**Law and the refugee**

Eman Hassan Jugg

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Pakistan has been home to nearly 3.8 million Afghans since Pakistan first started admitting Afghan refugees after the beginning of the Soviet-Afghan war in 1979. The most recent influx of about 600,000 Afghans into Pakistan was witnessed in 2021 after the Afghan Taliban seized power in Afghanistan.

In a recent shift in policy, the caretaker government in Pakistan issued an ultimatum to all undocumented, nearly 1.5 million, Afghan refugees to leave Pakistan by November 1, 2023. As a result, more than 200,000 of them have crossed into Afghanistan.

Since this decision has been made, there have been calls by the United Nations to not force out Afghans who are seeking refuge in Pakistan, stressing that Pakistan might be in violation of its international obligations and that it could also expose many Afghan families to the risk of persecution and other abuse by the Taliban rulers in Afghanistan.

There have been claims that Pakistan is allegedly in violation of the principle of non-refoulement set out in Article 33(1) of the 1951 Refugee Convention. The convention states that: “No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”. A refugee for that matter has been defined in Article 1 of this convention as any person who, “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality”.

One of the concerns is that Pakistan has not yet ratified this convention nor its protocol. However, it must be stressed that this principle has now attained the status of customary international law binding on all states and has evolved as a norm of jus cogens since it is not subject to derogation. It is a peremptory norm of international law and this was reiterated in Resolution 48/116 of 21 December 1993 where the United Nations General Assembly called upon “all states to uphold asylum as an indispensable instrument for the international protection of refugees, and to respect scrupulously the fundamental principle of non-refoulement.”

This has also been codified in other treaties such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 3), the International Convention for the Protection of All Persons from Enforced Disappearance (Article 16), and in other human rights instruments that have been ratified by Pakistan.

Now the ultimate question remains whether Afghan refugees face the threat of persecution and torture upon their return to Afghanistan, at the hands of the Afghan Taliban. There is no absolute stance since there have been multiple contradictory claims from both sides. One instance that can be quoted here is of a female refugee facing deportation who told VOA that she left Afghanistan in 2022 and fled to Pakistan to ensure her family’s safety.

There have been similar reports suggesting that women in particular left Afghanistan to escape the torture that the Afghan Taliban were inflicting on women and girls there. The UN human rights office has also claimed that: “We believe many of those facing deportation will be at grave risk of human rights violations if returned to Afghanistan, including arbitrary arrest and detention, torture, cruel and other inhuman treatment”.

The other side contests that there have been no such reports of persecution or violence reported as of yet. Pakistan has ordered the return while respecting the due process of law and abiding by its international obligations. Afghan Taliban officials have denied charges of persecution against anyone who intends to return to their homeland, Afghanistan. They have instead shown a willingness to provide general amnesty for all Afghans by making arrangements to facilitate the Afghans. There have been reports that food, shelter and first aid camps are set up at their border.

Another pertinent point that must be considered while addressing this issue is that, though the principle of non-refoulement is customary in nature, there are some exceptions under which the states have the authority to regulate the stay of refugees in their territory. Article 33(2) of the 1951 Convention on Refugees lays out two exceptions: one, in case of threat to the national security of the host country; and two, in case their proven criminal nature and record constitute a danger to the community. There is absolute clarity to the point that these must be given narrow interpretation to prevent states from acting with impunity and infringing the rights of refugees under the guise of a ‘threat to national security’.

Considering the first exception, there is some room to believe that Pakistan had reasonable grounds to justify its policy. There have been growing security concerns in Pakistan as it has been claimed that Afghan nationals were directly involved in 14 of 24 suicide attacks carried out this year. Pakistan has witnessed a surge in terrorist attacks executed by the TTP. The group has also launched more than 300 attacks in Khyber Pakhtunkhwa this year. The government’s decision also came on the heels of the two blasts that took place in Mustang and Hangu city on September 29 this year and claimed the lives of more than 60 people.

There have been voices in the past against the interpretation that includes anti-terrorism measures within the scope of this exception. In that case, there has been a consensus that the proportionality test must be applied between the consequences for the refugees if they are forced to go back to their country, the seriousness of the crime committed, and the threat that it will pose to the host country.

Even if Pakistan is able to justify its actions under the provisions of international law, it still remains a fact that these hasty steps have led to the suffering of hundreds of thousands of people. This even includes those who have been born and raised in Pakistan, families who have established their businesses in this country, and who have lived here for years and years.

There could have been a more humanitarian approach to settling the issues. International law also contains provisions to invite other countries to provide visas to the refugees to accept them in their countries.

Perhaps all countries hosting refugees need to be mindful of sentiments and values of dignity and respect for all humanity, irrespective of a refugee’s nationality and place of origin. Any kind of forced displacement of entire families consisting of children and women goes against the essence of basic human freedoms and rights.

The writer is a law student.