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Platform & Workflow by: [Open Journal Systems](#)<https://doi.org/10.5281/zenodo.17385652>**Asylum as a Human Right in International Law: Theory and Practice in Pakistan****Naqeeb Ullah Tareen**

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naqeebtareen861@gmail.com**Abstract**

The ability to apply for asylum is a key element of international humanitarian law. It provides support and protects to the individuals who are trying to escape from threats they see in their home countries. This article probes into the foundation of asylum as a human right under the international law. It also emphasizes the issues and challenges faced by asylum seekers and refugees in a country like Pakistan which is not a signatory state to the 1951 Refugee Convention. This article discusses the asylum law refugee policy and the challenges faced by the asylum seekers in Pakistan. It critically analyzes the huge gap between international legal policy makers and domestic authenticities. This article recommends the parameters of asylum practice in Pakistan into the position of international human rights of asylum seekers. This article will examine the right to asylum as a human right endorsed in international law where Pakistan is lacking its practical enforcement. Pakistan being not a signatory of the 1951 Refugee Convention and its 1967 Protocol has created complications in the implementation of asylum laws in Pakistan, but Pakistan has hosted a huge number of refugees for more than four and half decades. The legal framework related to the asylum and for dealing with asylum seekers of Pakistan is very primal. This article focuses on the legal and policy framework of Pakistan, examines the situation of asylum seekers in Pakistan and recommends to modify the legal framework and asylum policy for better protection of refugees and asylum seekers.

Keywords: Asylum, Human Right, International Law, Refugees, Policy Framework.

INTRODUCTION

People have always needed help when they run from persecution and seek safety in other countries. Today, international law defines asylum as a way to protect those whose basic rights are in danger back home. This article will first look at the theory behind asylum in international law. Then, it will see how it works in Pakistan, a country facing many refugees and tough social and political issues. Conflicts, persecution, and environmental disasters worldwide have caused a displacement crisis that puts a lot of stress on countries' asylum systems. The idea of asylum comes from caring about people and having the support of the world community, with the goal of protecting individuals escaping persecution. According to Article 14 of the Universal Declaration of Human Rights

(UDHR) everyone has the right to ask for asylum. it's still hard to make this a legally binding right that everyone accepts. This article will look closely at Pakistan's strategy towards asylum. Pakistan is still not the signatory of the 1951 Refugee Convention or its 1967 Protocol. The report will study the difference between the theory of asylum as a human right and what asylum seekers actually experience there. Pakistan has been dealing with the refugees for more than four decades and has the open borders which creates complications issues and security concerns. Keeping in view all these issues and challenges Pakistan need to know that how these issues be handled by meeting the human rights rules and norms in international law.

If we get into the global refugee situation and Pakistan's particular position at micro level we may face several issues and challenges in asylum seeking process. If we talk about fear of prosecution, we are addressing the conditions that threatens the life and freedom of someone. These are the conditions that compels people to seek asylum in other countries. International laws and other agreements still exist which provides a safe and impartial way for these people who seek asylum. The Universal Declaration of Human Rights is a clear and supportive document which is providing full legal protection to the people who seek asylum in other countries more than our expectations. The implementation of asylum protections is different from each country depending on their policies and laws. Every country has their own rules and policies for provision of asylum, some countries are very open minded in provision of asylum but some have very strict policies in this regard. Now the case of Pakistan is very different from the whole world by hosting millions of refugees in decades mainly from Afghanistan without any legal formalities, policies and rules despite being not a signatory of 1951 Refugee Convention. Due to hosting such a million of refugees there are countless issues and challenges like security issues, resources, huge population and financial stability. This research will go in deep by analyzing the status of asylum in theory and practice in Pakistan since long ago.

By looking into these problems this article will add to the discussion about asylum in the world is much fair due to the easy, clear and fair policies of refugees, which ensures the protection of rights and dignity of the people. Also, it is noted that this article will be applying a mixed methods approach both legal analysis and field research. The international legal documents for asylum, rules, conventions, policy papers, and relevant reports will be studied and reviewed to get a clear and fair picture of legal framework of Pakistan. The UNHCR and other private and government organizations working for asylum and refugee's protection will also be contacted in this regard to get the information. An important part of this article is to analyze the security issues which directly or indirectly affects the practice of asylum as we know that Pakistan has been dealing with several challenges like terrorism and instability in different regions of Pakistan for long time due to which or borders became more insecure.

THE RIGHT TO ASYLUM IN INTERNATIONAL LAW: A THEORETICAL FRAMEWORK

The concept of asylum as a legal right after World War II, culminating in its inclusion in the UDHR. Article 14(1) of the UDHR explicitly states that "everyone has the right to seek and enjoy in other countries asylum from persecution". While the UDHR is not a legally binding treaty, this article laid the moral and legal foundation for the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.

These instruments define a refugee and establish the core principles of international protection. Key principles of these instruments include:

Non-refoulement (Article 33):

This is the cornerstone of refugee protection, prohibiting states from returning a refugee to a territory where their life or freedom would be threatened. This principle is now widely considered part of customary international law, making it binding on all states, regardless of whether they have signed the Convention.

Non-discrimination (Article 3):

States must apply the Convention's provisions without discrimination based on race, religion, or country of origin.

Access to Justice (Article 16):

Refugees are guaranteed access to the courts of their host country.

Other international human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT), also reinforce the principle of non-refoulement and offer protections against torture or cruel treatment, thus indirectly supporting the right to asylum.

ASYLUM IN PAKISTAN: LEGAL GAPS AND PRACTICAL REALITIES

Pakistan's approach to asylum is characterized by a significant paradox, immense generosity in hosting refugees coexisting without a formal legal framework.

The Absence of a National Legal Framework:

Pakistan is not a signatory to the 1951 Refugee Convention or its 1967 Protocol and lacks a national law specifically governing asylum or refugees. Consequently, asylum seekers and refugees are often subject to the Foreigners Act of 1946, a law designed for immigration control that contains no provisions for refugee status determination or protection from refoulement. This legal vacuum creates significant vulnerabilities, leaving individuals at risk of arbitrary arrest, detention, and deportation.

The Role of the United Nations High Commissioner for Refugees (UNHCR):

In the absence of a national asylum system, the UNHCR plays a crucial role in Pakistan. Operating under a 1993 cooperation agreement with the government, the UNHCR conducts Refugee Status Determination (RSD) for non-Afghan asylum seekers under its mandate. The Pakistani government generally respects UNHCR's decisions, allowing recognized refugees and asylum seekers to remain in the country pending a durable

solution. However, this status is not legally binding under Pakistani law, which means individuals remain legally precarious.

The Case of Afghan Refugees:

The majority of refugees in Pakistan are from Afghanistan, having arrived in waves since the 1979 Soviet invasion.

Proof of Registration (PoR) Cards:

For many years, registered Afghan refugees were issued Proof of Registration (PoR) cards in collaboration with UNHCR. These cards provided temporary legal stay and a degree of protection from the Foreigners Act.

The Deportation Plan (2023-Present):

In late 2023, the Pakistani government initiated a plan to deport undocumented foreigners, a move that disproportionately affected unregistered Afghans. This policy has since expanded, creating pressure even on registered refugees with PoR cards, leading to forced returns and widespread anxiety within Afghan communities. The government set deadlines, with the validity of PoR cards set to expire on June 30, 2025, heightening fears of mass deportations.

ANALYSIS: THE CHASM BETWEEN THEORY AND PRACTICE

An examination of Pakistan's approach reveals a stark divide between the international ideal of asylum and the on-the-ground reality. While Pakistan has provided *de facto* protection to millions, this protection is not legally guaranteed and is subject to shifts in political will and security concerns. This insecurity and vulnerability contradict the fundamental purpose of asylum, which is to provide lasting safety as a human right.

The absence of a legal framework not only leaves refugees in a precarious state but also hinders the development of long-term solutions like local integration. It also places an immense and often unassisted burden on Pakistan, as the lack of a formal system makes it more difficult for the international community to provide structured, long-term support.

A Case Study on the status of Afghan Refugees since 2021:

Since 2021 things have gotten tougher for Afghan refugees in Pakistan. The country has been cracking down on Afghans without papers, deporting more people since late 2023, and its relationship with Afghanistan has been strong. Refugees who are registered with Proof of Registration (PoR) cards do not have many rights, especially when it comes to jobs and settling in Pakistan. Meanwhile, millions of Afghans without documents have been deported leading to fear and uncertainty about the future. This situation is made worse by not enough help from other countries, which puts a strain on Pakistan's services and could lead to more instability.

Before 2021:

Since 1979 to 2022 Pakistan was the only country in the world hosting a large number of Afghan refugees for more than 4 decades. Some of the refugees were issued the POR cards through UNHCR and some were having the Afghan Citizen Cards (ACC) but still there are more refugees living without any valid and legal documentation. In 2022, after the

takeover of Afghanistan by the Taliban and due to come uncertain situations the Government of Pakistan decided to close all its borders with Afghanistan and there was strict look on coming and going of refugees from Pakistan to Afghanistan and vice versa. Those refugees who were holding the PoR and ACC cards were provided some protection for a little time but there were several limitations on their movement and work in Pakistan.

What Changed After 2021:

After taking over of Taliban in recently in 2021 many Afghan refugees from Afghanistan have traveled to Pakistan through its borders. As Pakistan was already hosting a huge number of refugees so it has created a lot of pressure on Pakistan to affect the resources and infrastructure. Keeping these issues and challenges the Government of Pakistan started crackdown to send them back to their mother land.

The Deportation Plan (2023-2025):

In late 2023, after happening several security incidents the Government of Pakistan decided to deport and send back the Afghan refugees to their country. Initially, the refugees without any legal documentations were forced to be deported and the holding of POR cards and ACC cards were given some time for their voluntarily deportation. Since then, approximately one million Afghan refugees have been deported to their country. Due to this deportation, there are a lot of uncertainty and anger amongst the Afghan communities living in Pakistan.

Problems and Concerns:

Those Afghan refugees who do not have proper legal documents are trying hard to get the basic human rights of education, medical care and other legal support. It has also been observed that many undocumented Afghan refugees are working on informal jobs for their livelihood on a little payment. Since the process of deportation has been started, they have been in strong stress and tension whether to live in Pakistan or to be deported to the home land.

CONCLUSION AND RECOMMENDATIONS

The right to asylum is a well-established principle in international human rights law, yet its implementation in Pakistan highlights a profound gap between legal theory and state practice. Despite a long history of generosity, Pakistan's *ad hoc*, policy-driven approach, which lacks a firm legal foundation, leaves asylum seekers and refugees in a state of continuous uncertainty.

To bridge this gap and better uphold the human right to asylum, the following recommendations are proposed:

Enact a National Asylum Law:

Pakistan should develop a comprehensive national law that defines the term "refugee" in line with international standards, establishes a fair and transparent procedure for asylum claims, and legally codifies the principle of non-refoulement.

Consider Acceding to the 1951 Convention:

Pakistan should seriously evaluate acceding to the 1951 Refugee Convention and its 1967 Protocol. This would align its legal framework

with international norms and demonstrate a firm commitment to human rights.

Formalize the Role of UNHCR:

The existing Memorandum of Understanding with UNHCR should be integrated into Pakistani law to clarify its role and ensure consistent collaboration on protection and status determination.

Ensure Access to Basic Services:

Policies should be implemented to guarantee that refugees and asylum seekers have access to essential services such as healthcare, education for children, and opportunities for legal employment.

Combat Xenophobia and Promote Public Awareness:

The government, in partnership with civil society, should launch public awareness campaigns to educate the public on the rights and needs of refugees, thereby fostering a more welcoming environment and promoting social cohesion.

By taking these steps, Pakistan can move from a model of discretionary generosity to one of legally guaranteed protection, ensuring that the human right to asylum is not just an ideal but a lived reality for those seeking refuge within its borders.

REFERENCES

1. United Nations. (10 Dec 1948). Universal Declaration of Human Rights.
<https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf>.
2. United Nations. (28 Jul 1951). Convention relating to the Status of Refugees
<https://www.unhcr.org/about-unhcr/overview/1951-refugee-convention>.
3. United Nations. (1967). Protocol relating to the Status of Refugees,
<https://www.unhcr.org/sites/default/files/2025-02/1951refugee-convention-1967-protocol.pdf>.
4. Pakistan's Foreigners Act, 23 Nov 1946,
[administrator8922590399098ddfed00a6db56f2f91b.pdf](https://www.fza.gov.pk/administrator8922590399098ddfed00a6db56f2f91b.pdf)
5. Pakistan's Citizenship Act, 13 April 1951,
[administratora2b6f3407a109a491d47d649f6ff0c01.pdf](https://www.fza.gov.pk/administratora2b6f3407a109a491d47d649f6ff0c01.pdf).
6. Scholarly articles on the principle of non-refoulement in customary international law.
7. United Nations High Commissioner for Refugees (UNHCR) documents and reports on Pakistan.
8. Relevant academic publications on international refugee law and Pakistan's refugee policies.