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AFGHAN REFUGEES AND THEIR ECONOMIC HUMAN RIGHTS IN PAKISTAN



LLM FINAL THESIS

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2022

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Dedication

I would like to thank **ALMIGHTHY ALLAH**, who has bestowed me with strength and ability to pursue my LLM thesis. This research work (thesis) is dedicated to my Parents, Family Members, Mentor, Friends & my Well Wishers who have been a source of inspiration and motivation for me during the phase of this study. I am very much thankful to them for their love, prayer and for being patient with me.

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LIST OF ABBREVIATIONS

US	United States
AF-PAK border	Afghanistan-Pakistan border
KPK	Khyber Pakhtunkhwa
ARV	Afghan Refugees Village
AAN	Afghanistan Analysts Network
UNHCR	United Nations High Commissioner for Refugees
KP	Khyber Pakhtunkhwa
NADRA	National Database and Registration Authority
UDHR	Universal Declaration of Human Rights
POR's	Proof of Registration of Cards
WTO	World Trade Organization
Ministry of SAFRON	Ministry of States and Frontier Regions (Pakistan)
ACC	Afghan Citizens Cards
ICSCER	International Covenant on Economic, Social, and Cultural Rights
CSCER	Committee on Social, Cultural, and Economic Rights

Abstract

Armed conflict, violence and political instability have their serious repercussions for nation states around the world. Soviet invasion of Afghanistan in 1979 was monitored by mass migration of Afghans to Pakistan. Over four million Afghan refugees have stayed in Pakistan during last four decades notwithstanding the fact that Pakistan is a non-signatory to 1951 Geneva Convention Relating to the Status of Refugees nor its 1967 Protocol yet the State has ratified International Covenant on Social, Cultural and Economic Rights in 2008. Since 1979, Afghan refugees are operating large-scale businesses in Pakistan without paying any taxes to the state of Pakistan. These illegal businesses operated by Afghan citizen cost millions of dollars per annum to Pakistani governments, yet no legislation has been drafted for immigrants or settlers by the subsequent governments. Moreover, a good number of Afghan citizens have obtained Pakistani identity cards through illegal means which has seriously impacted the security situation of Pakistan. This research study will basically address the challenges and prospects for legislating the regularization of business, trade and professions of Afghan nationals in Pakistan. While the study will be conducted through the context of Pakistan and timeframe of Afghan refugees during last four decades in Pakistan, provisions of domestic as well as international law will be consulted to devise policy outcomes that may be applicable for the Government of Pakistan. Moreover, this research study will outline the socio-economic challenges that Afghan refugees are facing in Pakistani society and how these challenges are impacting growth in their economic well-being. This research study will thoroughly analyze the prospects of economic human rights in Pakistan and how Pakistan will benefit economically, if a legislation is passed to regularize the economic activities of Afghan citizens in Pakistan.

Keywords: Afghan Refugees, Economic Human Rights, Legislation, International Law, Socio-Economic Challenges, Regularization.

Chapter One

Introduction

1.1 Thesis Statement

Parliamentary legislation is required for regularization of economic human rights of Afghan refugees in Pakistan.

1.2 Background

Armed conflict, violence, and political instability have all made a significant impact upon forced lateral displacement and illegal migration in recent years around the world. Most forcibly displaced people just lack the financial means to leave the region, so they continue to stay. Internally Displaced People can either stay in their homes or migrate to neighboring states in search of employment.¹ Over the last several years, refugees have now become the world's fastest growing community. Conflict in Afghanistan since the last four decades has impacted the socio-economic stability of the region. Pakistan has been hosting Afghan refugees since the Soviet invasion of Afghanistan as the border between the two sides remained open until the start of 2017, thus facilitated the influx of Afghan refugees in Pakistan.

1.2.1 Pak-Afghan Border (Durand Line) & Migration of Afghan Refugees to Pakistan

In 1893, Sir Motimar Durand, a British diplomat, who represented British Raj during negotiations with Afghanistan over Durand Line, and Abdur Rehman Khan, who was the Amir of Afghanistan; entered into an agreement to draw an international border between Pakistan and Afghanistan, which has created unpleasant environment for both the countries because Afghan

¹Guido Veronese et al., "Risk and Protective Factors among Palestinian Women Living in a Context of Prolonged Armed Conflict and Political Oppression," *Journal of interpersonal violence* 36, no. 19-20 (2021): 44-46.

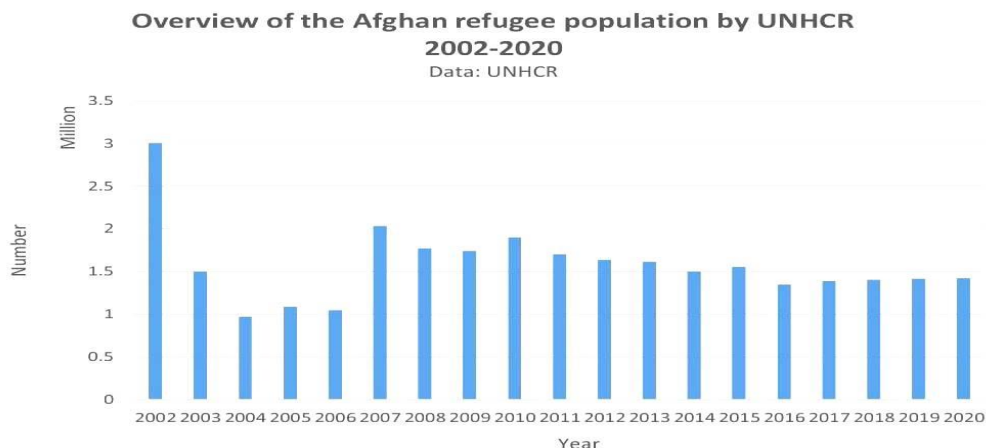
government had not recognized legitimacy of Durand Line as official International border between Pakistan and Afghanistan and they, from time to time, have questioned the authenticity of Durand Line Agreement. However, the report published by Asia Foundation in May, 2019 recognized Pakistan-Afghanistan border as “Notably porous and frequently traversed”

The Baloch in the South and the Pashtuns in the North are segregated by the Durand Line as according to a report by Afghanistan Analysts Network (AAN) that was issued in January 2020. However, both the group had preserved cross-border links due to their family terms or of business connections, further the report of Asia Foundation holds that the reason of carrying links by both the groups are due to the reasons that Pakistan are hosting millions of Afghan Refugees since last four decades.

1.2.2 Afghan Displacement to Pakistan

After the invasion of Afghanistan by the then Soviet Union in 1979; the process of displacement of Afghan nationals began and around 4 lac Afghan refugees entered into Pakistan by the end of 1979, as per the report of UNHCR. The Soviet Union left Afghanistan in 1989 but civil war broke out in Afghanistan, which again led the people of Afghanistan to take shelter in the neighboring countries i.e., Pakistan & Iran. And since then, millions of refugees have been given shelter by the Pakistan Government.

Till 2006, Afghan refugees in Pakistan were not required to hold any legal document to stay in Pakistan, however, in 2006-07, the Government of Pakistan in cooperation with UNHCR began the process of registering Afghan Refugees and endowed Proof of Registration of Cards (PoR's) to the Afghan Refugees. Sana Alimia holds that by the end of 2011, Pakistan has hosted around four to five million Afghan refugees.



In the Operational Portal Refugee Situation- Statistics on Afghan Refugees in Pakistan, the UNHCR published statistics that presented an overview of the overall population of Afghan refugees who entered Pakistan between 2002 and 2020.² However, it is uncertain how many Afghans remain in Pakistan without a legal instrument and with the status of unregistered Afghan refugee, as well as how their human rights to economic security may be maintained in the absence of such documents. Furthermore, registered refugees are guaranteed economic human rights in accordance with local laws, international agreements, and international policies.

A report published by an Afghan News Agency, ToloNews in 2021, reported that about 1.1 million unregistered Afghan refugees are living in Pakistan and they didn't own any legal documents from the Government of Pakistan at all. Further all these Afghan refugees are residing in Afghan Refugees Village (ARV) or in urban settlement, however the study of Asia Development Solution Platform-ADSP transpire that refugees having PoR's are allowed to live in Afghan Refugees Village. Currently 54 ARV's are open in Pakistan for the Afghan Refugees as per the Monthly report of UNHCR-2020. It was further explained that around 58% Afghan refugees are registered in the province of Khyber Pakhtunkhwa whereas Balochistan is on the second number with having 23% registered Afghan Refugees, Punjab hold 12% while Sindh is on the tail with having 5% registered Afghan Refugees.

²Operational Data Portal, "Registered Afghan Refugees in Pakistan," UNHCR.

Province	Afghan Refugees Village	Total PoR Card Holder	By Location Urban Settlement (%)		By Location Arv (%)
Khyber Pakhtunkhwa (including FATA)		43	824 904 (58 %)	54 %	46 %
Balochistan		10	325 395 (22 %)	85 %	15 %
Punjab		1	166 715 (12 %)	90 %	10 %
Islamabad		-	34 462 (2 %)	100 %	-
Sindh		-	64 890 (5 %)	100 %	-
Other locations		-	1 %	100 %	-

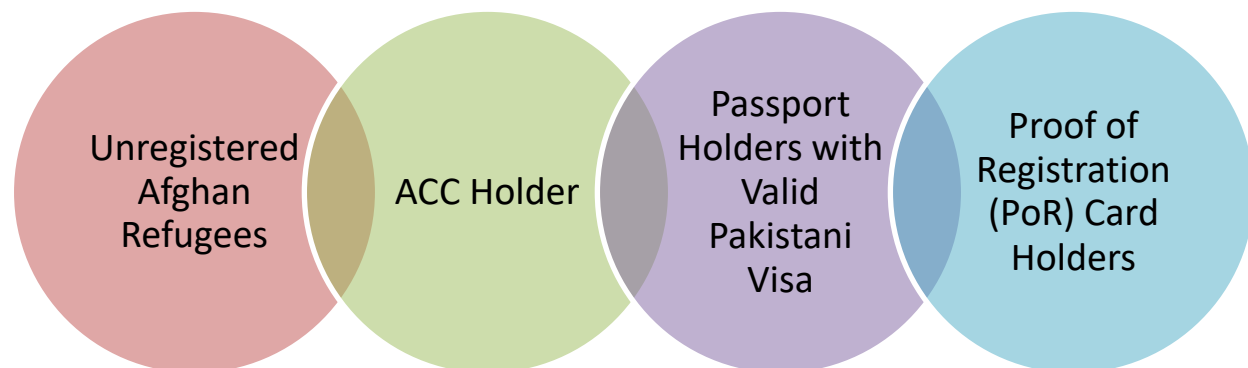
The above statistics shows the province-wise breakdown of refugees of PoR Card holder living in the four corners of Pakistan but many of them are leaving the Afghan Refugees Village due to the lack of basic facilities as reported by Khalid Khan Kheshgi in an interview recorded on 20th of February 2020. Constitution of Pakistan in its introductory part talks about the principles of Democracy, equality, freedom, social injustice which shall be fully observed as enunciated in Islam and latter under Article 4 of the Constitution states

“That no action detrimental to the life, liberty, body and reputation shall be taken except in accordance with law”.

However, when there is an absence of state legislation and clear policy on the subject of Afghan Refugees; the life, liberty, reputation, economic, cultural and social right is noxious for the Afghan Refugees living in Pakistan since decades.

1.3 Overview

Pakistan has hosted more than 4 million registered Afghan refugees since the Soviet attack in Afghanistan and still, more than 1.5 million Afghan refugees reside in Pakistan. It is pertinent to observe that the refugee influx into Pakistan has not ceased during last three decades. Even though when refugees were not legally permitted to enter Pakistan, they did so through multiple



illegal border crossings and openings along the Pakistan-Afghan border. According to Pakistani officials, 2,000 visas were issued to citizens of Afghanistan each day up until May 2016. However, between 40,000 and 60,000 immigrants (mainly Afghans) crossed the border into Pakistan each day. Pakistan accepted the International Covenant on Social, Cultural, and Economic Rights in 2008 despite not having ratified the 1951 Geneva Convention Relating to the Status of Refugees or its 1967 Protocol. Despite the ambiguous legal status of Afghan refugees living in Pakistan, the state is housing a sizable number of Afghan residents on its soil.³ Between 2006 and 2007, the Pakistani government began registering Afghan refugees and issuing Proof of Registration (hereinafter, PoR) cards in collaboration with UNHCR. Afghan populace living in Pakistan can be mostly categorized into four distinct groups.⁴ A PoR card holder is considered a registered refugee. Pakistan began issuing Afghan Citizens Cards (ACC) in 2017 in order to document a portion of the previously undocumented Afghan refugees. There are, however, unregistered Afghan refugees who lack documentation which is the third category and finally Afghans with passports and a valid Pakistani visa are the final group of Afghan citizens residing in Pakistan. Afghan refugees who have lived in Pakistan since 1979 have been conducting business without paying any taxes to the state of Pakistan. The state loses millions of dollars in

³Marjoleine Zieck, "Accession of Pakistan to the 1951 Convention and 1967 Protocol Relating to the Status of Refugees: Signing on Could Make All the Difference," *PLR* 5 (2010): 2-3.

⁴Muhammad Zubair, Muhammad Aqeel Khan, and Muzamil Shah, "Analysis of Pakistan's Policy Towards Afghan Refugees: A Legal Perspective," *Global Political Review* 4, no. 3 (2019): 14-15.

revenue each year as a result of the illegal businesses run by these Afghan citizens.⁵ Furthermore, a large number of Afghan refugees have managed to obtain Pakistani Identity Cards (CNIC) in order to enjoy complete rights of statehood. The Foreigners Act of 1946, which governs foreigners' entry into Pakistan, their presence there, and their departure, is the principal legal framework in Pakistan for governing foreign nationals on its jurisdiction.⁶ Any foreigner entering Pakistan without valid travel documentation risks being denied entrance due to a modification made to the Foreigner's Order of 1951 in the year 2000.⁷ So, there is a vital problem with the immigration laws and system of Pakistan in managing Afghan refugees.

The GoP manages refugee problems in accordance with international, national, humanitarian and political concerns. UNHCR has no formal status in Pakistan however, following the USSR invasion of Afghanistan; it was allowed to manage the Afghan refugee's influx in Pakistan. Afghan refugees who have registered with the UNHCR often receive indefinite temporary residency cards from the Ministry of SAFRON, which oversees Afghan refugees in Pakistan. In accordance with the 1993 Cooperation Agreement between the Government of Pakistan and UNHCR, the UNHCR applied jurisdiction based on General Assembly Resolution 428 (V) of December 14, 1950, due to Pakistan's lack of experience with refugee regulation and inadequate bandwidth to demonstrate compliance with an effective and prompt refugee management strategy.⁸

The UNHCR has been closely collaborating with the provincial and central governments in the establishment of camps, registration, and processing of asylum requests for Afghan refugees in Pakistan.⁹ Current Taliban regime in Afghanistan seems to fail in adverting the humanitarian crisis in Afghanistan and if furthered, refugee influx will once again move towards Pakistan.¹⁰ Worst case scenario of another Afghan refugee influx in Pakistan will have severely

⁵Jennifer Murtazashvili, "Gaming the State: Consequences of Contracting out State Building in Afghanistan," *Central Asian Survey* 34, no. 1 (2015): 8-9.

⁶Inayatullah Khan and Anees Iqbal, "Law Governing Afghan Refugees in Pakistan," *JL & Soc'y* 39 (2009): 5-7.

⁷Sanaa Alimia, "Performing the Afghanistan–Pakistan Border through Refugee Id Cards," *Geopolitics* 24, no. 2 (2019): 14-16.

⁸FORTY-EIGHTH SESSION, "General Assembly," *Institute for the period July 1994* (1993): 44.

⁹Helga Baitenmann, "Ngos and the Afghan War: The Politicisation of Humanitarian Aid," *Third World Quarterly* 12, no. 1 (1990): 65-68.

¹⁰Zahoor Ahmad Wani, "Afghanistan's Neo-Taliban Puzzle," *South Asia Research* 41, no. 2 (2021): 21-24.

adverse consequences for Pakistan, yet keeping in view the current problem at hand, Pakistan must initiate the legislation for existing Afghan refugees to cope up the loss of billions of dollars of revenue per annum.

1.4 Main Arguments

Over two million Afghan refugees are conducting their economic activities in Pakistan which are arguably unchecked and unaccounted for. While the state of Pakistan has been managing the Afghan refugees in collaboration with UNHCR, mainly with respect to their civil rights, the country has been unable to devise a sound immigration system or mechanism for their economic human rights due to which not only Afghan refugees, but the Pakistani society in general has also been severely affected.

1.5 Research Focus

The key focus of this study is to underline the challenges and prospects of legislating the regularization of Afghan economy in Pakistan. Secondly this research determines the socioeconomic challenges that Afghan refugees have been facing. Thirdly it focuses that whether the provisions in domestic and International Human Rights Law can be afforded to set the economy of Afghan refugees in Pakistan?

1.6 Objectives of the Study

This research will accomplish the following objectives:

- Firstly, this research study will basically address the challenges and prospects for legislating the regularization of business, trade and professions of Afghan nationals in Pakistan. While the study will be conducted through the context of Pakistan and timeframe of Afghan refugees during last four decades in Pakistan, provisions of domestic as well as international

law will be consulted to devise policy outcomes that may be applicable for the Ministry of Saffron in particular and Government of Pakistan in general.

- Secondly, this research study will also outline the socio-economic challenges that Afghan refugees are facing in Pakistani society and how these challenges are impacting growth in their economic well-being, and;
- Finally, this research study will highlight the prospects of economic revenue for Pakistan if legislation is passed to regularize their economic activities in Pakistan.

1.6 Research Questions

1. What research gaps exist in the management of Afghan refugees in Pakistan with regard to the protection of their economic rights?
2. What are the laws or conventions protecting the economic human rights of refugees around the globe including Afghan refugees in Pakistan?
3. Whether Pakistan and Afghan refugees fulfill their respective domestic and international human rights obligations in law and practice?
4. Whether some valuable recommendations could be presented to help Pakistan and Afghan refugees to comply with their respective human rights obligations with respect to the economic activities of the refugees in the country?

1.7 Research Methodology

The research approach employed in this study is communitarian critique. The goal of communitarian critique is to preserve the symmetry between an individual's social duties and rights, the unique character of trust between patients and healthcare providers, and the moral righteousness of a cohesive society. Communitarian is a twentieth-century sociopolitical ideology that prioritizes the interests of society over the interests of stakeholders, particularly the state. The context of Communitarian Critique can be explained by assessing the phenomenon through the lens of societal perspective. Katerina Dalacoura has assessed the critique of

communitarians with reference to post-revolutionary Iran. Political philosophers such as Charles Taylor, Michael Sandel and Michael Walzer contested Rawls' assertion that the main objective of government is to make sure security and disperse fairly the liberties and capital means that individuals require to live in freedom chosen lives, based primarily on Aristotle and Hegel's perspectives yet these liberal theorists never claimed to be part of the communitarian movement.¹¹

The case study evolves in this research is qualitative in nature which mainly focus on the thorough review of books, international Human Right laws in line with the laws of Pakistan, report and case study Moreover, case study belongs to the Qualitative conduct of research will be employed for this particular study mainly focuses on how people perceive and interpret situations in order to better understand the social realities of individuals. Qualitative research is inductive in nature which implies that the researcher looks for meanings and insights in a situation. Human rights legislation and constitutional provisions of Pakistan pertaining to the protection of minority rights in the state are included as primary sources in this study. However secondary data is based on the study of Constitution of Pakistan, Case-laws, reports produced by the Government of Pakistan as well as international organizations and authentic literature available on this pertinent issue. Inferring both primary as well as the secondary sources of research will incorporate all the relevant information, eventually impacting the assessments and analytical approaches to answer the research questions of this study.

1.8 Thesis Structure

Chapter One introduces this thesis. All-important notions and concepts will be defined here. Research questions, Research objective, Research methodology and a brief description of the chapters has been explained in this chapter.

Chapter Two critically analyzed existing published work on the subject of refugee rights in general with the goal of identifying any research gaps/niches in the available material and establishing an appropriate theoretical framework.

¹¹Daniel A Bell, "A Communitarian Critique of Liberalism," *Analyse & Kritik* 27, no. 2 (2005): 17-20.

Chapter Three relates to know the full concept of economic human rights of Afghan Refugees in Pakistan. It talks about the Domestic, Regional and International Human Right Laws and policies in the pretext of Afghan Refugees with the aim to subjectively analysis that how these provisions can be implemented in Pakistan.

Chapter 4 focuses on critical assessment. The conservative critique research methodology is used to investigate Pakistan's policies, programs, and actions involving Afghan refugees in order to reach a clear study outcome. This chapter summarizes key research findings.

Chapter Five is the last chapter. This chapter provides some useful recommendation to the State of Pakistan to improve its immigration system in compliance with its main human rights obligations and to secure the economic human rights of Afghan Refugees in Pakistan. This chapter also includes some suggestion for UNHCR and International Community to facilitate and to safeguard the rights of Afghan Refugees in Pakistan.

1.9 Conclusion

The main focus of this chapter is to introduce this research thesis. Important research questions have been identified in this research, which is going to be answered in each research chapter separately. The essence of this research is to fill the existing gap in the already available work with the intent to put forward imperative suggestions for the Government of Pakistan, UNHCR and International Community keeping in view the economic human right of refugees protected by the International Conventions, policies and law of the land for which efforts are made to achieve that purpose. Conservatism critique research methodology is used to identify how the business of Afghan refugees can be regularized and put into the legal channel for their economic well-being.

It was 1979, when Afghan citizens started taking shelter in their neighboring countries due to their invasion of Soviet Union in Afghanistan. At that time, the Government of Pakistan with open heart welcomed Afghans who crossed Pakistan border to take safe heaven; however due to the absence of state ownership and legislation; Afghans were not required to get registered with the Government of Pakistan and it was for the first time in 2006-07; when the host country in

association with UNHCR registered Afghan refugees and issued Proof of Registration card. During such juncture, many Afghan refugees started running their businesses in Pakistan in order to get their basic facilities; however, all these businesses were without proper registration or work permit. Absence of state policy created several problems, which make them at risk and leads to unequal and injustice behavior. Article 4 of the Pakistan Constitution holds that every person within the territorial jurisdiction of Pakistan is to be cured in accordance with law. International Convention also makes it obligatory upon the developing states to define up to what extent they can assured the economic rights of the people, however having gap in the state policy create hindrance for the Afghan refugees to get their socio-economic human right.

Chapter Two

Literature Review

2.1 Introduction

This chapter seeks to identify a research niche on the socioeconomic human rights and protection of Afghan refugees in Pakistan as well as to critically evaluate previously published work on refugees in general. This chapter also seeks to establish a sound theoretical framework within which this thesis can be placed.

Refugees are potentially subjected to human rights breaches and abuses across the world. The majority of refugees currently living in different parts of the world would almost certainly face a two-pronged contravention: an underlying infringement in their country of origin, which often will be the catalyst for their flight to some other state, and a lack of complete assurance of their critical rights and privileges in the accepting state. Nonetheless, the concept of state sovereignty, as well as the enabling conditions of self-defense and territorial superiority, determines the legal situation in which refugees find themselves. Opposing humanitarian ideals, on the other hand, stem from fundamental international law and treaties. The international legal framework for refugee protection, which is founded on the 1951 United Nations (UN) Convention Relating to the Status of Refugees (1951 Convention) and its 1967 Protocol, attempts to prevent such abuses. In any event, these measures underscore countries' obligations and responsibilities to undocumented immigrants and refugees.

The concepts of social and economic rights are basic human rights that impact our ability to live in pride and actively contribute in our communities. Among these are employment rights, social security, and access to food, health care, education and water. They include the right to acceptable salaries and salary, the right to appropriate income security in the case of illness, old age, or unemployment and the right to a decent quality of living.¹²Cultural, social and economic rights, in particular, should be recognized, protected, and delivered by states. The obligation to

¹²David Barkin and Alejandra Sánchez, "The Communitarian Revolutionary Subject: New Forms of Social Transformation," *Third World Quarterly* 41, no. 8 (2020): 44-45.

honor forbids governments from interference with the pleasure of a right. Under the commitment to safe, the country is expected to make reasonable measures to prevent other groups from infringing with the pleasure of the right.¹³ The state's commitment to fulfill requires it to actively work to create the circumstances required for individuals to fully appreciate their right. Because the protections for cultural, social, and economic rights differ significantly between universal and regional human rights treaties, the extent to which individuals can seek legal protection for their economic, social, and cultural rights is determined by which human rights treaties their respective states have ratified. However, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) is the most comprehensive and generally applicable international instrument in this field of human rights legislation. As of May 2018, 168 of the 193 UN Member States had ratified the ICESCR, with the UN Committee on Social, Cultural, and Economic Rights (CESCR) in responsible of overseeing its implementation.

2.2 Assessing Afghan Refugees

2.2.1 Afghan Refugees in World

Afghans make up one of the world's largest refugee populations. Nearly 2.6 million Afghan refugees live in settlements around the world, with 2.2 million in Pakistan and Iran. There are more than 3 million Afghan refugees worldwide, 2.2 million of whom live in Iran and Pakistan. Another 3.5 million people have been displaced throughout the country after fleeing their homes in search of safety. Number of people fleeing is projected to rise in 2021 as the security situation worsens. Afghanistan has been plagued by natural catastrophes, conflict, food insecurity and persistent poverty for more than 40 years.

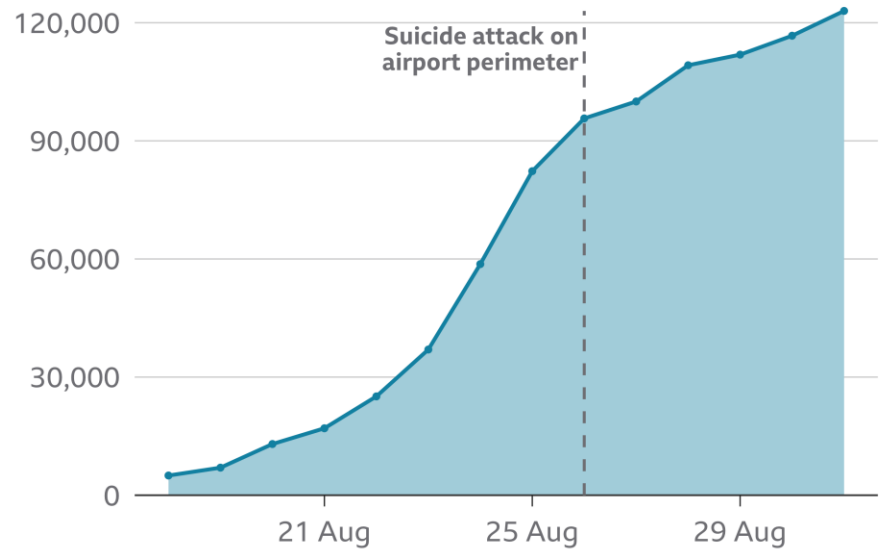
During the current position in Afghanistan; again, the people residing in Afghanistan fled into the other countries including Germany, Spain, Uzbekistan and Qatar. And in the circumstances; Pakistan who had the longest border with Afghanistan refused to accept refugees.

¹³William Theodore De Bary and Wm Theodore De Bary, *Asian Values and Human Rights: A Confucian Communitarian Perspective* (Harvard University Press, 1998), 24-26.

Shumaila Jaffery of the BBC reported from the border point that it was a chaotic situation with many Afghans barred from entering Pakistan.

More than 120,000 people were airlifted out of Kabul airport after Taliban took control

Total number of people evacuated by US and coalition planes



2.2.2 Afghan Refugees in Asia

The 1979 Soviet invasion in Afghanistan sparked political and social instability, resulting to a civil war (Haqqani 2005), which led to millions of refugees fleeing to Central Asia. Since 1979, central Asia had offered shelter to an estimated 5.7 million Afghans (UNHCR, 2012c). Refugees live in camps and rely on rehabilitation aid, community support, and self-employment to survive (Christensen 1989; Sadat, 2008; and Kucher 2005). Since 2002, at least 3.8 million refugees have returned home to Afghanistan.

Dr. Savitri Taylor is of the view that the International Covenant on Civil and Political Rights and the Convention Against Torture or Other Cruel, Inhuman, or Degrading Treatment or

Punishment have both been ratified by some Asian nations, but others have not.¹⁴ These agreements and treaties impose non-refoulement obligations on people even if they do not meet the criteria set forth in the Refugee Convention and Protocol to qualify as "refugees," and they do not lay a focus on exclusions. The principle of non-refoulement is also enforceable by countries that have not ratified either the 1951 Convention or its protocol because it is generally acknowledged as a component of customary international law.

Country or Territory	Refugee Convention and Protocol	Convention against Torture	International Covenant on Civil & Political Right
Central Asia			
Kazakhstan	Yes	Yes	Yes
Uzbekistan	No	Yes	Yes
Tajikistan	Yes	Yes	Yes
Turkmenistan	Yes	Yes	Yes
Kyrgyzstan/Kyrgyz Republic	Yes	Yes	Yes
East Asia & the Pacific			
American Samoa (USA)	Yes	Yes	Yes
China	Yes	Yes	No (but signed on 5 October 1998)
Australia	Yes	Yes	Yes
Federated States of Micronesia	No	No	No
Cook Islands	No	No	No
French Polynesia (France)	Yes	Yes	Yes
Fiji	Yes	Yes	Yes

¹⁴Kay Hailbronner, "James C. Hathaway, the Rights of Refugees under International Law, Cambridge University Press, Cambridge, 2005, ISBN 0521542634 (Hardback), 0521834945 (Paperback), Li+ 1184pp," (Oxford University Press, 2006), 9-10.

Kiribati	No	Yes	No
Hong Kong SAR (China)	No	Yes	Yes
Japan	Yes	Yes	Yes
Marshall Islands	No	Yes	Yes
Macau SAR (China)	Yes	Yes	Yes
North Korea/DPRK	No	No	Yes (but purported withdrawal)
Nauru	Yes	Yes	No (but signed on 12 November 2001)
Palau	No	No (but signed on 20 September 2011)	No (but signed on 20 September 2011)
Niue	No	No	No
New Caledonia (France)	Yes	Yes	Yes
Northern Mariana Islands (USA)	Yes	Yes	Yes
South Korea/Republic of Korea	Yes	Yes	Yes
Papua New Guinea	Yes	No	Yes
Samoa	Yes	Yes	Yes
Vanuatu	No	Yes	Yes
Solomon Islands	Yes	No	No
New Zealand (including Tokelau)	Yes	Yes	Yes
Tuvalu	Yes	Yes	Yes
Tonga	No	No	No
South Asia			
Bhutan	No	No	No
Maldives	No	Yes	Yes

India	No	No (but signed on 14 October 1997)	Yes
Sri Lanka	No	Yes	Yes
Nepal	No	Yes	Yes
South East Asia			
Bangladesh	No	Yes	Yes
Cambodia	Yes	Yes	Yes
Brunei	No	No (but signed on 22 September 2015)	No
Burma/Myanmar	No	No	No
Mongolia	No	Yes	Yes
Thailand	No	Yes	Yes
Indonesia	No	Yes	Yes
Laos	No	Yes	Yes
Malaysia	No	No	No
Timor-Leste	Yes	Yes	Yes
Philippines	Yes	Yes	Yes
Singapore	No	No	No
Vietnam	No	Yes	Yes
South West Asia			
Afghanistan	Yes	Yes	Yes
Pakistan	No	Yes	Yes
Iran	Yes	No	Yes

2.2.3 Afghan Refugees in Pakistan

Dr. Allauddin Kakar and his associate authors are of the opinion that political, socio-economic, security, and environmental implications, as well as instability and bloodshed, may befall the host country. It is critical to comprehend how the Soviet invasion of Afghanistan

resulted in a massive flood of Afghan refugees, destabilizing Pakistan's financial, social, political, and environmental systems. Over three million immigrants arrived in Pakistan, wreaking havoc on the country's civilization. According to the project, Afghanistan migration is a major contributor to terrorism, inflation, child labor, drug trafficking, and diseases such as poliomyelitis and malaria. Furthermore, as a result of refugee influxes, overexploitation of natural resources, soil degradation, deforestation, poaching, and foraging produced environmental difficulties. In addition to discussing the impacts of Afghan refugees on Pakistan's political and socio-economic fabric, another important dimension of the subject is forced repatriation of Afghan refugees which has been discussed by Vasja Badalic. She is of the view that Pakistani government had taken steps to compel Afghan refugees to return home. Pakistan's successive governments cultivated anti-refugee feeling amongst the local populace in order to build a favorable environment for the forced repatriation operation.¹⁵In addition, Pakistani authorities took particular actions that endangered the material, physical, and legal safety of Afghan refugees both before and after repatriation, and they prevented them from exercising their right to decide whether or not to return to their place of origin. It is important to note that Pakistan broke the law of non-refoulement with the UNHCR's tacit approval.

Ubaid-Ur-Rehman and his coauthors discussed about the economic aspects of the return of Afghan refugees. According to the researchers, Pakistan has provided Afghan refugees with a safe haven for more than 40 years. Pakistan started repatriating refugees with the aid of humanitarian organizations because these migrants put a drain on the nation's resources, but the desired results have not yet materialized.¹⁶Productivity, labor market integration, and housing access as indicators of economic conditions for Afghan refugees in Pakistan are substantially correlated with repatriation in the presence of the mediating variable. As a result, economic incentives in Pakistan encourage people to remain in the host nation rather than return home. Yet there are certain socio-economic and cultural challenges associated for the Afghan refugees, who choose to stay in Pakistan. Asadullah Khan and his corresponding authors assert that vast majority of Afghan refugees have settled in Pakistan's Khyber Pakhtunkhwa Province, which has

¹⁵Vasja Badalič, "The Reverse Exodus: The Forced Repatriation of Afghan Refugees in Pakistan," in *The War against Civilians* (Springer, 2019), 78-80.

¹⁶Ubaid ur Rehman, Syed Mudasser Abbas, and Alamgeer Khan, "An Analysis of Economic Factors Influencing Repatriation of Afghan Refugees from Pakistan," *Gomal University Journal of Research* 37, no. 1 (2021): 96-98.

seen decades of bloodshed and political upheaval.¹⁷ Pakistan sought the repatriation of refugees because to rising political instability, economic difficulties, and bad law and order circumstances. These exiles, who have been in Pakistan for generations, face significant social, economic, and political constraints. Because of continuous instability and terrible socioeconomic situations, the majority of refugees are unwilling to return to their native country. The return of Afghan refugees from Pakistan has been hampered by a lack of socioeconomic possibilities in their own country. A great majority of refugees seek, that Pakistani authorities must stop to force Afghan refugees to go back, until and unless Afghanistan's political and socioeconomic situation improves.

The Legal Status of Afghan Refugees in Pakistan: A Story of Eight Agreements and Two Suppressed Premises was written by Marjoleine Zieck.¹⁸ More than a fourth of the world's refugees live in Pakistan, the majority of whom have been there for more than 25 years. Pakistan, on the other hand, has refused to sign either the 1967 Protocol on the Status of Refugees or the 1951 Refugee Convention. Despite the fact that they were ostensibly considered refugees for the first 20 years of their expatriate existence in Pakistan, the legal standing of the Afghan refugees it sponsors is unclear. This article explores the legal status of Afghan refugees in Pakistan in light of a number of agreements signed by Pakistan with UNHCR and, on occasion, Afghanistan. As a result of the series' final agreement, Afghan refugees may return to Afghanistan under a UNHCR-supported voluntary repatriation program until December 2009.

UNHCR and RIPORE collaborated together to support the UNHCR in implementing the Government of Pakistan policy of assisting and expediting repatriation of refugees in KP's eleven southern districts, including tribal border regions.¹⁹ Previously, in the late 1970s and early 1980s, these refugees fled to Pakistan. However, because the Government of Pakistan was conducting military operations in tribal areas, it was decided that these areas would be excluded from the VRP. According to available data, 176,000 refugees were housed in this vast region. The majority of these refugees lived in tribal areas, with the remainder in KP and Balochistan.

¹⁷Asadullah Khan, "Socio-Economic Challenges in Repatriation of Afghan Refugees from Khyber Pakhtunkhwa, Pakistan," *Current Issues in Development Studies* 1, no. 1 (2021): 15-18.

¹⁸Marjoleine Zieck, "The Legal Status of Afghan Refugees in Pakistan, a Story of Eight Agreements and Two Suppressed Premises," *International journal of refugee law* 20, no. 2 (2008): 2-4.

¹⁹Faiz Bakhsh and Muhammad Asif Safdar, "Role of the Unhcr in Repatriation of Afghan Refugees from Pakistan: Post 9/11 Era," *PETITA: JURNAL KAJIAN ILMU HUKUM DAN SYARIAH* 5, no. 1 (2020): 5-6.

2.3 Gap in the Existing Literature

While this excessive literature has been produced on multidimensional perspectives of Afghan refugees, including the socioeconomic patterns of their stay in Pakistan, there have been found a brief gap in the existing published work in the topic, as very little literature has been produced on generating revenue from the economic activities conducted by these refugees in Pakistan. More pertinently, no or a negligible legislation has been done by the parliament of Pakistan on the said issue, nor this issue has been debated by the national legislators hence there is a dire need to address the said issues. Challenges and prospects of the said issue need to be discussed so as to bring a complete picture for the policy makers. Revenue of billions of dollars can be generated by the state of Pakistan if the status of Afghan refugees as well as their economic activities is regularized in Pakistan. It is appropriate to mention here that Honorable Peshawar High Court through its writ petition no 2715-P of 2013 directed the Federal Government to repatriate the Afghan refugees within six months but no legislation has been made so far nor even the same was put before the table in National Assembly; due to which Pakistan faces loss millions & billions of rupees on daily basis. Later on, another pro bono matter titled as Muhammad Muazzam Butt Vs Federation bearing its writ petition no 2468-P of 2019 was put before the Honorable Peshawar High Court seeking the parameter of the life of Afghan refugees in Pakistan and also requested for the restraint of business of Afghan refugees in the absence of legal license or work permits, wherein the Court was pleased to direct the federal government for taking appropriate legal action under the law against the refugees.

2.4 Theoretical Framework

2.4.1 Communitarian Theory & Its Critique

Communitarianism is a political and social paradigm from the twentieth century that puts the community's interests over the individuals. Liberalism is usually regarded as the opponent of communitarians, as it favors individual interests over communal goals. There has always been a distinction between political and civil rights and economic, cultural, and social rights within

communities ever since the Universal Declaration of Human Rights was adopted and set forth the fundamental principles of human rights.²⁰ Because none could be considered a right, they could not be included in the same covenant. The argument for separating the two revolves around the definition of freedom. The civic rights to freedoms of expression, assembly, association, religion, economy and others do not postulate the content of speech, the purpose of assembly or association or theology of religion. Freedom must be value-neutral in such situations. By leaving the content of the choice to the individual, these rights persistently abstract from the content of the choice.²¹ However, the case is not the same for minority communities as well as the majority. Nationalism and Liberalism are two dominant theories of international system that predominantly advocates the rights and sentiments of major portion of a society while on the other hand, communitarian theory advocates the rights of marginalized portion of societies.

The relationship between the community and the individual is emphasized by communitarians, and they assess this relationship as the foundation of politics. Michael Sandel used the term communitarian in his essay *Liberalism and the Limits of Justice* (1982) for the first time in which he articulated a critique of John Rawls' theory of liberal justice's liberal individualist assumptions.²² Alisdair MacIntyre, Michael Walzer, and Charles Taylor are among some of the prominent communitarian critics of liberal individualism. Hegel and Rousseau had greatly influenced these communitarian philosophers as well. As per communitarians, Individual identity, skills, and life goals can only be developed within the context of a community. By nature, we are communal beings. Because the community shapes and determines the nature of a person, political action must begin with a concern for the group rather than the individual. In other terms, philosophical contemplation on the desirable and just state must center on the society rather than the individuals. According to communitarians, liberal individualism ignores the purpose of community membership and identity in social and political life by emphasizing individual rights and freedom over society.²³ It reduces the extent to which a person's society or

²⁰Amitai Etzioni, "The Responsive Community: A Communitarian Perspective," *American Sociological Review* (1996): 34-36.

²¹Sunday Paul Chinazo Onwuegbuchulam and Khondlo Mtshali, "Contesting Paradigms in Society's Poverty Alleviation and Development Arena," 19-21.

²²Sandel Michael, "Liberalism and the Limits of Justice," *Cambridge University* (1982): 11-12.

²³Will Kymlicka, *Liberalism, Community, and Culture* (Oxford University Press, 1991), 21-24.

community influences who they are and the values to which they aspire. When making decisions, there may be disagreements on what is morally and ethically acceptable. Throughout history, many different types of ethics have been suggested and debated. As citizens of the modern day strive to create a balance between the independent society and individual as a whole, philosophers and researchers return to the notion of the ethical and community behaviors included within it.

“Action, to be meaningful, must be for community building; the bonding of persons is the epicenter of cultural formation, its constitutive ambience. Given the primacy of relationship, unless I use my freedom to help others flourish, I deny my own well-being. Because fulfillment as persons is never achieved in isolation, but only in relation, our encounter inheres in our beingness. In order to maintain our existence, we are committed to the mutual existence of the others with whom our person is interconnected.”²⁴

Communitarians argue that the notion of privacy encourages antisocial behavior by offering a sense of anonymity. Liberals, on the other hand, see privacy as a fundamental human right. In the digital era, how to protect an individual's data has evolved as one of the important issues. All the shells of privacy pose a problem for free-riders who take advantage of community membership without paying for it.²⁵ The typical communitarian challenge is to determine and establish policies that protect and promote beloved types of community without jeopardizing too much freedom. Citizenship, history, narrative, and culture are all tied to community participation, according to communitarians. Intelligent engagement is crucial to the development of communities since they are founded on shared ideals. Individuality, on the other hand, has already dismissed the communitarian perspective. Some academics also hold the opinion that during the previous few hundred years, individualism flourished as a result of new scientific insights and a break from religion, which gave the person a greater sense of control over his or her own destiny.

²⁴Sarah Hale, "Professor Macmurray and Mr Blair: The Strange Case of the Communitarian Guru That Never Was," *The Political Quarterly* 73, no. 2 (2002): 52-55.

²⁵Gad Barzilai, *Communities and Law: Politics and Cultures of Legal Identities* (University of Michigan Press, 2010), 15-16.

Critically reviewing the state of Afghan migrants in Pakistan, the context of community and social life has predominantly evaded from their lives as they strive to achieve their economic human rights in Pakistan. Their international human rights obligations are rarely met, and domestic legislation passed by Pakistan's parliament to protect their economic, human, and communal rights is rarely implemented. Though Liberal point of view may disagree with the notion as influx of Afghans in Pakistani society has introduced a passive connotation of drugs and weapons while subsequently strengthening economic ties with Pakistani counterparts, yet Afghans have predominantly suffered in Pakistani society as their rights have not been fulfilled in accordance with the international law as well as the Constitution of Pakistan.

2.5 Conclusion

Millions of Afghans have fled their homeland and have fled towards Pakistan due to years of political and military upheaval. Getting them into Pakistan was quite simple since they had a well-established economic, familial, and social network. Over the last 40 years, massive numbers of refugees have migrated to Pakistan, making it one of the countries with the largest refugee populations in the world. Despite the fact that Pakistan has long recognized Afghan refugees, however their social, cultural and economic rights are still debatable because of the foremost reason that Pakistan is not the signatory of international Convention dealing with the subject of Afghan refugees. It is also pertinent to note that till now, no legislation has ever been done by the parliamentarians for the regulation of Afghan refugees and to evolve them in the cycle of rules and regulations. There is lack of latest research on the topic and deficiencies for regulating the conduct and protecting their economic human rights in Pakistan. However particularly I found a research gap in the already published work on the said topic and Conservative Critique research methodology is deployed to critique the existing regulations in the parameter of safeguarding Afghan refugees and their economic human rights in Pakistan

Chapter Three

Legal Provisions for Economic Human Rights of Afghan Refugees

3.1 Introduction

This chapter addresses the second research question, which investigates whether there are any laws or international agreements protecting the economic human rights of refugees globally, including Afghan refugees in Pakistan.

This chapter of the research study considers several provisions in domestic, regional, and international human rights legislation that can be used to govern the economics of Afghan refugees in Pakistan. How these provisions can be implemented within the context of Pakistani laws and socio-cultural dynamics of Afghan refugees who have established their basis in Pakistan since last four decades. A subjective analysis of human rights laws of refugees within the context of international, regional and domestic level will be conducted.

In accordance with international and domestic law, a person's refugee status is determined in a municipal, local, or national setting employing the refugee popularity dedication. In terms of state supremacy, refugee judgments must adhere to the rules imposed by state actors.²⁶ This perspective holds that states are sovereign entities, and that each country must determine how to handle refugees in accordance with its own laws, rules, and agreements with other countries and the international community. Alternative perspectives on international treaties and law contend, however, that humanitarian ideals are distinct from international law and should be respected as such.

The overall foundation for the safety of refugees and to defend their fundamental human right is laid out in the 1951 UN Convention pertaining to the status of Refugees and its 1967 Protocol. The reality that emerges is typically a compromise between those two points of view: on the one hand, the principle of state sovereignty predominates, and nations are free to make their own legal regulations and guidelines regarding the status of refugees without interference

²⁶Alison Jeffers, "Refugee Perspectives: The Practice and Ethics of Verbatim Theatre and Refugee Stories," *Platform* 1, no. 1 (2006): 7-8.

from other nations or international law; on the other hand, pressure groups focus on invoking the concept of customary international law to protect refugees' fundamental rights. The guiding notion of the Vienna Conference on the Law of Treaties, which declares that countries may not consult their domestic legal systems when breaking international law, is also noteworthy.²⁷ Pakistan also adheres to a "dualist" philosophy rather than a monist one when it comes to customary international law. In the event of a regional impact, the matter defining the kind of act the state is expected to perform will largely determine the applicability. The concept of dualism is frequently associated with the fact that Pakistan's legal system is mostly founded on English common law, yet the country is also an Islamic Republic. The domestic political system of Pakistan has a considerable impact on refugee management in terms of how it treats Afghan refugees. However, Pakistan is obligated to follow customary international law on a regular basis due to international treaties it has ratified and its standing as a sovereign nation.

3.2 Major International Human Right Instruments and the Mechanism for its Implementation

3.2.1 Convention against Inhuman or Degrading Treatment, Torture and Cruel or Punishment of 1987

The torture convention requires state parties to take rational efforts to prohibit inhumane and cruel treatment of individuals within their boundaries. The definition of torture and the purposes for which torture is used are clearly explained in the convention's first articles. The deal strengthened the non-refoulement rule, which forbids states from relocating refugees to locations where they run the danger of being subjected to torture. Pakistan is one of its signatories, and it has preserved the principle of non-refoulement in large part by opting to participate in a global system for voluntary return rather than ordering refugees to leave.

²⁷Ibid., 4.

3.2.2 International Covenant on Social, Cultural and Economic Rights of 1966

Unquestionable human rights are required for the formation of a basic and nonviolent society. And, within the bounds of those rights, a nation must behave impartially. This covenant also provides for the rights of refugees. The right to basic exercise facilities, the right to social protection, and the ability to work and engage in change groups are among the rights protected by the aforementioned system. Pakistan's commitment to upholding the 1966 International Covenant on Social, Cultural, and Economic Rights has yielded conflicting findings.²⁸ At the floor, Pakistan's Foreigners Act 1946 prohibits employing someone who does not have consent to live within the vicinity. The authorities, then again, has endured refugees who work for the informal sector. Even inside the formal region, formally in line with the pertinent laws, refugee's requisite Pakistani associates for commercial enterprise and them via themselves can't gather down immovable belongings which are prerequisite to doing commercial enterprise. However, in practice, this law is evaded on an everyday foundation and is accepted with the aid of the law execution authorities.²⁹For instance, although it is illegal for Afghan refugees to possess vehicles in the province of KPK, they are in control of the entire transportation sector.

3.2.3 Universal Declaration of Human Right of 1948

Humans now have the freedom to seek asylum in states where they feel safe from persecution and brutal regimes. It is a typical human rights conference in which the inherent rights of all individuals, regardless of status, are clarified. It protects a person's inviolability before the law, equality, religious freedom, access to an education, and other rights.³⁰These impose obligations on Pakistan with regard to Afghan refugees, and Pakistan must develop a workable and compassionate policy to fulfill and uphold the fundamental human rights of Afghan refugees.

²⁸Giorgio Baruchello and Rachael Lorna Johnstone, "Rights and Value: Construing the International Covenant on Economic, Social and Cultural Rights as Civil Commons," *Studies in Social Justice* 5, no. 1 (2011): 24-25.

²⁹Ibid.

³⁰Cultural Rights, "Universal Declaration of Human Rights," *General Assembly Resolution 217A III*) of (1948): 89-90.

3.2.4 Convention Relating to the Status of Refugees, 1951

The 1951 Refugee Convention and its 1967 Additional Protocol, which strengthened its applicability, are a comprehensive instrument specifically dealing with refugee security that has been ratified by 145 countries.³¹The convention controls all aspects, including recognizing the responsibilities of states to safeguard refugees. It defines refugees as people who must flee because they fear being repressed due of their race, color, caste, or political affiliation. Certain fundamental liberties are given to humans, such as the right to an education, the freedom to travel, and the capacity to practice one's views. Despite Pakistan's rejection to join the Refugee Protocol and its convention, some of its requirements are required under customary international law, which applies equally to members and non-members. Dealing with the Afghan refugees who have migrated in unorganized manner over the past 40 years has proven to be tough for Pakistan. The state manages its refugees according to ad hoc, voluntarily criteria. Pakistan does not support the primary convention, for that reason. Even though Pakistan participates in numerous global agreements and conventions, many of its notions are included in them.

In light of the aforementioned facts and circumstances, it is important to consider the International Covenant on Civil and Political Rights, the UN Convention on the Rights of the Child, the International Covenant on Social, Cultural, and Economic Rights, and the UN Convention Against Torture as well as the Convention Relating to the Status of Refugees, the Universal Declaration of Human Rights, and the International Bill of Human Rights.³²The mandate of the UN High Commissioner for Refugees serves as a guide for dealing with refugees. States are bound by norms governed by conventional international law when it comes to how they handle refugees.³³

³¹UN General Assembly, "Convention Relating to the Status of Refugees (1951)," *United Nations, Treaty Series* 189: 111-14.

³²*Ibid.*

³³*Ibid.*

3.3 Regional Human Right Agreements

As far as international conventions are concerned, various intergovernmental associations have developed their own associations for the security of basic human rights not to the extent of civil & political rights but also of cultural, social and economic rights and for the same concern these instruments plays a pivotal role for the implementation international human rights of the concern region by focusing into the subjected issues of the same region. Apart from others, the most developed and persuasive regional human right system exists in America, Europe & Africa.

3.3.1 African Commission on Human and Peoples Rights

Intergovernmental organizations have founded a system to put into practice universal human rights standards, policies and rules and to protect the basic rights of the human being especially in the region of Africa.

African Commission on Human and Peoples Rights have come into existence on 21st of October 1986 whereas in the year 2002 it carries 53 states as its members. It carries two fold meanings firstly to promote human right, principles and policies by collecting documents, information's, research papers and to make recommendations, formulation principles and policies & cooperate with other state institution and secondly to implement and to protect these rights between the state actors by way of interstate communications, Communications other than the state parties and report from the state parties.

Apart, from others certain human rights system established in Africa are as follow: -

- i. East African Court of Justice
- ii. Economic Community of Central African States (CEEAC)
- iii. African Committee of Experts on the Rights and Welfare of the Child
- iv. African Court on Human and Peoples Rights
- v. Economic Commission for West African States (ECOWAS) Court
- vi. Southern African Development Community (SADC) Tribunal

3.3.2 American Convention on Human Rights, 1969, and its Protocols of 1988 and 1990

American Convention on Human Right was formed on 18th of July 1978 and 24 states were the part of it in the year 2002; wherein all the state actors commit to observe and follow all the rights recognized therein and to check that the same is to be implemented without any discrimination (Article 01). Primary objective of this convention is to guarantee the rights and freedom of the people's and to investigate, prevent and punish the violator who violate human rights protected by the international or regional charter and further to restore and compensate the person whose right has been violated by way of providing damages. Perhaps the Inter-American Convention on Enforced Disappearance of Persons (1994), the Inter-American Conventions on Punishment, Prevention, and Eradication of Violence Against Women (1994), and the Inter-American Convention to Prevent and Punish Torture (1985) are the key components of preserving, promoting, and putting into practice the fundamental human rights.

3.3.3 Protocol One, Four, Six & Seven of the European Convention on Human Rights (1950)

The European Agreement on Human Rights, also known as the convention for the protection of human rights and basic freedoms, became open for signature in Rome on 4 November 1950 and went into effect on 3 September 1953. It evolved into the main tool to give effect to and make enforceable the rights outlined in the Universal Declaration of Human Rights. The European Court of Human Rights, a permanent institution sitting in committees of three judges, chambers of seven judges, or a grand chamber of seventeen judges, examines the implementation of the European Conference on Human Rights. While the Court has the authority to entertain, evaluate, and analyze interstate cases as well as programs from any person, non-governmental organization, or corporation. This convention made a significant contribution to the growth and awareness of the human rights system in the region of Europe as well as to the education cycle on the subject.

The European Social Charter (revised), 1996, The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987, The European

Social Charter, 1961, and its Protocols of 1988, 1991, and 1995 and The Framework Convention for the Protection of National Minorities, 1995 are a few additional human rights laws in the area.

3.4 International Law Regarding Domestic Enforcement of Refugees in Pakistan

Pakistan never ratified nor adhered to the 1967 Protocol to the 1951 United Nations Convention Relating to the Status of Refugees nor does it have any national legislation governing refugee management.³⁴ According to Zubair, Khan, and Shah, the question of classifying refugee remains elusive among governments that have not ratified any refugee-related accords. Conversely, the focus should be placed on safety guidelines, for which constitutional rules must be applied. Nonetheless, despite the fact that Pakistan has traditionally respected well-known principles surrounding refugee rights, the host state lacks legislation within the national framework aimed at addressing refugee issues. Concerning states which are not parties to international conventions for the protection of refugees' rights, the focus appears to be on international safety, particularly the concept established by international human rights law.³⁵ Non-refoulement, which guarantees refugee protections in those nations and ensures that they are not sent back to their home countries, where they may face grave human rights violations including torture, threats of death, or other horrific treatment, is the main tenet of such principles. Similar to this, it is stressed that civil protections for refugees come from human rights agreements in which the host state takes part. Pakistan recognized Afghan refugees as *prima facie* refugees up until 1998, giving them access to necessities including food, shelter, and protection. This recognition was largely based on a series of agreements reached between Pakistan and the UNHCR. However, since late 1999, the Pakistani government has refrained from classifying new immigrants as *prima facie* refugees. The refugees in Pakistan also encountered numerous difficulties as a result of the completely inadequate guidelines for the regularization of Afghan Refugees and to protect their fundamental human rights, even though

³⁴Alan Dowty and Gil Loescher, "Refugee Flows as Grounds for International Action," *International Security* 21, no. 1 (1996): 45-46.

³⁵*Ibid.*

Pakistan is bound by international treaties and customary international law, including the Universal Declaration of Human Rights (UDHR). There is no appropriate legislation defining the obligations and rights of refugees in Pakistan.

The primary regulation governing foreigners on Pakistani territory is the Foreigners Act of 1946. Different foreigners and refugees in the territory are treated differently by the Act and its associated Order. However, there is no special protections for refugees under the Act. Nevertheless, several elements of the Foreigners Act render Afghan refugees especially vulnerable to persecution and abuse at the hands of law enforcement officials. It has given the government the discretionary authority to monitor and influence the interactions of foreign nationals within the state, as well as to deport or imprison them, in case they are involved in suspicious activities. The Pakistani government then issued a covering directive in 1997 exempting refugees from the 1946 Foreigners Act. Government of Pakistan made it clear in February 2001 that unregistered Afghan immigrants who are not NADRA-certified would violate the Foreigners Act of 1946. Furthermore, Pakistan's Citizenship Act does not address the nationality concerns of Afghan immigrants based in Pakistan since decades.³⁶

Articles 4 and 10 of the Pakistan Citizenship Act describe the credentials that may be sought of refugees. The Pakistani government approved the banishment of Afghan refugees in 2016, setting a dreadful precedence for women; who were married to Afghan immigrants in Pakistan. A person may also assert for citizenship under the Naturalization Act of 1926 if they had spent five of the previous eight years in Pakistan. However, according to the Asia Displacement Response website, refugees are lawfully prevented from seeking nationality despite satisfying these standards. Many Afghan immigrants who have been living in Pakistan for three years have opted not to apply for citizenship. Afghan expatriates are consequently granted extended time in Pakistan before even being repatriated home, and they have minimal motivation towards becoming Pakistani citizens. Refugees face discriminatory and inconsistent treatment since the judiciary as well as police remains unfamiliar with refugee law. Many critics contend that Pakistan is compelled to follow the non-refoulement criterion due to its enforced return to Afghanistan. This has exacerbated Afghan refugees' uncertainties about their legal and constitutional status. The *ibid* discourse begins with a review of the international landscape,

³⁶Alimia, "Performing the Afghanistan–Pakistan Border through Refugee Id Cards," 52-53.

including the conventions to which Pakistan is a party and the tenets of accepted international law since it pertains to immigrants in Pakistan.³⁷ It offers a critique of Pakistan's compliance with key international standards. The legal system for refugees in Pakistan is also covered in the debate that follows, along with its inadequacies.

3.5 Refugees Laws in Pakistan

Along with providing asylum, states have frequently pledged to ensure that immigrants' rights are respected by both domestic and international law. It is essential, as it was previously said that Pakistan is home to millions of immigrants from Afghanistan. In this regard, the worsening of the refugee crisis has mostly been attributed to the inadequacy of consistent policy-making. No legislation devoted specifically to refugees has been enacted at the federal level. The former administration of Prime Minister Imran Khan vowed to give refugees citizenship and had far higher aspirations for resolving the refugee problem in Pakistan. According to the *jus soli* concept, which is acknowledged as Pakistani municipal legislation, anyone born in Pakistan is eligible to apply for citizenship. However, Pakistan-born refugee children still remain refugees.³⁸ Several reasons contribute to refugee discrimination, particularly against Afghan refugees. The Shigri Report on Illegal Immigrants and Afghan Refugees in Pakistan, published in the latter half of the twentieth century, provided the framework for eventual legislative changes and raised awareness of the refugee crisis. They are forced to confess to crimes they did not commit, many of which they committed in order to sustain their families and their ability to be in the nation, but they are not forced to leave. They are instead compelled to testify against them. Another issue is economic exploitation, in which people are compelled to work for pitiful salaries. Problems of Afghan refugees have also worsened by bribes asked by law enforcement officials. Access to necessities including food, clothing, healthcare, and education is limited for them. Immigrants from Afghanistan are not permitted to access these healthcare services because they are supported by the taxes of Pakistani citizens. Additionally, there are restrictions on actions that contravene internationally established human rights, such as using ground transportation, creating bank accounts, making hotel reservations, and other similar actions.

³⁷Ibid.

³⁸GOVERNING RULE, "Admission or Exclusion of Persons Moving across Borders," 56-57.

Furthermore, coping strategies might occasionally be more diabolical, including using child labor or inappropriate behavior. It is noticeable that recent educational efforts have established particular quotas for migrant students receiving government scholarships in Pakistani higher education institutions. Pakistan has not followed the Pacta sunt Servando principle that accords should be observed with regard to international human rights, and there remains a lot to be actually done for Afghan refugees.³⁹

3.5.1 Refugee's Rights & Constitution of Pakistan, 1973

State of Pakistan follows the constitution that was outlined in 1973. Before that; a constitution was outlined in 1956 and 1962 however due to certain inadequacies; the national leadership adopted the new constitution of Pakistan in 1973 that provides a guideline for the state and its nationals as the citizens of Pakistan. It outlines the state, the people, and their fundamental rights. The fundamental tenet of the nation, in addition to its judicial system, legal codes, and associations, is the rule of law. According to the law, everyone must be treated equally and fairly in accordance with the regulations provided by the legislation. A contradictory act is therefore contrary to the provisions and should be declared invalid by the court. Because it establishes the rule of law, Article 4 of Pakistan's constitution is essential for the rights of refugees. Likewise, the right to be treated in accordance with the law has been declared unalienable and extends to both Pakistanis and foreigners who are only temporarily residing therein.⁴⁰

The existence and liberty can't be curtailed besides in lawful way. Article 4 of the Pakistani Constitution guarantees an essence of rule of law which speaks for the treatment of all in accordance with rule of law. And as a widespread implication indicates the practice of the word consists of all people and every persona which can be in Pakistan as a citizen of Pakistan or even otherwise living in Pakistan for the time being are to be dealt in accordance with law.⁴¹As a corollary, immigrants from Afghanistan encounter identical restrictions. Article 4's implicit

³⁹Hans Wehberg, "Pacta Sunt Servanda," *American Journal of International Law* 53, no. 4 (1959): 48.

⁴⁰Baruchello and Johnstone, "Rights and Value: Construing the International Covenant on Economic, Social and Cultural Rights as Civil Commons," 62.

⁴¹Jordan J Paust, "Self-Defense Targetings of Non-State Actors and Permissibility of Us Use of Drones in Pakistan," *J. Transnat'l L. & Pol'y* 19 (2009): 25-26.

requirements include the right to fair and consistent treatment at all times, the right to procedural fairness and appropriateness, and immunity from any activities that harm people's way of life, liberty, or properties. It also requires any state figure to operate "justly, honestly, and without arbitrariness" throughout all cases, while it has curtailed a real possibility that somehow still embodies the values of proper governance, such as an investigation into the arbitrary, discriminatory, and inappropriate use of authority.⁴²

Basic rights are outlined in Chapter II of the law of the land. These include protections for life and liberty under Article 9, defense against unlawful detention under Article 10, Safety towards all types of slavery under Article 11, the right to a fair trial under Article 10-A, Prohibition on double jeopardy under Article 13, Prohibition on retrospectively punishing a person under Article 12, freedom of movement under Article 15, Human dignity under Article 14, Freedom of assembly & association rights under Article 16 & 17, to establishing commercial business, profession & trade under Article 18, the liberty of professing faith under article 20, freedom of speech beneath Article 19 and the right to access to information under Article 19-A. These rights have two distinguishing qualities: they are judicially enforceable and are no longer definitive but instead just positive. A number of commentators have noted that the freedom and human rights guaranteed by the 1973 constitution are only applicable to Pakistani residents and do not extend to people who also are temporarily residing in Pakistan. The same idea has indeed been outlined in Article 4 of the Constitution and applies to everyone who is residing in Pakistan as a Pakistani citizen or who temporarily stays in Pakistan. It is important to note that Article 10 of the Constitution guarantees protection against unlawful detention and arrest; nonetheless, law enforcement officials often violate this right on account of thousands of Afghan immigrants. As Zubair Shahzad and Khan highlighted that;

“The ground reality even for the registered Afghan refugees is not satisfactory because of the inalienable predisposition of Pakistani authorities towards them, they are liable to capture without due reason and regularly mope in the slammer with next to zero plan of action to lawful portrayal which is an encroachment of

⁴²Ihsan Yilmaz, "Good Governance in Action: Pakistani Muslim Law on Human Rights and Gender-Equality," *European Journal of Economic and Political Studies (EJEPS)* 4, no. 2 (2011): 85-86.

their fundamental human rights and an infringement of the privilege to fair trial under this”⁴³

Arrests & Detention of Afghan Refugees holding PoR Cards as per the report of UNHCR (2016-2020) – DATA UNHCR		
S.NO	YEAR	NUMBERS
1.	Arrest and Detention of PoR Cardholders in 2016	5895
2.	Arrest and Detention of PoR Cardholders in 2017	3477
3.	Arrest and Detention of PoR Cardholders in 2018	1344
4.	Arrest and Detention of PoR Cardholders in 2019	1396
5.	Arrest and Detention of PoR Cardholders in 2020	126

In 2015, Human Rights Watch released a study paper titled "What are you doing here?" Based on various testimonies demonstrating the vulnerability of Afghan immigrants under the protection of Pakistani law enforcement, regardless of their citizenship or whether they are in the country illegally or with a PoR card. The majority of participants in Afghanistan regarded interactions with police enforcement officers as violent, brutal, humiliating, and manipulative. They all assumed we belonged to a frightening society. One participant claimed that if you are unable to provide the demanded payment, you will be formally accused of a crime and prosecuted. Inhumane treatment and harsh, inappropriate behavior are prohibited by Article 7 of the ICCPR. Additionally, it violates the 1987 Convention against Cruel, Inhuman, or Degrading Treatment or Punishment. Similar to this, Article 24 of the Constitution forbade the seizure of property by force unless authorized by law. Refugees from Afghanistan are yet considered "persons" and have their property rights violated. According to Zubair, Shahzad and Khan,

"They (Afghan refugees) are essentially barred from owning land in Pakistan due to the Pakistani state's stringent repatriation policy, which prevents them from naturalizing”⁴⁴

⁴³Muhammad Zubair, Suhail Shahzad, and Muhammad Aqeel Khan, "The Position of Afghan Refugees under Various Agreements and Constitution of Pakistan: An Analysis," *Global Regional Review* 4, no. 1 (2019): 45-46.

Land or property cannot be leased by an Afghan immigrant; only those having a PoR card may do so on a lease deed that is witnessed by two witnesses and sealed by the court. The issue arises when PoR card holders are unable to purchase judicial stamps; as a result, a Pakistani resident obtains the rightful ownership. On the other hand, Afghan immigrants who are living there illegally; cannot rent a home. It should be emphasized that the identifying process requires a variety of documents to demonstrate the identity of refugees, and it takes a significant amount of time.⁴⁵It would take a lot of time for immigrants to apply for the service. According to the Pakistani Constitution, all inhabitants including non-citizens are entitled to the aforementioned rights and agreements. As a result, Afghan immigrants listed in Pakistan shouldn't receive special treatment. Afghan refugees residing within Pakistani borders are covered by all provisions of the constitution that deal with freedoms and human rights and that relate to "persons" rather than citizens. According to the Pakistani Constitution, they have the right to pursue legal action if their legal rights are restricted.

Overview of the extension of the validity of PoR Cards	
Originally issued PoR Cards 2006-2007	PoR cards valid with validity until December 2009
September 2010	Valid until December 2012
January 2013	Extension given for a period of six months till 31 June 2013
August 2013	Renewed until December 2015
January 2016	Extension given for a period of Six months till June 2016
June 2016	Six month's extensions until 31 st December 2016
February 2017	Extended until 31 st December 2017
January 2018	Extended till 31 st December 2018
March 2018	Extended until 30 th June 2018
June 2018	Extended until September 2018

⁴⁴Raja Irfan Azam, "Analysis of Pakistan's Policy Towards Afghan Refugees: A Legal Perspective," (2021): 11-12.

⁴⁵Ibid.

October 2018	Extended until 30 th June 2019
June 2019	Extended until 30 th June 2020

3.5.2 Pakistan Citizenship Act 1951 & Citizenship Claims by Afghan Refugees

The domestic legal system of Pakistan does not include a single specific constitutional clause addressing the status of refugees who meet the requirements for citizenship. Article 4 of the Pakistan Citizenship Act of 1951's original text was as follows:

*“Citizenship by birth. — Every person born in Pakistan after the commencement of this Act shall be a citizen of Pakistan by birth. Provided that a person shall not be such a citizen by virtue of this section if at the time of his birth: (a) His father possesses such immunity from suit and legal process as is accorded to an every of an external sovereign power accredited in Pakistan and is not a citizen of Pakistan; or (b) His father is an enemy alien and the birth occurs in a place then under occupation by the enemy”.*⁴⁶

Senior government and policymaking institutions have denounced the then-Pakistani Prime Minister's comment on granting citizenship to Afghans and Bengalis born in Pakistan. A bill to modify the Citizenship Act of 2001 was introduced earlier than the Parliament in 2019. It stated that any person who has not been permanently staying in the country for more than 20 years or who was born in Pakistan and has an authorized registration framework was prohibited (like NADRA, NARA, UNHCR, etc.) to be granted the Pakistani nationality.⁴⁷ With the intervention of the Standing Committee of Interior Ministry established for consideration of this measure, this bill is now being repeatedly rejected. The legislator who presented this resolution claimed that Pakistan must define its position on refugees; either they should be given a rightful place in society or they should be ignored.⁴⁸ If Pakistan wants to avoid serious crises in the future, it needs a clear policy in place. The committee's position evolved into the notion that if this measure

⁴⁶Syed Nadeem Farhat, "Citizenship Laws of Pakistan: A Critical Review," *Policy Perspectives* 16, no. 2 (2019): 7-8.

⁴⁷Ibid.

⁴⁸Ibid.

passed, the Act would be revised, which would eventually normalize the situation of Afghan refugees, streamlining the subject of money laundering, and promote the Pakistani economy.

3.5.3 Foreigners Act 1946

The Foreigners Act of 1946 regulates the admission, departure, and visitation of refugees in Pakistan. A law that stated that anyone traveling internationally without the necessary papers could be denied entry into Pakistan was ratified in the year 2000. Although the Act distinguishes between foreigners and refugees, there is no special procedure set up for refugees. The section 3 clause 2 (e) of the Foreigners Act of 1946 read as under:

“(2) In particular and without prejudice to the generally of the foregoing power orders made under this section may provide that the foreigner [...]

(e) Shall comply with such conditions as may be prescribed or specified

(i) Requiring him to reside in particular places;

(ii) Imposing any restrictions on his movements; [...]”⁴⁹

Furthermore, Article 11 of the Foreigners Order of 1951 says:

“The civil authority may, by order in writing, direct that any foreigner shall comply with such condition as may be specified in the order in respect of his place of residence, movements, association with persons and possession of such articles as may be specified in the order”.⁵⁰

The Foreigners Act has provisions that the Pakistani government has used to monitor and influence the travel behavior of expatriate citizens in the region. Refugees are considered undocumented immigrants, and authorities may impede them if they are proven to be missing the necessary papers. Requests from the relevant Ministry of States and Frontier Relations (SAFRON) or the United Nations High Commissioner for Refugees (UNHCR) commonly

⁴⁹Abhay Singh, "A Critique of the Foreigners Act, 1946: A Legislation De Jure or De Facto?," *Available at SSRN 1989060* (2012): 65.

⁵⁰Ashrafal Azad, "Foreigners Act and the Freedom of Movement of the Rohingyas in Bangladesh," *Griffith Journal of Law & Human Dignity* 5, no. 2 (2018): 56.

exonerate those accused of being unauthorized immigrants. The UNHCR classified refugees as factually illegal immigrants who shouldn't be allowed to live in the host state, in the opinion of the Pakistani government. Younas claims that the Foreigner Order violates significant international laws, in particular the 1951 convention, because authorized staff have the authority to bar anyone from Pakistan although if they have appropriate documents.

3.6 Conclusion

The UNHCR stepped in to exercise jurisdiction and give Pakistan ongoing legal, administrative, and humanitarian support in the absence of national ownership and policy. There have been eight agreements controlling the regular voluntary return of refugees between the UNHCR and the government of Pakistan since 1988. A clear analysis of these documents reflects; the application of jurisdiction and principles prescribed in Geneva Accords on the Settlement of the Situation Relating to the then prevailing Afghanistan situation, which aimed towards soviet withdrawal and relieving Pakistan from the responsibility of mass refugee hosting. The subsequent agreements included Afghanistan as a party as well, and insisted on voluntary nature of repatriation, which given the conflict prone status of Afghanistan in coming years did not remain an exercisable or preferred option for refugees residing in Pakistan. In 1993 an agreement between GOP (Government of Pakistan) and UNHCR was drawn clearly mentioning the status and responsibilities of UNHCR in Pakistan, a practice that is done in states that are not signatory to the protocols that form basis of international law on refugees, but still are working in close coordination of UNHCR. Without having a clear legal status and a particular corresponding set of rights and duties of refugees towards host states; several negative implications may arise for both refugees and the host state.⁵¹ In case of Afghans for example the above-mentioned periodic engagements of GOP, Afghanistan and UNHCR to register and account for refugees, seem to be in context of not awarding a status of refugees to Afghan nationals residing in Pakistan, but simply to register and account for them for the purpose of census and chalking a systematic repatriation policy.⁵² The rights mentioned in the Refugee convention of 1951, like right to education, health, shelter, livelihood and mobility already seem

⁵¹Rhoda Margesson, "Afghan Refugees: Current Status and Future Prospects" (2007), 22.

⁵²Azam, "Analysis of Pakistan's Policy Towards Afghan Refugees: A Legal Perspective."

to have been granted to Afghan refugees residing for over four decades in Pakistan without them been granted asylum officially. Ironically, several European states that are now hosting Syrian refugees and happen to be signatories of the Refugee convention; have restricted refugees to camps and were unwilling to let them cross border in the first place in 2015.⁵³ On the inability to come up with a legislative framework and a legally applicable asylum system; an apparent lack of focus, preference and coherence between central and provincial governments in Pakistan on this matter may be observed. The inability to chalk a refugee related bill at parliamentary level, subsequent legislation or even a consistent management policy shows incapacity and lack of awareness on the serious consequences attached to and poorly managed and ill accounted protracted refugee situation. Given the fact that Pakistan was intervening closely in the Afghan conflict and kept changing its political stance on the situation, the repercussions to regulate, monitor and timely repatriate refugees have been utterly under recorded. Also, depending upon political and security pressures, unannounced transit and mobility restrictions have been applied at Afghan-Pak border as well. In Nov 2000 for example, Pakistan closed its borders to Afghans and called them a security concern, this was done instead of trying to come up with a responsive transit control strategy to differentiate between terrorist elements travelling in disguise of refugees and migrants. Instances of in formal entry points across the poorly managed border back then were also reported, where extortion money was collected to let those fleeing Afghanistan were allowed to cross border in exchange of money or goods. Pakistan however became lenient in its policy afterwards in 2001; when conflict escalated in the wake of US invading Afghanistan.¹³

In 2016, the state decided to fence the Pak-Afghan border and designate official check points despite fierce opposition from Afghanistan. The exercise is almost complete now. The ambiguous status of Afghans and the mixed nature of movement have resulted in adoption of some interesting terms being used in official correspondence and agreements drawn around repatriation of these people. The 2006 and 2007 agreement between Pakistan, Afghanistan and UNHCR call for "Registration of Afghan Citizens Living in Pakistan". Till now no clear policy has been communicated on how Pakistan and UNHCR are to deal with those which are neither registered nor choose to return to Afghanistan.

⁵³Dowty and Loescher, "Refugee Flows as Grounds for International Action."

Chapter Four

Enforcement of International & Domestic Laws of Afghan Refugees in Pakistan

4.1 Introduction

The critical question addressed in this Chapter is to critique and evaluate Pakistan's laws governing Afghan refugees. This chapter also investigates why national and international state actors have not implemented programs and legislation concerning refugees and their rights. It also identifies and critiques legal and regulatory deficiencies that make it difficult for Afghan refugees to attain the rights granted by international law and Pakistan's 1973 Constitution. At the end of this Chapter, some research findings will be presented.

There have been three generations of Afghan refugees living in Pakistan. For a variety of reasons, the Afghan migrants chose Pakistan as their preferred destination. First, Pakistan's proximity to Afghanistan made it easier for Afghan refugees to relocate there. The two nations had a history of cooperation, which was the second factor. Before the Durand line was drawn in 1893, which divided Afghanistan and British India, Afghans could travel freely between the two nations.⁵⁴ Even after the Durand line was established, the British continued to give the majority of Afghan migrants and traders access to British India's northern regions (Now Pakistan). Even after the independence of Pakistan in 1947, Afghans continued to enter into the territorial jurisdiction of Pakistan on a regular basis despite efforts made by Pakistan government to restrict Afghan entry. As a result, Pakistan had strong ties and relation with Afghanistan. Later, in 1970s, an extreme inflation and political instability in Afghanistan forced a large number of Afghans to enter into territory of Pakistan, which resulted into the expansion of Katchi Abadis and later after

⁵⁴Nabi Sahak, "The Origins of Anglo-Afghan Relations: Clarifying the Political Status of Durand Line, 1893-2021" (King's College London, 2021).

Soviet-Afghan war, it shaped an opportunity for other Afghans to enter and settle into the territory of Pakistan.⁵⁵

4.2 Restrictive Afghan Refugee Policy

However, the GOP established a more obstructive policy for the Afghan immigrants to change their perspective, which led to a series of development. Mr. Afzal Shigri initially prepared a report in 1996, which was known as the Shigri report. The report categorized the immigrants as illegal and explained reasons. It stated that since the reason of the mass migration, Soviet intervention, is no longer a factor, the Afghan immigrants in Pakistan are now illegal.⁵⁶ After a substantial fraction of the US military had left the country, Afghanistan's stable government machinery had been reestablished. In addition to the camps, it had spread to other urban and rural areas of Pakistan. Furthermore, immigrants had participated in business activities in Pakistan. Some of them had created businesses and obtained employment there. Nevertheless, the migrants committed several crimes, a few of which were serious in nature. They also introduced the Kalashnikov culture to Pakistan, wherein they manufactured weaponry and marketed them at lower prices, rendering them readily available to the ordinary people. It put Pakistan's internal order and legal system in danger. According to the research, identifying and humiliating Afghan immigrants who obtained passports and permits to travel to other countries illegally as well as those who were undocumented residents of Pakistan was another issue. Additionally, the report discusses the condition of Afghan refugees in Pakistan, pinpoints the causes of the enormous influx, and proposes solutions. As international aid for the protection of refugees decreased over time, the Shigri report necessitated a strategy to handle the future of refugees. Afghan refugees who have gone to urban regions and towns after leaving villages where the Pakistani government initially provided shelter and aid are in violation of the trilateral accords. They forfeit their status as refugees by doing this.⁵⁷ This report has been implemented as a national framework for dealing with unauthorized immigrants and refugees. In accordance with the suggestions in the study, the Pakistan Foreigners Act was reviewed, and a new provision was

⁵⁵Lian Wang, "Talibanization in the Tribal Areas of Pakistan," *Journal of Middle Eastern and Islamic Studies (in Asia)* 4, no. 1 (2010): 25.

⁵⁶Azam, "Analysis of Pakistan's Policy Towards Afghan Refugees: A Legal Perspective," 24-28.

⁵⁷Ibid.

introduced to Section 14-D to establish a new agency to register illegal immigrants. In the year 2000, the National Alien Registration Authority (NARA) was founded. The main purpose of this institution was to keep track of all immigrants to Pakistan.⁵⁸ Later, in 2015, the National Database and Registration Authority (NADRA) and NARA were amalgamated. NARA promptly disclaims all liability for the immigration status of those who are misrepresented as aliens. The main objective of this integration was to provide a Proof of Registration document (POR), which would allow people to access basic services including employment, education, healthcare, and other necessities in conformity with accepted standards of international law. The idea that Pakistan's security was seriously threatened by Afghan immigration also caused new concerns. Due to the 2014 attack on the APS School in Peshawar and the affiliations of terrorist to Afghanistan, Pakistanis became more impatient and asked that all refugees be sent back to Afghanistan right immediately.⁵⁹ Later investigations discovered only a tenuous relationship between Afghanistan and the terror attack. Following then, the circle of political asylum for Afghan migrants shrank dramatically in size. Furthermore, tensions between Afghanistan and Pakistan were heightened in 2017 by US pressure and a drone strike in the Kurram Agency, which resulted in the deaths of suspected terrorists who were staying in the homes of Afghan immigrants. This influenced Afghan immigration policies. Pakistan's leading military officials have also stated that the repatriation of refugees is critical to the country's stability.

4.3 Precedents for regulating the affairs of Afghan Refugees in line with their Life, Liberty and Economy in Pakistan

Municipal courts in Pakistan have the jurisdiction to protect human rights in accordance with international law. This is because customary law, as opposed to treaty law, is regarded as a national law (the dual approach of common law countries). It incorporates the logical tradition maintained by the most civilized nations, which eventually established a conventional legal principle.⁶⁰ A well-known Sindh High Court decision emphasizes the need of allowing for the

⁵⁸Alimia, "Performing the Afghanistan–Pakistan Border through Refugee Id Cards," 41-42.

⁵⁹Anwasha Ghosh, "Afghan Migration and Pakistan's Policy Response: Dynamics of Continuity and Change," in *Public Policy Research in the Global South* (Springer, 2019), 44-45.

⁶⁰Rabia Rana, Muhammad Imran, and Khadija Murtaza, "The Concept of Criminal International Law and Its Application in Pakistan," *Pakistan Journal of International Affairs* 5, no. 2 (2022): 48.

automatic adoption of customs into national law, notwithstanding the lack of prior legislative authorization. This principle is relevant, however, when domestic law and national custom do not conflict. Refugees may also seek legal remedies in domestic courts, including those derived from traditional international laws. Reported judgments of Honorable High Court of Pakistan are also critically examined to understand the intent of legislator and ascertain the gap in the laws relating to the refugees in Pakistan.

4.3.1 Ghulam Sanai vs. The Assistant Director, National Registration Office, Peshawar and another (PLD 1999 Peshawar 18)

The Peshawar High Court had received a lawsuit asking the registration officials to provide them a computerized national identity card. Father of the petitioner acquired fake Pakistani citizenship card that was later revoked. The legislation cannot be interpreted sequentially. Every person born in Pakistan is given citizenship, according to the division bench's interpretation of section 5 and clause 4 of the Citizenship Act. Anyone born following the beginning of the aforementioned processes is eligible for citizenship, according to Section 3, provided that his father was a Pakistani citizen at the time of his birth. The complainant's father was an immigrant from Afghanistan who used fraudulent information to get a national identity card and buy a house. The defense rests on the fact that he had a lengthy residence in Pakistan and purchased a home under his name. They rely on the fact that they had lived in Pakistan for a while and even purchased the home in their names to support their claims. Despite the fact that he was not born in Pakistan, their extended stay qualifies them for Pakistani citizenship. The court ruled that it was inadequate to simply intend to extend a stay or have any other similar motive. The only way to become a citizen is to go through the legal system. Pertaining particularly about Afghan refugees, they are permitted a brief and restricted stay in Pakistan; as a result, the Foreigners Act, not the Citizenship Act, regulates them. As Afghan refugees are not citizens, the Citizenship Act shall not apply to them, it was decided to rely on the definition of a foreigner found in the Foreigners Act, which encompasses anybody who is not a Pakistani citizen.

4.3.2 Saeed Abdi Mahmud vs. NADRA (2018 CLC 1588)

Regarding the aforementioned case, a different justification stated in Saeed Abdi Mahmud v. NADRA 2018 CLC 1588 was reviewed. It claims that Afghan refugees have been accepted by the UNHCR and therefore their application for citizenship is invalid.⁶¹The ruling in Saeed Abdi Mahmud v. NADRA 2018 CLC 1588 petition, however, was technically incorrect since section 4's nationality assessment is a discretionary right, and the Ministry of Interior has the authority to grant or deny citizenship. Additionally, Article 4 is generally applicable to everyone because it does not discriminate against anyone based on their status. As a result, Section 4 may also apply to refugees. Additionally, Section 16 of the Foreigners Act applies in addition to and not in derogation of other laws; it does not forbid the application of any additional legislation. These judgment flaws have not been fixed, and they haven't been raised on other forum. Although this case does not specifically relate to Afghan refugees, the Islamabad High Court created a precedent in 2018 with it. A university student from Pakistan who was born in a public hospital requested a computerized national identity card in 1997 when he became 18 from the National Database and Registration Authority. Due to the fact that his parents were Somalians rather than Pakistanis, NADRA declined to issue him. He claimed to be a citizen since he was born in Pakistan when he sought for IHC(principle of jus soli under section 4 of the Citizenship Act). The court thoroughly considered the citizenship application process. The five options to become a citizen of Pakistan that are enumerated in the applicable Act have also been mentioned by the court. The court used the US, the UK, France, and other nations as examples of nations that offer citizenship to children regardless of their ethnicity or parent's immigration status. In the Sanai case, where the PHC declared that just a protracted stay does not grant citizenship, the aforementioned Ghulam was noted. It needs to be controlled by the right laws and a thorough procedure.

As was previously stated, the specific scenario has nothing to do with Afghan immigrants, yet the judiciary has still spoken on the matter of Afghan immigrants' Pakistani citizenship. The court noted that because refugees are recognized as migrants and are subject to

⁶¹Farhat, "Citizenship Laws of Pakistan: A Critical Review," 27.

constraints and limits, they are exempt from citizenship under *jus soli*.⁶²The 1951 Refugee Convention governs how refugees are classified. The 1967 Protocol expanded the scope of the convention's original focus on WWII refugees to cover all refugees. Pakistani citizens who are from Afghanistan are eligible for refugee status. Pakistan is even listed by the court as having signed the UN Refugee Convention.⁶³Furthermore, since that UNHCR ruling governs migrants, the Citizenship Act does not apply to them. While many social-economic constitutional protections are likewise subject to limitations, their privilege does not stem from nationality. Other foreigners, including refugees, have the right to citizenship under Section 4 of the Citizenship Act and must be treated as such. The Islamabad High Court granted the petition, and the petitioner was instructed to address his complaint with the Interior Ministry rather than the court. However, the ultimate decision-making authority for the state rests with its executive branch. Regarding their constitutional rights and claims to citizenship, this judgment specifically affects Afghan refugees in Pakistan. The Peshawar High Court's ruling is the result of its preliminary review. If they had contested the original judgment, the executive order would have clarified numerous uncertainties. The assessment's first flaw was that it was founded on the misconception that Pakistan is a signatory to the 1951 Refugee Convention and that refugees are managed in accordance with UNHCR regulations.⁶⁴The truth, though, is the precise converse. Four decades after the initial wave of Afghan migration, there are still legal loopholes that need to be closed, and certain internal procedures must be implemented in accordance with the Refugee Convention.

Assume we use the IHC's classification of Afghans as migrants. If this is the case, a large number of Afghans who enter Pakistan after hours won't be regarded as refugees but rather as economic immigrants. Instead of fleeing the danger of persecution, they improved their standard of living and sought for employment opportunities. Furthermore, if the term "refugee" solely refers to Afghans registered with UNHCR, then Afghans who choose not to register themselves out of fear of deportation would not be considered refugees. The majority of refugees in

⁶²Kim McGuire, "Jus Sanguinis," "Effective Nationality" and Exclusion: Analysing Citizenship Deprivation in the UK," *Genealogy* 6, no. 3 (2022): 52.

⁶³Seyla Benhabib, "The End of the 1951 Refugee Convention? Dilemmas of Sovereignty, Territoriality, and Human Rights," *Jus Cogens* 2, no. 1 (2020): 144-46.

⁶⁴Ulrike Krause, "Colonial Roots of the 1951 Refugee Convention and Its Effects on the Global Refugee Regime," *Journal of International Relations and Development* 24, no. 3 (2021): 121.

Pakistan, nevertheless, have not yet registered as such. Therefore, both of these Afghans are unlawful immigrants as defined by the Foreigners Act, not refugees, in accordance with the IHC verdict. They now fall under the purview of the Citizenships Act and are therefore eligible for citizenship.

4.3.3 Muhammad Muazzam Butt Vs Federation of Pakistan

In the above subject case, the petitioner approached Peshawar High Court for regulating the life, business, trade and profession of Afghan refugees in line with Article 4 of Constitution of Pakistan, 1973; wherein the Court had observed that the refugees who fled from Afghanistan and took shelter in Pakistan are getting their bread and butter in undocumented manner and legislation has been made so far; hence they had directed the federal government to regulate the life of Afghan refugees and put the legislation on table within a period of 6 month; however no such implementation to the said effect has been made.

4.4 Legal Implications of Afghan Refugees Rights

Marjoleine Zieck analyzed the practical ramifications of agreements between Pakistan and Afghanistan addressing Afghan refugees at the height of the Afghan conflict. He said that more than one-fourth of all Afghan refugees, the bulk of whom had been residing in Pakistan for more than 30 years, were given asylum by the Pakistani government. Since then, Pakistan has not ratified the 1951 Refugee Convention or the 1967 Protocol relating to refugee status. Despite being prima facie recognized as refugees, the legal status of the Afghan refugees it supports is uncertain. Under a voluntary repatriation program supported by the UNHCR, Afghan refugees were given the choice to return to their country of origin. Given that everyone from Afghanistan was given permission to remain in Pakistan, many Afghans opt to remain there rather than return home with UNHCR help because they believe their nation lacks the conditions for a sustainable way of life. However, unlike all the others, this agreement does not really cover what would happen to individuals who remain in Pakistan when the voluntary repatriation program is through. It seems essential to determine Afghan refugees' legal status and the benefits that go along with it. Using the aforementioned accords as a foundation, refugee status can continue to

be recognized as such. Furthermore, although appearing to be advantageous to the most vulnerable migrants, it is shown that UNHCR's present profiling approach is unrealistic.

Ayesha Qiasrani in a report authored for Fredrich Ebert Stiftung is of the view that to deal with migration of Afghan refugees, Pakistan has put in place an extensive and complicated institutional system. This institutional structure seems to be almost entirely devoted to immigration from Pakistan, with a priority on managing migration of people from Pakistan, while fulfilling the requirements of the people of overseas Pakistanis, and devising strategy for deriving national benefits from the Pakistani Diaspora. While there is specific law, structures, and regulatory frameworks in needed to handle Afghan refugees, there is a considerable gap with how these protocols are linked into broader societal framework. Yet, Lindahl and Hanne Sofie argue that a particular criteria determine the legal status of Afghan refugees in Pakistan. This legal status is determined mostly through complicated, imprecise, and arbitrary registration procedures. Tens of thousands of Afghans are registered through administrative procedures and then they are classified as migrants rather than refugees. Registration gives these refugees a distinct legal status, resulting in a status hierarchy, with recognized refugees receiving the most international protection and access to rights and entitlements, including protection against asylum seekers and refugees.

During the crisis of refugees, Voluntary repatriation is the ideal and appropriate solution; nevertheless, for repatriation to be sustainable, pull pressures and multilateral factors at the point of origin must be larger and effective rather than pushing factors in the host state. Ahmed Khalid Hatim contends that appealing incentives should inspire refugees to return to their home station in peace, safety, and dignity. Voluntary repatriation demands general improvement in living conditions in the country of origin.⁶⁵ Afghanistan's situation has not improved sufficiently to allow millions of refugees to return. This is troubling because it appears that decisions of refugees to return are coerced rather than being voluntary and they are viewed as political tools who are convinced to return due to financial concerns and other multilateral causes however, Sumaya Khan Auntu and Afia TasnimPromee argue that Solution Strategy for Afghan Refugees

⁶⁵Randall Hansen, "The Comprehensive Refugee Response Framework: A Commentary," *Journal of Refugee Studies* 31, no. 2 (2018): 54.

(SSAR) is the most effective method for the repatriation of Afghan refugees.⁶⁶Nauroz Khan highlights another dimension of the issue arguing that during the repatriation program conducted by UNHCR, the Government of Pakistan and the Afghan government, an important factor of consultation with Afghan refugees was ignored and they were not taken in to confidence or given ownership in the resettlement process.

4.5 Treatment by the State of Pakistan

4.5.1 State of Pakistan-Afghan refugees; A Behavioral Analysis

One of the most prominent Journalists of Pakistan, Mr.Muhammad Tahir, argued in an interview with Cedoca on Feb 14, 2020, that the Pakistani government has decided not to evict the Afghan refugees from Pakistan by force. However, they are an economic burden and create many challenges in Pakistan as refugees. He also stated that Pakistan had hosted these refugees for around 40 years after the war. Pakistan has shifted its policy about them throughout the year. With the support of the international community, Pakistan initially welcomed Afghan refugees. According to a researcher at ISSI, Dr. Amina, Pakistan witnessed a decline in support from the international community during 1990 and specifically in 2000, due to which the perspective changed. Pakistan strongly favors sending these Afghan refugees back to their land.⁶⁷Another reason for the shift in perspective was the ill activities of Afghan refugees in Pakistan land, i.e., drugs and militancy. The APS Peshawar attack in 2014 increased this advocacy for the extradition of Afghan refugees. As per Amnesty international campaign director Omar Waraich, the Pakistan govt had started the repression against refugees for harassment n monitoring. The punishment has been announced for all ill activists found in connection with Afghanistan labeled as terrorists, criminals, and against Pakistan. After the 2014 incident, Pakistan formulated the NAP (National Action Plan) and chalked out its priorities. Its 19th point indicates that the Afghan refugee issue will be dealt with at the beginning of the registration of unidentified

⁶⁶Nasim Sadat Hosseini Divkolaye and Frederick M Burkle Jr, "The Enduring Health Challenges of Afghan Immigrants and Refugees in Iran: A Systematic Review," *PLoS currents* 9 (2011): 52-53.

⁶⁷Sultan Barakat and Gareth Wardell, "Exploited by Whom? An Alternative Perspective on Humanitarian Assistance to Afghan Women," *Third World Quarterly* 23, no. 5 (2002): 23-25.

refugees.⁶⁸It assigned this task to NADRA. It turned out to be a slow procedure. Pakistan even certified the volunteer repatriation while initiating a crackdown against unidentified refugees. As per dawn news, hundreds of these kinds of refugees were arrested.

According to AAN's Jelena Bjelica that these actions started increasing enmity and even turned violent. The extension of POR cards' time becomes shorter.⁶⁹They also explained that the internal mutual Afghan-Pakistan relations got strained because of the closer relationship between India and Afghanistan. It is witnessed that the ties became more strained after the inauguration of the Salma Dam. It is a hydro-power station in Kabul financed by India. Moreover, Amina Khan expressed that the border clashes on June 13, 2016, deteriorated the situation more resultantly cross border firings at the Torkham border were also witnessed. In June 2016, Pakistan imposed new rules for the mutual border. On the other hand, Pakistan legally outlined the procedure for returning Afghan refugee families to their country. The Comprehensive Policy on Voluntary Repatriation and Management of Afghan Nationals was adopted by the Federal Cabinet in February 2017.⁷⁰The UNHCR, Afghanistan, Iran, and Pakistan agreed at an informal quadripartite session (Q4) convened in Geneva in December 2019 that a three-pillar plan would have been the best option for their return to their own homeland, In February 2020, the commissioner of CAR. Muhammad Abbas stated that the recent situation for managing Afghan refugees needs a review. It mentioned that Pakistan needs to ponder refugee law implementation. The UNHCR and Pakistan held a summit on 17 and 18 February 2020 to discuss hosting refugees for 40 years; it was noted that enthusiasm and assistance from abroad had decreased. As per Dawn news, Pakistan demands the international community fulfill its duties and commitments to Afghan refugees' ethical and noble deportation.

4.5.2 Law Enforcement Agencies& their Attitude towards Afghan Refugees

The EASO COI Report: Pakistan - Security Situation provides in-depth information on the capability, integrity problems, and abuse of power of the police and security forces in Pakistan (October 2019). Human Rights Watch looked at police misconduct of Afghan refugees

⁶⁸Amina Khan, "Protracted Afghan Refugee Situation," *Strategic Studies* 37, no. 1 (2017): 45.

⁶⁹Samar Rashid and Yunas Samad, "Migration-Relevant Policies in Pakistan," *Changes* 1 (2022): 23.

⁷⁰Dr Fayyaz, "Pakistan Counter-Terrorism (Ct)-Afghan Refugee Question," *South Asian Studies* 33, no. 2 (2020): 6-7.

in Pakistan between 2015 and 2017.⁷¹ Human Rights Watch claimed in a study from November 2015 that following the attack on the Army Public School in Peshawar in December 2014, animosity among Afghan refugees grew. Since then, the Pakistani police have raided Afghan villages, imprisoned, interrogated, and assaulted Afghan males, demanded bribes, and destroyed Afghan homes, according to interviews with Afghan refugees captured by Human Rights Watch. The Pakistani police mistreated Afghan refugees, both those who were registered and those who weren't. Human Rights Watch documented increased violations committed by Pakistani police against Afghan refugees between July and December 2016 in a report from July of that year. The police limited free movement of people, detained legally registered Afghan refugees, and detained alleged unlawful Afghan squatters. Human Rights Watch stated in a report from February 2017 that this was caused by a publicity campaign carried out by the Pakistani government and the ambiguity surrounding the length of the stay of Afghan refugees in Pakistan.⁷² According to 145 Afghan refugees who were interviewed by Human Rights Watch, police frequently threatened to separate families and deport them and arbitrarily detained them for hours or days at a time. They also allegedly frequently offered them bribes, raided their homes late at night, accused them of harboring terrorists or being terrorists themselves, and raided them. Just 1.3% of individuals charged in criminal proceedings from 2014 to September 2016 were Afghan refugees, according to figures from the Directorate of Prosecution and Department of Police of the Khyber Pakhtunkhwa government, according to the daily Dawn. Despite the fact that Afghan immigrants were connected to certain criminal activities in the Khyber Pakhtunkhwa province, Dawn contends that the notion that they are mostly to blame for most crimes has been overstated. According to the Human Rights Commission of Pakistan's (HRCP) 2018 Annual Report on Human Rights, Pakistanis continue to believe that all Afghan refugees are involved in criminal and terrorism-related activity. The HRCP highlighted those complaints of harassment by the police and neighborhood watch groups persisted. There were allegations of police and provincial officials harassing Afghan refugees, but the number was lower than in recent years, according to the USDOS annual report on human rights violations in Pakistan (encompassing 2019). Data on the arrests and detentions of registered Afghan refugees

⁷¹Waseem Ahmad, "The Fate of Durable Solutions in Protracted Refugee Situations: The Odyssey of Afghan Refugees in Pakistan," *Seattle J. Soc. Just.* 15 (2016): 21-22.

⁷²Nicholas R Micinski, "Threats, Deportability and Aid: The Politics of Refugee Rentier States and Regional Stability," *Security Dialogue* (2021): 25-26.

by year was gathered for the UNHCR monthly report of the Legal Assistance and Aid Program, which was released on March 18, 2020. Liaqat Banori claimed that the majority of the cases SHARP handles involve police harassment. Afghan refugees are harassed by the police, who also seek money and bribes. Before official charges are brought, SHARP attempts to step in and secure the release of the Afghan refugees.⁷³ SHARP offers the assistance, but if they are charged and brought before the judge, attorneys will represent them (not in criminal matters because SHARP opposes it). The renewal of PoR cards for an extra year and other sociopolitical issues in the country, in Banner's opinion, have greatly reduced the protection challenges since the installation of the present administration in Pakistan. Before the current administration took office, Khalid Khan Kheshgi interrogated a number of Afghans. Kheshgi asserted that police and other law enforcement officials stop or inspect everyone at checkpoints, including Afghan refugees. Those who possess the required papers will be left alone by the police and other members of the judicial system (for instance, Afghan refugees with PoR cards). However, if they don't have the required documentation, they'll demand money and bribes. For certain reasons, controls are carried out at checkpoints. According to Liaqat Banori, the government's policies and the extension of PoR cards until 30 June 2020 have caused harassment to decline for the first time in 2019. Because they did not inform the police about the extensions, they used to experience additional harassment. To tell them of the extension of the time, SHARP must contact the authorities.

According to UNHCR statistics, the majority of arrests in 2019 (1,396 arrests) were made without any charges (66%) and were then followed by arrests made in accordance with legislation enforcing preventative measures and rental restrictions (2%) and The Foreigners Act of 1946 (10%). The majority of the 102 arrests made between January and February 2020 (79% of all arrests) were made without any charges, according to data from UNHCR published in its monthly update of the Legal Assistance and Aid Program on March 18, 2020. This was followed by arrests made in accordance with preventive and rental restriction laws (11% each), and arrests made in accordance with the Foreigners Act of 1946 (10%). According to UNHCR data, Khyber Pakhtunkhwa was where the majority of PoR cardholders were arrested and detained in 2019. According to UNHCR, the Foreigners Act of 1946 was the legal basis for some of the arrests and

⁷³Katja Mielke et al., "Figurations of Displacement in and Beyond Pakistan: Empirical Findings and Reflections on Protracted Displacement and Translocal Connections of Afghans," (2021): 34.

detentions of PoR cardholders. All foreigners without appropriate paperwork, including refugees and asylum seekers, are subject to arrest, imprisonment, and deportation, according to the Foreigners Act, which regulates the unlawful stay of foreigners. PoR cardholders have furthermore been detained, arrested, and deported, according to a 2012 report by the organization Community Appraisal and Motivation Programme (CAMP), particularly those who did not have their PoR card on them or had misplaced it.⁷⁴ In Peshawar, Khyber Pakhtunkhwa, the police allegedly organized a campaign to apprehend and deport individuals with connections to criminal organizations in April 2019. Authorities detained 46 Afghans who were residing illegally in Pakistan. The occurrences were documented using the Foreigners Act of 1946.

4.5.3 Employment

Despite the fact that there is no formal document that allows refugees to work legally; however, that is not against the law either. Numerous refugees worked as day laborers or in the manner of informal economy, whereas they were regularly exploited by local employers who paid them pitiful wages or no wages at all. Children and women who took on undesirable and low paid employment were mostly at risk.

4.5.4 Education

The constitution guarantees free, obligatory education to all kids between the ages of five and sixteen, regardless of their nationality. Theoretically, any refugee child with a POR card might be admitted to public educational institutions after submitting the necessary documentation. Access to education remained challenging for older pupils, especially girls in refugee villages.⁷⁵ Only 83,839, or 20 percent, of the 417,000 children who were of school age were enrolled in educational institution in 2020, and of them, 33 percent attended public schools. Afghan refugees had literacy rates of 33%, girls' literacy rates of 7.6%, and dropout rates as high as 90% due to their low enrollment rates.

⁷⁴Barakat and Wardell, "Exploited by Whom? An Alternative Perspective on Humanitarian Assistance to Afghan Women," 25.

⁷⁵Azam, "Analysis of Pakistan's Policy Towards Afghan Refugees: A Legal Perspective."

4.5.5 Abuse of Legal Status of Afghan Refugees Rights

More than 1.4 million Afghan refugees who arrived before to 2007 received proof of registration (POR) cards from the government. These cards were valid till December 31, 2015. Thereafter these cards were renewed for further 5 years till June 30th, 2020 and later had not renewed further. Approximately 878,000 Afghans with Afghan Citizen Cards were also given shelter by the nation, although they were not given refugee status. Afghan Citizen Cards' expiration dates were generally extended by the Afghan government in short bursts, but it allowed this to happen on June 30, 2020, and hasn't done so since. However, later the Government of Pakistan issued Bio-metric Card to the Afghan refugees and their families which are valid till 30th of June, 2023. However, the policies so adopted by Government does not carries consistency due to which it violates the principle of human right so guaranteed by the International, Regional & National laws relating to the refugees.

4.6 Research Findings

As discussed, and observed; different researchers on the economic challenges faced by Afghan Refugees in Pakistan, it is crystal clear that the main gap accrued in the violation of economic human rights of refugees are due to the absence of clear policy or legislation of the host state. Article 4 of the Constitution clearly states that:

*“To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen. Whenever he maybe, and **of every other person** residing for the time being within territorial boundaries of Pakistan.*

But regretfully, despite Pakistan's Constitution as well as the international law, Afghan refugees in Pakistan do not have access to their economic human rights. They thus face prejudice, which can only be addressed by reviewing the state's refugee policy.

4.6.1 Socio- Economic Challenges

MAIN CHALLENGES	PROVINCES					
	Balochistan	KPK	Punjab	Sindh	ICT	Total
Access to Health	24%	13%	15%	26%	9%	17%
Access to Education	18%	16%	20%	20%	18%	18%
Law & order	8%	4%	8%	11%	8%	7%
Employment opportunities	7%	9%	13%	21%	15%	12%
Access to Housing	30%	21%	13%	3%	22%	19%
Documentation or personal identification of documents	7%	17%	13%	17%	17%	15%
Lack of freedom of Movement	6%	16%	13%	1%	9%	9%
Others	0%	4%	6%	0%	2%	2%

From, the above stated study reported by Sustainable Development Policy Institute (SDPI) in its survey recorded in 2018, it would be safe to state that access to housing, education and health are main challenges faced by the refugees in Pakistan, which are main basic human rights.

4.6.2 Obstacles faced by the Refugees in getting Employment

Obstacles In Getting Employment	P R O V I N C E S					
	Balochistan	KPK	Punjab	Sindh	ICT	Total
Not having a POR card (other family members)	0%	6%	15%	4%	22%	9%
Permanent disability	5%	3%	4%	3%	3%	3%
Lack of skills	26%	17%	23%	21%	19%	21%
Lack of education/qualification	29%	39%	29%	44%	31%	36%
Lack of employment opportunities in the area of residence	0%	1%	6%	1%	14%	4%
Cultural obstacles for women	5%	8%	2%	8%	3%	6%
Lack of transport	27%	8%	2%	16%	2%	11%
Temporary illness	5%	0%	2%	0%	1%	1%
Other	2%	18%	17%	3%	4%	9%

The survey of 2018 suggests that around 57 percent of refugees hold that it was difficult for them to find work and to get their economic and basic human right in Pakistan. Similarly, 81% of refugees in Sindh also had the same problems. A lack of education, credentials, and skills was

identified as the biggest obstacle to employment in all provinces.⁷⁶ There were variances in occupations between refugees and the local population because of disparities in education and skill levels. The inability to move about was noted by Afghan refugees in Sindh and Balochistan as a significant hindrance. They also condemned how harshly refugees were treated.

4.6.3 Issues faced by Afghan Refugees in Business Zone

Obstacles in doing business	PROVINCES					
	Balochistan	KPK	Punjab	Sindh	ICT	Total
Taxes/fees	21%	9%	14%	0%	3%	9%
Informal payments	7%	6%	0%	0%	6%	5%
Security (violence/robbery)	14%	6%	14%	57%	13%	10%
Discrimination	0%	5%	0%	29%	19%	7%
Lack of access to credit	36%	35%	21%	0%	3%	27%
Energy prices	0%	5%	0%	0%	6%	4%
Energy availability	0%	6%	0%	0%	0%	4%
Difficulties in registrations	0%	15%	14%	0%	16%	14%
Hiring of labor	7%	2%	0%	0%	0%	2%
Inspection by regulatory bodies	7%	3%	21%	14%	16%	7%
Others	7%	9%	14%	0%	19%	10%

As Economic Human Rights includes all basic necessities against which any individual cannot survive and lack of skill is the main concern of having economic crisis of refugees in Pakistan.

⁷⁶Sonja Fransen and Hein De Haas, "Trends and Patterns of Global Refugee Migration," *Population and Development Review* 48, no. 1 (2022): 8-9.

The above suggested survey depicts that apart from Sind; lack of access to credit and difficulties in registration of business are the main obstacles faced by refugees and that is the reason that economic murder of refugees took place. Further most of the refugees have setup their own businesses, however due to undocumented business and informal work, they are unable to get bank loans or enter into any collaboration with the governmental or non- governmental organization; and are unable to expand their business. The Afghan Refugees while operating their business are unable to transfer money through banking institutions and had to rely on informal channels while achieving their targets like Hundi Hawala etc. which directly and indirectly damaged the financial status of Pakistan and Pakistan bear loss of billion & trillion of rupees every month.

4.6.4 Inference on Afghan Refugees After 18th Amendment

After the 18th amendment, which, in contradiction, demonstrates how it altered the Pakistani Constitution by protecting the independence of the judiciary, enhancing the political system and the transparency of provincial legislatures, promoting good administration, and increasing provincial autonomy. However, as a result of the 18th Amendment to the Pakistani Constitution, which gives provinces responsibility over education, each province has its own set of administrative laws and regulations. As there are no legal restrictions on education that hinder refugee children from enrolling in secondary school in the provinces of Balochistan and Khyber Pakhtunkhwa. However, there is little to no chance for the 60,000 refugees residing in Karachi to complete their secondary education, because Secondary Education, Karachi makes it mandatory for a student of 9th class to have Child Registration Certificate, however refugee's child does not have the same and the same policy is against the Article 25-A and the mandate of Article 38 of the Constitution of Islamic Republic of Pakistan.⁷⁷

⁷⁷Laurent Gayer, *Karachi: Ordered Disorder and the Struggle for the City* (Oxford University Press, USA, 2014), 25-26.

4.7 Conclusion

Concluding the arguments, it can be assessed that in absence of state ownership and policy, UNHCR applied its jurisdiction and gave legal, administrative and humanitarian assistance to Pakistan on the refugee crisis. So far eight agreements have been signed between UNHCR and Pakistan government starting from 1988 that deal with managing the systematic voluntary repatriation of refugees. A clear analysis of these documents reflects; the application of jurisdiction and principles prescribed in Geneva Accords on the Settlement of the Situation Relating to the then prevailing Afghanistan situation, which aimed towards soviet withdrawal and relieving Pakistan from the responsibility of mass refugee hosting. The ambiguous status of Afghans and the mixed nature of movement have resulted in adoption of some interesting terms being used in official correspondence and agreements drawn around repatriation of these people. The 2006 and 2007 agreement between Afghanistan, Pakistan and UNHCR call for “Registration of Afghan Citizens Living in Pakistan”. Till now no clear policy has been communicated on how Pakistan and UNHCR are to deal with those which are neither registered nor choose to return to Afghanistan. Since the Taliban regime has come in to power in Afghanistan, another 250,000 Afghan refugees have entered Pakistan citing different reasons, most common of which is safety and security of their families. Most of these people include government officers of Ghani administration, as they fear from Taliban taking revenge from them. While Pakistan direly needs the Afghan refugees to go back to their home state due to its own economic crisis as well, there is very less chance of repatriation of Afghan refugees until and unless there is political and economic stability in Afghanistan.

Chapter Five

Future of Afghan Refugees & Their Economic Human Rights in Pakistan

5.1 Introduction

The main objectives of this chapter are to provide an answer to the final research question and provide some useful recommendations for upholding the economic human rights of Afghan refugees in Pakistan while taking into account local, regional, and global laws and regulations. Considering the current political situation of the Country, the process of managing the refugees and protecting their basic human rights i.e., economic, political, cultural, and social right are quite an immense thorny task and in such like scenario, the country will be unable to host any more refugees. Around forty years ago; Pakistan entered into a tripartite agreement with the Government of Afghanistan and UNHCR under which proper documentation was signed to resolve the issue of Afghan refugees and to endow them with humanitarian assistance; however later after the expiration of the agreement, the question of Afghan refugees and their economic human rights were again a debatable and serious concern not only for refugees but also for host Country, which in my view can only be addressed after having proper legislation on the stay of Afghan Refugees and protection of their basic human rights in Pakistan.

Afghanistan and Pakistan now have tight economic and strategic ties as a result of the war and current political instability in Afghanistan; however, it is also the responsibility of the Afghanistan Government to look after the policies of taking back their citizens. Instead of merely relying on foreign policies and mechanisms, efforts must come from the place of origin because it is impracticable for the Pakistan Government to look after the Afghan Refugees who don't possess even proper documents and are staying in Pakistan illegally and unlawfully. Further, the economic human rights of Afghan Refugees can only be determined and protected once the state policies on hosting Afghan refugees are made clear.⁷⁸ It is also considered to mention here that the absence of proper legislation on the stay of Afghan refugees, their legality concerning

⁷⁸Jennifer Hyndman and Wenona Giles, *Refugees in Extended Exile: Living on the Edge* (Routledge, 2016), 14.

identification in Pakistan is also a main concern issue of providing them basic facilities to live and to protect their economic human rights.⁷⁹.

In light of the above-mentioned gaps mentioned in literature review and research findings given in the last chapter on the topic; following are the legal and policy recommendations, keeping in mind the essence of Article 4, as defined by the Constitution of Pakistan, 1973, as well as international policies and guidelines that the state may adopt to move towards drawing legal frameworks and designating suitable legal mechanisms.

5.2 Recommendations for Government of Pakistan

The most burning issue about Afghan refugees is their legal status because their basic human rights and economic human rights can only be protected once their legal status would be clear from its inception. Hence, the first recommendation is that the government may adopt proper policy and clarify the legal status of Afghan Refugees keeping in view the law of the land on the subject concern. In this regard Former Prime Minister Imran Khan in the year 2021, also announced that government will issue new smart cards to the Afghan refugees after holding their proper verification and they may be able to open their bank accounts in this regard Ministry of State & Foreign Regions (SAFRON), NADRA with the aid of UNHCR will process the “Document Renewal & Information Verification Exercise (DRIVE)” but the same requires due attention of the government for implementation in its letter & spirit.

It is pertinent to mention here that the Government of Pakistan may adopt regulations for those Afghan refugees who are living in Pakistan for a long and entered into a marital bond with citizens of Pakistan or vice versa to be provided citizenship by the Pakistan Citizenship Act, 1951. Further seeking wisdom from Article 9 of the Constitution of Pakistan, 1973; the state is duty bound to protect the life and liberty of every person which also includes Afghan refugees and no one can be deprived of his life and liberty but by law; however previous chapters depicts the attitude of law enforcement agencies that how they are violating the law of land by harassing

⁷⁹Asim Murtaza Cheema, Mariam Fatima, and Muhammad Irfan Mahsud, "Pakistan's Anti-Corruption Legal Regime: A Story of Political Rag Tag," *Pakistan Journal of Criminology* 12, no. 1 (2020): 23-24.

and disrespecting the Afghan refugees; therefore to secure their economic human right, the state must direct law enforcement agencies to protect the life and liberty of Afghan refugees (both registered and unregistered) instead of violating their rights and harassing them at the extreme. And to achieve the same prospect the state may educate enforcement agencies about the legal rights of Afghan refugees through seminars, workshops, conferences, etc.

To protect the economic human rights of Afghan refugees, the government is required to adopt the proper procedure of documenting the business of Afghans and they may also be given such incentives which the Pakistani businessman carries, further they may also be permitted to open bank accounts due to which the worth of Pakistan currency would also be uplift in the national and international market because the mode of illegal transferring of money through Hundi Hawala and other ways would be paralyzed when refugees would be given a better way of entry into any business transaction.

The host country should also consider creating jobs for the Afghan refugees who are residing in Pakistan since their birth or for the last 4 decades and the same can only be materialized once the state makes such policies through which the refugees can get a reasonable source of earning. Pakistan's government requires to adopt such policies through which refugees youth can start their businesses which would ultimately not only support Afghan refugees but would also sustain the economy of Pakistan.

Currently, Afghan refugees are paying trillions of rupees in the form of taxes to the government through informal channels; however they are unable to get social security, and their basic human rights are ruined by the federal and provincial governments because both are not taking their responsibility and that is the serious concern which is now required to be administered because after 18th amendment many subjects now directly come under the domain of Provincial Government; Hence my submission is that intergovernmental department is to be required which shall review the concerns of Afghan refugees, create opportunities for their economic upbringing and took responsibility to provide them socio-economic rights.

Pakistan should also implement a friendly strategy towards migrants who are active economic partners, such as Pashtun refugees who are engaged in jewel business in Peshawar (Pakistan's only jewel business). The expatriate populace also plays many positive roles in the

country's economy. For example, migrants deal with cheap labor and improve mutual trade and agricultural help. They play a significant role in both consumers and productive producers in the host economy. They give to the host economy through human capital, international aid, and financial support. However, it is claimed that the benefits of migrants far prevail over the burden they place on the host economy. The role of Afghan migrants in Pakistan's economic sector is often overlooked due to a lack of official statistics. Another concern is the influence of Afghans' informal business activities in creating market employment opportunities. Within this perspective, the Afghan migrants can strengthen the character building in Pakistan's economy, which needs to be endorsed. This will lead to a positive attitude towards Afghan migrants and their adequate settlement and contribute to the country's economy.

Pakistan should also pay attention to the education and health facilities provided to Afghan migrants. Educating refugees should be emphasized as it is a fundamental human right and will work for the long-term concern of migrants and Pakistan. However, as a developing country with inadequate assets, Pakistan has limited infrastructure to facilitate the educational rights of the migrants and would likely require international funding to sustain such programs.

Our Constitutional wisdom is based on the tracheotomy of powers; the judiciary can take the responsibility of judicial review of the policies legislated by the legislator; in the preceding chapters the judgments of the Honorable Peshawar High Court was talk about in which the Honorable Court had directed the federal and Provincial Government to documented the businesses of Afghan Refugees and bring them in the domain of legal framework; However, even after the lapse of 9 nine years, a single framework or policy has not been discussed in the Parliament due to which they are in the edge of being targeted of economic murder. Therefore, it would also be the recommendation that the Pakistan Government shall legislate on the subject of the undocumented businesses of Afghan refugees; after which refugees would be in a greater position of getting many opportunities. They would be able to register their companies under the law of Company Act, 2017; they will be in a position to enter into a joint venture with different governmental and nongovernmental organizations and likewise.

Children and women suffer the most when there is a refugee crisis. It is now essential to look at migration options from a gender viewpoint. Women can be empowered to become active contributors to society through paid employment, self-employment, and even volunteer work.

5.3 Recommendations for UNHCR

Most of the aid provided by the UN High Commissioner for Refugees (UNHCR) has gone to Afghan refugees in Pakistan. Since the 1980s, the UNHCR has operated in Pakistan with the primary objectives of protecting refugees and supporting institutional and financial humanitarian initiatives. The United Nations High Commissioner for Refugees was responsible for paying the bulk of the prohibitive expenses associated with maintaining a sizable refugee population (UNHCR). As Umar Rashid suggests:

*“It cannot be ignored that UNHCR's efforts in Pakistan have been essential in handling one of the greatest and most protracted humanitarian crises in history, and as such should be lauded”.*⁸⁰

Therefore, the UNHCR should keep helping the Afghan refugee population by contributing the resources required to support the refugees in Pakistan. Additionally, UNHCR has made education one of its main priorities, partially funding Afghan children's primary school education and providing legal support. The UNHCR should keep up these efforts which would ultimately help Afghan refugees in the upbringing of their economic prosperity.

Even though Pakistan substantially complies with the provisos of the Refugee Convention and its Protocol, However, the State is not legally obligated to uphold all of its provisions, except the principle that is a component of customary law. Pressuring Pakistan to sign and ratify the 1951 Convention and Protocol is one option to settle this problem. This would result in a significant legal duty for Pakistan regarding the refugees, one from which the Pakistani government will be unable to escape. As Grace and Maley argue:

“As a party to the 1951 Convention and the 1967 Protocol, Pakistan could not threaten to send the refugees back and would be forced by a legal obligation to face the consequences of its policy in Afghanistan. This would be a far stronger

⁸⁰Nasreen Ghufraan, "Afghan Refugees in Pakistan Current Situation and Future Scenario," *Policy perspectives* (2006): 52.

obligation than any which it arguably bears under customary international law”⁸¹

Afghan refugees have also received free legal assistance from the UNHCR. However, the legal standing of the Afghan refugee, the nature of the offense (civil or criminal), and the nationality of the offender and victim have all been criteria for this legal help. The Asia Displacement Solution Platform report states that only Afghan refugees who have proof of registration cards are given legal assistance; Afghan refugees without having legal documentation are not given any legal assistance. Additionally, the same report states that UNHCR does not offer legal assistance in criminal cases. This is an area where the UNCHR can do better and make sure that as many refugees as possible receive legal aid. The free legal aid to the Afghan refugees would be the most instrumental point in their socio-economic wellbeing.

5.4 Afghan Refugees & Role of International Community

Pakistan is receiving billion and trillion rupees every year from foreign countries and organizations for hosting Afghan refugees and to provide them with necessities of life; However, this research depicts that due to the absence of legislation, the role of the Pakistan government is hurtful and they had done little for the refugees; hence the international community is required to play its pivotal role in guiding the government for making such policies which would ultimately be helpful for the refugees as well as for the host state.

In response to Pakistan's stance on freedom of expression and speech, the European Parliament passed a resolution calling for a review of Pakistan's Generalized Scheme of Preferences Plus (GSP+). The former prime minister of the court responded by stating that while freedom of speech and expression is never absolute, it is also a fundamental right guaranteed by the Pakistani Constitution and that any restrictions must be within the bounds of the law. The government has been extremely motivated to reassess its policies and relations with western nations as a result of this resolution. According to the author, it would be more appropriate for

⁸¹Frédéric Grare and William Maley, "The Afghan Refugees in Pakistan," *J Middle East Institute. Refugees Cooperation* (2011): 75-78.

international organizations to persuade Pakistan's government to change its policy toward refugees by bringing up serious abuses of refugees and their legal status. Developing Country like Pakistan suffers from a growing population, limited resources, and an infrastructure gap that cannot host millions of Afghan refugees on its own, when apart from the above issues Pakistan is also facing political instability and insecurity in and from outside the border. Therefore, the international community must acknowledge that it must play its role and that Pakistan cannot bear the burden all on its own. During his recent visit to Pakistan, UN General Secretary António Guterres called for international collaboration in supporting refugees and displaying solidarity with them.

5.5 Concluding Remarks

Unquestionably, Pakistan has developed into a shelter for one of the largest refugee communities as a result of the massive exodus that has occurred there over the past 40 years. Even while Pakistan has long accepted the presence of Afghan refugees, it is still unclear what their legal situation is. This is true since Pakistan is not a signatory to the major conventions that direct global refugee policy. Furthermore, Pakistan's local legal system does not fully explain the refugee status. Afghan refugees have experienced a variety of challenges as well as unfairness and unfair treatment due to the lack of a national framework for refugee protection and their understanding of contemporary customary norms.

Economic Human rights can only be safeguarded and protected when their legal status is understandable. In the absence of proper legislation, their life, liberty, and economic and social rights cannot be protected. Further for their economic strength, the government is required to adopt proper policy so they may be able to start their business by law and they may also be given permission to open their bank accounts it would not only strengthen refugees but would also make stronger the economy of Pakistan. According to Ummat, a newspaper in Pakistan, on an annual basis reported that Afghan refugees pour 34 billion Pakistani rupees (\$325 million) into Pakistan's economy. The Governments of Pakistan, Afghanistan, the UNHCR, and the international community must all accord attention to the situation of Afghan refugees in Pakistan. Pakistan is a developing country that lacks the infrastructure necessary to sustainably

host millions of Afghan refugees. Therefore, the UNHCR and the rest of the world must also contribute to helping the Afghan refugees in Pakistan.

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