THE REFUGEE IN ISLAMIC AND INTERNATIONAL LAW: A COMPARATIVE AND PRACTICAL STUDY ON REFUGEES IN SAUDI ARABIA AND AUSTRALIA

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Abstract - This paper employs comparative law to explore similarities and differences in Saudi and Australian Refugee Laws, particularly their compliance with Sharia and Public International Law. The technique of comparative legal research is used to compare various legal norms to analyze refugee laws of both the countries leading to suggestions for changes to strengthen the existing legal jurisprudence and legislation. Comparative study of law from Saudi Arabia and Australia be helpful in providing recommendations for each country to learn from the experience of the other and integrate useful developments in refugee law. The study helps synthesize a comprehensive law to protect the rights of refugees and asylum seekers.

The researcher has identified and analyzed refugee law from Common law in Australia and examined their application in different court decisions. Additionally, sources of Sharia including Quran, Sunnah, conventions, statutes, has been evaluated in the context of refugee problems. Peter D Cruz's framework of comparative legal study has been used as a guide for the study to conduct the analysis of legal documents in accordance with doctrinal legal research.

Qualitative research methodology is used to determine 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 protection of refugees and their human rights is a guarantee under international law and is based on the broader framework of international human rights law, especially through the conventions and covenants that form the regional and topical instruments for protection and assistance of refugees.[1] First, it is important to contextualize the concept of Islamic law for this research. The research setting is Saudi Arabia, which embraces the larger branch of Islam, Sunni. The Sunni branch of Islam has four schools of thought that guide the jurisprudence of Islamic law. The schools of thought are Hanbali, Maliki, Hanafi, and Shafi'i. Saudi Arabia embraces the Hanbali School of jurisprudence, which bases all its Islamic laws on the Quran. However, concerning asylum seekers, the Hanbali concurs with other Islamic jurisprudence as stipulated by the Quran regarding hospitality and charity. Islam requires all Muslims to assist and protect vulnerable people such as refugees; it also presents mechanisms for their care and support. According to Abou-El-Wafa, the concept of asylum is ingrained in the Shari'a Law, which stipulates that every human being is entitled to protection, especially in the face of persecution.[2] Specifically, Shari'a Law emphasises the concept of Aman, which implies safety for all human beings irrespective of whether they are Muslims or non-Muslims. In this regard, Islamic Law is a rich custodian of the principles of refugee protection as highlighted by its focus on charity and kindness. In this regard, there are no significant differences in the application of Islamic law and international law for the status and protection of refugees.

The provisions of Islamic law are based on Qur'an and Hadith. All the doctrines are due to these two sources. Islamic jurisprudence in Saudi Arabia is the Hanbali jurisprudence, so the paper will rely on the Hanbali doctrine in the differences between laws, if any.

II. AIMS OF THE RESEARCH

The purpose of this research project is to make a comparative analysis of the status of refugees under Islamic law and international law. While Islamic laws require the government to accept refugees for asylum in any condition, international law impose certain restrictions on the refugees to qualify for asylum. That entry of non-citizens in Saudi Arabia and Australia is not possible without valid travel documents. Two representative countries, Saudi Arabia and Australia, have been selected for the analysis because Saudi Arabia employs Islamic laws whereas Australia implements international laws to address the refugee problem. The main difference between the two countries is the offshore requirement of the applicants. Under Islamic laws, a refugee should be present in an Islamic country to seek asylum, but Australia require that the applicant of asylum should be offshore until

[1]Musab, Hayatli,. "Islam, International Law and the Protection of Refugees and IDPs." *Forced Immigration Review,* 1 June 2012, 2

[2] Ahmed, Abou-El-Wafa,.*The Right to Asylum between Islamic Shari'ah and International Refugee Law: A Comparative Study.* Riyadh, Printing Press of Naif Arab University for Security Sciences, 2009. Pp. 43.

they are granted asylum. The strict Australian immigration laws regarding boat people are clearly in contrast with Islamic refugee laws. The researcher will assess the influence of these laws over refugees as per the legal instruments concerned in the specific conventions that apply to refugees. Additionally, the paper will evaluate and contrast the situation of Arab refugees in Saudi Arabia (practices Islamic law) and Australia which has domestic legislation on refugees as well as International law. Moreover, the research also aims at identifying the differences in the status of refugees under Islamic law and international law by analysing the pertinent covenants and conventions following the methodology advocate by Cruz. Also, find out what is actually happening to refugees and asylum seekers in Australia and KSA to establish how the related conventions and covenants are experienced by refugees and asylum seeker, interview is conducted with lawyers. Finally, the researcher will evaluate the problems that arise from the research and present apposite recommendations for improving the treatment of refugees, as well as establishing the refugees' rights in Saudi Arabia and Australia.

III. RESEARCH QUESTIONS

The main question of the research is whether the Islamic law on refugees only protects the interests of Muslims and obscures the basic human rights of non-Muslim refugees. Other specific questions include:

1. What are the similarities and differences in international and Islamic law on refugees?
(a) What is the status of refugees in international law?
(b) What is the status of refugees in Islamic law?

2. What is the Saudi Arabian law and practice on asylum claims?
(a) Is Saudi Arabian law and practice consistent with Islamic law?
(b) Is Saudi Arabian law and practice consistent with international law?
(c) Are applicants for asylum aware of their substantive and procedural rights?
(d) Are successful applicants aware of their rights and responsibilities?

3. What is the Australian law and practice on asylum claims?
(a) Is Australian law and practice consistent with international law?
(b) Is Australian law and practice consistent with Islamic law?
(c) Are applicants for asylum aware of their substantive and procedural rights?
(d) Are successful applicants aware of their rights and responsibilities?

4. Are there changes required to improve the substantive and procedural rights of refugees in Saudi Arabia and Australia?
5. What is actually happening to refugees and asylum seekers in Australia and KSA?
6. Is the Refugee Law in Saudi Arabia compatible with Islamic Refugee Law? Is it enough to protect refugees or not? Compare asylum applications procedure in Saudi Arabia with the asylum application procedure in Australia.
These questions derive a conclusive approach towards the analysis of refugee law in the interest of human rights.

IV. SIGNIFICANCE OF THE RESEARCH PROJECT

This research is important to scholars because it will improve the body of literature on refugees in Islamic law and international law because the current evidence is limited in its use of Islamic principles on refugees and asylum. According to Munir, scholars on refugee protection and status continue to ignore Islamic law even though it provides more protection to asylum seekers and refugees than international law.[3] In this regard, this research will invoke dialogue and research on how to enhance the understanding of the role of Islam in the protection of refugees. This research will also add to the theory of refugee protection concerning the significance of the different definitions and understandings of refugees in Islam and international law.
It can also be asserted that countries like Australia rely more on local laws than international refugee laws to deprive refugees of their basic human rights. The Australian government's handling of refugees arriving by boat is clearly in contrast with Islamic principles. Deporting a refugee to another country goes against the clause14 ofhuman rights which states thateveryone has the right to seek and to enjoy in other countries asylum from persecution. Thus, the research will try to establish that the Australian government should revise its policy to make it consistent with international laws by extending the principle of non-refoulement to the people arriving through boat.
Importantly, for individuals and states, this research will inform refugees and asylum-seekers on their rights and also advocate increased awareness of their rights in countries of asylum. Additionally, the research findings will provide recommendations on how non-Muslim states such as Australia can improve their current understanding and utilisation of international law to improve the treatment of refugees. This study also ascertains the importance of presenting recommendations to Muslim states such as Saudi Arabia on how to improve their current regulations and laws on refugees, especially regarding the application of Islamic law in dealing with refugees. As

[3] Munir, Muhammad. "Refugee Law in Islam." *Journal of Social Sciences*, vol. 4, no. 2, 2011, pp.2

Nicolson highlighted, the behaviour and needs of Muslim refugees are unique; accordingly, further understanding of Islamic aspects can improve both Islamic and international laws on refugees.[4] It is evident that the successful resolution of refugee crises involving Muslims requires the incorporation of Islamic principles of asylum and refugees into policies and practices in both Muslim and non-Muslim states. For this reason, this research has significant implication to policy formulation on refugee protection.

V. METHODOLOGY AND FRAMEWORK

According to Vernon Palmer comparative law is used as a means of effecting sameness and suppressing differences in the law.[5] Comparative legal research is the practice of comparing legal norms, case law, legal jurisprudence and legislation from different states and legal families. A comparative study of law from two different countries can be used to effect change and strengthen the law. The comparative study, undertaken in this thesis enables it to provide recommendations, for Saudi Arabia and Australia to consider, and to learn from each other. This can be achieved by borrowing, transplanting and transposing law and legal principles from each other.

This research utilises a methodology research design that uses qualitative approaches. Specifically, the methodology is the basis of the doctrinal legal research. Doctrinal legal research entails research into legal documents and concepts. The documents include case law from Common law in Australia and court decisions from appellate courts and statutory law. In this regard, the researcher identifies, studies, analyses, and interprets primary and secondary legal materials such as the Quran, Sunnah, conventions, statutes and legal history. The scholar, in the case of Australia, uses the issue of the status of refugees to search for relevant legal history and document. The researcher, then sorts all the identified legal documents and materials, and analyses the text using legal expertise to understand the legal interpretations and meanings of the text. In this case, the scholar adopts an evaluative form of inquiry, which aims at demystifying the reason that influenced the legislations, court decisions, statutory materials, or committee reports. Importantly, when using case law, the researcher locates cases and court decisions within the premise of the research problem and evaluates the cases to identify common ground, which facilitates interpretations for objective conclusions. Similarly, the researcher locates international conventions, royal decrees and legislations (in Saudi Arabia) relating to refugees and asylum seekers. The researcher examines and analyses the conventions and declarations of both Saudi Arabia and Australia to identify a common premise that guides the discussion of the status of refugees.

The qualitative approach entails the use of a comparative analysis to review and evaluate critically legal documents and literature regarding the status of refugees. The researcher uses the qualitative framework to develop a critical review of the relevant literature regarding laws and refugee statuses. The comparative analysis enables the researcher to understand each country's refugee legal framework and determine the differences and similarities in both Islamic and international laws. Concerning the legal documents, the scholar conducts a comparative, legal analysis of the legal documents to discern the differences in the legal doctrines employed by the Islamic and International laws regarding the status of refugees. Peter de Cruz, in his book Comparative Law in a Changing World, provides a comprehensive methodology for comparative legal study. His methodology is effective in analysing legal documents because it is in line with the tenets of doctrinal legal research.[6] According to Cruz, the framework for comparative law study is as follows:

i. The scholar should identify and state the problem precisely in the research questions.
ii. The researcher should also indicate the foreign jurisdictions and parent legal family to which the issues belong.
iii. The primary sources of law required for the national legal systems are the nation's legislation and case law in accordance with the jurisdiction referred to in the second point above. The researcher also collects, for analysis, committee reports and publications by national government agencies, law reform commissions, and commissions of inquiry into key issues. The scholar reviews professional practice commentaries on the pertinent laws and literature in scholarly monographs.
iv. The researcher also collects materials concerning relevant jurisdictions for analysis.
v. The researcher organises the data and materials in relation to the research questions; the scholar arranges the materials using headings that reflect legal philosophy and ideologies of the concerned legal systems- in this case Saudi Arabia, Australia, Islamic law and international law.
vi. The researcher also critically analyses the legal principles in terms of their intrinsic meanings in each legal system. Chapters 3 and 4
vii. The scholar maps out the possible answers using a meticulous comparison. Chapter 5
viii. Finally, the researcher provides the conclusions within a comparative framework with caveats, where relevant. The scholar also uses critical

[4] Ibid.
[5] Vernon, Palmer. "From Lerotholi to Lando: Some Examples of Comparative Law Methodology." *Global Jurist Frontiers*, vol. 4, no. 2, 2004.
[6] Peter, De Cruz. *Comparative Law in a Changing World*. London, Routledge, 2007 pp75

commentaries under the framework of the original objectives of the study. The commentaries reference doctrinal legal research and policy.[7]

VI. SUMMARY

The study of the status of refugees under Islamic and International laws, as applied in KSA and Australia, provides notable highlights of the challenges to the compatibility of both laws, especially concerning Arab refugees. The use of a comparative approach to study refugee law in Islamic and International laws shows that Islamic laws have their basis in religion. However, the research also contributes to knowledge regarding the integration of Islamic and International laws to address the gaps in both legal frameworks and capitalize on the strengths of the laws, especially regarding the principle of non-refoulement. Importantly, the study will inform the development of theories that are the basis for developing policies or laws that enhance the effectiveness of Islamic and International refugee laws as applied in KSA and Australia. The comparison between the Islamic and international refugee laws adopts a literature analysis perspective. The researcher focuses on relevant documents informing about the two sets of laws, and a few examples on applicability in both Australia and KSA. Therefore, it is a comparative legal analysis as highlighted and discussed by Cruz as he shares an 8-point framework. It means that the researcher identifies the problem, indicates all the relevant international jurisdictions and national legal systems relevant to the cases under review. All necessary and relevant materials on the case are collected and organised to respond to the research questions. All possible answers involve the meticulous comparisons of diverse approaches available. The researcher critically analyses the legal principles and their meanings in line with the current research Finally, the researcher provides commentary on the achievement of the original objectives of the study.

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[7] Peter, De Cruz. *Comparative Law in a Changing World*. London, Routledge, 2007. 88