EVALUATION AND COMPARISON SAUDI AND AUSTRALIA REFUGEE LAW IN TERMS OF SHARIA AND LAW

[1]MOHAMMED ALSUBAIH, [2]MATT HARVEY, [3]ROBERT WALTER

[1,2,3]College of Law and Justice, Victoria University
E-mail: [1]mohammed.alsubaih@live.vu.edu.au, [2]matt.harvey@vu.edu.au, [3]Robert.Walters@vu.edu.au

Abstract - This paper compares Saudi and Australian Refugee Laws to highlight their similarities and differences. The strategy of comparative law specifically focuses on exploring the compliance of the laws of the two countries with Sharia, International Law, and other Refugee Conventions. Various legal norms and case laws of the two countries are compared through comparative legal research through extensive analysis. The comparison has helped the researcher to suggest changes in the existing legal jurisprudence and legislation to incorporate the principle of basic human rights and equality. Comparative study of refugee laws enables the researcher to combine the provisions from Saudi Arabia and Australia to integrate useful developments in refugee laws for protecting the rights of the refugees in both the countries by synthesizing a comprehensive law.

The paper identifies the foundations of refugee lawsin Australia and its application in different court cases to explore its inhumane nature specifically against the boat people. Moreover, Sharia sources such as Quran and Sunnah along with conventions, statutes, have been evaluated in the context of refugee problems to highlight their common characteristics. Peter D Cruz's framework of comparative legal study (REF) is used as reference for analyzing the legal documents of Saudi Arabia and Australia in accordance with doctrinal legal research.

The research employs qualitative research methodology to analyze relevant sections of laws, court decisions, and courts' interpretation of refugee laws in different cases involving asylum seekers. The qualitative approach of reviewing legal documents and literature from Australia and Saudi Arabia through comparative analysis has helped researcher to ascertain the status of refugees and asylum seekers in both the countries. The royal decrees issued by Saudi Arabia are also analyzed for their relevance with Sharia principles protecting the refugee rights. The analysis has been helpful in exploring a common premise from the refugee laws of both Saudi Arabia and Australia and its relevance with Sharia principles and Public International Law.

Keywords - Asylum Seekers, International Law, Refugee law, Sharia law, Saudi Arabia law.

I. INTRODUCTION

The paper analyzes Saudi and Australian Refugee Laws through comparative legal research method to compare various legal practices to exploit their limitations and flaws. The extensive evaluation of refugee laws of both the countries helps the researcher to highlight strengths and weaknesses of the existing legal jurisprudence and legislation. The findings will be used to strengthen the contemporary refugee laws of both the countries by recommending effective clauses of the respective countries to be incorporated in the current legislative system. The paper will extensively cover the refugee problems under the existing system to suggest improvements for protecting refugee laws in Saudi Arabia and Australia.

The researcher observes that Australia is pursuing an encouraging immigration policy for making the country culturally vibrant through a tradition of contrasting multicultural values and beliefs. Australian culture effectively absorbs the values of immigrants to make them the part of the national identity. The policy of accepting refugees from different countries has helped Australian society represent the amalgam of various ethnic groups. The Australian government acknowledges that citizenship should be used as a sense of belonging to a specific country by associating with the national identity. It can be considered that the psychology of migration is multidimensional and is likely to have a negative or positive impact on the life of individuals. The paper considers two different communities of England and Yugoslavia migrating to Australia to represent the positive and negative impact of immigration respectively. The British immigrants coming to Australia found different commonalities in the history, culture, and sports between their country of origin and host country. The similarities provided them an opportunity to integrate into the Australian society without any difficulty. However, Yugoslavian people migrating to Australia felt substantial challenges to settle into the country due to the dissimilar political, social, cultural, and natural atmosphere.

Similar psychological issues can discourage immigrants to Saudi Arabia to integrate into the society due to the country's Islamic identity with its legal framework based on the teachings of Islam and Sharia. Moreover, the religious and cultural values of the country are dissimilar to the other nations, which create different psychological issues for the refugees [1]. Nevertheless, the Saudi government has used the *Kafala* system to facilitate specific refugee groups from Rohingya, Palestine, and Syria along with a labour force from other countries. Saudi-American Oil Company (ARAMCO) accommodating Palestinian refugees in 1949 and the issuance of a royal decree to help Eritrean refugees enter Saudi Arabia without visa processing can be cited as examples [1]. Similarly, people attempting to enter Australia through boats are not welcomed and are placed in offshore different detention camps. The inhumane treatment of the

refugees at such camps results in various physical and mental health issues for the inhabitants. Thus, psychological aspects of migration are significantly relevant in the case of refugees seeking asylum in Saudi Arabia and Australia.

II. NATIONAL IMMIGRATION POLICY OF AUSTRALIA AND SAUDI ARABIA

Economic and humanitarian assistance of the refugees under international and regional conventions are the main focus of Saudi Arabia and Australia despite certain differences in the national immigration policies of both countries. Australia's current immigration policy combined (before COVID) a high level of skilled migration and a significant refugee resettlement program with strong border protection, especially against asylum seekers attempting to come by boat.The country's law strongly discouragesasylum seekers entering without proper travel documents. The strict immigration policy effectively conveys a strong message to the world that boat people will not be welcomed in Australia due to the fear of human trafficking. Different regional and international events such as the Tienanmin Square massacre,Yugoslavian wars, Vietnam War, and the Middle Eastern issue specifically Syrian crisis played vital role in the evolution of Australian refugee policy. Australia has experienced different social issues due to the conflicts among various ethnic communities with contrasting values entering the country and bringing their conflicts with them.Immigration in Australia is regulated by the *Migration Act of 1958*, which is regulated by the Law on International Protection (LIP), which has 507 clauses spanning more than 800 pages dealing deal with economic and humanitarian aspects of immigration. However, it can be regarded that Australia's strong restrictions for different refugee populations lack effective association between its immigration policies and citizenship.

Saudi Arabia is also host toRohingyan, Palestinian, and Syrian refugees along with a significant labor force from other countries. The Saudi *Kafala* system is based on the Islamic principle of *aman*, but is lacks effective mechanisms to fulfill the needs of all the refugees. The *Kafala* system grants every Saudi citizen the right of hosting these immigrants.The systemprovides every foreign national with an opportunity to get sponsorship from Saudi citizens for living and working in the country. The arrangement can be regarded as the best option for the immigrants to stay in Saudi Arabia and work. The Islamic principle of *aman*is the guiding principle of the *Kafala* system, which grants safety to the foreigners in a Muslim country. Although the*Kafala* system has been applied to facilitate both refugees and foreign workers, specific changes are made through special royal decrees to allow different refugee groups from Rohingya, Palestine, Eritrea, and Syria into the country

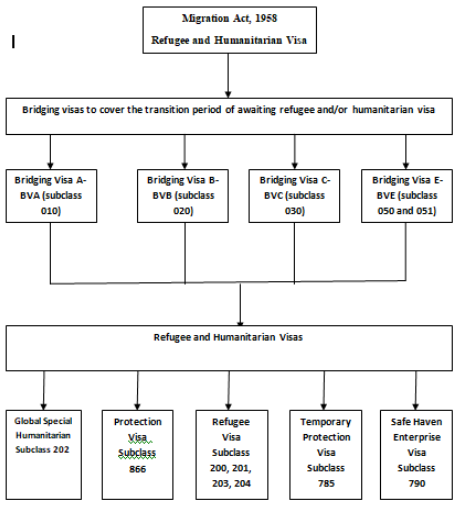
III. ENTRY TO SAUDI ARABIA AND AUSTRALIA

Being an island continent, entry into Australia is through air or sea but the Australian government strongly discourages entry of refugees without valid travel documents. The provisions of the *Migration Act of 1958* also exclude certain territories from the migration zone. Australia has agreed with the neighbouring states of Nauru and Papua New Guinea that they will host asylum seekers who have attempted to come to Australia by boat tohave their asylum claims assessed and to be resettled in third countries.

The Saudi government has started an e-visa service for people belonging to different countries to enter the country for religious purposes. However, the individuals must possess valid travel documents such as a passport to avail themselves of the opportunity. Additionally, the Saudi government allows labor visas for the nationals of different countries. The immigrants coming to Saudi Arabia are required to obtain a resident permit, *Iqama*, to make their stay legal. The Saudi government has divided travelers from different countries into two categories with dissimilar visa requirements: Travelling for religious purpose and immigration on humanitarian grounds.

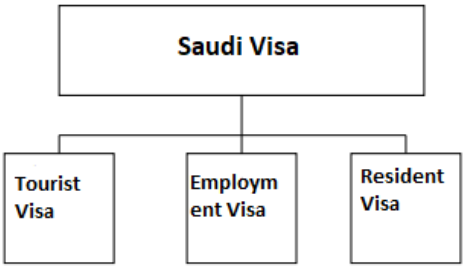
Entry of non-citizens in Saudi Arabia and Australia is not possible without valid travel documents usually consisting of a passport and visa. The Australian visa framework has different classes and subclasses divided according to the purpose of visit. The Saudi government has two visa categories for the visitors under the *Iqama* and *Kafala* system. While the Saudi visa framework requires a visitor to have an individual sponsor, Australia uses different permits based on the nature of the entry and stay.

Australian visa framework,which has 10 classes with more than 100 subclasses, is more complicated than that of Saudi Arabia,. Saudi Arabia has a relatively simple visa framework, which can help Australia review its current system to reduce the number of categories and subcategories through easy



documentation process. For example, decreasing the number of business visa classes will not only reduce the administrative burden for the government, but will also help minimize business costs. It can also be argued that the existing visa frameworks of Australia and Saudi Arabia facilitate the governments to accept and reject immigration applications randomly. The system of visas in both countries should be brief and meaningful with uniform standards to respect the right of equality for all immigrants.

Both Australian and Saudi Arabian visa frameworks provide statutory rights to the state to remove or deport non-citizens residing in the country. However, the ambiguity in such cases should be analyzed deeply. In Australia, the *Migration Act 1958* has two specific sections dealing with the issue of deportation. Once the visa is cancelled, the government usually places a person in detention preparatory to deportation. They may then pursue legal avenues to prevent deportation. The Australian courts have given numerous decisions in deportation cases to protect the rights of non-citizens. For example in *Shaw*, the court clearly ruled that a person should not be deported after exceeding the ten-year requirement for residency [2]. The court also established in other cases such as *Nystrom* that the government should not remove non-citizens under section 501because it is against the principle of inclusiveness [3]. Thus, the issue of removing or deporting non-citizen with lengthy stay in Australia is a matter of concern for the government, which needs an immediate solution.



The Australian government requires that an individual should be assessed and approved by the United Nations High Commissioner for Refugees to qualify for a refugee visa. Currently, the Australian visa framework has no provisions for accommodating refugees displaced from their native countries due to climate change and natural disasters. Therefore, it can be argued that the refugee laws should be revised to integrate all possible reasons for seeking asylum in Australia.

Situation for refugees is totally different in Saudi Arabia. Under the influence of Islamic law, Saudi government has sympathetic view about refugees. It can be noted that sources of Saudi refugee policy are deeply rooted in the Islamic Law and Sharia because the country does not have a separate domestic policy about refugees. The country has an established *Kafala* system, which grants every Saudi citizen the right of hosting immigrants from other nations. The *Kafala* system is used to regularize the refugees in the country by allowing them to reside and work in the country. The arrangement can be regarded as the best option for the immigrants to stay in Saudi Arabia and work. The Islamic principle of *aman*is the guiding principle of the *Kafala* system, which grants safety to the foreigners in a Muslim country.

IV. CHANGES REQUIRED TO IMPROVE THE SUBSTANTIVE AND PROCEDURAL RIGHTS OF REFUGEES IN SAUDI ARABIA

Saudi Arabia need to reform its current refugee laws to include more humanitarian considerations for the migrants who fail to arrange identity papers. Such persons should be treated sympathetically and must be supported to manage the documentation. The substantive and procedural rights of refugees in Saudi Arabia should be recognized and they should be treated with respect and decency. The existing laws must also be relaxed for the undocumented migrants to assist them through a fair legal process so they can challenge their deportation in Saudi courts of law. The deportation procedure also needs to be transparent and migrants should be deported in a manner to respect their basic human rights. It can be observed that migrants are not permitted to prevent their deportation by applying for an asylum. Saudi government should also amend the existing refugee laws to ensure that migrants should not be returned to their country of origin if their safety is threatened. Saudi police and labor authorities possess unlimited powers under the current law to locate, detain, and deport migrants who do not possess documentary evidence about their sponsor under the *Kafala* system. The Human Rights Watch asserts that most of the detainees in the deportation camps have been arrested due to the unavailability of valid residency permits. Saudi government should intervene into the matter and introduce effective legislation to help such refugees. The new laws should ensure that refugees are not detained in the camps for the minor issues and the matter of their identity should be resolved without violating the basic human rights.

V. CHANGES REQUIRED TO IMPROVE THE SUBSTANTIVE AND PROCEDURAL RIGHTS OF REFUGEES IN AUSTRALIA

Detention camps in Australia can be considered as one of the most punitive systems in the world. Refugees and asylum seekers looking for protection in Australia are placed in offshore detention centers in Nauru and Papua New Guinea. All these camps are designed like jails with inhumane conditions. The Australian government has to find a better solution for the issues of their immigration system. The government should look to abolish the detention centers and make alternate arrangements for the refugees and asylum seekers waiting for the outcome of their visa application. The state needs to address the issue on

urgent basis to improve the substantive and procedural rights of refugees in Australia.

The unlimited stay at the detention camps is raising the number of psychological issues in inhabitants such as pain, suffering, trauma, and anxiety. The detainees are not provided access to the judicial services and the cases decided against them cannot be reviewed. Hence, the reforms should be introduced to amend the existing system of detention camps and a separate judicial framework should be incorporated to offer the refugees complete legal assistance for determining their protection claims. Such procedural reforms will be helpful in promoting the positive image of the country in the world community. The current situation of compulsory detention for the onshore refugees makes their future uncertain. Thus, the government should develop a mechanism to allow refugees access to different services such as legal experts, doctors, interpreters, and educators to help detainees prove their claims effectively. Providing such facilities to the detainees will substantially reduce the stay at the camps, which will eliminate various health issues. The proposed changes will improve the substantive and procedural rights of refugees in Australia.

The Australian government can also extend bridging visa facility to the onshore immigrants instead of sending them to detention camps. Australia can establish facilitation centers for the refugees, which can replace the infamous offshore mandatory detention. The existing system is likely to deprive genuine asylum seekers of their right to obtain resident status in Australia. Thus, such refugees are returned to their respective country of origin in life-threatening conditions. Such actions on the part of Australian government are against the principle non-refoulement, which is reflected in the International Convention onRefugees. The government should establish specific desk at the airports of neighboring countries for issuing bridging visas to such asylum seekers. The arrangement would be helpful in resolving the issue of refugees entering Australia without valid travel documents. Hence, no detention camps would be required for undocumented onshore immigrants. Thus, the proposed changes will improve the substantive and procedural rights of refugees in Australia.

VI. DOES SAUDI AND AUSTRALIAN REFUGEE LAW INCORPORATE THE HUMAN VALUES OF SHARIA?

Having a closer look at the history of immigration of Saudi Arabia, it can be asserted that the national laws clearly incorporate human values. The guiding principle of the Saudi refugee law is the Sharia ideal of *aman,* which provides protection to any foreign citizen seeking asylum in the country to flee from the persecution in their homeland. The well-established *Kafala* system facilitates the refugees to contact a sponsor for their job and residence in Saudi Arabia in accordance with the philosophy of granting individual *aman*to the refugees. Additionally, the government also issues royal decrees to accommodate refugees through a special arrangement, which is consistent with Sharia law of group *aman.* Many examples are available in the recent history, where the Saudi government dealt with the issue of refugees through following Islamic teachings.

Contrarily, Australia being a predominantly Christian country, the impact of Sharia laws is not visible. Even Muslim refugees are ignored during the processing of their applications. The authorities adopt a biased attitude while granting visas to the Muslim refugees. The element of religious favouritism is highlighted by the fact that Christians make up about 80 per cent of the total resettled refugees in Australia from the Middle East [4].Although the Australian government propagates its humanitarian efforts by asserting that more than 12,000 refugees from Syria have been settled in the country, it is a proven fact that majority of these resettled refugees were Christians [4]. Selecting only Christian refugees for asylum from a predominantly Muslim country is a clear indication of favoritism. Thus, Australian refugee laws are not consistent with Sharia principles and human values of Sharia are relatively ignored in Australian refugee law. The Australian policy may be seen as upholding Christian values, but the parable of the good Samaritan {Luke 10:25-37) suggests that the true Christian value is to help a person in need regardless of their race or creed, a value shared with Sharia.

VII. SUMMARY

Australia and Saudi Arabia are two countries which deal with refugees through their specific legal frameworks. While Saudi Arabia primarily follows Sharia principles and Islamic law for dealing with refugee issues, Australia has various laws to deal with refugees and asylum seekers. Comparing the refugee laws of both the countries has helped explore new methods of protecting procedural rights of asylum seekers in both the countries. A comprehensive comparative analysis of current refugee laws of the two countries has been conducted to determine their significance in facilitating refugees and asylum seekers in Saudi Arabia and Australia. The detailed evaluation has enabled the researcher to assess the contemporary laws of both the countries for their potential to protect the basic human rights of the refugees. The flaws and loopholes in the existing legislation have been highlighted effectively to guide policy makers and to suggest meaningful reforms in Australian and Saudi refugee laws.

The detailed discussion reveals that Saudi refugee laws are relatively simple because they are based on the Sharia principle of *aman.*In comparison, Australian refugee laws contain different issues, which give the impression of the visa framework of refugees being punitive. The government's insistence on offshore visa processing of refugees can be regarded as the violation

of basic human rights. Additionally, the system of compulsory detention is also against equality and fundamental rights. Furthermore, the Australian government ignores various clauses of the international refugee laws despite being signatory of various global treaties. Australia has also introduced reforms, which are specifically designed to favour specific religious groups. The government uses the tests as a tool to grant asylum and citizenship to refugees belonging from certain communities[4]. Thus, Australia's refugee laws need significant changes to make them conform to the international laws.

The paper also highlights the element of religious favoritism and bias against the boat people apparent from the analysis of Australian refugee laws. While the Australian government helps Syrian Christians to obtain asylum, it clearly ignores Muslim refugees coming from the same war-torn region. The practice is against the universal principle of equality and basic human rights. Similarly, the Australian government is particularly against entry into the country by sea. Usually, the refugees without legal documents try to reach Australia through boats to seek asylum. However, the government diverts all such individuals to the compulsory detention camps established on neighboring islands. It is argued that Australia should simplify its visa system to facilitate the better treatment of refugees and asylum seekers. Moreover, the country should abolish the system of compulsory detention to protect the rights of the refugees entering Australia. The existing system should be replaced by an efficient bridging visa system, which can allow refugees to live freely in Australia during the period of their visa processing.

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