). It is stated that a person is eligible to apply for citizenship when he has been registered as OCI for last five years and been staying in India for at-least one year.¹⁵² However, OCI are not allowed to cast vote in elections and cannot hold any constitutional post like President, Prime Minister, judges of High Court and Supreme Court.¹⁵³ Moreover, Indian former attorney general is opinioned that if a Diasporas is involved then they will be given right to vote and hold of important offices.¹⁵⁴

¹⁴⁹ Australian Constitution law, Section 44(1).

¹⁵⁰ HCA.30, 199 CLR. 462; 163 ALR. 648: 73 ALJR 1016 (1999); Sue. V. Hill.

¹⁵¹ The Citizenship amendment Bill, (2003) of Indian Citizenship Act, 1955

¹⁵² Section 5 (1) (g), Indian Citizenship Act, 1955

¹⁵³ Section 7(B) of Indian Citizenship Act, 1955

¹⁵⁴ <http://www.legalserviceindia.com> (last retrieved on 12 May, 2014)

However, National Democratic Alliance (NDA), National Congress and Bhartiya Janta party promised to amend the constitution in their manifesto to prohibit holding of constitutional posts by the natural born citizens of India. But opponents view that it can create constitutional crisis by discriminatory behavior between natural born and naturalized citizens of India.¹⁵⁵

The purpose behind issuance of OCI card to give following benefits:

1. Multi-purpose and lifelong visa to enter into India.
2. They will not be bound to inform police in case of long stay in India.
3. Parity with non-residential Indians (NRIs) in financial matters except in holding plantation properties and agriculture lands.¹⁵⁶

Conclusion

It is clear from this chapter that dual nationality was not known to states in past. But later development made in different states and those states permitted dual nationality status to keep authority on citizens. Some EU states, US, Australia, Canada and Pakistan are one of those who have started tolerating dual nationality. But these states prohibited dual nationals to represent in assemblies. But some states avoid making it hard and fasting rule for political leaders. US, Pakistan, UK, are one of those states. Moreover, international treaties were drawn to award dual nationality and eliminate any conflict in laws of states. For this purpose different conventions were signed among states like, Hague Convention, 1930, Harvard Draft Convention, 1930.

¹⁵⁵ www.hindu.com/fline/fl1612/16120300.htm (last retrieved on 12 May, 2014), 9:05 pm

¹⁵⁶ Overseas Citizenship of India, (9th November, 2010), (<http://www.immigration.com/overseas-citizenship-india-ocidual-citizenship>). 10:20 pm

Conclusion and Recommendation

Introduction

Finally this research is based upon nationality and dual nationality. Chapter one is regarding nationality and rights and duties of nationals in a state. Moreover, it also discusses about some factors which leads to dual nationality, like migration. The second chapter of the research is based on dual nationality. It discusses the acquisition and loss of nationality, acquisition of dual nationality, and dual nationality practices in the world. Chapter three is regarding dual nationality in Pakistan, dual nationals and holding of key posts, participation in politics and historical case laws by Supreme Court of Pakistan. It further describes about benefits of dual nationals to Pakistan. Chapter Four is regarding dual nationality practice in the world and their participation in politics in respective states. It also gives brief about those states that have legally permitted dual nationals to participate in politics and hold key posts. It has examples of those states that have good policies about dual nationals. Last is conclusion and recommendations of the research paper.

Conclusion

After growing nation state system the states decided to award nationality to its citizens for holding their sovereignty over man power from which nationality laws emerged. States had legislated laws to acquire and loss of nationality. Consequently nationals of various states started migration from one state to another state for shelter, food and security. When such migration put confusion for those migrants rights and privileges and their status of stateless person was growing then different states legislated to reduce stateless persons.

Although it was a good step but not absolute for granting them rights and privileges so states entered into treaties to award dual national status to immigrants. Moreover, emigrant states were also ready to accept their status into their state. The issue of dual nationality which was considered as security threat to the states became growing and acceptable phenomenon.

Dual nationality is a new and growing phenomenon which has been adopted by many countries since, 1931 where states preferred to give stateless status to persons who got dual citizenship without informing to their previous state. But now many states have established this practice and enter into globalization for remittances, easy travel, business facilities and other national rights. However, some countries are hesitating to allow dual nationality due to division of loyalty.

Article 15 of UNDHR, 1948,¹⁵⁷ states that every individual has the right of nationality, nobody can be deprived of his right and no one can be bared to obtain nationality of any other state. Moreover, Article 95 of the Constitution of Bangladesh declares that a dual national (British origin of Bangladesh) can be head of Government in People Republic of Bangladesh. Even a dual national can also be a judge of High Court and Supreme Court.

Even, Supreme Court of Pakistan in his different decisions has decided to prohibit contest of elections and participating in political process. But now the situation has changed because many countries are allowing dual nationality to citizens like United States, United Kingdom, etc with some conditions. However, Pakistan has also allowed dual nationality but prohibited to participate in political process. Even there is no legal provision regarding dual nationality for judges, bureaucrats and many other high officials. We do not find any example in history that

¹⁵⁷ Universal Declaration of Human Rights 1948, Article 15

dual nationals damaged any country. There are many chances that single nationals are disloyal to their country, like doctor Shakeel afredi associated to American marines on 3rd May 2011 in Osama Bin Laden Operation. In opposite side dual nationals are more beneficial to the states, like Farah Naaz Asfahani owns nationality of Pakistan and United States. Her ancestors participated in struggle for independent of Pakistan, even now Pakistan embassy in United States is in Farah Naaz Asfahani's house free of cost.

Appointment of dual nationals started in Pakistan from 1952, when Muhammad Asad was a dual national of Austria and Pakistan. He was appointed a Minister of Plenipotentiary in United Nations in New York.¹⁵⁸

However, if we can trust a dual national as a head of department of educational institute, as chairperson of a hospital then we should also trust them as a politician. Moreover Shaukat Khanum, Layton Rehamtullah benevolent trust is sponsored and members of board of directors are dual nationals. Indeed Edhi foundation is also funded by mostly dual nationals. Another great work done by dual nationals of UK by collecting about Rs.10 million for flood affected people of Pakistan in 2010.¹⁵⁹

However, a number of politicians of United States were also dual nationals, e.g. Arnold Schwarzenegger was Governor of California and he did not relinquish his second nationality of Austria. Former Canadian Prime Minister "John Turner" born in United Kingdom and he retained his dual nationality till today.¹⁶⁰ Rafiq Hureiri, the former Prime Minister of Lebanon was dual national of Lebanon and Saudi Arabia. He re-established the state after a long civil war.

¹⁵⁸ Ayesha Ijaz Khan, "Targeting Dual Nationality" (last access on 13 March 2014)
<http://www.ayeshaijazkhan.com/docs/Targeting%20dual%20nationals.pdf>

¹⁵⁹ ibid

¹⁶⁰ http://www.parl.gc.ca/content/sen/chamber/362/Debates/02401b_2000-02-08-e.htm (Retrieved on 6 May 2014)

Moreover, both the Estonian president, Toomas Hendrik Ives, and the former Lithuanian president, Valdas Adamkus were naturalized citizens of United States. Moreover, in UK dual nationals are having same rights as having by the single nationals.¹⁶¹ Dual nationality has been becoming practice in number of states in the world for many years. It has been becoming an accepting and tolerating practice through which states are giving them gradual rights and duties. As some states are allowing dual nationals to contest election and represent citizens of the states.

Consequently dual nationals are not harmful for any state. But they are considered as ambassadors of the state in foreign countries. Even they can easily communicate the matters of the states. They know the culture and tradition of other country.

Recommendations

One man, one state maxim has been outdated by allowing dual nationality by many states. States have permitted dual nationality to its citizens with some conditions and to participate in various offices of the state. In the same way Government of Pakistan should also allow to dual nationals to contest elections with the following conditions:

1. A dual national should be in Pakistan for a long time that may be ten years stay.

After such a long stay in Pakistan will give chance to security agencies to scrutinize his contacts and activities that should be patriotic. United States and United Kingdom allow to individuals to stay for ten years and five years in the state respectively that permit them to participate in politics.

2. He should invest considerable amount for business in Pakistan. That amount should be for the betterment of state and its individuals. The business should be in

¹⁶¹ Aysha Ijaz Khan, "Targeting Dual Nationals" (Last accessed on 6 May 2014)

accordance with law of the state and constitution. The national should pay taxes to the state and his any activity should not against the state.

3. He should contain stake and interest in Pakistan. His investment, business, long term stay, and family residence should be in Pakistan. It is helpful for the state to take easy decision about his loyalty and disloyalty.
4. His activities in Pakistan should be patriotic. He should not be permitted to facilitate any group or organization that is working against the state. His past should be clear and he should participate in positive activities that are in favour of the state.
5. He should obey law and constitution of Pakistan whole heartedly.
6. He should fulfill all terms and conditions required by Constitution of Islamic Republic of Pakistan, 1973 and Representative Act of Pakistan, 1976.
7. All these conditions should be fulfilled by a dual national candidate for contesting elections. These conditions can remove doubts about loyalty of a citizen because; these are prerequisites for a loyal citizen in any country as required by Supreme Court of Pakistan in decisions regarding dual nationality. Moreover, all those states like Australia and US have imposed these conditions to permit dual nationals to contest election.
8. However, the situation has been changed in the demography of the world. Countries are freely accepting dual nationality without any hesitation. Because, there is no any prove of division of loyalty in the world on the ground of dual citizenship. But dual nationals in foreign states are having more concerns about the internal and external condition of Pakistan.

9. A politician with dual nationality can attain remarkable opportunities of investment by using his personal relations. He can offer beneficial business terms and create job opportunities in the country. Even a politician from a developing country can follow a developed country's agenda for development within limited resources.
10. Moreover, dual nationals can send remittances that play vital role in development of a country and removal of poverty and unemployment. Recent survey of World Bank stated that poverty in Pakistan has reduced to 50% due to remittances.¹⁶²

¹⁶² CIA fact book, 2013

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APPENDIX A

PAKISTANI CITIZENSHIP LAW 1951

The following summary of the main provisions of Pakistani citizenship law reflects the agreed outcome of discussions which the Home Office and Foreign and Commonwealth Office have had with the Pakistan Government. It does not aim to be, nor should be taken as, definitive. Only the Pakistani authorities can provide definitive advice on their citizenship law. However the information should normally be sufficient to determine an applicant's eligibility for British nationality where this turns on his/her possession, or not, of Pakistani citizenship.

The principal legislation is the Pakistan Citizenship Act 1951, as amended by the Pakistan Citizenship (Amendment) Act 1952, the Pakistan Citizenship (Amendment) Act 1972, the Pakistan Citizenship (Amendment) Act 1973, the Pakistan Citizenship (Second Amendment) Act 1973 and the Pakistan Citizenship (Amendment) Ordinance 2000.

1. Pakistani citizenship by birth

Under the 1951 Act, as originally in force, any person born in Pakistan after commencement is a citizen of Pakistan.

2. Pakistani citizenship by descent

A person born outside Pakistan before 18 April 2000 can normally only be a citizen of Pakistan by descent if the father was a citizen of Pakistan otherwise than by descent.

However, a person born outside Pakistan to a father who, at the time of the birth, was a citizen of Pakistan by descent is also a citizen of Pakistan by descent if:

the birth is registered at a Pakistani Consulate or High Commission abroad; or
the father was in Pakistan Government service at the time of the birth

A person born outside Pakistan on or after 18 April 2000 is a citizen of Pakistan by descent as per 4.1 or 4.2 above if either parent is a citizen of Pakistan.

3. Renunciation

Under the 1951 Act, as amended by the 1972 Act, a citizen of Pakistan who is also (or is about to become) a citizen of another country can make a declaration of renunciation of Pakistani citizenship.

4. Dual nationality

Dual nationality is not permitted. A citizen of Pakistan who is, at the same time, a citizen of some other country ceases to be a citizen of Pakistan unless that other citizenship is renounced. There is an exception for people holding certain other nationalities, including British citizenship, but this exception does not extend to any of the other forms of British nationality.

If, despite the prohibition on dual nationality, an applicant has been issued with a passport or other formal document describing him as a citizen of Pakistan, it should not be assumed that it has been issued incorrectly.

5. Female citizens 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.

6. Minors

Minors (i.e. persons under 21 years of age) who qualify for Pakistani citizenship are exempt from the ban on dual nationality if they acquire another citizenship as long as their fathers do not cease to be citizens of Pakistan:

automatically as a result of acquiring a second citizenship; or

due to renunciation of Pakistani citizenship

However, if the father ceases to be a citizen of Pakistan, the minor automatically loses Pakistani citizenship at the same time.

APPENDIX B

WHICH COUNTRIES ALLOW DUAL CITIZENSHIP, AND UNDER WHICH CIRCUMSTANCES

Level	Official Legislation Regards Dual Citizenship Allowed in These Circumstances	Countries	Combined Estimated Population Size
1	Allowed for the majority of the population	Afghanistan, Albania, Armenia, Australia, Bangladesh, Barbados, Belarus, Belize, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Colombia, Costa Rica, Cyprus, Ecuador, Egypt, El Salvador, Finland, France, Greece, Grenada, Honduras, Hungary, Iceland, India, Ireland, Israel, Italy, Jamaica, Jordan, Latvia, Lebanon, Lithuania, Malta, Mexico, Moldova, New Zealand, Panama, Peru, Philippines, Portugal, Romania, Russian Federation, Samoa, Slovak Republic, Slovenia, South Africa, Sri Lanka, Sweden, Switzerland, Trinidad and Tobago, Turkey, United Kingdom, United States, Uruguay	2,449,003,945
2	With treaty nations	Argentina, Bahrain, Belgium, Chile, Kuwait, Netherlands, Nicaragua, Norway, Pakistan, Paraguay, Saudi Arabia, Spain, Syrian Arab Republic, Tajikistan, United Arab Emirates,	730,185,930
3	For children and adolescents only	Croatia, Czech Republic, Denmark, Germany, Kazakhstan, Macedonia, Poland, Ukraine	249,860,127
4	Under special circumstances (ex-refugees)	The Bahamas, Brunei, Fiji, Japan, Korea, Papua New Guinea, Singapore	193,894,207
5	Never	Austria, Azerbaijan, Bhutan, Bolivia, Cambodia, China, Estonia, Georgia, Guatemala, Guyana, Indonesia, Iran, Kyrgyz Republic, Lao PDR, Luxembourg, Malaysia, Mongolia, Myanmar, Nepal, Oman, Qatar, Suriname, Thailand, Timor-Leste, Turkmenistan, Uzbekistan, Venezuela, Vietnam	2,013,492,423

SOURCE: CIA WORLD FACTBOOK

APPENDIX C

REGIONS AND DUAL CITIZENSHIP LEGISLATION

Region	Number of Countries from Region Analyzed	Percentage of Countries Allowing Dual Citizenship	Year of Change to Dual-Citizenship Legislation
Asia (23% of Countries Allow Dual Citizenship)			
North Asia	4	25%	Dates for changes not available
Central Asia	8	13%	Afghanistan: 2004
S. E. Asia	10	10%	Philippines: 2003
Sub-Continental Asia	4	50%	Sri Lanka: 1987; India: 2004
Middle East	13	31%	Dates for changes not available
Americas (63% of Countries Allow Dual Citizenship)			
North America	2	100%	Canada: 1977; United States of America: 1986
C. America	8	75%	Panama: 1972; Belize: 1981; El Salvador: 1983; Costa Rica: 1995
Caribbean	5	80%	Jamaica: 1962; Barbados: 1966; Grenada: 1973; Trinidad and Tobago: 1988
South America	12	42%	Uruguay: 1919; Peru: 1980; Colombia: 1991; Ecuador: 1995
Europe (61% of Countries Allow Dual Citizenship)			
Eastern Europe	21	62%	Romania: 1989; Slovenia: 1991; Slovakia: 1993; Turkey: 1995; Russian Federation: 2001; Belarus: 2002; Lithuania: 2002; Moldova: 2003; Armenia: 2004; Hungary: 2004;
Western Europe	20	60%	Ireland: 1935; UK: 1949; Cyprus: 1967; France: 1973; Portugal: 1981; Italy: 1992; Switzerland: 1992; Malta: 2000; Sweden: 2001; Finland: 2003; Iceland: 2003
Oceania (50% of Countries Allow Dual Citizenship)			
Oceania	6	50%	New Zealand: 1949; Australia: 2001

SOURCE: CIA WORLD FACTBOOK