



## LEGAL PERSPECTIVE ON THE EXPATRIATION OF AFGHAN REFUGEES FROM PAKISTAN

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### Abstract

*This research focuses on the legal aspects of the expatriation of Afghan refugees in Pakistan, the dilemma between state sovereignty and international human rights policies. Although Pakistan is not a signatory to the 1951 Refugee Convention and the 1967 Protocol, non-refoulement is owed to it by customary international law and other treaties like the ICCPR and CAT. The paper examines the activities of Pakistan during the Foreigners Act, 1946, which focuses on the negative aspects of procedures and the lack of an established refugee protection mechanism. Based on UNHCR reports, judicial rulings, and international standards, the paper asserts that the current process of repatriation poses threats of breaching the constitutional obligation of Pakistan and global commitments. It ends by giving a recommendation on how a comprehensive law concerning refugees can be put in place so that migration can be managed lawfully, humanely, and within the rights context.*

**Keywords:** challenges, historical context, laws, opportunities, theoretical context

### Introduction

The problem of the expatriation of the Afghan refugees in Pakistan has gained international attention under the Illegal Foreigners Repatriation Plan (IFRP) of Pakistan, which was introduced in late 2023 (Khan et al., 2023). Under this scheme, the illegal Afghans, Afghan Citizen Card (ACC), and even the Proof of Registration (PoR) cardholders have been asked to voluntarily leave Pakistan before the deportation process commences (Farashah & Blomquist 2022). The latest reports about Afghanistan show that almost one million Afghans are returning home, voluntarily and through forced repatriation, which is why human rights and humanitarian impacts have become an issue of concern (Ali, 2022).

The Integrated Response Plan on Afghan Returnees, United Nations, 2025, outlined that the procedures of deportations are not followed by any procedural safeguards, document verification, or child protection (Muhammad et al., 2024). The Human Rights Watch in 2024 warned about the high risks of arbitrary detention and family separation during the process (Khuhro et al., 2024; Masudi, 2023).

Pakistan is in a complicated legal situation. Not being a signatory to the 1951 Refugee Convention and the 1967 Protocol, Pakistan is, nevertheless, Pakistan is subject to the principles of non-refoulement through the international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture (CAT), and the Convention on the Rights of the Child (Mumtaz & Nadeem, 2022). Asserting that these treaties do not allow sending people back to the states where they can be persecuted or tortured, UNHCR in 2024 and Amnesty International in 2024 emphasize (Lee & Wechtler, 2024). Pakistan also depends on the constitutional provisions of liberty and due process, as

well as the Foreigners Act, 1946, domestically. Several petitions have been directed against the policy of the government, revealing its incompatibility with the fundamental rights (Scherer et al., 2024).

### **Research Justification**

The deportation of the Afghan refugees in Pakistan is a burning question, which requires rigorous legal analysis because of the ramifications of human rights, the sovereignty of the state, and international responsibility. Millions of Afghan refugees have been living in Pakistan for the last forty years without having an official framework of asylum and refugee protection. This new government policy of mass repatriation has been subject to serious doubts of its legality and morality, especially with the danger that the refugees are exposed to when they get back to their home countries.

The research is appropriate as it aims to examine the situation in terms of the law.

Perspective, looking at whether the current practice adopted by Pakistan is in line with its domestic laws and the foreign commitments. It will discuss the relevance of the Foreigners Act, 1946, constitutional rights, and the principle of non-refoulement of the customary international law. In this manner, this paper will aim to outline the deficiencies of the Pakistani legal system in the context of protecting refugees and suggest changes that would allow treating the Afghan nationals fairly, humanely, and with rights. Moreover, this study adds to the wider policy debates of finding a balance between national security issues and humanitarian needs. It aims at giving recommendations that may inform the formulation of a clear policy on refugees so that Pakistan does not do anything on the matter that is unconstitutional and morally wrong.

### **Research Methodology**

This study employed a systematic review methodology, with research objectives established accordingly. A comprehensive literature review was conducted (Komba & Lwoga, 2020). Research findings were categorized based on their content (Hiver et al., 2021; Petticrew & Roberts, 2006), and classified information was incorporated into the study by organizing it into headings (Gan et al., 2021; Pawson et al., 2005). The evaluation of classified information and titles formed the basis of the study (Page, 2021; Rahi, 2017), ensuring the integrity of the research subject and its contents (Egger et al., 2022; Victor, 2008). The criteria for selection are listed.

1. **Relevance:** Research that directly addressed the questions posed by this study is included.
2. **Quality:** Studies that meet a certain quality threshold (e.g., methodological rigour, bias risk) are included. Most of the researches are from Scopus-indexed and Clarivate Analytics journals and reputed publishers.
3. **Recency:** Consideration of the publication date to ensure that the review reflects the most current evidence. Most of the studies are from the last three years.
4. **Language:** Only studies published in English are included.
5. **Data Completeness:** Previous studies must provide sufficient data on outcomes of interest for practical synthesis; this is also ensured in this research.

This study did not use primary data from human participants; therefore, no ethics clearance letter from the ethics committee was required.

### **Literature Review**

The current research on the legal status and treatment of Afghan refugees in Pakistan indicates both legal and humanitarian issues. Pakistan has known more than four million Afghan refugees since 1979, though it is not a signatory to the 1951 Refugee Convention and its 1967 Protocol (Mumtaz & Nadeem, 2022). The scholars attest that the lack of a national asylum system exposes refugees to vagaries of state actions under the Foreigners Act, 1946, according

to Khan et al. (2023). Repatriation measures are also reported by Human Rights Watch (2024) to have procedural flaws. They may result in a breach of the principle of non-refoulement as defined in customary international law (Scherer et al., 2024).

A number of studies look at the international obligations of Pakistan, though it is not a signatory (Farashah & Blomquist, 2022). The International Covenant on Civil and Political Rights (ICCPR), the Convention against torture (CAT), and the Convention on the Rights of the Child (CRC) all the three countries ensure that forced returns should not be enforced where persecution or torture can be expected (Ali, 2022). The measures are not consistent with the international standards, especially in cases where the process of repatriations occurs without the assessment of risks individually and without legal solutions (Khuhro et al., 2024).

The political relations of repugnant law courts and constitutional guarantees for refugees have also been debated by legal scholars (Masudi, 2023). Forced deportations could be contested on constitutional grounds using the guarantees of dignity and liberty provided by Articles 9 and 14. The courts have been unwilling to provide constitutional safeguards to non-citizens in most cases (Muhammad et al., 2024). The lack of institutional coordination between federal and provincial governments is pointed out by policy researchers as further complicated in managing refugees, and they argue that a comprehensive piece of refugee legislation is the key to ensuring due process and compliance with human rights (Zandi-Navgran et al., 2024).

#### **Historical Context of Afghan Refugees' Expatriation from Pakistan**

The history of the Afghan refugees in Pakistan goes back to when the Soviet Union invaded Afghanistan in 1979, which caused one of the most massive refugee incidents in contemporary history (Masudi, 2023). UNHCR (2024) and the United Nations (2025) claim that millions of Afghans entered Pakistan to find safety, and the camps were established in Khyber Pakhtunkhwa and Balochistan (Khuhro et al., 2024). Firstly, Pakistan took an open-door policy where they took refugees as refugees on humanitarian grounds, although they did not have a written refugee law. This initial hospitality was driven rather by political and religious unification than by international law of the refugees (Zandi-Navgran et al., 2024).

Over time, the policy of Pakistan changed to one of hostility, control, and regulation. The Foreigners Act, 1946, had taken the place of the major legal tool that began to regulate all the non-citizens, including the refugees (Fischer & Houte, 2020). Despite far-reaching powers on deportation and detention of foreigners, the Act does not distinguish between refugees and other foreign nationals. Withdrawal of international aid and growing security concerns after 2001 led to Pakistan starting to focus on voluntary repatriation programs together with UNHCR (Mumtaz & Nadeem, 2022). The recent deportation pushes as part of the Illegal Foreigners Repatriation Plan (2023) are a turning point when it comes to the tougher implementation of immigration legislation against Afghan citizens (Khan et al., 2023).

#### **Theoretical Context of Afghan Refugees' Expatriation from Pakistan**

The theoretical background of the given study lies in the collision of state sovereignty, human rights law on the international level, and the principles of refugee protection. According to the principle of sovereignty, each state has the natural right to control its borders, decide what or whom to enter to admit and who to exclude, and to secure its national security. There is, however, no absolute power. International law gives some restrictions to the activities of states, especially in the policy of non-refoulement, which denies anyone the opportunity to go back to a country where they are likely to be persecuted, tortured, and/or treated inhumanely.

Human rights viewpoint dictates that the treatment of refugees and migrants should be in line with the key principles of dignity, equality, and justice. Humanitarian theories point out that, despite the lack of treaty obligations, states are morally and customarily bound by law to

safeguard vulnerable people. The conflict in the Pakistan case is between the domestic legal sovereignty under the Foreigners Act, 1946, and the international law requirement given by the human rights conventions. The theoretical framework of this research thus aims to examine how the legal system of Pakistan strikes these competing norms - state control or international protection - and whether the existing policies of expatriation are based on a rights approach that can be in line with the constitutional and international legal provisions.

### **Laws Regarding Afghan Refugees in Pakistan**

The legal system that applies to the Afghan refugees in Pakistan is not an easy one, as it incorporates local legislation and international engagements. Although there are decades of experience in hosting millions of Afghan refugees in Pakistan, the lack of a special Act on refugees has led to a lack of clarity regarding the legal status and protection of these refugees. The laws that follow describe the most important legal tools that play a role in the expatriation and treatment of Afghan refugees in Pakistan.

- 1. Convention against Torture (CAT):** Pakistan has no right in CAT to expel or send the refugees back to a country where they are at risk of being tortured. Such a global requirement restrains the random repatriation of Afghan refugees.
- 2. Ordinances (Amendment) Foreigners:** The Foreigners Act has been modified to enhance the administrative power over illegal immigrants. These enable the detention or deportation of refugees without adequate due process, which is usually against human rights standards.
- 3. Pakistan, 1973: Constitution of Pakistan, 1973:** Although there is no direct mention of refugees in the Constitution, the basic rights stipulated in Articles 9, 14, and 25 apply to all people, whereby protection of life, dignity, and equality are guaranteed. These stipulations may be decoded to stop unlawful or inhuman deportation.
- 4. The Foreigners Act, 1946:** This Act serves as the most important legislation in the entry, residence, and deportation of foreign nationals in Pakistan. It gives the federal government very wide authority to deport any alien without any valid documents. But it does not draw a line between the refugees and other foreigners, and thus, legally, Afghan refugees are vulnerable to being expelled at will.
- 5. The International Covenant on Civil and Political Rights (ICCPR):** As a signatory, Pakistan must uphold the right to life and liberty, which means that it must not forcefully send people back to their countries where they are persecuted or risk being harmed.

### **Challenges for Afghan Refugees' Expatriation from Pakistan**

The deportation of the Afghan refugees in Pakistan is associated with a wide range of legal issues that can be grounded in domestic and international law. Lack of legislation on refugees in Pakistan has been ranked among the most prominent challenges. Not being a signatory to the 1951 Convention on refugees and its 1967 Protocol, the status of the Afghan refugees is not legally recognized, and, therefore, their rights and status are at the mercy of the will of administrative authorities.

The other dilemma is the achievement of a balance between humanitarian and national security. The Pakistani government frequently uses security and economic factors to justify deportations, but they may contradict the principles of non-refoulement, which forbid returning people to danger or persecution. In addition, the absence of coordination between federal and provincial governments is a source of procedural confusion in the use of repatriation policies. The support of refugees by the law is minimal, and hence they struggle to appeal against deportation orders or demand inalienability rights under the Constitution of Pakistan, especially Articles 9 and 14 on life and dignity.

Finally, there is the lack of judicial checks and balances, as well as international surveillance, which has raised human rights issues. In the absence of adequate legal processes and frameworks that address refugees, Pakistan will find it hard to make sure that expatriations are done in a legal, just, and fair manner and adhere to the international human rights provisions.

### **Opportunities for the Repatriation of Afghan Refugees from Pakistan**

Nevertheless, the Afghan refugees have a variety of opportunities to enhance the legal and humanitarian system in Pakistan, in spite of the challenges. Among the opportunities is the formulation of a national law on refugees, which will be in line with international standards. Setting up the effective procedures of identifying, protecting, and repatriating refugees would improve the image of Pakistan in the world as a responsible nation that cares about human rights and the rule of law. Institutional strengthening and legal reforms can also be practiced through the process. Pakistan can achieve this by enhancing the coordination of the ministries, law enforcement, and the court system in order to have the fair implementation of the repatriation policy, but also the constitutional guarantees provided in Articles 9 and 14.

Also, the cooperation with other international organizations like UNHCR and IOM would provide the possibility of capacity-building, funding, and technical support. This collaboration would not only protect the dignity of the refugees but would also be useful in contributing to the socio-economic stability of Pakistan. Lastly, it is possible to create a balance between the national sovereign and humanitarian duty in the situation by providing legal clarity and decision-making transparency. An efficiently established legal framework could be used as an example by other countries hosting refugees, as it would not only be in the nation's favor but also humanitarian.

### **Discussion**

Expelling Afghan refugees in Pakistan poses a lot of legal, humanitarian, and policy issues. Although it is the sovereign right of Pakistan to control its borders, the power should be accompanied by international human rights standards and the laws of the Constitution. The lack of clear refugee laws still leaves a vacuum that is frequently filled with ambiguity in the administrative process, which is not always legally clear and consistent. Nonetheless, the case also presents the prospects of legal change and the establishment of systematic mechanisms to deal with refugees.

Enhanced collaboration with the global agencies like UNHCR and the incorporation of clear repatriation policies can be used to address the issue of conformity to the principle of non-refoulement. Moreover, people should introduce judicial control and legal assistance to refugees, which will increase accountability and equity. Thus, the legal approach to expatriation needs to shift towards a balance between the security of the state, humanitarian duty, and compliance with the domestic and international legal norms.

### **Conclusion**

Repatriation of the Afghan refugees in Pakistan is a highly complicated phenomenon that has commercial, human, and political aspects. Although Pakistan has traditionally proved to be generous in terms of accommodating Afghan refugees, the lack of a pegged legal system has led to confusion about their status and rights. The administrative policies in use in the country, instead of the established refugee law, allow the country to be inconsistent and result in possible violation of human rights. To solve these predicaments, Pakistan needs to think of the passage of an all-encompassing refugee law that is in tandem with international rules, due process, and safeguarding of fundamental rights as stipulated in the Constitution. Cooperation with international agencies such as UNHCR may also encourage legal and ethical repatriation. The moderate policy between national sovereignty and adherence to the principle of

humanitarianism will not only enhance the legal system in Pakistan, but it will also demonstrate its devotion to the values of justice, dignity, and international responsibility in dealing with refugee matters.

### **Recommendations**

- 1. Co-operate with International Organizations:** Intensify relations with UNHCR, IOM, and human rights organizations in order to provide human and legal repatriation.
- 2. Develop a National Refugee Law:** Pakistan needs to come up with a rigorous law to specify the rights, duties, and legal status of refugees to create uniformity and security.
- 3. Enhance Legal Awareness:** Refugees ought to be sensitized to their legal rights and protection mechanisms provided to them through awareness programs.
- 4. Establish Rehabilitation and Reintegration Programs:** Support the returning refugees to be integrated into the Afghan society safely and in a sustainable manner.
- 5. Guarantee Adherence to the Constitutional Rights:** The deportation processes must follow basic rights in Articles 9, 14, and 25 of the Constitution of Pakistan.
- 6. Intensify Judicial Supervision:** The cases of expatriation should be monitored in courts, in order to prevent violations of due process and human rights.
- 7. Increase Coordination among Authorities:** Improve coordination of the federal, provincial, and local authorities to make the process of repatriation lawful and transparent.
- 8. Leverage Refugee Status Determination (RSD) Mechanisms:** There must be a formal legal process of determining the refugee status in order to avoid random deportations.
- 9. Ratify International Conventions:** The government of Pakistan ought to take into consideration the signing of the Refugee Convention and Protocol, which were signed in 1951 and 1967, to align its national policy with the norms set by the international protection of refugees.
- 10. Take a Humanitarian Approach:** All the legal and administrative practices must be shaped with a focus on human dignity, and as such, repatriation must be voluntary, safe, and respectful.

### **Research Limitations**

This study had a few limitations that might affect the intensity and generalization of the study. To begin with, there was no detailed information on the legal status of Afghan refugees and their repatriation in Pakistan, which limited a complete evaluation of the existing practices. The majority of the information at hand is based on secondary sources, including reports and media publications, which might be biased or out of date regarding statistics. Secondly, Pakistan did not have established laws governing refugees; hence, understanding the rules was not easy to do in a systematic fashion. The authors also failed to address field interviews or primary information on government officials, refugees, and legal practitioners, because of the limited time and access. Also, since the matter is a political one, there is information that is kept hidden or unofficial. Although these are limitations, the study offers important information on both legal and humanitarian issues of Afghan refugees' expatriation in the country of Pakistan.

### **Research Implications**

The study has immense policy implications for various policymakers, legal experts, and humanitarian agencies that deal with refugee matters in Pakistan. It raises the critical necessity of the global refugee law to address the lack of law in current practice and secure the uniformity of norms and duties. To the policymakers, the results highlight the need to bring the national laws into the international human rights principles and, in this case, on the concept of non-refoulement and equitable deportation process.

Legal scholars can utilize this research to conduct research on the interface of domestic and international law of refugees. Besides, it promotes the partnership between Pakistan and other international institutions like UNHCR to come up with effective and humanitarian expatriation systems. In practical terms, the study underpins the development of judicial and administrative systems that facilitate constitutional assurances without compromising national security and humanitarian concerns. Generally, it makes it possible to make informed decisions and advance justice-oriented governance of refugees.

### **Future Research Directions**

Further studies are also required in order to investigate the application and effects of the current policies on repatriation in Pakistan, especially the 2023 Illegal Foreigners Repatriation Plan, to determine its adherence to international human rights laws. The difficulties during the expatriation can be assessed first-hand by conducting empirical research and interviewing refugees and legal professionals, as well as policymakers. The judicial interpretations of the rights of refugees within the Constitution of Pakistan on Articles 9 and 14 also require more research.

The comparative analysis of Pakistan and other countries that host refugees, like Iran or Turkey, may outline the best practices to formulate a comprehensive law on refugees. Moreover, it should examine the interest of the international organizations in facilitating voluntary and humane repatriation processes, such as UNHCR and IOM. Lastly, the interdisciplinary strategies that incorporate law, sociology, and international relations would enhance the knowledge on the overall socio-legal implications of the Afghan refugee expatriation.

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