

"MARITAL ISSUES, FAMILY LIFE, AND THE SCOPE OF HUMAN RIGHTS PROTECTIONS"

“MARITAL PROBLEMS FACED BY REFUGEES AND THE PROTECTION OF THEIR FAMILY RIGHTS IN PAKISTAN UNDER INTERNATIONAL HUMAN RIGHTS LAW OBLIGATIONS”

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DOI: <https://doi.org/10.5281/zenodo.18067613>

Received	Accepted	Published
11 October 2025	21 November 2025	27 December 2025

ABSTRACT

Refugees across the world face complex marital and family-related challenges, including forced and child marriages, divorce complications, domestic violence, and prolonged family separation. These issues directly undermine the right to family life, which is recognized as a fundamental human right under international legal instruments such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Rights of the Child (CRC). Despite these protections, refugees frequently remain without effective legal remedies due to weak enforcement mechanisms and the absence of comprehensive domestic legal frameworks in host states.

This research examines the marital problems faced by refugees in Pakistan and evaluates the extent to which their family rights are protected under Pakistan's international human rights law obligations. The study analyzes Pakistan's constitutional provisions, including Article 4 and Article 35 of the Principles of Policy, alongside Islamic legal principles, to assess their role in safeguarding refugee family unity. It further explores Pakistan's compliance with international human rights instruments despite its non-ratification of the 1951 Refugee Convention and the 1967 Protocol. The study argues that the absence of a specific refugee law in Pakistan has resulted in inadequate protection of refugees' marital and family rights, particularly for women and children. The research concludes by proposing legal and policy reforms aimed at strengthening family rights protection for refugees in Pakistan in line with international human rights standards.

Key words: Refugees, Marriage, Protection, UNCHR, Displacement, Pakistan.

INTRODUCTION

This research focuses on the topic “Marital Problems Faced by Refugees and the Protection of Their Family Rights in Pakistan Under International Human Rights Law Obligations”. Article 4 substitute for international refugee obligations in Pakistan and Islamic Law protect refugee family union rights and Article 35 of Principles of Policy of Constitution of Pakistan give binding nature force to protect the marital

and family rights of refugees .It examines the legal and social challenges refugees face in matters of marriage, divorce, and family life. The study also analyzes how Pakistan's laws correspond with international human rights instruments such as the Universal Declaration of Human Rights (UDHR), the Convention on the Rights of the Child (CRC) and International Covenant on Civil and Political Rights. The aim is to identify the legal gaps and challenges that

affect the protection of refugees' marital and family rights in Pakistan.

The need for this study arises from the ongoing struggles of refugees in Pakistan who face serious difficulties in protecting their marital and family rights. Many are unable to register their marriages, access legal divorce, or secure child and inheritance rights due to their uncertain legal status and lack of documentation. Moreover, Pakistan has not ratified the 1951 Refugee Convention or its 1967 Protocol, and there is also an absence of a proper and updated legal framework to address refugee issues. These gaps leave refugees without adequate protection and result in violations of family unity and basic human rights. Therefore, this research seeks to highlight these problems and suggest legal and policy reforms to strengthen the protection of refugee families under international human rights law.

Problem Statement/Identifying Problem

Refugees around the world face serious marital and family-related problems, including forced marriages, child marriages, divorce complications, domestic violence, and separation from family members. These challenges directly affect the right to family life, which is recognized as a fundamental human right under international instruments such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Rights of the Child (CRC). Despite these protections, refugees often remain without effective legal remedies due to weak enforcement mechanisms and the absence of comprehensive legal frameworks in many host countries. This gap between the promises of international human rights law and the lived realities of refugees results in significant hardships, particularly for women and children. Therefore, there is a critical need to analyze how international human rights law addresses refugee marital problems and to what extent it ensures the protection of family rights Obligations”

Theses Statement

This study argues that the absence of a specific refugee law in Pakistan and its non-ratification of the 1951 Refugee Convention have resulted in inadequate protection of refugees' marital and family rights, as evidenced by legal and protection gaps highlighted in the UNHCR Pakistan Fact Sheet, March 2024 (UNHCR, 2024).

Objectives of Study:

1. Can constitutional safeguards under Article 4 substitute for international refugee obligations in Pakistan? Examine in the context of Pakistan's non-accession to the Refugee Convention.
2. How refugees merital and family rights are protected under the UNDHR, ICCPR, CEDAW, CRC, ICCPR, CRPD and CAT?
3. How refugees forced displacement affect their merital rights and exacerbates financial burdens resulting in increased stress, child labour, debt accumulation, and strained relationships with host communities
4. Islamic Law protect refugee family union rights and How Article 35 of Principles of Policy of Constitution of Pakistan give binding nature force to protect the merital and family rights of refugees?
5. Need for affective and easy mechanism for refugees registration, marriage registration, child birth certificate and death certificate procedure and how Civil Administration Bureaucracy prevent early child hood marriage.

Literature Review

Marital and Family Unification Rights are Family unification rights are a fundamental aspect of refugee protection, grounded in international human rights standards such as the UNDHR, ICCPR, CEDAW, CRC, CAT and the 1951 Refugee Convention. These instruments recognize the right to marry, found a family, register children, and maintain family unity. Ensuring legal recognition of marriages, birth registration, and nationality for children of refugees helps prevent statelessness, safeguard children's rights, and preserve the social and cultural integrity of displaced families. It also promotes integration and social stability in host states, as families provide essential emotional, economic, and social support to one another.

However, practical implementation faces significant challenges. Many host states lack the legal frameworks, administrative capacity, or political will to fully enforce these rights. Bureaucratic delays, strict documentation requirements, and overloaded asylum systems often hinder family reunification, particularly for refugees who lack identity papers or belong to marginalized or stateless groups. This can result in prolonged separation, inequality among displaced populations, and frustration for families who are legally entitled to reunification but cannot access it in practice.

Pakistan Despite host Many Refugees influx since 1980s such as Refugees communities who take as asylum in Pakistan such as Biharis, Afghanis, Burmese and Persians, Bosnian Muslim and many others however Pakistan's international obligations still pending towards International human rights such as accession of refugee convention .

Although a National Refugee Bill, 2023 was introduced in the National Assembly in July of that year, there is currently no domestic statutory framework to regularize the status of refugees. In the absence of a refugee law, two other laws govern the Afghan population residing in the country: the Foreigner's Act, 1946 and the Pakistan Citizenship Act, 1951. Section 14 of the Foreigner's Act criminalizes the illegal entry of foreigners into Pakistan but also "generally accepts UNHCR decisions to grant refugee status and allows asylum-seekers (who are still undergoing the procedure) as well as recognized refugees to remain in Pakistan pending identification of a durable solution." Simply put, individuals granted refugee status by the UNHCR—and individuals whose status is pending—are meant to be treated as an exception to section 14 of the Foreigner's Act and can legally remain in the country. Section 4 of Pakistan Citizenship Act of 1951 states that every person born in Pakistan after the commencement of the Act shall be a citizen of Pakistan by birth in the territory except those whose fathers have diplomatic immunity or are enemy aliens. The plain text of section 4 does not limit birthright citizenship to the children of Pakistani citizens, however, Pakistani courts are split on whether to grant citizenship to the children of refugees.

Present Governing Cooperation Agreement between the United Nations

(United Nations High Commissioner for Refugees) and the Government of Pakistan. Signed at Islamabad on 18 September 1993

COOPERATION BETWEEN THE GOVERNMENT AND UNHCR

Article III

1. Cooperation between the Government and UNHCR in the field of international protection of, and humanitarian assistance to, refugees and other persons of concern to UNHCR shall be carried out on the basis of the statute of UNHCR and of other relevant decisions and resolutions relating to UNHCR adopted by United Nations organs.

2. The UNHCR Office shall consult, coordinate and cooperate with the Government with respect to the preparation and review of projects for refugees.

3. For any UNHCR-funded projects to be implemented by the Government, the terms and conditions including the commitment of the Government the High Commissioner with respect to the furnishing of funds, supplies, equipment and services or other assistance for refugees shall be set forth in project agreements to be signed by the Government and UNHCR.

4. The Government shall grant UNHCR personnel access to refugees and other persons of concern to UNHCR and to the sites of UNHCR project.

Article 4 of the Constitution of Pakistan is central to the refugee protection which provides for rule of law and states:

(1) 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.

(2) In particular:

(a) No action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;

(b) No person shall be prevented from or be hindered in doing that which is not prohibited by law; and

(c) No person shall be compelled to do that which the law does not require him to do. This Article provides protection to every individual

present in Pakistan, and not just citizens, and, thus, applies to refugees and their family.

Article 4 has been interpreted to provide procedural due process; right to be treated fairly at all times; right to procedural fairness and right to procedural propriety; protection against any act detrimental to life, liberty and property of 'any person'; it imposes duty on every public functionary to act in all matters justly, fairly and without arbitrariness and has been termed an inalienable right which also embodies the principles of good

In addition to such constitutional protection, the courts in Pakistan have interpreted Pakistani laws in line with its obligations under International law. This is especially true in cases concerning international human rights obligations. Thus, for example, the courts have imposed obligations on the government which are derived from international human rights treaties, even where those treaties have not been ratified by Pakistan.⁸⁵ Though these cases dealt with providing protection to citizens of Pakistan, it can be argued that if a particular provision applies to all, not just citizens, (such as Article 4 of the Constitution) such treaties would be relevant when the government is exercising its authority vis-à-vis non-citizens. As argued above, such human rights and due process obligations would also be relevant to the actions of UNHCR.

Though Pakistan is not a signatory to the Refugee Convention, other human rights treaties that Pakistan is a signatory to bind Pakistan's actions. As discussed above, Pakistani courts have used international law to regulate the actions of Pakistani government. Thus, these treaties should inform administrative law rules that should apply to UNHCR activities in Pakistan. The relevant human rights obligations concerning refugees in these treaties are:

Articles 6, 9, 14, and 15 of Universal Declaration of Human Rights (UNDHR) provide for the right to life, liberty, security of person, right to be recognised everywhere as a person before law, freedom from arbitrary arrest, detention or exile, the right to seek asylum, and the right to a nationality.

Pakistan is also bound by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, which it has ratified.

The Convention imposes obligations on Pakistan not to return anyone to states where they would be in danger of facing torture and other cruel, inhuman or degrading treatment or punishment.

Reports by different Committees established under various Human Rights treaties have pointed out Pakistan's failure to fulfil their obligations under those treaties, as a result of government of Pakistan's actions regarding refugees

Thus, both the Constitutional Law and international laws binding on the government of Pakistan are relevant in assessing what type of domestic law rules should apply to UNHCR's activities. These rules would entail that the repatriation programme should not operate in a way that allows for a situation that exposes refugees to inhuman or degrading treatment and actions/circumstances detrimental to life, liberty and property.

Marital and Family Rights under International Human Rights Law:

Under international human rights law, the family is recognized as the fundamental group unit of society and as entitled to protection and assistance in Article 16(3) of the 1948 Universal Declaration of Human Rights (UDHR);⁹ in Article 23(1) of the 1966 International Covenant on Civil and Political Rights (ICCPR);¹⁰ and in Article 10(1) of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR). The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) contains similar language,¹² as do the preambles to the 1989 Convention on the Rights of the Child (CRC)¹³ and the 2006 Convention on the Rights of Persons with Disabilities (CRPD).

The right to marry and to found a family is contained in Article 16(1) of the UDHR and Article 23 of the ICCPR (which adds that the right applies to persons of marriageable age and only with their full and free consent). Article 10(1) of the ICESCR requires States Parties to accord

"[t]he widest possible protection and assistance ... to the family ... particularly for its establishment and while it is responsible for the care and education of dependent children".

The Human Rights Committee (HRC), established to monitor States' implementation of the ICCPR, has clarified that: "[t]he right to found a family implies, in principle, the possibility to... live together".

In addition, under Article 5 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), States Parties undertake "to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of ... the right to marriage and choice of spouse". The 1979 Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) also requires States Parties to "take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations", including as regards the right to enter into marriage, rights and responsibilities during marriage and at its dissolution, and in all matters relating to children.

The right not to be subject to arbitrary or unlawful interference with privacy, family, home or correspondence is protected, *inter alia*, by Article 17(1) of the ICCPR¹⁸ and in several corresponding regional instruments as outlined below. Further, Article 17(2) of the ICCPR affirms the right of everyone "to the protection of the law against such interference or attacks".

Article 18 also recognizes that "[p]arents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child", that "[t]he best interests of the child will be their basic concern", and that "States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing

Responsibilities and shall ensure the development of institutions, facilities and services for the care of children".

Article 10 of the CRC requires, *inter alia*, that applications by a child or his or her parents for the purpose of family reunification shall be dealt with "in a positive, humane and expeditious manner".

Article 22(1) explicitly concerns asylum-seeking and refugee children and requires States Parties to ensure that such a child "whether unaccompanied or accompanied by his or her parents or by another person, receives

appropriate protection and humanitarian assistance".

Principle of the child best interest:

Furthermore, the **principle of the best interest** of the child is an overarching human rights principle that must be respected in all matters including those relating to the child's right to family life. Article 3 of the CRC requires States to ensure that "[i]n all actions concerning children ... the best interest of the child shall be a primary consideration".

The principle of non-discrimination

An overarching principle of international human rights law is the principle of nondiscrimination. Virtually every major international human rights instrument prohibits discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Non-discrimination is also the subject of dedicated instruments that address particular forms of discrimination and apply the principles of universality, non-discrimination and equality in respect of particular groups, as for example in the ICERD, CEDAW, and CRPD.

Any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights constitutes discrimination. Discrimination also includes incitement to discriminate and harassment.

Among the documents evidencing State practice and contributing to this development are the numerous Conclusions of UNHCR's Executive Committee, which represent the agreement of nearly 100 countries and express their collective international expertise on refugee matters, including on issues related to family life and family unity. Three Conclusions are particularly relevant and concern

- (i) **family reunion,**
- (ii) **family reunification and;**
- (iii) **the protection of the refugee's family, but there are many others.**

Arguably, if refugees are to exercise their right to family unity, they can be seen as entitled to

assistance (at moderate cost) regarding the issuance of such documents or certification concerning their family members as are needed for them to enjoy this right. This could include documents or certification, whether on the basis of an affidavit or sworn statement, issued in lieu of the original document by the national authority of the refugee's country of residence or by an international authority, including notably documentation issued by UNHCR.

Married spouses

Lawfully and genuinely married spouses come within the term "family". As the ECtHR ruled in **Abdulaziz, Cabales and Balkandali v. United Kingdom**, a case which concerned three women lawfully and permanently settled in the UK who were seeking to bring their three respective husbands to the UK:

"Whatever else the word 'family' may mean, it must at any rate include the

Relationship that arises from a lawful and genuine marriage, even if a family life ... has not yet been fully established. Those marriages must be considered sufficient to attract such respect as may be due under Article 8 [of the ECHR]."

In addition, a lack of cohabitation does not necessarily mean there is no family life. There is also no mention in the judgment concerning Mr and Mrs Cabales, whose marriage was not recognized in domestic law of the couple having any children, though their relationship was recognized as constituting family life. Furthermore, the situation of a married couple who are separated, where one continues to lend the other support after separation may also constitute a relationship falling within Article 8 ECHR.

Unmarried couples and couples whose marriage is not recognized

Marriages that are not recognized under national law do not automatically prevent the existence of family life for the purposes of Article 8 ECHR. In **Abdulaziz, Cabales and Balkandali**, the ECtHR held that a purely religious marriage, though not valid under domestic law, constituted family life where the parties genuinely believed themselves to be married and intended to cohabit and live as a family. The Court found that such a committed relationship was sufficient to attract Article 8 protection.

An exception to this principle applies in cases of early or child marriage. In **Z.H. and R.H. v. Switzerland**, involving a religious marriage where the wife was 14 years old, the Court agreed that the marriage was invalid under Afghan law and contrary to Swiss public order. However, once the wife reached an acceptable age, the authorities recognized that family life existed and allowed the couple to benefit from a joint asylum procedure..

Forced migration and displacement: A Case study of Afghan Refugees in Pakistan.

Since 1980, Pakistan has been hosting one of the largest refugee populations in the world. With slightly more than 1.4 million registered refugees, Pakistan has the fifth highest refugee population worldwide (IOM Migration Data Portal, 2018). However, in addition, there is also an estimated 500,000 undocumented

Afghan refugees living in Pakistan (CAR, 2019).

If this population is considered, it would make Pakistan the third largest refugee host country globally. Almost all refugee and asylum seeker populations in Pakistan are from Afghanistan.

Registration of documented Afghan refugees is based on a Proof of Registration (PoR) card, which is a document that provides temporary legal stay and freedom of movement to registered Afghan refugees.

Yet, the temporary nature of this card does not guarantee adequate protection to Afghan refugees in the country who are vulnerable to the negative impacts of changes in political and security environments.

Afghan refugees, and especially undocumented migrants, are at risk of abuse, arrest and detention by authorities. Child protection is also an issue, as poverty, lack of education and insufficient access to basic

Service deprivation is a common issue among Afghan children (IRC, 2017). Afghan forced migration to Pakistan began in 1979 following the Soviet invasion. Between 1979–1980, more than 1.5 million Afghans fled to Pakistan (Government of Pakistan & UNHCR, 2005), facilitated by tribal ties and cross-border Pashtun networks (ICG, 2009). Most early arrivals lived in refugee camps and were initially welcomed by Pakistan and the international community.

A second influx occurred between 1991–2000 during the rise of the Taliban, bringing

approximately 300,000 refugees (Government of Pakistan & UNHCR, 2005), alongside the launch of Pakistan's first repatriation program in the 1990s. The most recent large-scale movement followed the 2001 Taliban-US conflict (Marchand et al., 2015).

A 2005 census showed that most Afghans resided in Khyber Pakhtunkhwa (62%), Baluchistan (25%), and Punjab (7%). While 42% lived in camps, 57% settled in urban and rural areas. The population was evenly split by gender, with an average household size of 5.6, and was predominantly Pashtun (81%), followed by Tajik (7%) and Uzbek (2%). Twenty percent were under five years of age.

Since 2002, return migration has dominated, with over 4.3 million Afghans repatriated, including 2.7 million between 2002-2005 (UNHCR, 2019; Marchand et al., 2015). Surveys show that 60% of returnees had lived in Pakistan for over 30 years, and one-fifth were born in exile (IOM-UNHCR, 2017).

Marriage registration Issues related to Afghan Refugee or Migrants in Pakistan

Marriage to Pakistani nationals

Article 10(2) of the Pakistan Citizenship Act 1951 provides that a foreign woman may acquire citizenship through marriage to a Pakistani man.¹⁸² The mentioned Article (10) specifies the following:

'10. Married women. (1) Any woman who by reason of her marriage to a [British subject] before the first day of January, 1949, has acquired the status of a British subject shall, if her husband becomes a citizen of Pakistan, be a citizen of Pakistan.

(2) Subject to the provisions of sub-section (1) and subsection (4) a woman who has been married to a citizen of Pakistan or to a person who but for his death would have been a citizen of Pakistan under section 3, 4 or 5 shall be entitled, on making application therefore to the Federal Government in the prescribed manner, add, if she is an alien, on obtaining a certificate of domicile and taking the oath of allegiance in the form set out in the Schedule to this Act, to be registered as a citizen of Pakistan whether or not she has completed twenty-one years of her age and is of full capacity.

(3) Subject as aforesaid, a woman who has been married to a person who, but for his death, could have been a citizen of Pakistan under the provisions of sub-section

(1) Of section 6 (whether the migrated is provided in that sub-section or is deemed under the proviso to section 7 to have so migrated) shall be entitled as provided in sub-section

(2) Subject further, if she is an alien, to her obtaining the certificate and taken the oath therein mentioned.

(4) A person who has ceased to be citizen of Pakistan under section 14 or who has been deprived of citizenship of Pakistan under this Act shall not be entitled to be registered as a citizen thereof under this section but may be registered with the previous consent of the Federal Government.

However, a foreign man cannot acquire the citizenship of Pakistan by marrying a Pakistani woman.

In 2016, Pakistani women married to Afghan nationals reportedly protested these legal provisions following attempts by the Pakistani government to repatriate their husbands. In March 2022, Mudassar M. Javed clarified this further by giving an overview of the two scenarios: an Afghan woman who marries a Pakistani national has 'a slim chance' to get the Pakistani nationality but the 'process is lengthy and cumbersome'. The children of this couple are granted Pakistani citizenship if they do not have another citizenship already. By marrying a Pakistani national, the Afghan woman 'enters a new world since the Pakistani national has roots in the system and can take use of all the same opportunities as any other citizen'. An Afghan man marrying a Pakistani woman will not be granted Pakistani nationality.

According to the Directorate General of Immigration and Passports (DGIP) which operates under the Pakistani Ministry of Interior (MoI), women who are married to Pakistani citizens and want to apply for Pakistani citizenship have to submit form 'F' to the relevant Home Departments at the headquarters in Islamabad or to the Regional Passport Offices at the provincial headquarters in Lahore, Karachi, Peshawar or **Quetta and include:**

- A copy of the Computerized National Identity Card (CNIC) and the passport of the Husband

- One affidavit of the applicant and one of the husband, in which the ‘facts of the case’ are stated
- The submission fee of 200 Pakistani rupees (approximately EUR 1187)
- Two certificates in which the particulars are verified by class one officers
- A photocopy of the applicant's passport, the marriage certificate (nikah nama) and an evidence of a stay of five years in Pakistan in the aggregate as well as ten photos.

According to information in the aforementioned form ‘F’, the form itself has to be handed in quadruplicate (plus a photocopy of the domicile certificate of the applicant’s husband) and all the aforementioned documents have to be attested by an oath commissioner or a notary public. In contrast to the information on the DGIP website, form ‘F’ states that applicants have to hand in only six photographs. They have to have a light blue background, be in passport size and colored. One of the photos needs to be attested on the front and the others on the back. Women who are nationals of a country which is not a member of the Commonwealth have to further hand in their own domicile certificate and an oath of allegiance on 20 Pakistani rupees stamp paper, which has to be attested by a first class magistrate.

Islam has a strong heritage of forced migrant protection, stemming from the original teachings of the Qur’an, as well as from historical examples taken from the lives of great Prophets – from Ibrahim (PBUH), to Musa (PBUH), to Prophet Muhammad (PBUH). This heritage includes strong – even stern – commands on the importance of seeking refuge if one is facing persecution, as well as on the duty of providing asylum to those who need it. It is a tradition which provides a robust and generous framework for the protection of and provision for forced migrants, enshrining rights such as the rights to dignity, non- emolument, equal treatment, shelter, healthcare, family reunification, and protection of property.

Once aman (Asylum) is granted a musta’min (Refugee) should benefit from all the rights granted to nationals (Elmadmad 2008: 54). Such a conceptual framework and its foundations in the example of the Constitution of Madinah, which promised equal protections for all citizens

of Madinah – be they migrants or indigenous, Muslims or non- Muslims (Ramadan 2007: 88). Equally, a framework of forced migrant rights would need to reflect the five “purposes” (or maqasid) of shari’ah (Islamic law), which form the foundation of Islamic governance and citizens’ rights: the protection of life, religion, intellect, wealth and posterity (i.e. family) (Aminu-Kano 2014). These principles provide a comprehensive framework within which we can understand the rights due to a musta’min, stemming from the right to protection, the right to non- refoulement, the right to have their physical needs met, the right to freedom of belief, the right to do business and have their wealth protected, the right to marry and raise children, and the right of family reunification (Munir 2011: 14; ‘Abd al-Rahim 2008: 21; Abou-El-Wafa 2009: 143). Such rights would be due to any musta’min, regardless of whether they were a refugee, an internally displaced person, or a stateless person (Zaat 2007: 13).

As such, it is primarily the duty of the host community to ensure that a musta’min is not denied these rights. The Qur’an repeatedly calls on Muslims to “give what is due to ... the wayfarer” (Q30:38, Q17:26). To do so should not be regarded as a burden, or be considered a source of resentment, but rather considered as a noble blessing conferred on us by God. The Prophet Muhammad (PBUH) reminds us that: “Whoever fulfilled the needs of his brother, God will fulfill his needs; whoever brought his brother out of a discomfort, God will bring him out of the discomforts of the Day of Resurrection, and whoever screened [provided sanctuary to] a Muslim, God will screen [provide a sanctuary] to him on the Day of Resurrection.” (Bukhari).

The protection of life is one of the key objectives of the shariah, and Islam provides strong teachings on the sanctity of life. God calls upon Muslims to not only refrain from murder, but to also actively strive to protect the lives of others.

i. The right to protection:

“the asylum (of protection) granted by any Muslim is to be secured (respected) by all other Muslims; and whoever betrays a Muslim in this respect incurs the curse of God, the an The right to non-refoulement.” (Bukhari)

ii. The right to non-refoulement

As part of this protection covenant, it is forbidden to force a musta'min to return to their country of origin against their will. This is rooted in the Prophetic teaching that "a Muslim is a brother of another Muslim, so he should not oppress him, nor should he hand him over to an oppressor" (Bukhari). There is a consensus that this right extends to both Muslims and non-Muslims. Imam ash-Shaybani states that even if an enemy came seeking aman, he should not be forced to return to his state if he fears being killed (Abou-El-Wafa 2009: 56).

iii. The right to dignity

The Islamic protection framework emphasizes the importance of ensuring that musta'min are able to maintain their dignity. This stems from the inherent dignity due to all humans, as God stated that He has "honored the children of Adam ... favored them specially above many of those We have created" (Q17:70). The Prophet Muhammad (PBUH) was "deeply aware" of the hardship and destitution faced by the Makkan emigrants when they arrived in Madinah, for they had faced intolerable conditions and arrived bereft of property, belongings and income (Agha, 2008: 36).

The right to non-discrimination

As mentioned earlier, musta'min would be entitled to the same rights as citizens of the host state, regardless of whether they were an internally displaced person, a refugee, or a stateless person. However, it is also worth noting that within the Islamic framework forced migrants are entitled to receive Aman regardless of religion, race, colour or fortune (Shaykh Othman ibn Foudi in Abou-El-Wafa 2009: 71).

The right to Freedom of Religion

This is often a point of contention and misunderstanding. Surah Al-Taubah clearly states that Muslims should grant protection to a non-Muslim "so that he may hear the word of God" (Q9:6). This may be interpreted as consisting with current sensibilities regarding proselytization towards vulnerable people. However, it must be made clear that aman is not conditional upon the faith of the recipient - as discussed earlier, both Muslims and non-Muslims are to be honored under the

Covenant of aman, and adored the full rights which they are due. The verse itself commands Muslims to take musta'min "to a place safe for [them]" regardless of whether the musta'min has become Muslim or not. Professor Wahbah Zuhaili argues that it is compulsory for the state authority to protect non-Muslims who are in need of sanctuary (Manuty 2008: 26).

The right to have their physical needs met (food, shelter, clothing and economic provision)

The right to non-separation from family:

The shari'ah and Prophetic traditions stress the importance of family unity, which plays an essential role in people's moral and psychological needs.

Marriage and Family Life Protection under Constitution of Pakistan:

The nature of the right to marriage and family life is wide and encompasses a number of aspects. Cultural and religious attitudes have often conflicted with the international human rights norms

Pakistan has committed to uphold in relation to the right to marriage and family life. For years Pakistan has faced international criticism on the treatment of women in Pakistan, specifically in terms of the discrimination they face in their family life.

It must be noted that while there is no fundamental right within the Constitution of Pakistan that deals with marriage and family life per se, it can be seen as an extension of the fundamental right to life. Moreover, emphasis has also been placed on the duty of the State to protect the marriage, the family, the mother and the child in the Principles of Policy, which provide guiding principles to the State for enacting laws and making executive decision

"Security of Family" Article 35 Constitution of Pakistan 1973

Protection of family, etc. Article 35.

"The State shall protect the marriage, the family, the mother and the child".

It shall be the foremost responsibility of state to protect the family including children, father, mother etc. State shall also be responsible to take all well measures for family's prosperity, whether socially or economically.

Mean state shall also be much more responsible by the mean of time to required to do so in this regard. State means the Federation of Pakistan shall take all well betterments for family status including:

- A) Protection of privacy
- B) Health
- c) Education
- D) Well reforms in the shape of legislation e) provide them all necessities of life.

Due to the wide nature of this right and the numerous issues surrounding the right to marriage and family life, the domestic legal framework regarding this right is also scattered around different laws. The overarching legislation that governs Muslim personal law in relation to marriages in Pakistan is the Muslim Family Law Ordinance 1961.

Executive authorities which are assign to matters related to Refugees:

Under the Rules of Business 1973, the responsibility for managing matters related to asylum, refugees, and personal affairs is distributed among various executive authorities. The Ministry of Interior is primarily tasked with granting political asylum to eligible individuals seeking protection. Matters concerning personal status, such as registration of marriage, divorce, and adoption of children, fall under the jurisdiction of the Ministry of Religious Affairs and Interfaith Harmony. Meanwhile, the Ministry of SAFRON (States and Frontier Regions) is specifically responsible for addressing issues related to Afghan refugees, including their registration, welfare, and overall management. This distribution ensures that the executive authorities operate within clearly defined mandates while addressing both humanitarian and administrative needs.

Research Methodology: The qualitative method was employed in this study to determine what marital and family-related issues do refugees encounter when they come to Pakistan? The study examined rulings from the Supreme Court, Provincial High Courts, and Ajk Supreme Court that grant refugee status and highlight there core issues related to their family and marriage.

Protection of refugees family

1. **AMMAR AMAN V/S FOP, PLD2020SINDH533, C.P 6606 of 2016**

Decided 12th March 2018.

Whether refugee families (including spouses and children) can be forced to leave Pakistan when their visas expire, despite lawful entry, clean record, and pending UNHCR asylum applications—without hearing, reasons, or due process.

How the Court Framed the Family-Related Issue

The Sindh High Court recognized that the case was not only about individual refugees, but about entire families, including:

- Spouses
- Minor children
- Dependents who had no independent legal fault

The Court emphasized that family members cannot be treated as illegal occupants merely because the principal applicant's visa expires, especially when:

- They entered Pakistan lawfully
- They complied with all visa conditions
- They lived peacefully for years
- Their UNHCR asylum applications were pending.

A case of Denying Refugee Husband Citizenship to Pakistani Citizen Wife: Islam and Constitution of Pakistan promote without any prejudices refugee Family Unification:

P L D 2024 Peshawar 57

Before Muhammad Naeem Anwar and Dr. Khurshid Iqbal, JJ

Mst. AMNA and another~Petitioners

Versus

FEDERATION OF PAKISTAN through Secretary, Ministry of Interior and others~Respondents

Writ Petition No. 1536-P of 2023, decided on 9th August, 2023.

The petitioner, a Pakistani woman, invoked the constitutional jurisdiction of the High Court, contending that the respondents (Directorate General of Immigration & Passports, Ministry of Interior) had unlawfully declined to issue a

Pakistan Origin Card (POC) to her husband, an Afghan refugee.

Validity.—Although S. 10 of the Pakistan Citizenship Act, 1951 grants a Pakistani husband the right to acquire citizenship for his foreign wife, it denies a Pakistani wife the corresponding right to obtain citizenship for her foreign husband. However, it has been held in the *Suo Motu (Gender Equality) Case* reported as PLD 2008 FSC 1, as well as in PLD 2016 Lahore 857 (*Mst. Rukhsana Bibi and others v. Government of Pakistan and others*), that such denial is discriminatory, negates gender equality, and violates Articles 2-A and 25 of the Constitution of Pakistan.

On the basis of the aforesaid judgments, a foreign husband of a Pakistani woman is entitled to apply for, and to be considered by, the competent authorities for the issuance of a Pakistan Origin Card (POC) in accordance with law.

Held.—The High Court directed the respondents (Directorate General of Immigration & Passports, Ministry of Interior) to consider the case of the petitioner's husband for issuance of a Pakistan Origin Card (POC). The constitutional petition was disposed of accordingly.

On Refugee women Gender Equality Rights Protection and Islamic Injunctions:

P L D 2008 Federal Shariat Court 1

Before Haziqul Khairi, C.J., Dr. Fida Muhammad Khan and Salahuddin Mirza, JJ

In re: SUO MOTU CASE NO.1/K OF 2006 (GENDER EQUALITY)

Suo Motu Case No.1/K of 2006, decided on 12th December, 2007.

Pakistan is committed to International Community to equal and indiscriminate treatment to its women and to enforce equal rights for them.

25. Section 10 of the Citizenship Act, 1951 provides for the grant of Pakistani citizenship to women married to Pakistani citizens. Section 10(1) allows a woman who married a British subject before 1 January 1949, whose husband later became a citizen of Pakistan, to acquire Pakistani citizenship. Section 10(2) further entitles an alien woman married to a Pakistani citizen, even if widowed, to become a citizen upon obtaining a domicile certificate and taking

an oath of allegiance, regardless of age. This aligns with the Convention on the Nationality of Married Women, which permits an alien wife, upon request, to acquire her husband's nationality through facilitated naturalization, subject to national security or public policy considerations.

26. It is pertinent to note here that there is nothing in the said "Convention on nationality of married woman" or in the Citizenship Act, 1951 or elsewhere in any International Convention which gives right to a woman to acquire nationality for her husband on the basis of her nationality and her right to live with him for good in her country. Similarly no such right is given to the husband either to live with his spouse in her country and acquire her nationality.

27. In our view of the matter, the position in Islam is somewhat different. Islam is a universal religion.

The last sermon of Holy Prophet is the first Charter of Human Rights wherein all human beings are equal. Mankind is one. Allah says in Holy Qur'an that "He created man and woman from a single being (7:189)" and for HIM "whoso doeth good work, whether male or female and he (or she) is a believer, such will enter paradise. (4:124)"

28. In view of the above, we are of the view that section 10 of the Citizenship Act is discriminatory, negates gender equality and is in violation of Articles 2-A and 25 of the Constitution of Islamic Republic of Pakistan and also against International commitments of Pakistan and most importantly is repugnant to Holy Qur'an and Sunnah.

29. In the end, it may be clarified that while section 10 of the Citizenship Act, 1951 expressly contemplates denial of citizenship to a foreign husband of a Pakistani woman as neither she nor he is entitled to apply under it, nevertheless under law whether municipal or international, grant of nationality would remain within the domain of discretion of the Government of the country which may refuse it for reasons of national security or public interest etc. to which she or he cannot claim it as a matter of right.

We, therefore, in exercise of our powers under clause (3)(a) of Article 203-D of the Constitution of Islamic Republic of Pakistan require the President of Pakistan to take suitable steps for

amendment of section 10(2) and other provisions of the Citizenship Act, 1951 within a period of six months hereof ensuring appropriate procedure for grant of Pakistani Nationality to a foreign husband married to a Pakistani woman.

Denial of recognizing marriage and citizenship rights to refugee and their children: Section 10(2) of the Citizenship Act is declared as discriminatory being in violation of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973.

P L D 2016 Lahore 857

Before Ali Baqar Najafi, J

**Mst. RUKHSANA BIBI and others--
Petitioners**

Versus

**GOVERNMENT OF PAKISTAN and others--
Respondents**

**Writ Petition No.5939 of 2006, decided on
18th May, 2016.**

Under section 10(2) of the Pakistan Citizenship Act, 1951 alien female had been given the right to acquire the Pakistan nationality on her marriage with a man having Pakistani nationality but an alien male who had migrated to Pakistan and married a Pakistani woman was not granted a right to acquire Pakistani Nationality.

Denial of citizenship to a foreign national having a Pakistani wife appeared to be arbitrary and not founded on any rational basis and had no nexus to the object to be achieved by such classification. Constitution of Pakistan did not recognize gender discrimination. Sharifan and 6 others v. The Federation of Pakistan through Secretary Ministry of Interior and Narcotics Control, Interior Division, Islamabad PLD 1998 Lah. 59 distinguished.

15. It is pertinent to mention here that right of a woman to marry of her own choice is the basic human right and to acknowledge this right no discrimination is to be observed against Article 25 of the Constitution of Islamic Republic of Pakistan.

16. Under UDHR Articles 2, 13, and 15, all persons enjoy equality without discrimination, freedom of movement and residence, and the right to a nationality and its change. ICCPR Articles 12, 13, and 23 recognize the right to leave any country, provide due process before expulsion of aliens, and affirm the right to marry

and form a family. CEDAW Articles 9 and 16 guarantee women equal rights in matters of nationality, marriage, and family, ensuring that marriage to an alien does not affect a woman's nationality or rights concerning her children. Beijing Declaration (1995) para 232(2) obligates states to review and amend discriminatory laws. As a signatory, Pakistan is bound to align its domestic laws with these international commitments.

17. For what has been discussed above, this petition is allowed and respondents Nos.1 and 2 are directed to grant citizenship to Hassan Asghar s/o Ali Asghar husband of the petitioner after following the procedure as denying this right under section 10(2) of the Citizenship Act is declared as discriminatory being in violation of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973.

Law is not meant to act as trap, Constitution and law regulate relationship between State and citizens and any other persons :

P L D 2024 Islamabad 231

Before Babar Sattar, J

RAHIL AZIZI--Petitioner

Versus

The STATE and 5 others--Respondents

**Writ Petition No. 1666 of 2023, decided on
19th June, 2023.**

29. The provisions of the Foreigners Act must be read in harmony with the Constitution. In Al-Jehad Trust v. Federation of Pakistan (1999 SCMR 1379), the Supreme Court held that certain fundamental rights apply to every person present in Pakistan, including foreigners. These include the rights to life and liberty (Article 9), dignity (Article 14), protection of law (Article 4), and fair trial and due process (Article 10-A). A foreigner entering Pakistan out of fear for life cannot automatically be treated as a criminal under Section 14(2) of the Foreigners Act. It would be inconceivable that the legislature intended to punish such persons despite compelling humanitarian circumstances. The absence of a formal asylum mechanism does not justify automatic penalization under the Act.

30. Whether or not a foreigner has been forced to enter Pakistan out of fear for his/her life is no doubt a factual determination. But making such factual determination will not always require a full-fledged trial. In the instant case, the

underlining facts are uncontroverted. The petitioner is an Afghan national, who entered Pakistan and herself disclosed to the police that she was in Pakistan without a visa and wished to register with the UNHCR as an asylum seeker as she feared for her life under the new regime that had formed Government in Afghanistan. She was subsequently registered with the UNHCR, which certified her status as a potential refugee seeking asylum in a third country. Her credentials were subsequently verified and her application to asylum was accepted by Australia. while in Pakistan she was alleged or found to have been involved in any illegal activities. The only thing holding her up in Pakistan is an FIR charging her with illegal entry into Pakistan due to which the Ministry of Interior is refusing to issue an exit permit to allow her to travel to Australia.

31. The law is not meant to act a trap. The Constitution and the law regulate the Relationship between the State and citizens and any other persons who for the time being are within the territorial boundaries of the State. The purpose of law is to act as a benevolent instrument to facilitate and uphold the rights of the citizens and other persons as guaranteed by the Constitution. It is in this context that Section 14(2) of the Foreigners Act is to be read together with Article 4, 9, 10-A and 14 of the Constitution, while also taking into account the entrenched principles of international law that recognize the right of refugees to safety, to not be treated as criminals, and to seek asylum in a foreign country. That Pakistan does not have its own national legal framework for refugees does not mean that anyone seeking refuge out of fear for his/her life or liberty must do so at the cost of being imprisoned for a term prescribed under Section 14(2) of the Foreigners Act.

Refugee Student Admission without any Discrimination

2020 M L D 1584

[High Court (A)J&K]

Before Azhar Saleem Babar

and Muhammad Sheraz Kayani, JJ

FIZZA MURTAZA MUGHAL~Petitioner

Versus

JOINT ADMISSION COMMITTEE

through Chairman and others~Respondents

Writ Petition No.254 of 2018, decided on 7th February, 2019

12. According to the approved unit wise quota, 25% quota has been reserved for the refugees; i.e. 19% for refugees of 1947 settled in Pakistan and 06% for the refugees of 1989. Through the policy of 'Swap over', the vacant seats, available due to non-availability, of any candidate from the said unit, to allot the same to the refugees, again is discriminatory and against the fundamental rights of the other state subjects, living in Azad Jammu and Kashmir. It is also settled that the IOK (Indian Occupied Kashmir) is an integral part of the State of Jammu and Kashmir and all the subjects of the State are equal in the eye of law. Article 4(15) and (17) of the Interim Constitution, 1974, dealing with the equality of all the subjects and safeguarding against discrimination, are usefully reproduced, hereunder: -

"15. Equality of State Subjects.-(1) All State Subjects are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination against any State Subject on the basis of sex.

(3) Nothing in this article shall prevent the State from making any special provision for the protection of women and children.

17. Safeguard against discrimination in services. No State subject otherwise Qualified for appointment in the service of Azad Jammu and Kashmir shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, residence, sex or place of birth :

Provided that in the interest of the said service, specified posts or services may be reserved for members of either sex if such posts or services entail the performance of duties and functions which cannot be adequately performed by members of the other sex; Provided further that under representation of any class or area in the service of State may be redressed in such manner as maybe determined by an Act of Assembly."

13. It may be observed here that when, all the subjects have been granted equality before law, to give preference to one unit or subject over another unit or

Person is glare discrimination.

Recommendations:

- Framing Comprehensive Refugee Domestic Legislation that harmonize with International Human Rights Standard and ratifications of 1951 Refugee Convention
- Protecting Refugee Marriage Rights under UNDHR, CEDAW, CRC, and Gender Equality Convention.
- Amending the 10(2) of the Pakistan Citizenship Act, 1951 and Section 14(2) of the Foreigners Act which are inconsistent under Article 4, 25 and 35 of Constitution of Pakistan and Inconsistent with Holy Quran and Sunnah in the light of above Court Rulings
- Steps be taken to Family Unification and Family Unit Protection of Refugees which are taking asylum in Pakistan.
- Granting equal Rights to refugees such as prescribe Job Quota and Admissions in Institutions.
- Implementation of Principle of non refoulment.
- Easy Mechanism for Registration of refugees their families across border.
- Implementation of shariah Principles related to Refugee protection.
- Working on Refugees Child Best Interest Policy under CRC Convention.
- Making Economic and Financial policy which I inclusive to refugees work force and economic activity so that they excel with equal member of other society members.

Conclusion

Although Pakistan has not acceded to the 1951 Refugee Convention, its constitutional framework, particularly Article 4, read with Articles 9, 10-A, 14, and 35, provides important—though limited—protection to refugees within its territory. These safeguards ensure legality, dignity, due process, and protection of family life for every person in Pakistan. However, constitutional guarantees cannot fully substitute international refugee obligations such as formal refugee status determination, non-refoulement, and durable protection mechanisms.

International human rights instruments including the UDHR, ICCPR, CEDAW, CRC, CRPD, and CAT collectively protect refugees' marital and family rights, regardless of nationality or legal status, by recognizing the family as the fundamental unit of society and

ensuring equality, child protection, and freedom from inhuman treatment. Forced displacement severely undermines these rights by disrupting family unity and livelihoods, increasing financial insecurity, child labour, early marriages, debt, and social tensions with host communities.

Islamic law strongly upholds family unity, protection of women and children, and care for displaced persons, principles that align with Pakistan's constitutional mandate. Article 35 of the Principles of Policy reinforces the State's obligation to protect marriage, family, mothers, and children, giving normative force to the protection of refugees' marital and family rights within Pakistan's legal and moral framework.

Finally, the absence of effective and accessible civil registration mechanisms for refugees—covering registration, marriage, birth, and death certificates—remains a major barrier to protection. Streamlined administrative procedures, coordination with civil authorities, and strict age-verification systems are essential to prevent early childhood marriages and safeguard children's rights. Strengthening these mechanisms is crucial for ensuring legal identity, social stability, and the effective protection of refugee families in Pakistan.