



The Position of Afghan Refugees under Various Agreements and Constitution of Pakistan: An Analysis

Vol. IV, No. 1 (Winter 2019) | Page: 462 – 472 | DOI: 10.31703/grr.2019(IV-I).50

p- ISSN: 2616-955X | e-ISSN: 2663-7030 | ISSN-L: 2616-955X

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Abstract

This article explores the legal position of Afghan refugees in Pakistan (as it has no refugee related legislation at national level nor a signatory to refugee related instruments at international level) in the light of various agreements which it has concluded with the UNHCR and the Afghan government along with the various protections available under the 1973 Constitution. A total of eight agreements which started with the first one in 1988 have been concluded among the Government of Pakistan (GOP), the United Nations High Commissioner for Refugees (UNHCR) and the Government of Afghanistan (GOA) under which various rights have been extended to them apart from their refugee status recognition. The Constitution of Pakistan also affords them certain fundamental rights irrespective of their status as they are currently living in Pakistan's territorial jurisdiction, which enables them to claim those rights. Their life and liberty is as protected as any other citizen of Pakistan.

Key Words: Protection, Registration, Repatriation, Legislation, Safeguards, Screening

Introduction

Despite of not having any conventional definition, the Afghan citizens living in Pakistan were by and large perceived as refugees. Along these lines keeping in mind the end goal to have the capacity to recognize the pertinent meaning of refugee, reference will be made to the treaties which Pakistan have made throughout these years, mainly with United Nations High Commissioner for Refugees (UNHCR). These treaties are considered here in sequential order to quickly examine the fundamental concerns they deliver in connection to the legitimate status of the Afghan refugees in Pakistan. Besides, the lawful ramifications of the respective agreements are linked to decide their purport with respect to the refugee status granted to Afghan refugees in Pakistan.

The mechanism adopted by UNHCR for the Afghan refugees seems to be a deviation from the standard procedure which UNHCR keeps up in regards to the qualifications of the individuals who are perceived as refugees on group basis: 'profiling' already collected information in order to recognize those with a continued requirement for international protection preceding the termination of the voluntary repatriation program, supplemented, apparently; with 'screening' the alleged remaining case-burden following the fruition of that program (Azam, 2018).

Pakistan Concluded the First Agreement with UNHCR in 1988 which is Related to the Return of Afghan Refugees on Voluntary Basis

Every positive development in Afghanistan ends up in an agreement for the repatriation on voluntary basis of Afghan refugees from Pakistan between the concerned entities. In this regard, Government of Pakistan (GoP) and UNHCR concluded the first agreement on 8th of June 1988 for the repatriation of refugees on voluntary basis, which implemented one of the Geneva Accords on the Settlement of the Situation Relating to Afghanistan, which addressed the issues for the USSR's troops withdrawal. The above-mentioned agreement

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neglects to accommodate those individuals who are by a similar rationale qualified to decline to grab the option of voluntary repatriation (Text in Refugees, 1988).

Government of Pakistan introduced this provision in the agreement which does not wish to give a choice to the refugees at this stage, in spite of endeavours by the UNHCR to make sure those individuals protection that might not opt to return voluntarily (Zieck, 1997). UNHCR was worried that this specific formulations could be taken to suggest proceeded with help to Afghan refugees in Pakistan just until the point when they finish .the predetermined time of willful repatriation program. A concern that was fortified by how the agreement was to remain in force for the period required for the successful intentional return of the Afghans.

This problem was dealt with by the exchange of letters, and the GoP recommended these contents: 'in continuation of its support to the refugees in Pakistan, the office of the UNHCR will maintain close cooperation with the GoP in conformity with the established practices. There is uncertainty in the agreement with respect to the legal position of the Afghan refugees because from one viewpoint, it stresses upon the willful nature of repatriation, an indication that demonstrates status of refugee in the typical sense of the designation while from the other view it seems to avoid the lawful consequences of this determination in regards to the individuals who might not pick to return (UNHCR, 1988).

The GoP, Government Of Afghanistan (GoA) And UNHCR Concluded Agreement No. II In 1993 Related With The Afghan Refugees Repatriation:

With the collapse of the Dr. Najibullah's Government, a tripartite agreement with respect to refugees' repatriation on voluntarily basis was signed on 17th August 1993; having Afghanistan among the signatories apart from the previous two parties. The Afghan refugees living in Pakistan were the beneficiaries of this accord. It is limited to the ordinary nature of voluntary return of the refugees. No provisions are incorporated dealing with the destiny of the individuals who might not pick to go back, the last clauses of the agreement simply indicates that the tripartite accord will stay in force until that point when the concerned parties' agreed goals of the Commission have been accomplished. The primary target of the Commission based on the tripartite agreement, comprises of encouraging the safe, systematic and willful return of Afghan refugees and their effective reintegration in Afghanistan. No further course of action seems to have been made; the agreement just stayed in force for 10 years (Tripartite Agreement, 1993).

The 3rd Agreement Between The Government Of Pakistan And UNHCR Concerning Cooperation Concluded In 1993:

The presence of UNHCR in Pakistan was officially formalized in the form of a cooperation agreement between the GoP and UNHCR on 18th of September 1993, rather late as UNHCR is in the country since 1979. By virtue of this agreement Pakistan agrees to abide by all the duties and rights of the concerned parties primarily in terms of privileges, immunities and facilities. The difference between ordinary host state and co-operation agreement is that co-operation agreement deals with the main aim of the physical presence in the hosting state, in case of UNHCR – the host state as a consequence of the co-operation agreement clearly turns into a means of serving an clearly stated particular end – and the co-operation in-between UNHCR and host state to fulfil that specific task. The main aim of this exercise is to provide refugees and other concerned individuals to UNHCR, assistance and protection on humanitarian grounds. The recognition of this type of collaboration can be derived from different sources from obligation to co-operation with UNHCR such as UN Charter, which compels the states to help UNHCR's empowerment in-order to practice its functions; the language of paragraph I of Article 35 of the 1951 Convention is clear example. This specific standard obligation, in co-operation agreements with UNHCR is of high importance when it functions in those host-states which have not signed the relevant refugee law instruments. Besides, Co-operation with respect to those people might be done based on UNHCR's Statute as well as based on some other decisions and resolutions relating with UNHCR, if they have been embraced by United Nations organs.

The most pertinent of which are, other than the resolutions of the General Assembly the vehicle for the broadened personal scope of UNHCR's mandate as consolidated in the commitment to cooperate the

conclusions which have been adopted by UNHCR's Executive Committee, a subsidiary organ of the Economic and Social Council of the United Nations. It is irrelevant that most of the relevant decisions and resolutions are not lawfully binding for states, that is, it has been consigned to the domain of lawfully irrelevant since they compose the substance of the coupling commitment to participate as established in the collaboration agreement amongst Pakistan and UNHCR (ZIECK, 2008).

The third accord is the most important one as is based on the cooperation it recommends, specifically its substantive substance, it can be said that the host state are going to be bound to respect a substantive body of refugee law, well beyond something that might be derived from customary law of nations, with respect to the individuals who qualify as refugees based on UNHCR's expanded mandate.

Agreement No. IV Concluded In 2001, For The Screening Process Of Afghan Refugees Based On Agreed Understandings For The Determination Purpose Of Those Individuals Who Are In Need Of International Protection And Who Are Not, In The Nasir-Bagh, Jalozy And Shamshato Camps:

The determination of refugee status on prima-facie basis was relinquished in the summer of 2001 and on the second of August 2001 a conclusion reached between Pakistan and UNHCR on 'Agreed Understandings for Afghan refugees' Screening Processes in Nasir-bagh, Jalozy and Shamshato camps for the determination purpose of those individuals who are in need of international protection and who are not (ZIECK, 2008). The fresh refugee cases were to be determined on individual bases instead of collective. UNHCR's definition of refugee has been used in the agreement. The exact number of screened refugees under the above agreement is not known. The execution of the agreement was first hindered by GoP in the shape of 150 Afghans' refolement (VOA, 2001). Just after resumption, Pakistan fairly soon again stopped it, when another influx of Afghans it faced following the US attack after 9/11 on Afghanistan, when United States requested for the closure of Pakistani borders with Afghanistan. In spite of the fact that it was never continued, the screening strategy was granted another lease of life in an agreement adopted later on.

This Screening Agreement constituted a baseline. It formally ended the granting of prima-facie refugee status to the individuals who stepped into the country. Furthermore, it mirrors the observation with respect to the host nation that fresh arrivals are not qualified for this implicit type of collective recognition. GoP is of the view that new Afghan citizens crossing the frontiers are not refugees but coming due to their country's economic conditions and looked for an approach to recognize them from the individuals who could be esteemed to be qualified for international protection. Those qualified on the basis of assessment for international protection, in any case, were not granted refugee status but rather were simply qualified to be 'persons of concern', without mentioning whose concern, qualified for 'protection on temporary basis' (Human Rights Watch, 2002). From the legal perspective both their qualification and designation don't look good rather creating confusion.

Agreement No.V In Series Concluded In 2003 Between The Gop, Goa And The UNHCR Governs Afghan Refugees' Repatriation From Pakistan:

It is related to the voluntary repatriation concluded in 2003 in the backdrop of the massive return of Afghan refugees because of the 'Bonn Agreement' in December 2001 (This return although could be considered to come under the 1993 agreement, it was repealed only on the day when new agreement was signed (see Art. 23, para 2 of the 2003 agreement).). This agreement; which is the third on wilful return extensively refers to 'Afghan citizens who have looked for protection in Pakistan' not like the past two, which called them as 'Afghan refugees' (Doi:10.1093/ijrl/een0 accessed on, 2017).

Screening as per the definition of refugee consented to in the Screening Agreement finished up between the UNHCR and Government of Pakistan 2nd August, 2001 will be completed for the leftover casework to identify Afghan nationals with the ongoing international protection and recognize them from economic migrants. This activity might be executed after the completion of the UNHCR assisted voluntary repatriation program.

This agreement unlike the previous two refers to all Afghan citizens instead of refugees looking for asylum in Pakistan as beneficiaries; therefore every one of them is entitled to repatriation on voluntarily basis irrespective of their status. By throwing the beneficiaries' net that much wide it can be argued that the parties to the accord erred on the safe aspect for it means all Afghans, together with refugees, got the implicit title to protection against forced return. It might be acknowledged that conditions prevailing at that time in Afghanistan when agreement reached were perceived to be such that even non-refugees needed to be protected against forced return through supplementary type of protection.

Nevertheless, it just lasted till the completion of the willful repatriation program in March 2006, later reached out to December: upon termination of the willful program to return the rest of the refugees would be screened in connection to the requirement for continued international protection, based on the definition figured in the Screening Agreement, and that the minimum means those individuals who might still need protection, would be pointed out.

Accord No.VI Concluded In 2004 Is Concerned With Memorandum Of Understanding (Mou) Related To The Census Of Afghans And Their Registration In Pakistan In-Between The UNHCR And Government Of Pakistan

The expansion in beneficiaries' number under the 2003 Voluntary Repatriation Agreement; appears to be an indication of the situation that the Afghan populace was or had turned into a mixture. Both the GoP and UNHCR were likewise tormented by the factum that the exact position of Afghan citizens in Pakistan was never certain. For quite a long time this figure had based on imagination with diverging estimates, yet the data were thought to be pivotal for the destiny of those individuals who might in any case stay upon the termination of the program of willful return.

Another relevant issue is related to the identification that who will ultimately bear the responsibility of Afghans in Pakistan. These inquiries have to be settled through census methods and then registration of all Afghans and for this purpose an accord was finalized up on December 17, 2004. The understandings stipulate that UNHCR accepts the result as far as numbers is concerned, and the GoP that all Afghans in the nation were not the concern of UNHCR (<http://www.unhcr.org/afghan.html>). It doesn't give how the individuals who might be of concern to UNHCR shall be distinguished. The understanding just refers to the screening predicted in the 2003 Voluntary Repatriation Agreement.

The scope, objectives and exercising screening mechanism mentioned in Article VI of the March 2003 Tripartite agreement will be agreed by the GoP and UNHCR which is based on the results of the census and registration (Art. 1, Para, 4 of the agreement). Agreement no.VI reference to the proposed screening process is just to demonstrate that the screening objectives have to be agreed once the process of registration and census of Afghans in Pakistan completes; as though those targets were not officially distinguished and settled down in the 2003 Voluntary Repatriation Agreement.

Agreement No.VII is related to the memorandum of understanding between GoP and the Office of UNHCR on Afghan refugees' registration in 2006 in Pakistan

A continuation of Census agreement on 19th of April 2006 was finalized by the GoP and UNHCR on Afghan nationals' registration in Pakistan. As per contents of the agreement:

The purpose behind the activity is to help the GoP and UNHCR to find out various groups in Pakistan of Afghan nationals and to create strategies for their solutions who would stay after the Tripartite agreement's expiry in December 2006 in Pakistan (Art. 1, para 6; on the expiry of the 2003 Agreement).

All the 3,049,268 Afghans who had been counted during 2005 census have to register themselves (SAFRON, 2005). On 15th of October 2006 the actual registration started which slowly proceeded due to the fear on the part of majority Afghans that the registration drive might be a prelude to forceful repatriation (Daily Times, 2006). Albeit each individual who took part in the registration process and became its part was given Afghan citizen status temporarily residing in Pakistan, was awarded Proof of Registration (PoR) cards, as a result of he/she was entitled to remain for a 3-years period in Pakistan (UNHCR, 2006). UNHCR qualified the registration a 'protection tool', just for the purpose of identifying perceiving the bearers as Afghan nationals

living temporarily in Pakistan. It is a document of protection against harassment, yet won't give any extra rights or status (Daily Times, 2006). The 2006 Registration Agreement neither added nor reduced the prior rights/status but maintained a status quo.

Agreement No. VIII between the Governments of Pakistan, UNHCR and the Government of Afghanistan governing the Afghan citizens' Repatriation from Pakistan (2007)

On the basis of Voluntary Repatriation Agreement concluded in 2003, a tripartite commission was set up in order to decide the prolongation of repatriation program on voluntarily basis until December 2009 in the beginning of February 2007 (UNHCR, 2007). In June 2007, this issue was further taken up in another tripartite commission's meeting (UNHCR, 2007), which ended not in the expansion of 2003 agreement, instead concluded in yet another repatriation agreement on voluntarily bases on the 2nd of August 2007 (UNHCR, 2007). This new arrangement which revoked the earlier repatriation agreement of 2003 should remain intact till the 31st of December 2009, unless mutually terminated by the concerned preceding that date.

The understanding reaffirming voluntary nature of repatriation, including those individuals holding proof of registration 'might just occur on standards of gradualism and voluntarism as mutually agreed and in view of the inside conditions identified with voluntary repatriation. A recently authored term 'Gradualism' refers to the needs in-order to make the return's pace in recognized limitations of the purported 'absorption limit' of the nation of inception; which remains extremely restricted up to date (Art. 6, Afghans who did not register themselves in the registration extension were given a period of grace from 1 March to 15 April 2007., 2007). This agreement unlike the previous one neglects to provide for the destiny of those individuals who remain in Pakistan when the willful repatriation program is terminated in December 2009 finally. No solitary provision is included in the agreement like that of 1988 for the individuals who don't pick to return (Mohmand, 2018).

It may be concluded that the strategies embraced by the government of Pakistan towards the Afghan refugees gave off an impression of being drawn on the more extensive refugee definition as outlined in the 1969 OAU Convention. The legitimacy of Afghan refugees' status appears to be covered due to the fact that if they are registered, then they were offered permission to remain for an additional three years in 2006 which have been stretched out till date. In reality majority of the Afghans have been dealt on par; however the refugees among them have never been registered systematically except for the few whose qualification was evaluated based on the 2001 Screening Agreement.

Despite of the fact that there are certain ambiguities', however the series of agreements concluded in-between different stake-holders, permit to deduce that the Afghans are thought to be refugees. Both the accords (i.e. Cooperation Agreement of 1993 and Screening Agreement of 2001) support the assumption that the fundamental collective acknowledgment of refugee status continued from a wide definition of refugee person along the lines of UNHCR's expanded mandate. In the same way, the accords also give the impression that not all of Afghans are in need of international protection, specifically, not the economic migrants among them. In spite of the fact that the need to recognize both the groups were perceived, but to make distinction in-between them was put on hold and was decided to allow all Afghans (registered) to remain in the country. At first, that is, from 2003 and afterwards, the goal seems to have been to distinguish those needing protection consequent to the completion of the voluntary repatriation program, at whenever that would be.

Constitutional Safeguards and Protections for Afghan Refugees in Pakistan:

"To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan".

Art. 4 of The Constitution of the Islamic Republic of Pakistan, 1973

In this section of the research, an endeavour has been made to resolve the prevalent confusion about the legal status of Afghan refugees under the existing arrangements by focuses on the safeguards and protections available as per the provisions of Constitution (1973 Constitution of the Islamic Republic of Pakistan) to registered Afghans living in Pakistan. What's more, in doing as such, it is important to point out and examine

whether registered Afghan refugees residing in Pakistan are entitled to have the protection of law or not; since their existence within the nation enables them to be under the national laws ambit, therefore the application of relevant procedure and laws is deemed essential to them also particularly on account of abuses or legitimate issues facing them during their stay in connection with the people and state both.

In the existing circumstances, it is the need of the hour to investigate the possible options available to these Afghans as far as rights and protections are concerned under the Constitution of Pakistan. Certain fundamental rights under the Constitution are available to all those persons who are on the Pakistan's territory irrespective of their status, whether they are their citizens or not, it is for that purpose that the word 'person/persons' have been used in some provisions by the founding fathers of the Constitution; therefore it is thus applicable to all those Afghan nationals currently residing in Pakistan as registered refugees.

Fundamental Rights under the Pakistan's Constitution:

The statement of Fundamental Rights is a sort of suggestion to the government that certain freedom limits provided by the constitution are to be respected. The prime point of consideration of basic rights is to set up government of law and not of men. Majority should not rule tyrannically over the minority. The object of fundamental rights is to establish rule of law. They should provide certain standards of conduct, justice and fair play. Therefore the fundamental rights and freedoms guaranteed under 1973 Constitution of the Islamic Republic of Pakistan are sacred and applicable to both nationals and non-nationals inside the territorial borders of Pakistan. The term "persons" instead of nationals/citizens has been utilized in Chapter 1, Part II of the Constitution and henceforth it might be surmised that the non-citizens or foreigner are protected under the said chapter while they are in Pakistan.

Some articles in the 1973 Constitution give equal treatment to both citizens and non-citizens, with their relevance to Afghan refugees living in Pakistan is as examined below.

The Constitution expresses that no person (citizen as well as non-citizens] except as per law is to be denied of his/her right to life and/or liberty (Art. 9). However, if there is a requirement under the law to deprive someone of life and/or liberty, freedom of an individual or persons is essential for its execution, then this is the unparalleled circumstance in which the denial of such right is justified.

Article 9 comprises of the following basics:

- a. 'Person' – Article 9 and some of the consequent articles of the Constitution utilize the term 'person' rather than the citizen which shows its pertinence to non-natives, including all outsiders and Afghan refugees who are living in Pakistan.
- b. 'Deprivation' – The term 'deprived' indicates complete loss as opposed to only restrictions on freedom (Mahmood, 2010), for the present as well as for a proceeded period; in this way, present and in addition proceeded with confinement of a 'man' is fit for disregarding this arrangement. The loss applies similarly to both life and freedom, along these lines additionally focusing on the significance of the two ideas. Consequently, as indicated by the Article, any sort of denial of right to life or freedom, which is against the law, is considered an infringement of the security of a person; an imperative exemption to this guideline is the confinement of outsiders who are held to impend expelling to their nation of origin (Foreigners' Act, 1946).
- c. 'Life' – The word life has not been characterized in the Constitution but rather has been interpreted widely to indicate human presence in the thin sense, as well as stretching out to every facility and necessities required for an existence with nobility, without impedance as well as the danger of mischief.

Article 9 of the Constitution ensures a person's right to life with the only exception of state laws which requires a person its denial; e.g. the death penalty where state is legitimized in denying a man of his/her life, though some schools of thought consider it insensitive and an infringement of the privilege of life. Pakistan on the other hand is still practicing this law and is legally relevant here where an individual likely to be penalized by death has been tried and indicted under Section 302 of the Pakistan Penal Code 1860 (PPC) of a heinous wrongdoing, for example, murderer to be punished with death. It has been noticed since the war on terror that states have expanded its power to interfere with the life and/or liberty of an individual particularly with regards

to anti-terror laws. In this way, the state has the ability to legitimately deny a man of life and/or liberty in specific circumstances.

Therefore, it is according to the constitutional and principles of public policy that more extensive understanding of 'life' under the Constitution has been given to all 'persons', which extends without any ambiguity to all those individuals living in the country including Afghan refugees, since they are also to be governed by the law while they are present here. Thus the shield of natural justice and due course of law is also offered to those refugees having registration and residing here as prescribed by the constitution; they are qualified for similar standards of life and freedom as citizens on the grounds that the article mentions 'persons' rather than citizens, thus it is safe to state that the term 'person' refers to all inhabitants in the state.

Similarly, shields against arbitrary/illegal arrests or detentions have been guaranteed under Article 10 of the Constitution as well. An individual arrested may be informed of grounds of his/her arrest as quickly as time permits; he/she should be permitted to consult and designate lawyer of their own choice; and should be brought within 24 hours from arrest before a Magistrate and shouldn't be confined more than the prescribed period by the Magistrate. Arrest of a person under the preventive confinement laws shouldn't be more than three months longer [unless expanded by another three months by the State & Review Board] the state must get direction at the lapse of such period from the said Board, if further expansion is needed, the concerned officials requesting for such confinement should convey the prisoner the grounds of confinement inside a period of 15 days, in-order to empower the prisoner to safeguard him/herself in court. However the criterion for the arrest is that it should satisfy two test; one approval from the executive/through lawful warrant and the other one is allegation of a specific offence and shouldn't be on the basis of doubt (*Mst Bakhtawar v The State & 3 Others*, 1976).

Right to fair trial under Article 10A is the fundamental right of the accused under the Constitution to get a lawyer of his/her own choice, either on his/her own or state costs. The court of law should satisfy itself whether the accused's detainment is really based on reasonable grounds or not, because the confinement order's issuance from the lower court is not adequate, the High Court should ask the detainment order's nature and reasons. Right to fair trial is one of the cornerstones upon which the rule of law is based. Its purpose is to safeguard individuals from unlawful and arbitrary violation of other basic rights and freedoms such as right to life and liberty.

Applicability of the above Article to Afghan refugees in Pakistan: Therefore, as obvious from these discussions, the privilege to a fair trial incorporates both the ideas of due procedure of law and also the privilege to legal aid and portrayal, and this privilege applies to nationals as well as stretches out to Afghan refugees in Pakistan also since the Article addresses 'people'. However, 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 their fundamental human rights and an infringement of the privilege to fair trial under this (Abid).

Utilization of Article 10 of the Constitution in case of Afghan Refugees in Pakistan: Where the prisoner is a refugee residing in Pakistan, the protections under Article 10 of the Constitution is accessible; this is as a result of the rule that the legal provisions applicable to non-nationals shouldn't be deciphered or potentially connected in a way which damages the fundamental rights and assurances given in the Constitution. Where an individual who is a genuine national is in confinement for a prolong period without having any chance to be heard by the Board, will be held to be kept in contradiction of Article 10 without legitimate impact and subsequently will be permitted a writ of Habeas Corpus (*Mst Bakhtawar v The State & 3 Others*, 1976). Also, where a non-native and particularly an Afghan refugee residing in Pakistan— is in constant confinement under Clause [7] of Article 10 for over 10 months without response to survey by the Board, a similar circumstance will emerge (*Muhammad Akbar Cheema [Advocate] v Superintendent Jail KotLakhpat*, 1994).

Indeed, even where an Afghan refugee is kept under an order of preventive confinement, he/she is qualified for the remedy through petitioning for portrayal immediately; Clause [5] of Article 10 stipulates that a prisoner held under such an order has right to know the grounds of his or her detainment within 15 days since the initiation of his confinement immediately; if this prerequisite isn't clung to, the confinement will be thought to be founded on mala fide aim and in this manner be at risk to be struck down by the High Court in

compatibility to its established constitutional jurisdiction (*Syed Shamim Akhtar v The Government of Pakistan & 3 Others*, 1996). Subsequently it is fundamental that the confinement arrange even on account of an Afghan prisoner must be first passed by a capable specialist in light of legitimate, legal grounds and he/she should be given an open door for portrayal, otherwise, the order for detention may be quashed (*Syed Shamim Akhtar v The Government of Pakistan & 3 Others*, 1996).

Nevertheless, where an Afghan national having registration has entered into the nation by unlawful means and therefore is in detainment decisively due to his illicit action and stay, no writ of Habeas Corpus is accessible and he or she should stay in confinement to anticipate expelling back to his nation (*Syed Ahmad-ud-Din v Superintendent, District Jail Lahore & 2 Others*, 1977).

Article 11 of the Constitution

(U.S. State Department, 2009) “This Article of the constitution is related to ‘slavery’, ‘forced labour’, and ‘human trafficking’. It precludes kids up to 14 years of age from working especially in mines, factories etc; in order to eradicate the menace of child labour from the country. The Article further expresses that any type of “compulsory service” (i.e. punishment for an offense under any law) oughtn’t to be directed in such a way to undermine the human pride and regard.”

With regards to the constitutional arrangement denying forced labour and its variations, the Bonded Labour System [Abolition] Act 1992 nullified fortified work and all types of constrained work as for risk to pay any creditor[s] and additionally all traditions, practices, conventions, and so on., of any such remarkable understandings. Such acts, if preceded are culpable under the 1992 Act and in addition by the PPC. The 1992 Act gives a highest punishment of five years in the event that a business is observed to practice constrained/fortified work, while the PPC prescribes an extreme punishment of ten years and a fine for a man managing in slaves as a profession [ss. 370 and 371], and in connection to a man convincing others to constrained work, it distributes a greatest punishment of five years and a fine, or both [s. 374]. Likewise, the PPC additionally accommodates punishments identifying with human trafficking, particularly of minor young ladies [ss. 366A and 366B], kidnapping or abducting a lady to drive her to wed without consent to [s. 365B] , and offering or purchasing people for prostitution purpose [s. 371A and 371B].

Applicability of Article to Afghan refugees in Pakistan:

This Article has equal application to those youngsters of refugees from Afghanistan currently residing in Pakistan as they have the same level of protection but unfortunately in spite of a few endeavours at state level the picture on ground is still stark as far as this right is concerned. Various reports at different times recommended for greater protection as they have been excessively abused and constrained in working arrangements (U.S. State Department, 2009).

There is no uncertainty in apparent infringement of the Constitution’s Article 11; an understanding where an individual is compelled to provide services without satisfactory earnings or none by any means – while surrendering individual opportunity inside and out because of misuse, danger or manhandle will be regarded as void (*Human Rights Commission of Pakistan v Government of Pakistan*, 2009). It has likewise been held that nobody can keep someone else who is sui-juris in imprisonment or custody; any sort of limitation on the freedom of a man – be it because of any reason – is significant under Article 4, 9, 11, and 199 of the Constitution and furthermore a wrongdoing under the Criminal Procedure Code 1898.

Article 14 of the Constitution (Inviolability of Dignity of Man, etc.)

The Holy Quran says, "O' ye who believe! Enter no houses other than yours own without first announcing your presence and invoking peace upon the folk thereof." The Universal Declaration of Human Rights mentions ‘dignity’ twice in its preamble and thrice in the Articles. Similarly, the International Covenant on Economics, Social and Cultural Rights has also mentioned it twice in its preamble. As Pakistan is a Republic in which rule of laws is to reign supreme. Dream of founding fathers of the country was enshrined in Objectives Resolution which is now substantive part of the Constitution and that Objectives Resolution was preamble of almost of all previous Constitutions. Article 4 of the Constitution of Pakistan (1973) reflected the will of Sovereign and that

is to enjoy the protection of law and to be treated in accordance with law which is the absolute right of each citizen anywhere he/she may be and of every other person for the moment in Pakistan. Mandate of Art 4 is that not only the citizens, but even aliens who were for the time being living in Pakistan, were entitled to such protection. Article 14 guarantees to all persons in Pakistan that their dignity and subject to law, their privacy of home was inviolable.

Art. 14 Pertinence to Afghan refugees living in Pakistan: It is by and large seen that Afghans residing in Pakistan are the target of numerous discretionary practices in Pakistan. The Human Rights Watch and other shocking stories reports that unfriendly strategies of the Pakistan's government transform to the lowest stage where police and different law enforcing authorities regularly subject Afghans residing in Pakistan to harassment, blackmail, and arbitrary detainment, due to their undocumented ambiguous status, frequently with no worthwhile motivation or doubt (Human Rights Watch, 2002 & 2011).

Article 24 of the Constitution (Protection of Property Rights):

Constitution's Article 24 expresses that "no person shall be compulsorily deprived of his property save in accordance with law" and if the related official does as such, it may be either for "public purpose" or "by the authority of law" and remuneration will be allocated to the proprietor as indicated by the standards set for such issues. Henceforth the state can't deny an individual of his or her property unless it can demonstrate that it is indicating to do as such under legitimate expert. This is the essence of the right, that is, no individual can be denied of his property unless the state's activities have been endorsed by law. The special cases expressed in this Article, i.e., when the State may secure private property, include: mandatory procurement if there should arise an occurrence of property posturing "danger to life, property or public health"; property gained through "unfair means" or "in any manner contrary to law"; the "acquisition, administration or disposal" of "enemy property or evacuee property under any law"; and, when it is in the "public interest" for the State to acquire property for its "proper management". This Article additionally specifies laws that accommodate mandatory obtaining of property in the accompanying open administration territories: instruction, medicinal guide, lodging, open offices [roads, gas, power, and sewerage], and also upkeep for the jobless, wiped out, and elderly "who can't look after themselves".

Application to Afghan Refugees in Pakistan

plentiful case law is accessible for the implementation of property rights under this arrangement which is related generally to residents or naturalized people; even non-natives who are residing and doing work in Pakistan can possess property subject to lawful conventions with the Board of Investment and the Trade and Development Authority of Pakistan and therefore can authorize their entitlement to security of property under Article 24. In any case, if there should be an occurrence of registered Afghan subjects living in Pakistan, it is the contrary case: they are effectively banished from owning property in Pakistan in view of the Pakistani state's approach of strict repatriation which precludes them from being naturalized; the Afghan Management and Repatriation Strategy (AMRS) goes for possible repatriation – paying little mind to any individual decision or condition – to Afghanistan. Afghans when all is said in done have been living in Pakistan for nearly 4 decades yet the GoP does not mean to naturalize them; rather all enrolled Afghan residents in the nation have been given 'transitory insurance' and the procedure of enlistment– Proof of Registration card – is only issued to distinguish them in promotion of AMRS.

Yet, it might be contended that enrolled Afghan nationals living in Pakistan comes inside the class of "people" under the Article and, what's more, may likewise seek after their rights under Art.9 [person's security] to implement their entitlement of property's claim – even incidentally – for the span they stay in the nation. All things considered, it is additionally practical to take note of that the state may effectively guard any such activity of an enrolled Afghan subject living and owning property in Pakistan on the grounds of approach and open intrigue. A current advancement, be that as it may, may yet give a beam of expectation: the GoP has formulated another arrangement of activity as a team with the GoA and the United Nations for allowing consent for expansion in their stay past the present due date of 31st January 2018. The GoP has perceived the inescapable obstacles in repatriations and concessions have been given to enrolled families of Afghans due to

which they might have the capacity to broaden their stay past 2018 and conceivably appreciate "square with rights like different nationals of the nation". Regardless of whatever this will occur in established truth that the property privileges of enlisted Afghans will be viewed as equivalent to those of Pakistani natives – yet this is very far-fetched soon (Daily Times Online, 2011).

The above discussed protections and safeguards are equally available under the Constitution to both citizens as well as to non-citizens; hence, the Afghan refugees having registration in Pakistan are no exception. All those provisions of the constitution related to the freedoms and fundamental rights that address 'persons' instead of citizens only are also applicable in the case of Afghan refugees currently residing within the country. If there is any violation of their fundamental right guaranteed under the constitution, then they have the legal standing to bring the matter before the court of law for enforcement. Therefore, regardless of their status, Afghan refugees' presence on the Pakistan's soil affords them the legal protection in accordance to the constitutional and Islamic injunctions that are in-force through law, and thus there is no bar on the Supreme Court of Pakistan or High Courts to entertain any writs where a violation of fundamental rights is challenged.

Conclusion

TO sum up the legal status of Refugees in Pakistan, it can safely be said that Pakistan has adopted a very liberal approach towards refugees, which is more in line with the definition of refugees of 1969 Organisation of African Union (OAU) Convention. Pakistan firmly believes that although not a party to any refugee related international document, and even in the absence of refugee specific national legislation, it has provided adequate protection to the refugees from Afghanistan during their four long decades stay in Pakistan through generous administrative measures. The Constitution of Pakistan gives every registered Afghan Refugee equal protection of law. His life and liberty is as protected as any other citizen of Pakistan. He is protected against slavery, illegal detention and forced labour. However, we have to admit the fact that there is a legal vacuum in Pakistan with regard to the refugees in general and those from Afghanistan in particular. The government's approach to this area is guided by ad-hocism since their arrival in 1979. The Foreigner's Act of 1946 is an obsolete piece of legislation, which makes no discrimination in-between the refugees and other foreigners by allowing the government authorities to deport the foreigners without their consent, due to which the government violates the international customary law which protects the refugees from expulsion to such a territory where they are not feeling safe. Successive drives of repatriation of these refugees from Afghanistan clearly show a close link to the law and order situation along with economic activities in Afghanistan. Therefore it can be inferred from these drives that if there is an improvement in the security situation in Afghanistan, majority of these refugees will return back to their homeland willingly.

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