

**Australian Offshore Refugee Policy: Human Rights
Violations in Nauru and Manus, 2001-2016**

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CHANCHAL



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Declaration

I declare that the dissertation entitled "Offshore Refugee Policy of Australia: Human Rights Violations in Nauru and Manus, 2001-2016" submitted by me in partial fulfillment of the requirements for the degree of **MASTER OF PHILOSOPHY** of Jawaharlal Nehru University is my own work. The dissertation has not been submitted for any other degree in this university or any other university.


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CERTIFICATE

We recommend that this dissertation be placed before the examiner for evolution.


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Dedicated to my grandparents and parents.....

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International And National Abbreviations Used

SHP	:	Special Humanitarian Programme
WAP	:	White Australia Policy
IRA	:	Immigration Restriction Act
CEDT	:	Certificate Exempting from Dictation Test
UNHRC	:	United Nations High Commission for Refugee
WWII	:	World War II
SEATO	:	South East Asia Treaty Organization
RDA	:	Racial Discrimination Act 1975
AHRC	:	Australian Human Rights Commission
MDP	:	Mandatory Detention Policy
IDCs	:	Australia immigration detention centres
IRH	:	Immigration Residential Housing
APOD	:	Alternative Places of Detention
DIMA	:	Department of Immigration and Border Protection of Australia
ACS	:	Australasian Correctional Service Pty Ltd
GFC	:	Global Financial Crisis
GSL	:	Global Solutions Limited (Australia) Pty Ltd
IOM	:	International Organization for Migration
ICC	:	International Criminal Court
CROC	:	Convention on the Rights of the Child
ODA	:	Official Development Assistance
HRW	:	Human Right Watch
IHMS	:	International Health and Medical Services
HIV	:	Human immunodeficiency Virus
PNG	:	Papua New Guinea
MOU	:	Memorandum of Understanding
RRAP	:	Regional Resettlement Arrangement policy
LTTE	:	The Liberation Tigers of Tamil Eelam
OBS	:	Operation Sovereign Borders
RPC	:	Regional Processing Centre
UNGA	:	United Nation General Assembly

UNHRC	:	United Nation Human Rights Council
UDHR	:	The Universal Declaration of the Human Rights
ICCPR	:	International Covenant on Civil and Political Rights
ICESCR	:	International Covenant on Economic, Social, and Cultural Rights
ICERD	:	International Convention on the Elimination of All Forms of Racial Discrimination
CEDAW	:	Convention on the Elimination of all Forms of Discrimination against Women
CAT	:	U.N. Convention Against Torture and other Cruel, Inhuman and Degrading, Treatment or Punishment
DIMIA	:	Department of Immigration and Multicultural and Indigenous Affairs

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Chapter-1

Background

Australia holds the World's largest immigrant population, but Australia was always condemned due to its immigration policy. International organisation and human right groups have been quite critical towards Australia's immigration policy for the human rights violation in detention centres on Nauru and at Manus; which is an Island of Papua New Guinea (PNG). Australia's Offshore Refugee Policy (2001-2016) is under probe because it is based on the offshore processing of asylum seekers being sent to neighbouring islands. The offshore processing and Australian government's response to the asylum seekers have come to the limelight due to major human rights violation in Nauru and Manus detention centres. The major question is that why Australia adopts the mandatory detention policy and why it breaches the international human rights law; especially when Australia is the state party of the major human rights treaties like 1951 Refugee Convention and 1967 Refugee Protocol. Australia justifies its immigration programme as a border safeguarding and control of trafficking and illegal terrorism.

The most important question is that who are asylum seekers those who are coming to Australia. As a result, Australia has adopted mandatory detention policy and offshore detention policy. More than half of refugees came from four countries: Afghanistan, Iran, Iraq and Sri Lanka.¹ These are the major places where people are running away from their countries due to war and proxy wars of the super powers and for different ways to balance their powers in the regions while Sri Lanka alone has a strong internal ethnic strife between Sinhalese and Tamilians. They live under the fear of violation, fleeing war or brutal regime like Taliban. The most important question is that why people chose to migrate from their homeland. Afghanistan is the most affected country from terrorism; people are not safe in Afghanistan. Iran is also a country from where a large number of people are leaving for other countries, especially in Australia. Iraq and Sri Lanka is the land where human rights are

¹Healey, J. (2013), *Asylum Seeker and Immigration Detention*, Thirroul: Spinney Press.

violating. Iraq is the epicentre of terror group Islamic State of Iraq and the Levant (ISIL) which also known as Islamic State of Iraq and Syria (ISIS). Sri Lanka is a South Asian country, facing an ethnic conflict between Tamil and Sinhalese and this becomes the reason of human rights violation of Tamil (those who are the indigenous people of India, brought by Sri Lankan colonial government as labour).

Australia has the long history of immigration and the resettlement of the refugees and asylum seekers from 1901 White Australia Policy to 2001 Pacific Solution. The Australian immigration policy has both features onshore and offshore processing of the asylum seeker offshore processing had started from the 1975 Indo-China war when Vietnamese people started leaving their country in small boats and reached Australia. Before understanding Australia immigration policy, it is mandatory to be aware of some important questions which are related to the immigration system. These are;

- What is immigration and its role or impact on global politics?
- How countries relate to immigration, refugees, and asylum seekers?
- How public opinion vis-à-vis multiculturalism affect the immigration policy?
- How states manage its immigration policy according to their interest?

Immigration policy becomes very important in the global era. Australia immigration system is also important in this context, but without understanding the history of Australia's immigration policy; we cannot understand the present immigration policy. When the Federation of Australian States formed the Commonwealth of Australia, an act was framed to increase Australian population of the British origin. Therefore in 1901 Immigration Restriction Act popularly known as White Australia Policy came into force. The context of White Australia policy is interesting because the making process of this policy has gone through the colonial history of racial and socio-cultural issues along with economic resource management issues. The policy was discriminatory because it only allowed the white people (Anglo-Celtic) in Australia and non-white people faced severe discrimination. The White Australia Policy was the base of the Australian immigration policy. We can see the impact of the White Australia Policy in the Australian present immigration policies. But there have been some good spots within the Australian government during World War II when it

resettled nearly 181,700 refugees of World War II in its territory.² Australia's policy maker changes its portfolio in 1945. This portfolio major objective was to attract immigrants from UK and other European Countries especially skilled labour. Australia needed skilled labour force to help in the economic growth of the country and hence relaxed the White Australia Policy by immigrating people from Europe. Australian parliament made an act which was called Australian Immigration Act 1958. The 1958 Immigration Act was amended in 1994 by the Australian government for reducing temporal limitation 273 days to 186 for the unlawful citizens. Under the section 196 of the act, unlawful citizens will be kept in detention centre until they got a valid visa or removed from Australia.

In the mid-1970s, Australia developed a new comprehensive approach to the global refugee situation. Whitlam's Government passed the Racial Discrimination Act 1975 which rejected the race-based discrimination. The Australian Human Rights Commission (AHRC) was the watchdog of the Racial Discrimination Act because this time Australia was under the hard scrutiny of the human rights groups and international organisations like UNO and Amnesty International. Australia gives importance to the Comprehensive Refugee Policy 1977. This policy includes the commitment and responsibility to the resettlement of refugee;

- to protect the global human rights;
- to setup an interdepartmental committee for the refugee;
- to help the UNHRC in global activity;
- to setup a task force in Thailand for the Indo-Chinese refugee;
- to provide the special assistance for resettlement of refugee.

Australian government adopted the liberal economic approach in the 1980s and 1990s and this approach strongly influenced the Australian immigration policy. The Australian immigration policy has transformed in accordance with the changing situations. In 1990s Australian government started the offshore processing of asylum seeker. Australian government started the mandatory detention centre in 1994 under this policy all unlawful citizens will be kept in a detention centre until they are granted a visa or to be removed from Australia. 1990s decade was very important from the Australian immigration policy point of view. 1998 was the year in which

² Hugo, G. (2002), "From Compassion to Compliance? Trends in Refugee and Humanitarian Migration in Australia.", *Geo Journal*, 56(1):27-37.

Australian mandatory detention centre gets privatised. Three Private companies Australasian Correctional Services Pty Ltd (ACM), Global Solutions Limited (Australia) Pty Ltd (GSL) and Serco Ltd get the contract from the Australian Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) during different times to provide the necessary facility to the asylum seeker but privatization of the detention centre was very crucial for the asylum seeker which led to an increased exploitation of the refugees leading to mental and physical torture and harm to life and dignity.

The turning point of Australia's immigration policy was the MV Tampa crisis (2001).³ A Norwegian Freighter MV Tampa had rescued 438 boat people from Afghanistan who were lost at the sea and brought them to the nearest shore i.e. the Christmas Islands an Australian territory. But the John Howard government did not give the permission to enter and brought out the Pacific Solution which became Australia's Offshore Policy. Pacific Solution was the response of the MV Tampa crisis and the people were sent to the nearby islands until the Australian Government processes their stay as asylum seekers in Australian territory. Prime Minister Kevin Rudd (2007-2010) dismantled the Pacific Solution which was criticised by the Australian Parliament for leading to smuggling, trafficking and terrorism by going against and justifies its Pacific Solution as the border safeguarding and national sovereignty. Julia Gillard's (2010-2013) government again started the offshore processing with the Nauru and Papua New Guinea governments were also the part of the Pacific solution. Consecutive Australian governments did the bilateral agreement with the neighbouring countries like Malaysia, Indonesia, Nauru and Papua New Guinea, Cambodia, to combat the refugee problem. Nov, 2012 Australian government announced the detention centre in Nauru and Manus Island. Tony Abbott's government also follows the same immigration policy like the other government. Malcolm Turnbull's government is also under the criticism because of the detention centre policy. The human rights violation at the detention centres was at its peak when a human rights group under UNO went to check the livelihood of the centres due to the protests to shut down the detention centres. Self-harm, suicides were common in the detention centres, which are still happening. Australia is the state party of the most of human rights treaties like;

³ Penovic, T. and Dastyari, A. (2007), "Boatloads of Incongruity: The Evolution of Australia's Offshore Processing Regime", *Australian Journal of Human Rights*, 13(33).

- Universal Declaration of Human Rights (UDHR)
- 1951 Convention Relating to the Status of Refugees (Convention)
- 1967 Protocol Relating to the Status of Refugees (Protocol)
- International Covenant on Civil and Political Rights (ICCPR)
- U.N. Convention Against Torture (CAT) and
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

These treaties are binding to all the countries that are signatories to these treaties and Australia is one among the countries that have signed all these international conventions that are fighting against any kind of harm to human rights all over the world. Issues of Refugee, Asylum seeker and boat people have become very important especially in human rights context. According to the 1951 Refugee Convention which is on refugees rights, “a refugee is a person who (1) has a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion, (2) is outside the country of his or her nationality (or, if stateless, outside the country of his or her former habitual residence), and (3) is unable to avail himself or herself of that country’s protection or is unwilling to do so because of such fear.” According to the UNHRC, an asylum-seeker is someone whose request for sanctuary has yet to be processed. Every person has the right to be an asylum seeker.

This study will focus on three phases; one is about Australia’s immigration policy and history of immigration. Study will go through various phases of immigration policy; such as importance of White Australia Policy’s (WAP) in Australian immigration policy; WAP abolished officially in 1973; offshore immigration policy came in 1975 after Vietnam War and aftermath; Second phase will focus on Australia Mandatory detention policy; in 2001, it adopted “Pacific Solution” policy; Major reasons behind Pacific Solution and its consequences; criticism of Pacific Solution or regional offshore processing on the basis of human rights violation of asylum seekers. The study will also deal with the privatisation of the detention centres by corporate Companies. Privatization is also a major reason of human rights violations. Under pacific solution treatment of asylum seekers and detention centres became controversial in human rights groups and international organizations. Third phase will

focus on the human rights obligations on Australia and role of international law in human rights violation.

Review of literature

The enormous literature on the Australia immigration policy since 1901 gives huge scope to study the Australian immigration policy.

A. Australia Immigration Policy

K. M. Dallas (1955) explained historical background of White Australia Policy. British colonial rule used Australia for raw material and transformation for agriculture industries especially woollen industries. Because of labour demand, convicts sent to Australia from UK. Under the immigration scheme, British government sent the people of Ireland and England to Australia to work as labour. In 1851, discovery of gold was a turning point of Australia immigration settlements because government bring Chinese people to work in gold industry. Chinese people were working in both agriculture and mining industries. But Chinese people felt that British government discriminate with them. They want equal treatment as equal as British origin people. Dissatisfaction of Chinese people became the reason of riots, strike, and labour movement. As a result, they restrict in Australia by colonial masters. Japanese also migrated for pearl industry. They established themselves as owner of pearl industry, Japanese government supported them diplomatically. Pacific Islanders were also migrated for the sugar industry. In this context, government adopted Natal formula as restriction of Asian migrants. This was continuing after got independence as an Immigration Restriction Act 1901 which is popularly known as White Australia policy.

David C. Atkinson (2015) describes the Australia Immigration Act 1901 and its journey to how it became the White Australia Policy. Australia Immigration Act 1901 cannot be understood without its history, which was based on the colonial history. Colonial government restricted the Chinese immigration at the end of the 19th century; Chinese immigrants faced many limitations in the immigration settlement and employment in Australia. This restriction of Asian Immigration framed the debate over the 1901 Act. Barton introduces the Bill in the Australian Parliament. Australian Parliament Debate was on how to implement the immigration regime. It was accepted after the huge debate. Australia's Immigration Act 1901 was prepared by the Myra

Willard, A.T. Yarwood and H.Y. London. This Act has allowed only the Anglo-Celtic people from United Kingdom so it was based on discrimination. Australia's Immigration Act 1901 was called White Australia Policy due to the severe discrimination in its immigration methods. According to the Author, White Australia Policy still plays an important role in the immigration programme.

James Jupp (1995) has highlighted that Australia's 'White Australia Policy' shifted towards the Asian region in 1960s. Australia was under immigration restriction policy since 1880s to 1960s, which is popularly known as White Australia Policy. Immigration restriction policy restricted the Asian people in Australia and allowed only British origin people in Australia. In 1950s and 1960s, white Australia policy was breakdown due to several aspects. British people were not coming to Australia, due to prosperity in its own country. Along that Asian countries were emerging economically, they were full of skilled labours and Australia needs skilled labours in his country. He also described public opinion on Asian migration, it was welcome by public but after a decade when unemployment increased in Australia then people show negative attitude towards Asian immigration and skilled based migration.

Graeme Hugo (2002) has highlighted Australia's development of refugee policy and evolution of the offshore and onshore policy. Australia's Immigration Programme is always criticised and debated since 1901. Australia adopted Special Humanitarian Programme and appointed a special assistance category. This work was to provide the humanitarian need to the asylum seeker. In the mid 1970s; Australia developed a comprehensive approach for the global refugee situation. These things were good in the Australia history of asylum seeker. Australia's first experience of illegal immigration was from Vietnam, Cambodia and Laos in 1975. The Comprehensive Refugee Policy was reformulated in 1977. Crook (2000 p7) said that Australian government and the Asylum Seekers relationship is love and hate. Australia's policies have shift in the public altitude. Recently the human trafficking is increasing in the sea area. The immigrants need the protection under the international refugee regime. Australia's immigration policy gave the illegal status to the all asylum seeker and detained them in the detention centres.

Chris F. Wright (2014) argued that comparative political economic literature generates valuables things for explaining liberal skilled immigration reforms. Australia started liberal economic reforms in 1980s and 1990s. Australia liberal

economic reform had certain impact on the Australia immigration policy. The Howard government's politically cautious approach, influenced Australia's immigration policy legacy on the positions of government institutions and employer groups, demonstrates the importance of 'non-market' as well as 'market' factors in shaping the reform process. The desire to maintain public support for its immigration policies explains why the government baulked at relaxing lower-skilled visa restrictions, despite the demand for lower-skilled workers generated by Australia's liberal production regime. The government's fiscal policy agenda and its overhaul of immigration selection criteria spurred by a desire to maintain its electoral base also show that its motivations for skilled visa reform were somewhat distinct from the largely market-driven motivations of employer associations.

White Australia Policy is an important part of Australia immigration policy and this topic have huge literature but this study will discussed about the role of White Australia Policy in Australia Offshore Policy. Study will examine the role of White Australia Policy in Australia recent immigration programme and it's Pacific Solution.

B. Pacific Solution or Offshore Policy

Azadeh Destyari (2007) mention that Australia's Pacific Solution was the blue print of the Guantanamo Bay processing centre for the HIV positive refugee which was opened by the USA President George HW Bush and Bill Clinton administration in 1990. Australia opens the detention centre for the illegal boat people, which was coming from different countries like Vietnam, Afghanistan, Sri Lanka and Syria etc. Azadeh Destyari raised the human rights issue of the detention centres of Guantanamo Bay processing centre in Cuba and other in the Nauru and PNG detention centres. She compares both announcement of the offshore processing by USA and Australia. In Guantanamo Bay centre, there were the illegal immigrants from the Hatti which was HIV positive. In another case Australia is doing the offshore processing of the all illegal immigrants in Nauru and Manus. She said that 'Pacific Solution' which was announced by John Howard and the 'Kennebunkport Order' which was announced by George HW Bush both were reason of the violation of human rights of asylum seeker in the Nauru & Manus and Guantanamo Bay processing centre .

Jared L. Lacertosa (2014) has highlighted that turning point of the Australia immigration policy was M/V Tampa crisis (2001). MV Tampa was a Norwegian ship

which has South Asian refugee but Australian government did not give the permission to deport in its territory. This issue has become much highlighted in the international society. After this crisis Australian government made illegal immigration unacceptable in Australia. Australia starts offshore processing in the neighbouring island in Nauru and Manus and it was the main reason for the violation of the human rights. This pacific solution is still going on. Major question is that why Australia choose Nauru and PNG as destinations for detention centres. It was because of the economic aid and the history of the colonialism. But Australia is totally violating the UNHRC guideline. According to the author, Australia offshore processing centre should be closes its totally violating the human rights of asylum seeker.

Gregory Brown (2016) put the Australian immigration policy as a good example of the refugee settlement. Australia's refugee settlement programme can be a good example for the recent European Union refugee crisis. European immigration crisis is a grave issue for the International Community and European Union. Australia has the justifiable claim to the 'Nation of Immigration'. He also said that Australia's immigration program becomes crucial after the 1970 Vietnam refugee crisis, which started during the Vietnam War when large number of Vietnamese entered the shores of Australia illegally in many boats. The Humanitarian issues were overlooked and the immigrants were living under severe threat to life. Australia always justifies it in the context of the border safeguarding and stops the human trafficking. Public interest is also equally important in the policy making. Australian government is also supported by the Australian population. According to the author, if European Union (EU) adopts Australian offshore policy it should be careful about human rights of immigrants.

Tania Penovic and Azadeh Dastyari (2007) explained evolution of six year journey of offshore regime. According to Azadeh Dastyari, Australian Offshore Refugee Policy is a blue print of Guantanamo Bay processing centre. But before started this policy, Australia did some solution to stop boat people in its territory such as; Australia did some bilateral agreement with neighbouring countries like Indonesia, Cambodia etc; and announced some operations for its open border like operation Relex and Relex-II. But these steps were not effective on the problems of illegal asylum seekers and John Howard's government announced "Pacific Solution". Australia has some human rights obligations but Australia do not following these

obligations. In these six year term, Australia breached human rights law such as Children's rights, Non-Refoulement, the right to health, the right to personal liberty. According to both thinkers, Australia offshore processing is affecting its international image. It should be respect the human rights of asylum seekers.

Justin Healey (2013) talking about the obligations on Australia towards asylum seekers in his book "Asylum Seeker and Immigration Detention." He also talks about the Australia and the world ranking of Australia in refugee status in his book. Healey explained that how Australia's Mandatory Detention Policy complete its unhappy 20 years. Second chapter of this book explained mandatory detention policy in detailed. He criticised its detention policy that this detention policy is against humanity. He also mentioned role of Amnesty International in protecting human rights of asylum seekers in detention centre. Detention affect detainee's mental health and children are also suffering in detention centres. According to him, Australia has some moral obligation towards the asylum seekers. It should be work on to improve the condition of asylum seekers. Offshore detention facilities are also the symbols of the torture. Third country processing is not legal under the 1951 Refugee Convention and its Refugee Protocol.

Second important issue of this study is to analysis the human rights violation in Nauru and Manus detention centres. Pacific Solution of Australia is breaches the human rights of asylum seekers. What are obligations on Australia will be discussed in the study.

C. Human Right Violation in Nauru and Manus and International Response

Gregory Brown (2014) noted that Australia treatment of Asylum seeker is under the human rights spotlight. The article major analysis is on the mandatory detention and offshore processing under the International Criminal Court (ICC). Australian High Court rejects the transfer of asylum seekers from Australia to Malaysia but Australian government always put it as border safeguarding. Operation Sovereign Borders continue as the regional resettlement programme. 'Stopping the boat' was started by the Tony Abbott in 2013. Australian government is mandatorily detaining the asylum seekers and classified them as unlawful-non citizen. UNHCR observed that condition is very poor in the detention centre there is lack of water, no privacy, lack of sanitation, and sexual abuse with the children and women. Nauru and Manus does not

afford full human rights protection to the transfer asylum seekers. Papua New Guinea has poor record to protect the human rights it has several problem like violation, abuse and general intolerance etc. Forceful transfer of the asylum seeker and the violation of human rights cannot be acceptable. There should be a solution of Illegal boat people but with the protection of the human rights.

Tania Penovic (2014) examines the outsourcing immigration detention and also analysis the privatization of the detention centres in Nauru and Manus. Australia immigration detention policy was introduced by the Paul Keating government in May 1992 because of the boat arrival for Indo-Chinese immigrants. Australian government adopted some values in 2008 for protection of human rights that was strong border control, protect human rights, detention would be the last option. Prisons privatisation started form the UK and USA in 1980s. Australia adopts privatisation policy for the detention centre in last decade of 1990s in three phases but privatization of the detention centre was very crucial for the asylum seeker. Mental torture was increasing with the immigrants at the detention centres. Australian Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) gave the contract to three private companies. Private companies focused on the business profit rather than public service. United Nation Organization always plays the watch dog role in the protection of these mandatory detention centres.

Jo Durham, Claire E. Brolan¹, Chi-Wai Lui¹ and Maxine Whittaker (2016) noted that right to health is the basic right of any individual. This paper did the brief analysis of the Australia health policy in the mandatory detention centre in Nauru and Manus. Australia refugee health policy is under criticism because the people in detention centre need the physical and mental health. Physical conditions include dental caries, digestive complaints respiratory problem etc. mental health is also very poor. Privatization of the detention centre is the main reason of the torture and lack of basic needs. Private company always see the benefit not the public interest. After the brief analysis of the Australia detention policy and practice the conclusion is that these treatments of the asylum seeker is violating the Health rights and human rights of asylum seeker.

Australia human rights issue has great concerns in the international community. Further studies will discussed about the role International community in the Australian human rights violation. Role of international organization will also discuss

in the study. Along with Australia's obligation towards the international law will also discuss. In addition, the role of major important international organizations will also examine in chapters. Solution and suggestion of human rights violation will also provide in the study.

Definition, Rationale of Study

Australia's immigration policy has been under scrutiny since 1901 for White Australia Policy and then for its offshore policy. But there have been many changes within the immigration policy which were humane. The major changes were seen since during and after the Vietnam War and the Indo-China War bringing people from Vietnam to the shores of Australia, popularly known as 'boat people'. Australian government took it like the national security crisis. Australia's immigration policy was based on onshore and offshore policy. Australia immigration policy 1901 (popularly known as White Australia Policy) and Pacific Solution (2001) is the backbone of Australia's immigration policy. White Australia Policy and Pacific Solution will be compared in the study. Does Australia's immigration policy follow the same ideology of racial discrimination as the White Australia Policy?

The study undertaken believes that Australia's Immigration Policy is the major reason behind the human rights violation in the Nauru and Manus detention centres. Australia is the party state of the major human rights treaties even though it's violating the UNHRC guideline. The study will be analysing Australia's immigration policy and its role in violation of human rights. Australia is recently facing the international pressure to close the detention centres in Nauru and Manus. International organization and human rights groups protest against the Australian Pacific or offshore processing. Australia government cannot violate the human rights of asylum seekers on the bases of the country's sovereignty and border security.

Scope of Study

Human rights issues have come under the limelight in the 21st century because of increased non-traditional security threats. The refugee crisis in Europe becomes the triggering factor for the interest in the topic. The solution to illegal immigration is a vast area of study. Illegal immigration issue has great concern in recent world. The scope of study on Australian immigration policy is quite good. Although, Australia has the largest immigrant population in the whole world rather than its immigration

policies always have been in controversy. This is important to understand that the World's largest immigrants country how framed it's immigration policy, what was the role of historical background behind its immigration policies and how it is helpful in understanding Australia's recent immigration policies like offshore policy. The detention camps at Nauru and Manus in PNG will be studied for valuation of human rights violation. UNO is the primary institution advocating Human rights and allowing many smaller institutions to fight for life and dignity locally and globally.

Research Objectives

- To analysis Australian immigration policy.
- To examine the status of human rights violation in Nauru and Manus detention centre.
- To understand the role of the United Nation in the safeguarding the human rights in the detention centre of Nauru and Manus.

Research Problems

- What is the offshore policy? Why the offshore policy is under scrutiny?
- Does the White Australia policy still play a role in its offshore policy, If yes then how?
- What is the status of the human rights in the detention centre of Nauru and Manus?
- What is the role of civil society to protect the human rights violation in Nauru and Manus?
- What is the role of the United Nation in safeguarding human rights in the detention centre of Nauru and Manus?
- Why Australian government is not following the International Human Rights Law?
- What are the possible reasons for Australia not following the International order?

Hypotheses

The proposed study would examine the following hypotheses.

- Australia's immigration policy from 1901 till now has not been changed much which is justified from the offshore policy or Pacific Solution and the human rights violation at the detention centres of Nauru and Manus in PNG.

- Australia's offshore policy as a measure of safeguarding its border and sovereignty from terrorism and trafficking is to actually hide the racial discrimination it shows to non-European immigrants.

Research Methods

The study will be analytical in nature. It will analysis the whole Australia immigration policy and its impact on the human rights violation in the offshore processing centres. It will follow an interdisciplinary approach and employ various theoretical insights of the Human rights, immigration policy. Insights from the works of scholars like Graeme Hugo, Chris F. Wright, David C. Atkinson, Azadeh Destyari, Jared L. Lacertosa, Gregory Brown, Gregory Brown, Tania Penovic, Jo Durham, Claire E. Brolan¹, Chi-Wai Lui¹ and Maxine Whittaker, K. M. Dallas, James Jupp, Justin Healey etc will be used in the study. The methods of data collection would be both primary and secondary sources. Primary sources include the government official documents, bilateral agreement, government reports, international organizations report and important declaration. Secondary sources include the book, article, editorial and photographs. Study also has some important international relation theoretical aspects like realist key words national interest, sovereignty, border safeguarding and other important concept like refugee and asylum seekers etc. These terms will help in better understanding of this research

Chapter 2

Offshore Refugee Policy of Australia: A Historical Overview

In various countries, Immigration has been seen as an important element in the history of many countries impacting on the culture, religion and politics for years together. Australia is well known as ‘the land of immigration’ as it hosts the Worlds’ largest immigration population. Australian Offshore Refugee Policy is under scrutiny in the 21st century due to the recent incidence of detention centres. However, to understand better offshore refugee policy of Australia, it becomes important to analyse Australian Immigration Policy. Australian immigration policy is divided into two types; a) onshore immigration programme and b) offshore immigration policy. Onshore Immigration Programme is about the resettlement of immigrants in Australia with a valid visa. Onshore immigration has further three types- Protection Visa, Temporary Protection Visa and Safe Haven Enterprise Visa.⁴ Protection Visa is for those people who come to Australia through the official Authority; Temporary Protection Visa is only for illegal migrants, for a limited period. Within this time limit, they could get a valid visa or they could be forced to leave permanently; Safe Haven Enterprise Visa is for five years settlement in Australia and this is only provided to student and workers.⁵ While offshore immigration programme⁶ is different from the onshore immigration programme, it is about resettlement of asylum seekers. This resettlement can be in Australian territory or outside Australia. It is of two types; one is of refugee category and another one is Special Humanitarian Programme (SHP) category. Australia introduced its offshore policy in 2001; it is also known as ‘Pacific Solution’. Australian Pacific Solution started a new treatment with asylum seekers; under which government deported the asylum seekers in regional processing detention centres in Nauru and Manus (PNG) in 2001. Australia's refugee program became the subject of the investigation; the main reason for this was the violation of human rights of the refugees in the detention centre of Nauru and Manus. Offshore refugee programme

⁴ Department of Immigration and Border Protection (2017), “Onshore –Protection Refugee and Humanitarian”, Australian government, [online: web] Accessed 3 March 2017: URL: <https://www.border.gov.au/Trav/Refu/Onsh>

⁵ Ibid

⁶ Department of Immigration and Border Protection (2017), “Offshore–Resettlement”, Australian government, [online: web] Accessed 3 march 2017 : URL: <https://www.border.gov.au/Trav/Refu/Offs>

will be explained elaborately in the next chapter which is related to offshore refugee policy and human rights of refugee.

This chapter will deal in detail with the Australian Immigration policy from the day of its inception in 1901. The policy was popularly known as White Australia Policy (WAP). Some scholars even said that it is actually the ‘British Australia Policy.’⁷ This chapter will elaborate that what were the circumstances and factors that forced the Australian Government to adopt this kind of policy and what was its impact on Australian economy and society and how the rest of the world looked at this policy?

Historical Development of Australian Immigration Policy

Australian Immigration policy cannot be understood properly without going through the British Colonial era. Considering British rule as the founder of Australian Immigration Policy it would be important to know how and when Australian Immigration policy started. And why did Australia need to have its Immigration Policy and how its intentions and regulations have changed from time to time according to Australian Government interests. British Colonial era is the story of exploitation and expansion of colonial power not only throughout Asia and Africa but also in Pacific region. With the British colonial establishment on the Australian continent, in the 1770s the land of the continent used as a source of raw material and transformed into agricultural industries especially for the woollen production. However, Agriculture demands labour, but the population of Australia was not sufficient to fulfil the required labour demand. From 1802, convicts from The United Kingdom were sent to work on projects and were assigned as free settlers. However, with the rise of Industrial Revolution, the flow of labour population decreased. Then British Government of Australia adopted the Policy of Immigration to fulfil the labour demand. Under this scheme, a significant number of people came from Ireland and England to work as labour.

However, with the new settlement of migrated labours, some economic, social and health related problems arise and the government was managing with this settlement. Although, with the discovery of Gold in 1851 and establishment of mining industry forced the Australian government to bring the Chinese people. The fact was that British only wanted to have European population but the economic concerns forced to

⁷ ‘British Australia Policy’ means that Immigration Restriction Act 1901 was actually British policy because Australian officials were following Colonial Immigration programme.

change the policy and a large number of Chinese labours came to work in both agricultural as well as mining industries. By 1861, there were 40,000 Chinese in Australia.⁸ Eventually, Chinese people wanted the same treatment like the British dissent population in the country. They moved in the urban area and established small business and market gardening. Riots, Strike, labour movement become common in the 1870s. British government restricted Chinese people in coming decades. Pacific Islanders were migrated in the 1860s for Queensland cotton industry. But in few years this replaced with sugar industry because they were cheap and good for the sugar industry. They were brought in inhumane conditions; it was also called a new form of slavery.⁹ Japanese also migrated to Northern Australia for participating in pearl industry in the mid-1880s. But they established themselves as the owner of pearl industry. Japanese government also gave diplomatic support to these industrialists. Excluding the British people, Chinese, Japanese, Pacific Islanders were major migrants in Australia with the end of the 19th century. In this context, British government started restrictions on Asian countries, especially Chinese and Japanese immigrants. These restrictions on immigrants come under Natal formula. Natal formula was adopted in 1897 at the Conference of Colonial Premiers¹⁰ in London. Conference of Colonial Premiers was held in London; Joseph Chamberlain was Secretary of State for the Colonies prepared the Natal formula. Under Natal formula, there was compulsion test for immigrants; they had to transcribe an English passage to enter in British Colony.

After independence in 1901, Australia had to face many questions that how an independent country should be run. A major question was how to build a nation with sovereignty and integrity. Colonial history always impacted on Australian political, economic and social life. So when talking about immigration policy, it was also totally affected by colonial history.

⁸ Vrachnas, J. et al (2005), *Migration and Refugee Law: Principle and Practice in Australia*, Cambridge University press.

⁹ Ibid

¹⁰ “Conference of Colonial Premiers” was held in 1897 at London. This was famous for adoption of Natal formula, Atkinson, D. C. (2015), “White Australia Policy, the British Empire, and the World” *Britain and the World*, 8(2): 204-224.

Australia's Immigration Restriction Act 1901

After independence, there was a major question on immigration policy that how to implement immigration regime. If we see 1901 census data, Australian population¹¹ was 3,773,801 (1,977,928 males and 1,795,873 females). In this census data, 2,908,303 (77.2%) were Australian-born and 857,576 (22.8%) were born overseas. Three main countries in Born overseas were; the United Kingdom 679,159 (18.0%), other European countries 74,673 (2.0%), and Asia countries 47,014 (1.3%). Immigration policymakers were fully aware of Australia's social structure and they were keeping it as such. In 1901, the Colonial history and social structure gave base for immigration policy of Australia. In this context, First Commonwealth Parliament passed its first Immigration Restriction Act 1901 under Sir Edmund Barton's government. A major feature of Immigration Restriction Act (IRA) 1901¹² was:

Article 1 of IRA 1901 says that it will be called as Immigration Restriction Act 1901. Considering that it shows that they wanted to restrict or ban immigrants those who were not able to resettle in Australia under the guideline of Immigration Restriction Act 1901.

Article 3 described prohibited immigrants in Commonwealth of Australia. This Article has six sections which defined the prohibited people in Australian territory. Article 3 Section (A) states that "Any person who when asked to do so by an officer fails to write out at dictation and sign in the presence of the officer a passage of fifty words in length in a European language directed by the officer¹³." This section is very critical for researchers¹⁴. According to researchers, prohibition of immigrants, whose roots can be seen in Natal formula. Australia included the kind of Natal formula test in its IRA 1901. It was based on European language; those immigrants will fail in dictation and

¹¹ Australian Bureau of Statistics, "2001 Census of Population and Housing - 00 1901 Australian Snapshot" [online: web] accessed 5 march 2017: [URL: http://www.abs.gov.au/websitedbs/d3110124.nsf/24e5997b9bf2ef35ca2567fb00299c59/c4abd1fac53e3df5ca256bd8001883ec!opendocument](http://www.abs.gov.au/websitedbs/d3110124.nsf/24e5997b9bf2ef35ca2567fb00299c59/c4abd1fac53e3df5ca256bd8001883ec!opendocument)

¹² Ministry of External Affairs, Commonwealth of Australia (1901), *Immigration Restriction Act*, Robt. S. Brain Government Printer for the State of Victoria, page no 1-7

¹³"Officer" means any officer appointed under this Act, or any Officer of Customs; Ministry of External Affairs, Commonwealth of Australia (1901), *Immigration Restriction Act*, Robt. S. Brain Government Printer for the State of Victoria, page no 1-7

¹⁴ McGown, B. (2013), "Transnational Lives: Colonial Immigration Restrictions and the White Australia Policy in the Riverina District of New South Wales, 1860–1960" *Chinese Southern Diaspora Studies*, 6; Atkinson, D.C. (2015), "The White Australia Policy, the British Empire, and the World" *Britain and the World* 8(2): 204–224; Dallas, KM.(1955), "The Origins Of "White Australia"", Australian Institute of Policy and Science, *The Australian Quarterly*, 27(1): 43-52.

sign in European language he/she will be prohibited in Australia as an immigrant. In a nutshell, Australian immigration, the act was based on racial discrimination because of its racial and linguistically discriminatory¹⁵ provisions that is why it is also known as White Australia Policy (WAP).

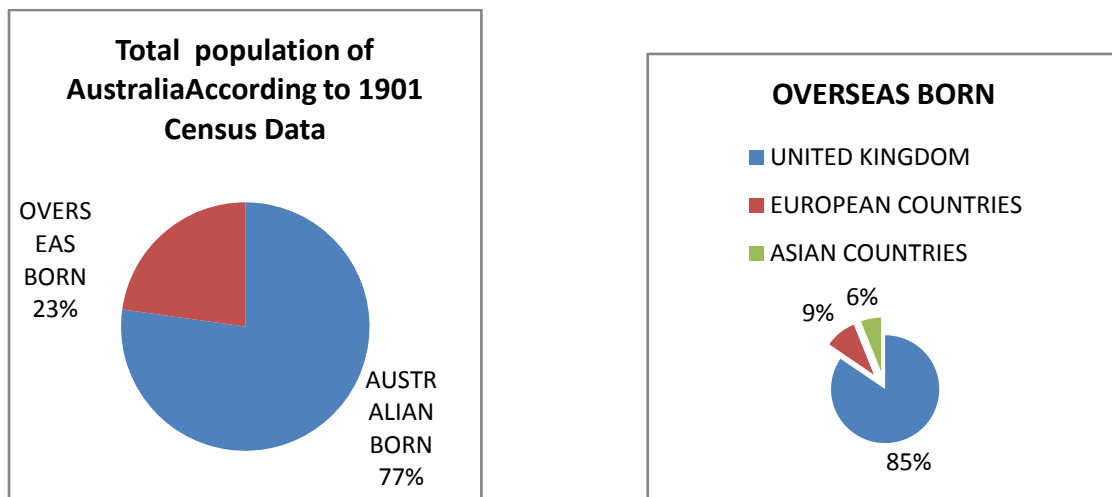


Fig No.1.1-Total Population of Australia According to 1901 Census Data, Department of Immigration and Border Protection, Australian Government¹⁶

Barry McGown (2013) also criticised this act and viewed this Immigration Restriction Act as a continuation of the history of Australia. Notably, Chinese people were restricted in colonial Australia in the 1870s as there was Anti-Chinese sentiment¹⁷ prevalent in Australian society. McGown says this restriction was the centrepiece of Immigration Restriction Act because it allowed only Anglo-Celtic people from England. It was followed by Commonwealth government under WAP 1901. Under WAP there was verification for Chinese known as Certificate Exempting from Dictation Test (CEDT). In December 1905, a new system of verification known as the Certificate Exempting from Dictation Test (CEDT) replaced by the Certificate of Domicile. CEDTs could be made available to residents deemed of good character who

¹⁵ Atkinson, D.C. (2015), “The White Australia Policy, the British Empire, and the World ” *Britain and the World* 8.2 (2015): 204–224

¹⁶ Australian Bureau of Statistics, “2001 Census of Population and Housing - 00 1901 Australian Snapshot” [online: web] Accessed 5 March 2017 URL: <http://www.abs.gov.au/websitedbs/d3110124.nsf/24e5997b9bf2ef35ca2567fb00299c59/c4abd1fac53e3df5ca256bd8001883ec!opendocument>

¹⁷ In 1880s, Chinese restriction was at peak. According to Chinese Restriction Immigration Act 1888, Chinese were illegal to enter in Australia especially in South Australia. McGowan, B. (2013), “Transnational Lives: Colonial Immigration Restrictions and the White Australia Policy in the Riverina District of New South Wales, 1860-1960”, *Chinese Southern Diaspora Studies*, volume 6.

had lived in Australia for five years.¹⁸ It mentioned in 1901 act that it would not apply on Pacific Island Labours.

Australia has allowed only British and Irish descent people; they were Anglo-Celtic. Along with them it also allowed The British natural born people and some European Countries people under its Immigration policy. The First Prime Minister Edmund Barton said that “We are guarding the last part of the world in which the higher races can live and increase freely for the higher civilisation¹⁹” The second Prime Minister Alfred Deakin was very straightforward: “Unity of race is essential to the unity of Australia. It is more, actually more in the last resort, than any other unity....”²⁰ The reason for their staunch support given by the politician in the Federation Debate was that the Asian people are not familiar with the Australia’s population and British political system. Their increasing presence could undermine the Commonwealth System and racial conflicts could take place that will hamper the social harmony. However, this could be true even then such a statement could not stop the migration. When the time and need is not in its favour which happened at the time of World War situation and whenever it has been profitable for Australia’s own economic and social needs.

World War Period and Change in Australian Immigration Policy towards Refugees

Although Australia did continue its White Australia Policy, First World War refugees have to be accommodated and Australia had the responsibility to share the burden. It was the first time that Australia had to settle 3000 refugees in its land²¹. After the Second World War and under the guidance of League of Nations and outcomes of Evian Conference (1938), Australia agreed to accept 15,000 refugees who were mainly Jews for three years. This programme was under the Commission for the Refugee of League of Nation, but this programme was limited due to the ethnic balance of

¹⁸ McGowan, B. (2013), “Transnational Lives: Colonial Immigration Restrictions and the White Australia Policy in the Riverina District of New South Wales, 1860-1960”, *Chinese Southern Diaspora Studies*, 6.

¹⁹ Price, A.C. (1979). *Australian Immigration: A Bibliography and Digest*. Department of Demography: Institute of Advanced Studies, the Australian National University, Canberra.

²⁰ Ibid

²¹ Hugo, G. (2002), “From Compassion to Compliance? Trends in Refugee and Humanitarian Migration in Australia.”, *Geo Journal*, 56(1):27-37.

Australia. The Evian Conference (1938)²² was very important in the Australian refugee programme. Australia accepted 15,000 Jewish refugees for three year period that had fled from Germany, Austria and Suddenland as Anti-Semetic policies which was pursued by Adolf Hitler. Finally, 7500 refugees came to Australia under this conference agreement by mid-1938. First World War was an experience for Australia where it has to deal with refugees for the first time along with its restricted immigration policy. Australia had to face the refugee problems because Australia restriction act was simultaneously going on which allowed only the Anglo-Celtic people from Europe but Jews was different Race. It was a historical event for Australia's immigration programme because after this event Australia introduced its refugee policy.

Australia again confronted with the same situation with the Second World War (1939-1945). The major question was how to resettle the refugee of World War II who was coming from the affected countries. Before World War II, Australia did not have the refugee policy and refugee simply enter in Australia with ordinary immigration requirement and rejected if they did not. Rather than, Australia play a very important role in the WWII because it resettled 600,000 World War II refugee which was defined by United Nations High Commission for Refugee (UNHCR).²³ This humanitarian programme was under Australia immigration programme. It was the biggest data of refugee tell the history of the Commonwealth of Australia. The major thing was that these were mostly Non-Europeans refugees which were different from the Australia immigration policy. These refugees established business- restaurants, carpentry shops and mechanical repair shops and some refugee did the intermarriage with Australians.

In addition, things were changing dramatically after World War II because Australia needed-people for economic development and 1% Britain was not enough because of the immigration portfolio²⁴ which was created in 1945 in the context of World War II. The major thing of this portfolio was that it was to implement the immigration

²² Evian conference was held in Evian, France to discuss for how to help the German Jews which was facing so much cruelty by the Adolf Hitler anti-Jews policies. It was the result of the American pressure but Britain and France said they were unable to accept the Jews refugee because they had already too much burden of refugees after that Australia and Dominican Republic; a Caribbean nation took 15000 and 10000 respectively.

²³ Price, A.C. (1979). *Australian Immigration: A Bibliography and Digest*. Department of Demography Institute of Advanced Studies, The Australian National University, Canberra.

²⁴ Hugo, G. (2002), "From Compassion to Compliance? Trends in Refugee and Humanitarian Migration in Australia.", *Geo Journal*, 56(1): 27-37

programme adopted in the World War period and its aftermath on a large scale. Australian government wanted to boost its economic and defence power which demands manual power too. In this context, the portfolio has a positive impact on Australia's population. Australian population born overseas grow rapidly, it was 9.8 percent in 1947 and 20 percent in 1971.²⁵ Under this portfolio, Seven million people have settled in Australia.²⁶ Under this portfolio policies Australian then Immigration Minister Arthur Calwell made an agreement with the International Refugee Organization (I.R.O) it was offered by the President of United States of America, Harry Truman to Australia for resettled the thousands of displaced people having difficulties in the I.R.O camps of Europe. According to this agreement, 170,000 displaced people came to Australia and Australian government took the responsibility to establish the camp accommodation, maintenance and job etc for them. The Australian government also allowed to the civil society for the welfare of the refugees. This scheme was ended with IRO in 1952.²⁷

Australia's refugee programme in World War era was very significant because this refugee programme provided a better life to many displaced people. But the whole picture of this refugee programme was for the development of Australia. Australia's refugee programme was under probe and criticised by the refugee groups and international origination. Two major criticisms of Australian refugee policy were that it concentrated with young healthy refugees and avoided the disabled refugees; second, that is just focused on the talented refugee from Europe. Non-Europeans were restricted for example, "Africans and Asian"²⁸. Arthur Calwell was the very liberal Immigration Minister and he opposed the restriction of the Asian people in Australia.²⁹

After the end of the World War, the Australian immigration policy changed because of the economic need or to grow the population of the country³⁰ but restrictions were still going on for example; in 1947, Minister of Immigration allowed Non-Europeans

²⁵ *Spinks, Harriet (Oct 2010) "Australia's Migration Program" Parliament of Australia, Department of Parliamentary service.

²⁶ Ibid

²⁷ Price, A.C. (1979). *Australian Immigration: A Bibliography and Digest*. Department of Demography Institute of Advanced Studies, The Australian National University, Canberra.

²⁸ Ibid

²⁹ Ibid

³⁰ Opperman, Hubert (1966), "Australia's Immigration Policy", Commonwealth Government Printer, Canberra 1966.

to stay in Australia for 15 years for the business purpose. In 1952 it allowed to Japanese wives of Australian service under permits valid for initial five years. In July 1956, the Government modified the conditions for the entry and stay of Non-Europeans and persons of mixed descent to provide that: -³¹

- Those people who are already permitted to stay in Australia, to be qualified not to extend their migration from time to time should be based on morality;
- Some Non-European people who were residing in Australia since long, was normally expected to left the country, but for humanitarian reason, they should be permitted to stay;
- distinguished and highly qualified Non-Europeans should be admitted for indefinite stay; and
- The conditions for the admission of persons of mixed descent should be clarified and carefully.

Australia and its Immigration Policy in Context of Asian Countries

The White Australia Policy had reached the crucial position in the end of the 1950s, due to which the Australian government had take a New Immigration Policy in 1958. Australian Parliament passed a New Immigration Act 1958 which played very significant role in Australian immigration policy. Under the Immigration Act 1958, government modified the situation of the Non-European immigration and gave a full focus on legal and illegal immigration. This Act also ended dictation test of European language which was under WAP. Legal immigrants under Act 1958 meant that a non-citizen has a valid visa which allows him/her to stay in Australia. Illegal immigrants means that a non-citizen person who does not have a valid visa. This act provides that a person lawfully entering as an immigrant could be deported only on the basis of a serious crime or after admission to mental hospital within five years of entering the country. This act provided to safeguard the rights of immigrants as an individual right or stop the arrest of immigrants. The 1958 Immigration Act was amended in 1994 by the Australian government for reducing temporal limitation 273 days to 186 for the unlawful immigrants. Under the section 196 of the act, unlawful immigrants will be kept in detention centre until they got valid visa or removed from Australia.

³¹ Ibid

Immigration Reforms Group was set up in 1959 by the academician with the purpose of end of White Australia Policy, but there was no official end of White Australia policy. There was some positive indication from some officials for example; Mr Peter Heydon, Head of the Department of Immigration want to finished non-white restriction from Australian immigration policy. Heydon was followed by Billy Snedden who also favoured non-white immigration. In 1960s things were changing rapidly in the Australia's immigration policy. In 1966, Australian government made the major policy reviews in its immigration policy. In 1966, 4 percent of the population were born in Asia and 1.6 percent in the Middle East and Africa.³² In 1945, the opinion of Arthur Calwell, Immigration Minister was that 'the Australian Government should realise that Asian countries are very important in the context of the economic development and hence the policy of Asian immigration should be made more liberal'. Australian government was very clear to say that if Asian nationals, who are highly skilled or professional, could speak good English and had a job in Australia, he or she has a chance to permanent settlement. Australia found Asian immigrants will play a significant role in Australia's process of nation building and the economic development.

Land Marks of Australia's Immigration Policy

There are some programmes or incidents which became a milestone of the Australia immigration policy. These are as follows;

Australia considered itself as a part of British Empire as its population was culturally and ethnically British. During the World War II, the Japanese Attack on Indonesia and other neighbouring countries and its slogan was 'Asia for Asians' terrified the Australian government due to proximity. The United Kingdom provided military support to Australia, but the wave of anti-imperialism and the post-World War situation forced British to withdrawal their army from South and Southeast Asia and grant these countries freedom. Singapore was the symbol of the British Empire's strength and security but in the 1942 Singapore was invaded by Japan and the British forces were taken prisoners. The fall of Singapore came as a huge shock to Australia, forcing Australia to think of safety in its own homeland. To secure itself from Japan,

³² Japp, J. (1995), "From 'White Australia' to 'Part of Asia': Recent Shifts in Australian Immigration Policy towards the Region", *International Migration Review (IMR)*, 21(1): 207-228

Australia used the rigid immigration policy and shifted towards the United States for its safety and signed South East Asia Treaty Organization (SEATO).

Apart from this, Australia has also joined the Colombo Plan which was an Inter-governmental Organisation for economic and social and human resources development of countries of Asia-Pacific region. Colombo Plan was one of the major point of attraction of students;³³ The aim of Colombo Plan (1950) was the economic and social development of the member countries in the Asia-Pacific region. Australia was the member of Colombo Plan and its primary focus was on the human resource development. Australian government took it as an opportunity to connect with Asian countries and it became the turning point for the Australian immigration programme. Australia joined it in the 1950s to build the relationship with the Asian Nations. 20000 students were trained under the Colombo Plan since 1985³⁴. Under the Colombo Plan, Australia provided the degree and training to the Asian students. Colombo plan was the milestone for the Australian immigration programme.³⁵ But how could it be safe from the Australian immigration program criticism, as there were so many cases of discrimination against immigrants.

The Japanese Trade Agreement 1957

Australia and Japan had a trade agreement in July 1957 which was the core factor to change the Australia immigration policy. A major feature of this trade policy was that it was a free trade between Australia and Japan. Japanese were restricted in Australian territory under the colonial and WAP. But this trade agreement totally changed Australia's thinking towards Japan. As Australia started gaining benefits from trade with Japan along with the rise of other Asian countries, it provided a large market for the Australian goods.³⁶ This changed the mindset of Australian people and Australia took steps to liberalise its immigration policy. In addition, the change in the political

³³ Lowe, David (2011), 'Colombo plan: An Initiative that brought Australia and Asia Closer'. The Conversation: Academic rigour, journalistic Flair. [online: web] accessed 5 march 2017, URL: <http://theconversation.com/colombo-plan-an-initiative-that-brought-australia-and-asia-closer-3590>

³⁴ Ibid

³⁵ Ibid

³⁶ Arthur, A.J. (13156/64), "Appendic3-Agreement on Commerce between Australia and Japan,1957", Commonwealth government printer Canberra [online: web] accessed 5 March 2017. URL: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Completed_inquiries/1999-02/japan/report/e03

party was also the factor that affected the immigration policy of Australian government.

Australian Immigration Policy after 1970

Australian immigration policy passed through the various phases since 1901 to 1970. Beyond the criticism, WAP was officially dysfunctional in 1973. There were some reasons behind it which were.³⁷

- The European people have been growing very fast. They were prosperous, so there was limited scope to move to Australia.
- Another reason was to growing newly independent state of Asia. Although, Asian immigration was restricted under the WAP. It was based on the theories and attitudes which become intellectually unfashionable and Australia has the economic, social and political interest in the Asian countries.
- Australia was protected from British Empire until 1942 and by the WAP 1973. Trade, investment, education, immigration, language, travel Australia bound all till the 1960s.

Whitlam's Government (1972-1975) Phase

With the Gough Whitlam's government (1972-1975), immigration policy of Australia took a U-turn and some measures to liberalise it and made it more rational. This liberal phase of immigration started from 1975. He took the issue to remove the relics of the WAP which was a discriminatory policy. Another reason was that society was also changing and Australia was required to increase its population and increase its defence power for development work. Whitlam government concentrated on conserving more resources, create jobs, welfare, and social service³⁸. The government passed the Racial Discrimination Act 1975 (RDA) which rejected racial based discrimination. In sum, 1970s decade was very important as it changed the structure of immigration policy and gave Australian Human Rights Commission (AHRC) which had the responsibility to review the immigration policy³⁹ under RDA 1975.

³⁷ Japp, J. (1995), "From 'White Australia' to 'Part of Asia': Recent Shifts in Australian Immigration Policy towards the Region", *International Migration Review (IMR)*, 21(1): 207-228.

³⁸ Price, A.C. (1979). *Australian Immigration: A Bibliography and Digest*. Department of Demography Institute of Advanced Studies, The Australian National University, Canberra.

³⁹ Penovic, T. (2014), "Privatised Immigration Detention Services: Challenges and Opportunities for Implementing Human Rights" *Law in Context*, 31, 10.

Australia's RDA 1975 had some significant features⁴⁰ of the immigration policy as it paved the way for Australia to become the part of Asia and showed them (Asian Countries) that it also belongs to the same region.⁴¹ Article 10(1) RDA 1975 says that a person will not be discriminated by the race, gender and nationality. Every person will be equal under the law of Commonwealth of Australia.

Malcolm Fraser's Government (1975-1982) Phase

After Whitlam, Malcolm Fraser came into power in late 1975 and he had introduced some programme considering the Australian Immigration policy. Under Fraser's government, a new Department of Immigration and Ethnic Affairs was established. Fraser government was liberal towards immigration policy.⁴² This government accepted 200,000 immigrants from Asia. However, these immigrants were neither detained nor given temporary visa. It means they had been accepted but their security and safety was not taken as a responsibility by Australian government. Some other incidents happened in Fraser Administration that had a vital impact on Australia's immigration policy. Those events need to be understood and in which the Vietnam War is the more important one.

1975 Vietnam War and Refugee Crisis in Australia

In Australia's Immigration Policy and its implementable, the Vietnam War (1965-1975) could be considered as the turning point as it has changed the Australia's perspective towards the immigration. The Vietnam War became one of the largest movements of refugees in the World history. It has made millions of people homeless, causes millions of deaths and forced million to move into other countries. The refugees affected by the war had been settled in America, Canada and Australia. Because of the Vietnam crisis boat people came into the Australian territory for seeking Asylum. "Boat people" term came from Vietnam crisis in which victims of Indo-China War had come to Australia by boat. The first group of the boat people were from Indo-china on the shores of northern Australia in 1976. Between 1976 and

⁴⁰ *Ministry of Immigration (1975) "Racial Discrimination Act 1975", Australia parliamentary act.1975 Canberra.

⁴¹ Price, A.C. (1979). *Australian Immigration: A Bibliography and Digest*. Department of Demography Institute of Advanced Studies, The Australian National University, Canberra.

⁴² Davidson, Helen (2016), "Australia is Paying for Malcolm Fraser's Immigration Mistakes, Says Peter Dutton", The Guardian, London, [online: web] Accessed 7 March 2017. URL:<https://www.theguardian.com/australia-news/2016/nov/18/australia-paying-for-immigration-mistakes-made-by-malcolm-fraser-says-peter-dutton>

1978, 2087 people moved to Australia in 55 boats. By 31 July 1979, Australia had accepted a nearby 6000 Laotian, Cambodian and Vietnamese refugee.⁴³

Comprehensive Refugee Policy (1977)

Australian then immigration minister MacKellar reformulates its refugee policy which was called Comprehensive Refugee policy (1977). Comprehensive Refugee Policy (1977) has some important features⁴⁴ these were:

- This comprehensive refugee policy reinforced Australia for the humanitarian commitment and resettlement of the refugee which was the responsibility of the Australian government.
- Australia is the signatory of the 1951 United Nation Convention on the status of refugee and the 1967 protocol accept that refugee was the responsibility of Australia. And under this UN Convention and Protocol member country cannot be sent to asylum seeker at any unsafe place outside the country.
- Australian government provided the special assistance for the movement of the refugees to Australia and their resettlement. It was the major feature of the refugee policy because the Australian government policy was not so much familiar with refugees.
- The Australia government took the decision to help to UNHCR. It makes the substantial contribution to the UNHCR to assist its global activity.
- Some special procedures will be the designation for the refugee situation and provision of the financial aid also included.
- An interdepartmental committee was set up to give advice on the refugee matters. It will help the refugees for their living situation in Australia
- The determination of refugee Status Committee was set for the handling refugee claims in Australia. This committee will decide the refugee status under rules and regulation.
- Under the comprehensive refugee policy, a task force was set up in Thailand to process the continuing intake of the Indo-Chinese refugees.

⁴³ Schloenhardt A. (2000), "Australia and the Boat-People: 25 Years of Unauthorised Arrivals" *UNSW Law Journal*, 23(3): 33-56

⁴⁴ Hugo, G. (2002), "From Compassion to Compliance? Trends in Refugee and Humanitarian Migration in Australia", *Geo Journal*, 56(1): 27-37.

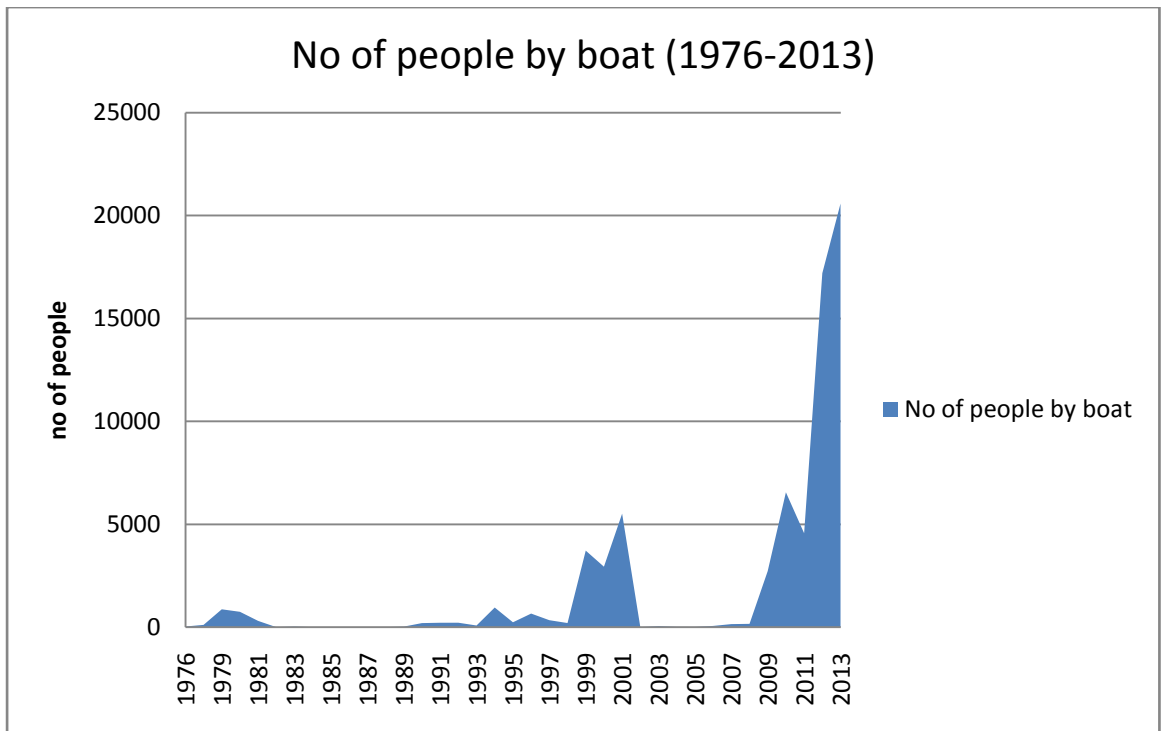


Fig No 1.2- No of boat people in 1976-2013, Department of Immigration and Border Protection, Australian Government⁴⁵

Even though, Fraser’s government has also taken steps to prevent immigration. It made policy for the solution of the boat people. It implemented a programme of controlled immigration and also starts taking the refugees from camps in South East Asia. To prevent the immigration of boat people from the Indo-China region, Australian government signed bilateral agreements with Hong Kong, Indonesia and Malaysia. Under this agreement, Australia accepted selective refugees from these countries and in return, the Asian countries (Hong Kong, Indonesia and Malaysia) will prevent the entry of boat people in Australia.⁴⁶ Over 90000 Indo-Chinese refugees came to Australia within the ten years after the Vietnam War. This was the time when Australia immigration was on its peak and arrival or immigration shifted from Sea to Air. On the other side, Australian government started new restrictions to tackle the situation and introduced new programmes such as detention centres in 1992 and made new provisions under its immigration policy.

⁴⁵ Parliament of Australia (2014) “Boat Arrivals in Australia: A Quick Guide to the Statistics” [online: web] Accessed 15 March 2017 URL: http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1314/QG/BoatArrivals.

⁴⁶ Schloenhardt A. (2000), “Australia and the Boat-People: 25 Years of Unauthorised Arrivals” *UNSW Law Journal* vol. no. 23(3): 33-56

In Hawke's government period, immigration issue becomes more politicised in the mid-1980s and population of Australia was against immigration. Australian immigration policy up to 1989 was based on the Ministerial discretion.⁴⁷ But in 1984 and 1988 under the Prime Ministership of Geoffrey Blainey and John Howard, restriction of Asian immigration was supported due to public demand.

Australian Immigration Policy 1990s and Emergence of Offshore Policy

In the 1990s, Howard/ Ruddock government did reforms in immigration policy. They focused on economic programme and reduced size of family immigration programme and also restricted new immigration based on welfare. In 1990s government become rude towards immigrants for example; 1995–96 the Keating Government issued 97,550 permanent visas. In 1996–97 the Howard Government issued 85,760.⁴⁸

In the 1990s, Australian immigration policy was highly planned and focussed on four major aspects⁴⁹ like;

1. skill migrants
2. family migrants
3. humanitarian settler
4. Others (New Zealander who were free to enter Australia).

John Howard's government (1996) increased planned migration⁵⁰; it was much closer to economic growth because in starting of 1990s Australia economy was suffering from a slowdown⁵¹. It was essential to take some effective steps by government to save its economy. Australian migration programme was both permanent and temporary.

⁴⁷ "Ministerial Discretion means an executive power to decide policy without review either by parliament or the courts". Betts, K. (2003) "Immigration Policy under the Howard Government", *Australian Journal of Social Issues*, 38 (2): 169

⁴⁸ Betts, K. (2003) "Immigration Policy under the Howard Government", *Australian Journal of Social Issues*, 38 (2): 169

⁴⁹ *Spinks, Harriet (Oct 2010) "Australia's Migration Program" Parliament of Australia, Department of Parliamentary service.

⁵⁰ Planned Migration, it was a migration policy which was introduced by John Howard government with the purpose of benefit country economy in financial crisis. *Spinks, Harriet (Oct 2010) "Australia's Migration Program" Parliament of Australia, Department of Parliamentary service.

⁵¹ Australian Bureau of Statistics, Australian Economic Indicator 1991, "1991 Feature Article- Picking Turning Point in the Economy" [online: web] 17 March 2017 URL:<http://www.abs.gov.au/ausstats/abs@.nsf/94713ad445ff1425ca25682000192af2/bc7ec6b46d35dcabca256fe9007bfe27!OpenDocument>

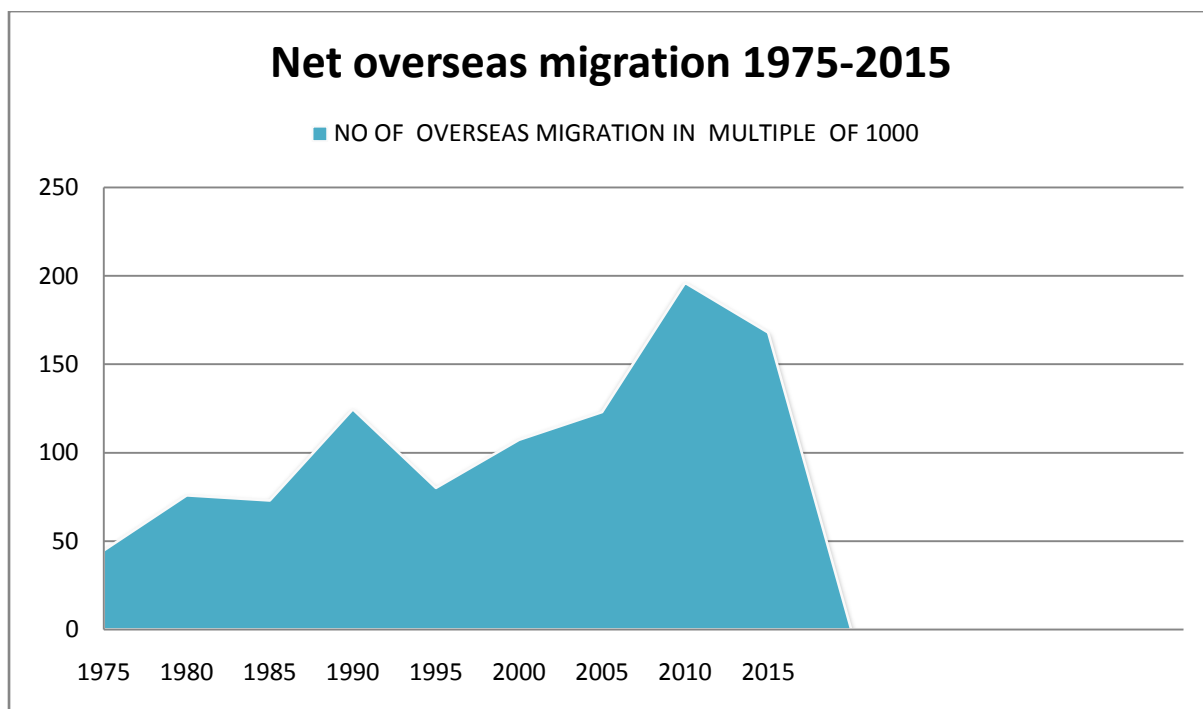


Fig No1.3-Net Overseas Migration 1975-2015, Department of Immigration and Border Protection, Australian Government⁵²

Permanent Immigration Programme

There were two types of Permanent migration programme; skilled migration programme and family migration programme. Under the permanent migration programme Australia give the opportunity to skilled labour in Australia and family programme is for those who are the skilled labour who want to settle in Australia.

Temporary Immigration Programme

Temporary migration programme also has four major programmes these are;

1. Temporary Work Visa

A temporary work visa is a basic need for Australia Economy. Temporary skilled worker programme changed in 1997 and under this change, it introduced new visa, one was temporary Business Entry Visa (457). It is a long stay visa a person can work in Australia for between 3 months to 5 years. Short Stay Visa (456) allows a person in Australia till three months. It is even more focused on skill than the permanent migration program, being confined to the

⁵² Department of Immigration and Border Protection (2017), "Australian government" [online: web] 17 March 2017 URL:<https://www.border.gov.au/about/reports-publications/research-statistics/statistics/live-in-australia/net-overseas-migration>

managerial, professional, paraprofessional and trades occupation categories, and it has been successful.

2. Student Visa

Student Visa is provided under the temporary migration programme which are; student visa (Subclass 500), Student Guardian visa (subclass 590) and training visa (Subclass 407). Student visa (Subclass 500) is for study in Australia; Student Guardian visa (Subclass 590) is for less than 18 years old student. The government will provide a duty of care under this visa; Training visa (Subclass 407) is about to give the opportunity to work with the study.

3. Working Holiday Programme

Australia's temporary migration also has working holiday program. This has two elements – an uncapped (417) and capped (462) program. (417) Visa is reciprocal programme with 19 countries (United Kingdom, Canada, Belgium, Denmark, Estonia, Finland, France, Germany, Hong Kong, Italy, Japan, Malta, Netherlands, Norway, Republic of Ireland, Republic of Cyprus, Republic of Korea, Sweden, Taiwan) up to 12 months.⁵³ This visa allowed only young people (18-30 years). (462) Visa programme was introduced in 2008. This visa is for Argentina, Bangladesh, Chile, Indonesia, Malaysia, Poland, Turkey, Thailand, Uruguay and USA and it also based on reciprocal programme⁵⁴ which is for only professionals and tertiary educated people. This visa allowed to work and stay in Australia.

4. Other Temporary Visas.

Other temporary visa includes electronic travel authority (class UD). This visa application is computerised and visa is issued electronically. This visa is for travel agent, airlines or overseas post. This visa has three visas Subclass 956, Subclass 976 and Subclass 977. Subclass 956 provides multiple travels for three months; Subclass 976 is for the visitor; Subclass 977 is short validity

⁵³ *Department of Immigration and Border Protection, Australian Government. Work And Holiday Visa (Subclass 417) [online: web] Accessed 18 March 2017 URL:<https://www.border.gov.au/Trav/Visa-1/417->

⁵⁴ Ibid

visa; It provides a specific number of entries to Australia. Medical practitioner visa under subclass 422, this visa is for temporary resident doctors.

In the mid-1990s there were some major changes in Australian immigration programme. Australia introduced New Regional Migration Scheme in 1997. In 2012–2013, 51,924 persons settled in Australia under the Scheme was non-humanitarian intake. This scheme was for regional migrants which accepted by Australia on the basis of labour and work skill. This trend was continued under Kevin Rudd government; planned migration was on the peak with the number of 190,300 in 2008-2009 and 2009-2010 planned migration was reduced, and it was 168,700.⁵⁵ The major reason behind the reduction of planned migration was Global Financial Crisis (GFC) and 2010 election. Global Financial Crisis impact on Australian economy, because of GFC needs of skill labour demand declined. 2010 election was also one of the major reasons because “Sustainable Population”⁵⁶ was under debate.

Australian Minister for Foreign Affairs and Trade, Stephen Smith announced a scheme which was called “The Pacific Seasonal Pilot Scheme” in August 2008. Under this scheme, Australia gave 2500 Pacific Islanders, from Kiribati, Papua New Guinea, Tonga and Vanuatu to participate in this scheme for over three years. It was related to the horticulture industry. At the end of Pilot programme, the scheme would be evaluated with a view to expanding it to help to fill the gap in employment in Australia’s horticultural sector. The reaction of this scheme was very positive from the Pacific Island Countries. It was the symbolic message of Australia’s willingness to engage with the nation of the Pacific as for the economic assistance and a good change in the immigration policy. In 2012, this scheme was completed and seasonal worker visa introduced as a temporary immigration programme.

Australia’s immigration policies always have been under probe. Australia found it difficult to manage immigration movement.⁵⁷ Public opinion became the major difficulties in the democratic countries like Australia. Immigration regimes are became

⁵⁵ *Spinks, Harriet (Oct 2010) “Australia's Migration Program” Parliament of Australia, Department of Parliamentary service.

⁵⁶ “Sustainable population” means that population growth should be balance with country natural resource. This was a debate in 2010 national election that how to grow sustainable population by migration or natural birth.

⁵⁷ Birrell, Robert (1994) “Immigration Control in Australia”, *The Annals of the American Academy of Political and Social Science*, Vol. 534: pp. 106-11

in the context of economy needs and balance of the social, cultural and ethnic balance of country. In case of Australia, it become over possessive for its social structure, WAP was result of this over possessiveness on social structure. Although, Australian immigration policy always had been under controversial but rather than Australia is enjoying its status of “immigrants land”.

Australian Population in June 2016 was increased 3% by net overseas immigration while Natural increased was only 2.6% Australian. This data explained that migration is still playing a very important role in Australian population. Australian immigration policies are critical in the humanitarian context.

Conclusion

No doubt, Australia is the land of immigration but its immigration policy has a different point of views. Australia wants only those who are useful for their needs like economic and educational sectors. Australia accepts immigrants according to his interest which is discussed in this chapter. As a result of above study, Australian WAP became the base of the coming immigration policies like 1958 Immigration Act, 1975 Immigration Act, 1994 amendment act etc. Along that Australia change its refugee policy but only for the interest of country. Australian immigration policy has been criticised by the scholars because of the discriminatory behaviour.

Chapter 3

Australian Offshore Refugee Policy and Violations of Human Rights

The earlier chapter dealt with Australian Immigration Policies, its major objectives, how it was formed and its implementation. The third chapter will discuss the offshore refugee policy and its outcomes. Australia's immigration policy has many phases which discussed in last chapter like: how Vietnam War affected Australia immigration and refugee policy. This chapter will discuss three major issues

- The development of mandatory detention policies and its outcomes.
- Australia offshore refugee policy and reasons behind it.
- Violation of refugees human rights under Australia's offshore refugee policy

Historical Development of Mandatory Detention policy

Australia had received first group of asylum seekers in late 1970s. And it has managed it very well. However, over time, Australia faced many socio-economic problems due to which Australia considered it a burden on its own economy. Although Australia had abolished its WAP but it was still prevalent in daily life. In addition, people of Australia did not like the immigration of outsiders especially Asian as they feared being outnumbered by them.⁵⁸ Along with other reasons, this scene forced them to think about immigration. At this point, they came out with the policy of immigration detention centres in Sydney, Perth and Melbourne. Indo-Chinese asylum seekers those who had been to Australia from 1976 to 1981, were resettled in Sydney's West bridge migrant centre (now Villawood). In the first wave, 56 boats with 2100 people had arrived in Northern Australia from 1976 to 1981.⁵⁹ These asylum seekers were resettled under humanitarian and refugee programme. They were not allowed to leave immigration centre during processing and they had to report daily to Australian Protective Service. These boat people also have Australian public sympathy. Australia changed its refugee policy in this context. Migration Legislation Amendment Act 1989 was introduced by the government and this act empowered the officer to arrest and detain any illegal person those who try to enter

⁵⁸ Phillips, J and Spinks, H.(2013) "Immigration Detention in Australia" Parliament of Australia, Department of Parliament of Parliamentary Service, Social Policy Section

⁵⁹ Ibid

into Australian territory without a valid visa, it is called ‘administrative detention’.⁶⁰ There were another group of boat people: those were mainly from Cambodia begun to arrive on 28 November 1989. They all were moved to the west bridge (now Villawood) migrant’s centre in Sydney. Between November 1989 and January 1994, 18 boats entered in Australian territory and these boat people were mostly Cambodians, Vietnamese and Chinese. Processing centre was the result of second wave. The number of Australian immigration detainees was increasing rapidly and because of this immigration detention centres were getting full.

According to S. Taylor, the Aim of Australia’s mandatory detention policy⁶¹ is

- To save the community from those people who are a cause of Health, Criminal and Security threat
- To ensure that non-citizens who breached Australia’s immigration law are removed from country
- To stop unauthorised arrival

Mandatory Detention Policy of Australia

In this context, John Keating’s government reintroduced the Mandatory Detention Policy (MDP) under the Migration Act 1958 in May 1992. It amended in September 1994 and by this amendment, it removed the temporal limitation⁶² and introduced the requirement in section 189 that if any person who entered unlawfully without a valid visa then he must be detained. Section 196 was introduced, which provides that an unlawful non-citizen will be kept in detention until they are granted a valid visa or removed from Australia. Only those who had a valid visa and those who come by Air can live in Australia. Paul Keating’s government maintained the detention regime. Australia’s MDP had been condemned by the human rights group. There was no standard of human rights in detention regime under the 1994 amendment act. It became a very crucial act in the Australian immigration history.⁶³ Women and children were also the detainees in the detention centres. It became the major reason

⁶⁰ Phillips, J and Spinks, H.(2013) “Immigration Detention in Australia” Parliament of Australia, Department of Parliament of Parliamentary Service, Social Policy Section

⁶¹ Taylor, S. (2006), “Immigration Detention Reforms: A Small Gain in Human Rights”, *A Journal of Policy Analysis and Reform*, 13 (1): 49-62.

⁶² Temporal Limitation is a temporal time period, under which illegal migration has to either get valid visa or they have to leave the country.

⁶³ Penovic, T. (2014), “Privatised Immigration Detention Services: Challenges and Opportunities for Implementing Human Rights” *Law in Context*, 31, 10.

of criticism of MDP. Due to this, MDP come under the spotlight of human rights groups.⁶⁴

Australia’s MDP had been condemned by the International Organizations. But The Minister for Immigration and Multicultural and Indigenous Affairs stated that “MDP is necessary for the safety of the country”.⁶⁵ As unlawful migration was on its peak and there was no other solution for this problem. Australian MDP was the response of wave of Indochinese boat people.

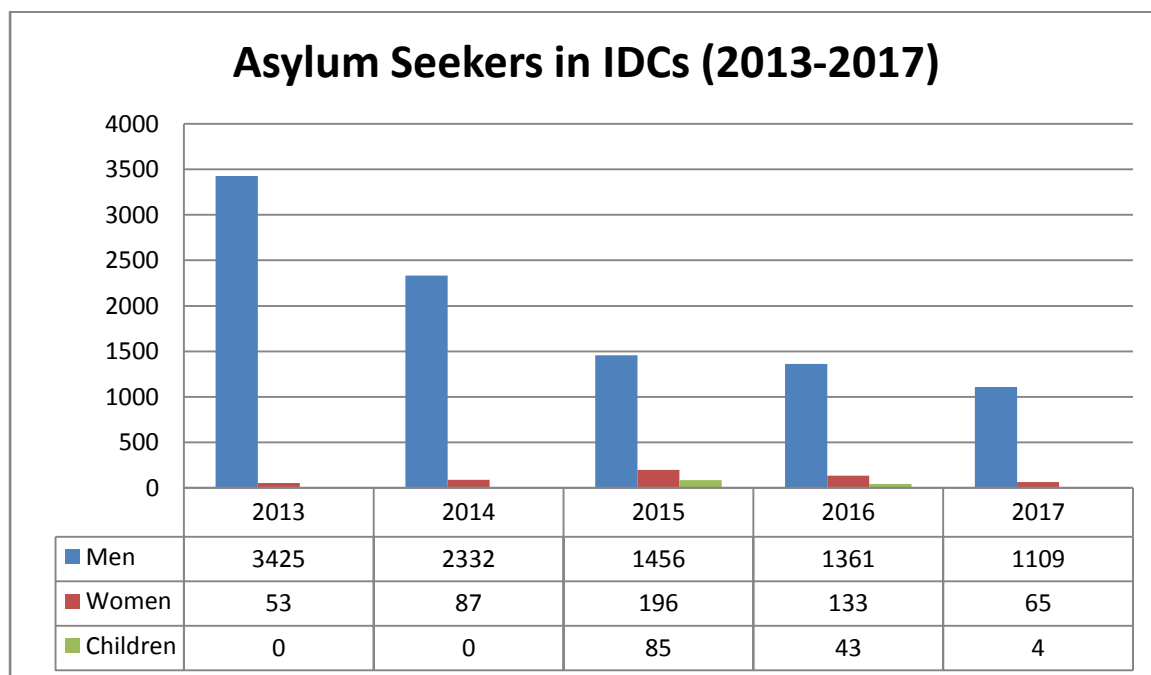


Fig No.2.1- Total number of Asylum seekers in IDCs (2013-2017).⁶⁶

Types of Australia’s Detention Centres

“Immigration Detention and Community Statistics Summary” is a report which is published by Department of Immigration and Border Protection of Australian for giving the data of onshore and offshore detainees. According to February 2017 report, Australia detention centre are of five types which are explained below;

⁶⁴ Penovic, T. (2014), “Privatised Immigration Detention Services: Challenges and Opportunities for Implementing Human Rights” *Law in Context*, 31, 10.

⁶⁵ Ibid

⁶⁶ Department of Immigration and Border Protection of Australian (2014) “Immigration Detention and Community Statistics Summary”; Department of Immigration and Border Protection of Australian (2015) “Immigration Detention and Community Statistics Summary”; Department of Immigration and Border Protection of Australian (2016) “Immigration Detention and Community Statistics Summary”; Department of Immigration and Border Protection of Australian (2017) “Immigration Detention and Community Statistics Summary”

Australian Immigration Detention Centres (IDCs)

Australia immigration detention centres are most important part of its refugee policy. These detention centres are much secured than other detention centres. There are five IDCs as latest data of February 2017 mentioned. These are;⁶⁷

- Christmas Island detention centre on Christmas Island with 264 asylum seekers
- Maribyrnong detention centre in Melbourne with 97 asylum seekers
- Perth detention centre with 28 asylum seekers
- Villawood detention centre in Sydney with 466 asylum seekers
- Yongah Hill detention centre in Western Australia with 272 asylum seekers.

Immigration Residential Housing (IRH)

Immigration Residential Housing (IRH) is a very important step towards better detention than Alternative Places of Detention (APOD).⁶⁸ First IRH was established in August 2001, nearby Woomera IDCs and other IRH established in Port Hedland. It was a result of great political pressure, but these detention centres were removed because of decreased number of asylum seekers. IRH was again started in 2006 in Sydney and Perth. Immigration Residential Housing (IRH) facilities are closed detention facilities; they have less security measure than IDCs. It provides accommodation for families. The purpose of IRH is to give a domestic environment to the detainees. Community care arrangement was between Department of Immigration and Border Protection of Australia (DIMA) and non-government organisation. As of February 2017, there were three IRH; Perth IRH, Sydney IRH and Villawood.⁶⁹

Immigration Transit Accommodation (ITA)

These types of facilities are closed detention facilities; they have less facility than IDCs. But these detention centres are different from IRH. Basically ITA used for those people who are departing from Australia and those who are passing through the process of transfer to other places of detention. The importance of ITA lies in the fact that this accommodation is for longer stay. Thus asylum seeker can live even if they

⁶⁷ Department of Immigration and Border Protection of Australian (2017) "Immigration Detention and Community Statistics Summary"

⁶⁸ Taylor S. (2006) "Immigration Detention Reforms: A Small Gain in Human Rights", *A Journal of Policy Analysis and Reform*, 13 (1): 49-62.

⁶⁹ Department of Immigration and Border Protection of Australian (2017) "Immigration Detention and Community Statistics Summary"

have been transferred to other places of detention centres rather irrespective of it is onshore or offshore; or outside the Australia. As February 2017 there were three ITA facilities:⁷⁰

- Adelaide ITA in Kilburn with 13 asylum seeker
- Brisbane ITA in Pinkenba with 82 asylum seeker
- Melbourne ITA in Broadmeadows with 113 asylum seeker

Alternative Places of Detention (APOD)

These detention centres are designated area which means this area is to be used for the Skilled Nominated or Sponsored Subclass 489 Visas⁷¹. It includes places like correctional centre, hospital, hotels, psychiatric facilities, or with a designated person at private residence. These are the alternative places of detention. Security is low in these detention centres and it is classified by the department as alternative places of detention. As for February 2017, there was only one APODs centre in Mainland with 48 asylum seekers. These detainees are work under the authority and do not free to move in or outside without the permission of authority

Community Detention

Community detention centre started in 2008 by Australian government⁷². It allowed to a specific residence in the community. These detention centres are generally, not physical supervision. It covers total 24% of Australia's detention centres in November 2015⁷³, but According to Immigration Detention and Community Statistics February 2017 Summary, It has increased from 24 to 28.43 percent. It is appreciated by the human rights groups. But the major question is about thousands of asylum seekers are still closed in immigration detention facilities.

⁷⁰ Department of Immigration and Border Protection of Australian (2017) "Immigration Detention and Community Statistics Summary"

⁷¹ The Skilled Regional Subclass 489 Visa is a four year provisional visa which requires holders to live and work in regional area to obtain permanent residence. Acaica Immigration Australia (2017), "Skilled Regional Subclass 489 Visa" [online: web] Accessed on 14 June 2017. URL:<https://www.acacia-au.com/skilled-nominated-sponsored-provisional-subclass-489.php>

⁷² *Amnesty International (2013), "This is Breaking People' Human Rights Violation at Australia's Asylum Seeker Processing Centre on Manus Island, Papua New Guinea.", Amnesty International Publications, Landon (UK).

⁷³ Australian Human Right Commission (2014) "Immigration detention and human right"[Online: web] Accessed on 20 March 2017. URL:<https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/projects/immigration-detention-and-human-rights>

Australia immigration detention

In facilities

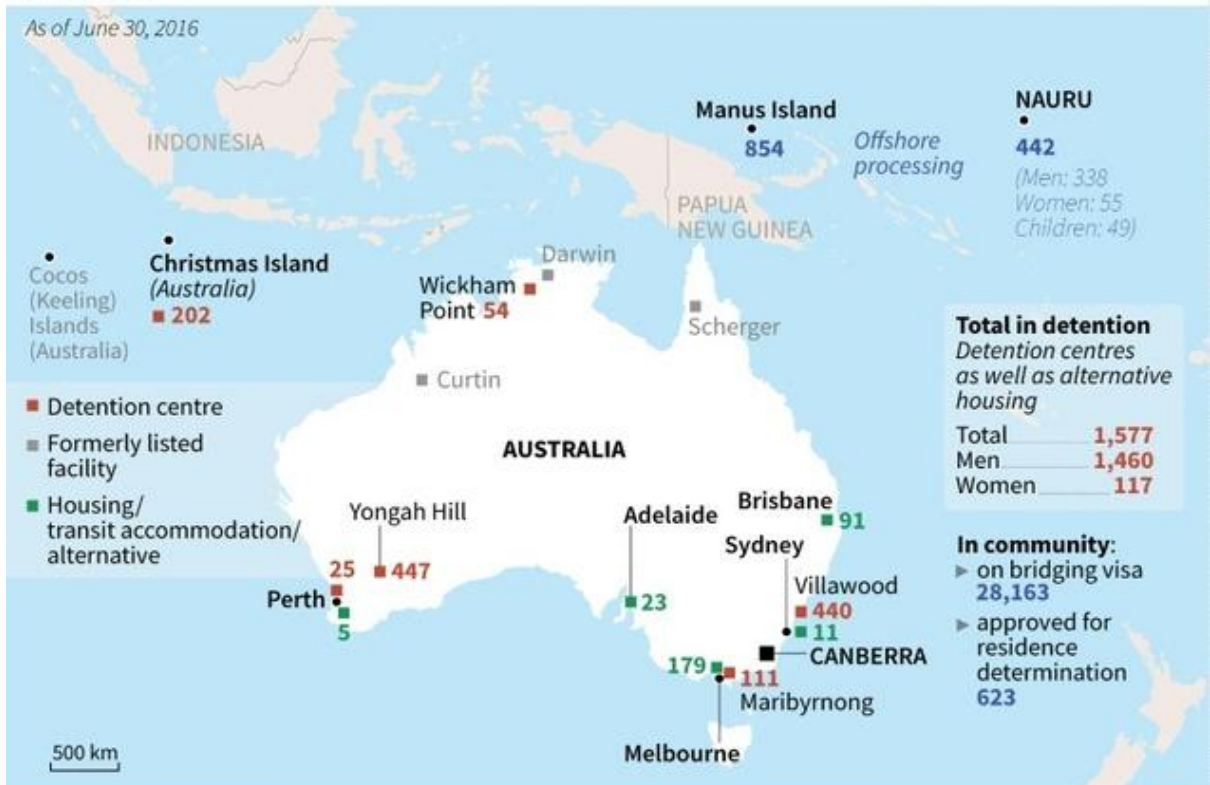


Fig.2 Australia immigration detention in facilities⁷⁴

Management of Detention Centres

MDP management was under the Department of Immigration since May 1992 to December 1997 and security of MDP asylum seekers was provided by Australia Protective Service. Australian government announced in August 1996 budget session that the detention centre would be contestable and they began the tender process. The tender was granted to Australasian Correctional Service Pty Ltd (ACS) in February 1998. Australasian Correctional Management Pty Ltd has got subcontract of service delivery. It was the starting when MDP management was transferred to private contractors. This contract was for three years, but it was extended till December 2003. After that two other private companies, Global Solutions Limited (Australia) Pty Ltd (GSL) and Serco Ltd get the contract from the Australian Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) during different times to provide

⁷⁴ "Australia immigration detention in facilities" [online: web] Accessed 24 June 2017 URL:http://i.dailymail.co.uk/i/pix/2016/10/17/article-doc-h78nr-7MptiNGzOe2c92c7f41772810b5-533_634x494.jpg

the necessary facility to the asylum seeker. Recently, Transfield Service (a private contract company) has a contract of IDCs and Offshore Processing detention centre.

Offshore Detention Policy of Australia

With the beginning of 21st century, there was a change in Australia's detention policy; it had shifted from onshore detention to offshore detention policy to prevent unauthorised arrivals. Australia initially took several steps to stop boat people. Regional Cooperation Arrangement was one of the very important steps to prevent the problem of increasing boat people. Regional Cooperation Arrangement was developed by Australia and Indonesia in 2000, to prevent illegal people who arrived in Australia via Indonesia by boat. Under this agreement, boat peoples would have to pay Indonesia to visit Australia, only after they could go to Australia.⁷⁵ Indonesia allowed them to go to Australia, but Australia could obstruct boats and force them to return to Indonesia. The returned people will be kept in the custody of the International Organization for Migration (IOM) centre in Indonesia. Both governments said that it is for the safety of the region.

In this context, John Howard government introduced Australia's offshore detention policy in 2001 which was called "Pacific Solution", it was the result of M/V Tampa crisis. The Australian Offshore Detention Policy also criticised by the human rights groups because of human rights violation of asylum seekers. Australia rationalised its Pacific Solution for safety, security and cost. However, the main objective was to deterring boat arrivals on Australia's land.⁷⁶ According to the eminent human right activist Azahdeh dastyari, Australia's Pacific Solution was the blueprint of the Guantanamo Bay processing centre for the Human Immunodeficiency Virus (HIV) positive which was opened by the USA President George HW Bush and Bill Clinton administration in 1990.⁷⁷ Australia opened detention centre for the illegal boat people, who were coming from the different countries like Vietnam, Afghanistan, Sri Lanka and Syria etc. Another reason for the adoption of new immigration policy was that this was the time of the national election in Australia and this issue was overwhelmingly highlighted in the country's domestic politics. Australian

⁷⁵ Penovic, T. and Dastyari, A. (2007), "Boatloads of Incongruity: The Evolution of Australia's Offshore Processing Regime", *Australian Journal of Human Rights*, 13(33).

⁷⁶ Ibid

⁷⁷ Dastyari, A. (2007), "Refugees on Guantanamo Bay: A Blue Print for Australia's Pacific Solution?" *AQ: Australian Quarterly*, 79(1), 4-40.

government wanted to resettle unauthorised immigrants in another country like Indonesia, East Timor and Fiji because they do not want refugees in its homeland. Australian also approaches its former colony Papua New Guinea (PNG) and economically depressed Island Nation of Nauru. The Nauru and PNG accepted this agreement in 2001 and Australia started third country processing.⁷⁸ There were some reasons behind “Pacific Solution” which was:⁷⁹

- M/V Tampa crisis (2001) & Increasing number of asylum seekers
- Migrants issue were seen as vote bank in domestic politics because of National election
- Australian public opinion was against migrants

M/V Tampa Crisis (August 2001)

It became the turning point of the Australia immigration policy. MV Tampa was a Norwegian ship which had 433 South Asian refugees especially Afghani, but Australian government did not give permission to deport in its territory. John Howard government politicised this incident and said that unlawful people would not be acceptable in Australia, so this issue has got highlighted much in the International Society. After this crisis, Australian government made illegal immigration unacceptable in Australia and Howard government tried to pass a bill to remove ship for Australia’s waters territory. But international organisations, media, human rights group and state actors put the diplomatic pressure on Australia to solve the illegal migrant's issues and as a result, Australia started offshore processing on the neighbouring island of Nauru and Manus Island of PNG, which was popularly called as ‘the Pacific Solution’.

Nauru and Manus Island of PNG were the major Island where Australia built its processing centres. Under so-called Pacific Solution, Nauru received asylum seekers since 2001 to 2007 and PNG received since 2001 to 2004. The reason given by Australia for initiating the policy of offshore immigration was that the Pacific Solution is for safeguarding the Pacific region; second, 2001 was an election year in

⁷⁸ Third country processing word is related to the refugee treatment first country is asylum seeker origin country, second country is where the asylum seeker goes to take asylum and third country is where second country deport asylum seeker for example Australia deport refugees in Nauru And Manus (PNG). Healey, J.(2013), *Asylum Seeker and Immigration Detention*, Thirroul: Spinney Press

⁷⁹ Henderson, C. (2014), “Australia’s Treatment of Asylum Seekers from Human Rights Violations to Crimes against Humanity.” *Journal of International Criminal Justice*, 12(5), 1161-1181.

Australia, so migrants issue was treated as vote bank in domestic politics. Howard's Liberal party which had been known for its liberal policy was not at all liberal concerning the immigration policy. As Howard said that "We will decide who can come to Australia and under which circumstance they can come."⁸⁰ This idea plays a very important role in his 2001 election victory; Finally, Australian public opinion was against immigrants.⁸¹ According to an opinion poll (September 2001), 41% Australian do not want to receive more immigrants because they already had enough.⁸² Immigration effect on economic growth, fear of changing society, long-term effect on the environment due to increased population are some major factors which made immigration a negative point for the Australian population. Due to the public opinion immigration became a hot issue in Australian politics. According to Azahdeh dastyari, under the Pacific Solution Australia has adopted four Strategies-⁸³

1. Under 1958 Migration Amendment Act, A minister can now declare a new part that is under Australia migration zone or no longer part of it.
2. Every person who entered Australia without a valid visa will be detained.
3. Those who entered Australia illegally were sent back to their country
4. Those who entered illegally cannot be deported in Australia

Australian government gave important role to Australian Defence Force towards the entry of Asylum seekers. Australian defence force was a supporting agency before 2001, but now it was dealing security issues directly. Australian government announced a naval programme which was called Operation Relex on September 3rd, 2001. Operation Relex was very important from strategic point of view.⁸⁴ It was an important part of Australia's New Border Protection Policy which was started with M/V Thampa crisis. Operation Relex has two major aims; a) to prevent people's smugglers in the Pacific region. b) To stop the illegal migrants those who come to Australia for asylum. Howard's government became intolerant towards boat people; as a result, Operation Relex was instigated. There was not any such policy of Australia that was not under human right spotlight and Operation Relex was also one

⁸⁰ Phippen, j.Weston (2016), "Australia's Controversial Migration Policy" *The Atlantic Daily*, Washington D.C29 April 2016

⁸¹ Birrell, B. and B. Katharine (2001), "*Australians' Attitudes to Migration*, Australia: Monash and Swinburne University

⁸² Ibid

⁸³ Penovic, T. and Dastyari, A. (2007), "Boatloads of Incongruity: The Evolution of Australia's Offshore Processing Regime", *Australian Journal of Human Rights*, 13(33).

⁸⁴ Ibid

of them because boat people's human rights became the issue in domestic and international politics. Operation Relex II replaced operation Relax on March 14, 2002. Operation Relex brings the danger of 'direct refoulement of Asylum seekers' which means that Australia started to send asylum seeker to the other countries like Cambodia, PNG and Nauru⁸⁵. But Australian government justified it as sea border protection and to prevent Australian territory from people's smugglers. According to Australian government, it was based on the principle of the 1974 International Convention for the Safety of Life at Sea and the 1982 Law of the Sea Convention so it is also under the International Law.

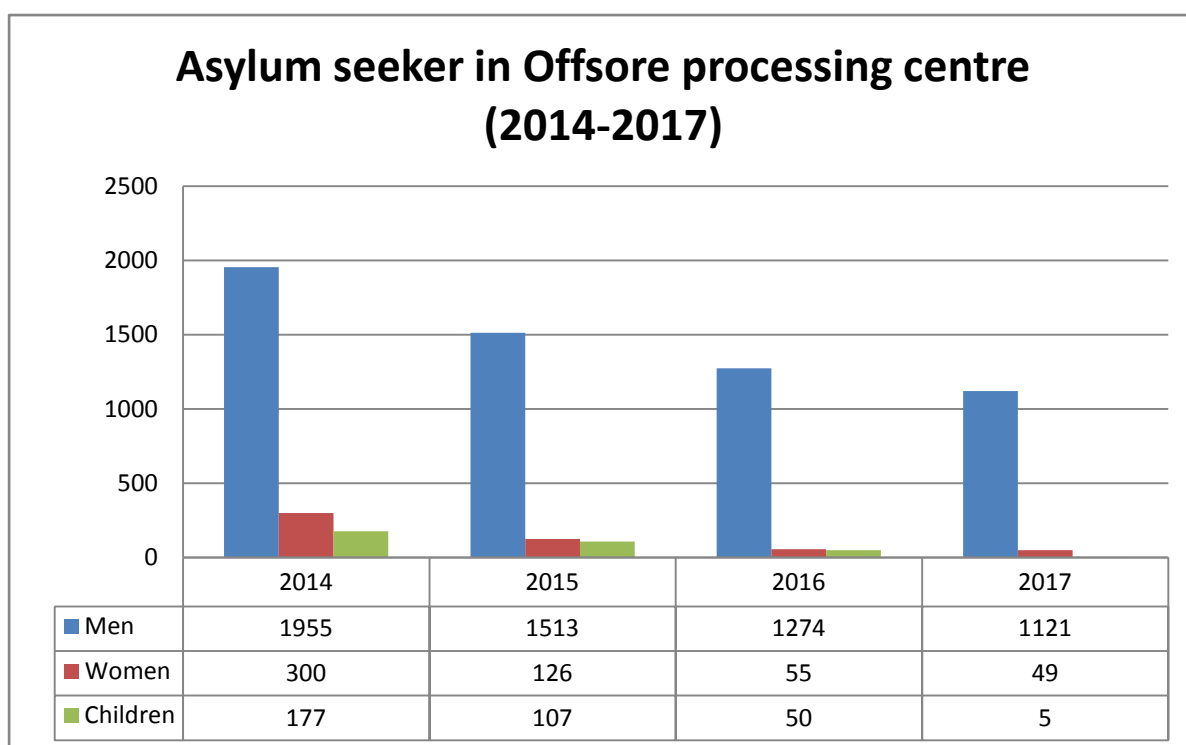


Fig No. 2.3- Asylum seekers in offshore processing centres (2014-2017)⁸⁶

Australia's Detention Centre in Manus Island (PNG)

Manus Island Regional Processing Centre was opened in 2001 under the Pacific Solution Policy. It was detention centre where the unlawful asylum seekers were

⁸⁵ Penovic, T. and Dastyari, A. (2007), "Boatloads of Incongruity: The Evolution of Australia's Offshore Processing Regime", *Australian Journal of Human Rights*,13(33).

⁸⁶ Department of Immigration and Border Protection of Australian (2014) "Immigration Detention and Community Statistics Summary"; Department of Immigration and Border Protection of Australian (2015) "Immigration Detention and Community Statistics Summary"; Department of Immigration and Border Protection of Australian (2016) "Immigration Detention and Community Statistics Summary"; Department of Immigration and Border Protection of Australian (2017) "Immigration Detention and Community Statistics Summary"

detained those who come from Vietnam, Afghanistan, Sri Lanka, Syria, and other South Asian people through boat. In 2001, Papua New Guinea and Australian governments signed Memorandum of Understanding (MOU) for established detention centre. It was continued till 2008 but when Kevin Rudd came in power, he officially closed it. When Julia Gillard became the Prime Minister, she appointed an expert panel on the issue of unauthorised arrival; this panel give the recommendation to reopen the Manus and Nauru regional processing detention centre. On panel's recommendations Gillard's government restarted regional processing centres. After Julia Gillard, Kevin Rudd again became Prime Minister and this time he was supporting the regional processing very hardly. Kevin Rudd said that “There is no chance to resettle the boat arrival on Australian land.”⁸⁷ This regional processing centre is under hard scrutiny because of the inhuman condition of the asylum seeker. Human right institution like UNHRC, Amnesty International and Australian Human Right Commission criticised this regional processing centre of Manus (PNG). Recently UNHRC report said that Australian government failed to provide the adequate detention condition to the asylum seeker. Amnesty International report said that this processing detention centre is overcrowded and asylum seeker got tortured in the detention. It has been mentioned by them that 300 people have only two toilets and 112 men living in the single dormitory. In addition, detention centres are facing the problem of lack of drinking water, lack of toilet and shower facilities and essentials like shoes and clothing.⁸⁸ 898 detainees (only men) were kept in the Manus detention centre until March 2015.⁸⁹

Australia’s Detention Centre in Nauru

Another offshore detention centre was Nauru detention centre that was also the part of ‘Pacific Solution 2001’ and however it has officially closed in 2007 with the order of Kevin Rudd like the Manus. When Gillard government came in power, Nauru detention centre re-opened, with a signed Memorandum of Understanding (MOU) with Nauru government. Australia and Nauru also signed the new MOU to transfer an assessment of asylum seeker in Nauru. Recent policy of Australia is the resettlement

⁸⁷ * Asylum Seeker Resource Centre (ASRC) (2015), “Manus Island Detention Centre”

⁸⁸ *Amnesty International (2013), “This is Breaking People’ Human Rights Violation at Australia’s Asylum Seeker Processing Centre on Manus Island, Papua New Guinea.”, Amnesty International Publications, Landon (UK).

⁸⁹ * Asylum Seeker Resource Centre (ASRC) (2015), “Manus Island Detention Centre”

of illegal people in Nauru on temporary protection visas, before they offered permanent resettlement in Cambodia. 718 people were detained in the Nauru processing centre which includes children, women and men. Nauru detention centre is also criticised by the human rights point of view. Nauru has lack of infrastructure in detention centre.⁹⁰

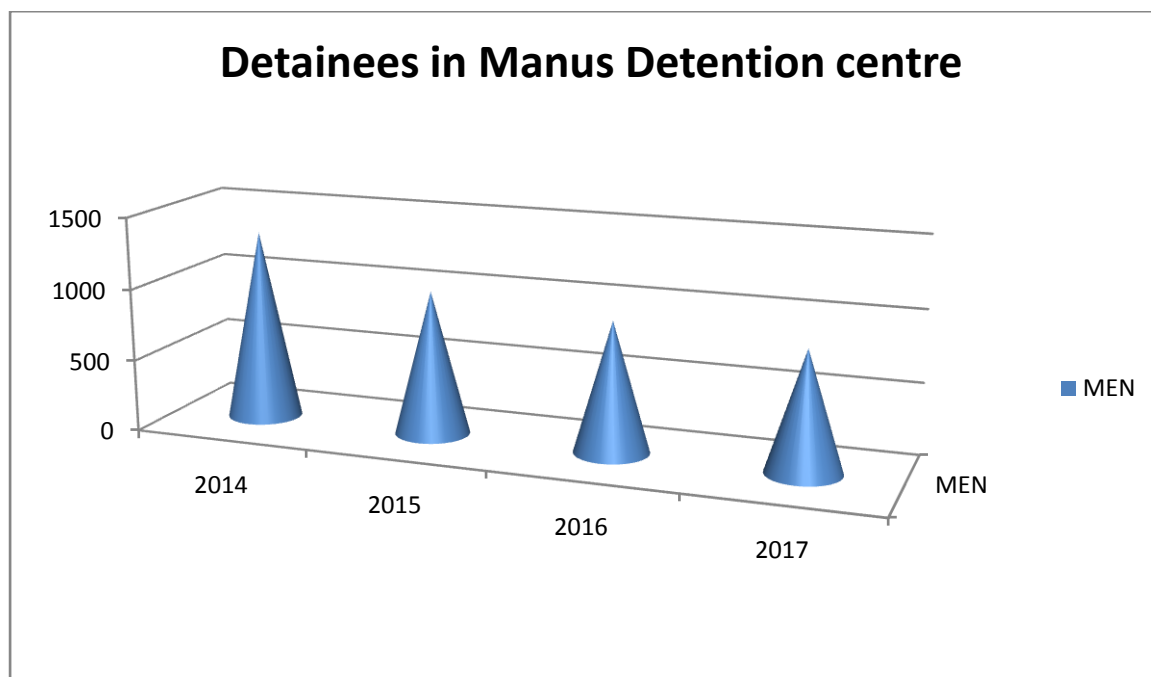


Fig no 2.4-detainees in Manus detention centre ⁹¹

United Nation Human Rights Council (UNHRC) said that centre lacks “durable solution for refugees.” Australian government does not provide the human condition for the asylum seekers.⁹² Australian Human Right Commission founded the evidence of torture to children in the detention centre. Commission states that centre detained the children and they are suffering from extreme level of physical, emotional, psychological and development distress.⁹³

⁹⁰ Asylum Seeker Resource Centre (ASRC) (2015), “Nauru Island Detention Centre”

⁹¹ Department of Immigration and Border Protection of Australian (2014) “Immigration Detention and Community Statistics Summary”; Department of Immigration and Border Protection of Australian (2015) “Immigration Detention and Community Statistics Summary”; Department of Immigration and Border Protection of Australian (2016) “Immigration Detention and Community Statistics Summary”; Department of Immigration and Border Protection of Australian (2017) “Immigration Detention and Community Statistics Summary”

⁹² *UNHCR (2013), “UNHRC Monitoring Visit to the Republic of Nauru 7 to 9 October 2013”, UNHCR the UN Refugee Agency. Canberra.

⁹³ Asylum Seeker Resource Centre (ASRC) (2015), “Nauru Island Detention Centre”

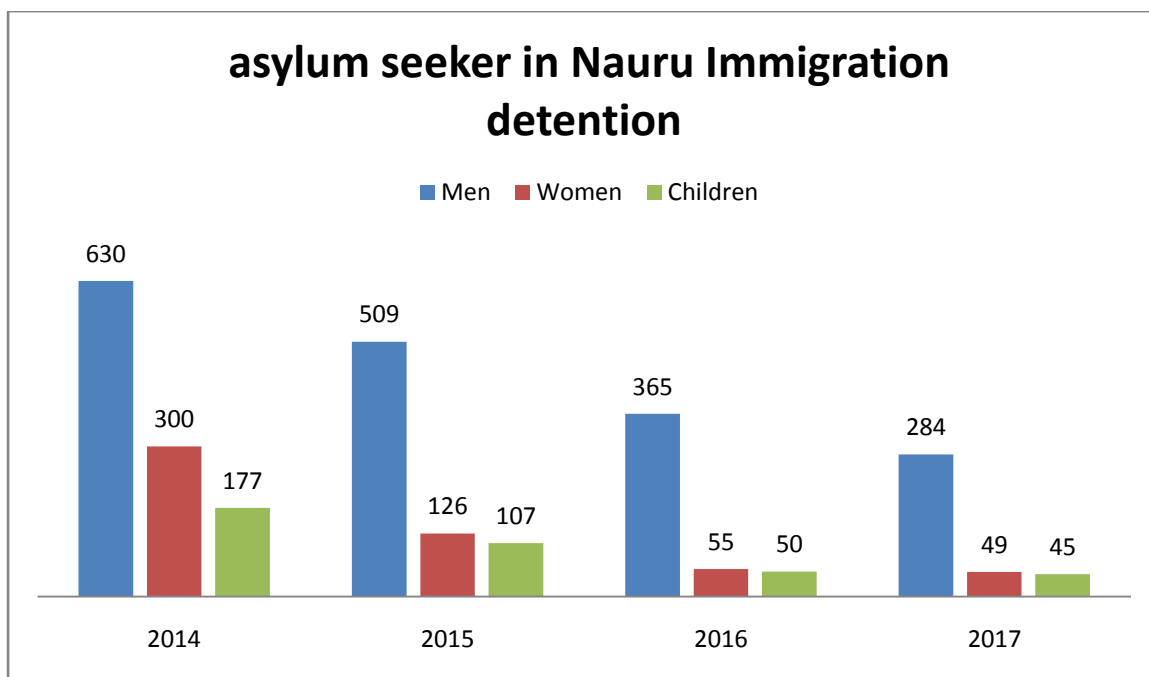


Fig no 2.5- asylum seeker in Nauru immigration detention ⁹⁴

Kevin Rudd’s Government and Regional Processing Centres Situations

Kevin Rudd was Prime Minister for two terms one was 2007-2010 and another was 2013. Kevin Rudd’s first term officially ended the offshore policy because of the high costs of the programme and was unsuccessful as it was highly criticised by the other political parties of Australia. Offshore policy was again started with a new framework for the boat people now they all will be settled in the Christmas Island. Under the Rudd government refugee number increased dramatically, rising from 161 in 2008, to 2726 in 2009, 6555 in 2010 and 4565 in 2011. Under his second term of government on 19 July 2013, Kevin Rudd government signed Memorandum of Understanding (MOU) with Prime Minister of Papua New Guinea (PNG), Peter O’Neill and announced Regional Resettlement Arrangement policy (RRAP). Under RRAP there was an agreement that PNG government will accept all refugees those who will be sent by Australian government, it cannot chose to other options rather than accept and PNG also cannot resettle asylum seekers to third country. According to Australian

⁹⁴ Department of Immigration and Border Protection of Australian (2014) “Immigration Detention and Community Statistics Summary”; Department of Immigration and Border Protection of Australian (2015) “Immigration Detention and Community Statistics Summary”; Department of Immigration and Border Protection of Australian (2016) “Immigration Detention and Community Statistics Summary”; Department of Immigration and Border Protection of Australian (2017) “Immigration Detention and Community Statistics Summary”

government, the aim of RRAP was to prohibit people's smugglers who came to Australia by boat from Southeast Asia. They follow two routes: one is from Indonesia to Australia and another is direct Sri Lanka to Australia.⁹⁵

Gillard's Government and Reopened Regional Processing Regime

Julia Gillard took office in 2010 and the number of boat people was at peak at this time. 2010 year was very important in world history. Afghanistan, Sri Lanka, Middle-East were the major place where people were leaving their homeland. In 2010, 60% of boat people coming to Australia were from Afghanistan.⁹⁶ It was 70 % in the June 2010. The major reason behind the Afghan refugees was the instability of government and terror factor. Afghanistan is affected by Taliban. So people were leaving their homeland and Australia is the important second country for Afghani. Along that Sri Lankan refugees also were also increased at that time. Major reason was the Sri Lankan civil war which was happened in March 2009 between Sri Lankan government and the Liberation Tigers of Tamil Eelam (LTTE). The final stage of the conflict resulted in approximately 40,000 deaths and over 280,000 internationally displaced people. Both the government and the LTTE put humanity on hold and committed crimes against humanity.⁹⁷ In this context, Sri Lankan people were became refugees in other counties Australia was one of them. Arab Spring was also play a very important role in the increased the number of refugees in Australia. Arab Spring was a movement for democracy, the fight for human rights, fights against the brutal regime of the dictators which was started from Tunisia and spread all over the Middle-East. Because of this people were started to leave there homeland. The refugee problem has taken an explosive form due to the above reasons, and Australia could not save itself, and seeing the number of refugees increasing

In this context, Australian government adopted the new policy for the solution of boat people. Gillard government said that people's smuggling has increased in the area. Australia and Malaysia signed refugee transfer agreement in 2011 which was called "Malaysian Solution". Under the Malaysian solution, 800 asylum seekers who were in custody in Australia would be sent to Malaysia and Australia has allowed resettling

⁹⁵ Penovic, T. and Dastyari, A. (2007), "Boatloads of Incongruity: The Evolution of Australia's Offshore Processing Regime", *Australian Journal of Human Rights*, 13(33).

⁹⁶ "Gillard's goal: wreck people smugglers" Sydney, the Sydney Morning herald, 6 July 2010

⁹⁷ "Crisis in Sri Lanka" International Coalition for Responsibility to Protect [online: web] Accessed 6 July 2017 URL:<http://responsibilitytoprotect.org/index.php/crises/crisis-in-sri-lanka>

4000 refugees who was already recognised as genuine refugees. However, High Court of Australia rejected this deal as it was found illegal. After the rejection of Malaysian solution by High Court of Australia, Gillard gave the other solution for the refugee problem that was historical which is continuing since 1990s.⁹⁸ Gillard government created a panel on the refugee solution and it recommended the re-opening of Nauru and Manus processing centres. It also said that frequent maritime entry would not be acceptable in the Australia territory. Australia passed the resolution by the parliament and signed the memorandum of understanding with government of the Nauru and Manus (PNG) to transfer of the illegal migrants. In Sept 2012; Australian government again repeated the offshore processing with the transfer of the 30 Sri Lankan men to Nauru and 19 women and children to the Papua New Guinea. The policy was updated in the July 2013 when Kevin Rudd again came into power. He hardly said that people who don't have valid visa cannot be resettled in the Australia.

Tony Abbot's Government and Its Operation Sovereign Borders Policy

Like the other governments, Tony Abbot's government had also adopted the same attitude towards boat people. His Government adopted a policy known as the "Stopping the boat".⁹⁹ The government started a campaign with the title "No way! They will not make Australia home."¹⁰⁰ Australian government implemented a new policy in September 2013, which was called as "Operation Sovereign Borders (OSB)".¹⁰¹ Tony Abbot called it Regional Processing Centre (RPC) and gave the strong power to Nauru and Manus. OSB was for country's sovereignty and border safeguarding. Australia did a lot to strengthen its naval power to prevent the entry of the boat people in the Australian territory. This policy was most cruel during last decade because Australian action has increased the crime against humanity.¹⁰²

Recently, Malcolm Turnbull's government is also following the same refugee policy. Nauru and Manus (PNG) processing centres are still open and these centres are the symbol of the mental torture of the Asylum seekers. Turnbull signed an agreement

⁹⁸ Penovic, T. and Dastyari, A. (2007), "Boatloads of Incongruity: The Evolution of Australia's Offshore Processing Regime", *Australian Journal of Human Rights*, 13(33).

⁹⁹ Ibid

¹⁰⁰ Penovic, T. and Dastyari, A. (2007), "Boatloads of Incongruity: The Evolution of Australia's Offshore Processing Regime"

¹⁰¹ Henderson, C. (2014), "Australia's Treatment of Asylum Seekers from Human Rights Violations to Crimes against Humanity.", *Journal of International Criminal Justice*, 12(5): 1161-1181.

¹⁰² Ibid

with Barak Obama's administration to resettle the refugees who are kept under the processing centre. But the government of Donald Trump, who came after Obama's government, rejected this agreement. Regional processing centre are still going on. They are the major centres of torture for the asylum seekers.

Factors Responsible for Increasing Threats from Immigration

Post 9/11, Afghan and Islamic Immigrants and Terror Factor

9/11 the terrorist attack by the Al-Qaeda on USA, was the biggest incident not only in the USA history but also for other nations too. Now days, Terrorism is spreading like a creeper in the world which is very dangerous for the human beings and humanity. In case of Australia, It was under the USA umbrella until last year but when current US President, Donald Trump showed not his interest in putting his efforts considering US allies in Asia. However, Australia has been the military partner of USA. Considering the incidence of 9/11 and increasing the Islamic extremism towards western countries, Australia was also under threat because it has an open border; it was and is still the biggest challenge for Australia. Australia's safety is the first foremost priority of the Australia. Former Australian Prime Minister Julia Gillard said that either Muslim immigrants must learn to speak the English language and adopt Australian culture or leave the country. One can assume that under this condition Australian believe that by language compulsion they can reduce the Islamic extremism as they will learn Anglo culture along with the language. Although it was not an official policy, the government stressed that it should be followed. Some immigrants also accepted the same culture that government wants because they were harmed due to their Islamic culture. Australia always said that their immigration policies are not discriminatory, but they are against the people smuggling and the terrorism. Recently, the Nauru and Manus asylum seekers are of the Islamic religion. They were facing extreme difficulties in the detention centres.

People opinion always matter in a democratic country. Australia's immigration policy has also been navigated through its populist opinion of its Australian citizens. Now, most of the Australian population did not want immigration. The Australian public also favoured Pacific Solution. People of Australia wanted to enjoy its homeland without having any concerns about the situations of asylum seekers. Study continuously talking about the human rights since the starting of the chapter, major

question here is; what are the human rights for concerning asylum seekers and are they entitled to possess when they are in a foreign land? How are these rights important for Australia to understand the situation of asylum seekers and Australia needs to resolve them? In the following discussion, these questions will be analysed; it could not be ignored by Australian government anymore while it will continue to face the refugee's problem in the coming decades.

Human Rights Phenomenon and Asylum Seekers Rights

Development of Human Rights

The modern idea of human rights has been developed from the idea of 'Natural Rights'. Hugo Grotius and John Locke describe these rights as natural rights.¹⁰³ According to Hugo Grotius and John Locke, natural rights are considered as the first stages of human rights development. Recent phenomena of human rights cannot develop it without natural rights. USA Declaration of Independence (1776) also noted that life, liberty, and happiness are core rights of the people. French Declaration of the Rights of man and the citizen (1789) was also a very important document from human rights point of view. Some other important conventions which become the major stairs for the modern human rights were; Vienna Congress (1815), Brussels Convention (1890), Hume Convention (1907), Slavery Convention (1926), and Geneva Convention (1926) etc. The human right issue got much highlighted after the Second World War. The second decade of 20th century was worst decade for human beings, due to First World War (1914-1919) and Second World War (1939-1945). This was the time when human rights issues were put under international institution for debate, especially in United Nation Organization. The major organisation was League of Nation that was established with the purpose to secure humanity from war and to protect humanity from threatening elements. League of Nation failed to give security to the people. The major question was how to give security to human beings? End of Second World War brought a lot of things for human beings security. United Nations organisation was established after the end of Second World War and United Nation General Assembly (UNGA) passed a resolution (217A) in 1948 which was about the declaration of the human rights. The Universal declaration of the human

¹⁰³Heywood, A (2011), *Global Politics*, Palgrave Macmillan, Page no, 303-316

rights (UDHR) was the milestone for the humans. UDHR have 30 articles with Preamble.

Every person has a right to enjoy it without any discrimination on the ground of race, colour, sex, language, religion, political opinion, national or social origin etc. Human rights protect freedom and dignity. They are provided in treaties, customary international law, bodies or principles and other sources of law. Human right are three types which are¹⁰⁴;

1. Civil and political rights
2. Economic, social and cultural rights
3. Solidarity rights

Civil and Political Rights

Civil and political right are the modern form of natural rights. These are first generation rights. These rights are seen as negative rights. Civil liberty includes rights to freedom of speech, freedom of the press, freedom of religion and conscience, freedom of movement and freedom to association. They are very important in the modern democracies.

Economic, Social and Cultural Rights

These rights are identified under the positive rights and these are for welfare purpose or we can say that these are the welfare rights. These rights developed in the 20th century especially post 1945. These rights include rights to social security, right to work, right to paid holiday, right to the healthcare, right to education etc. These rights are based on the socialist ideology and come under second generation rights. It was the result of social injustice and unequal class power. The major thing is that human dignity was affected by poverty, disease and ignorance of social level, so economic, social and cultural rights became very important in this context. Economic development will improve the lifestyle of people; reduce poverty and disease; It also helps to improve the social status. Social and culture rights are also important as such as economic right.

Solidarity Rights

¹⁰⁴ Heywood, A (2011), *Global Politics*, Palgrave Macmillan, Page no, 303-316

Solidarity rights evolved as third generation rights after 1945. Most important thing of these rights is that these are for social groups and whole societies but not for single individuals. Solidarity right includes development, right to peace, right of environment protection and multicultural rights. In the recent global world, migration is a very important issue. Migration is very common, due to the civil war, terror activities, for better life style and climate change. In this context, solidarity right became more important for migrants.

Although, there were lots of convention and conference on human rights issue, but 1948 UDHR has developed to promote and protect human rights. UN declaration is not legally binding treaty; it comes under customary international law. It is a tool which can be used by diplomatic or moral pressure to promote the human rights or to save human rights. UN High Commissioner established in 2006 under United Nations General Assembly to promote and protect human rights. Major International human rights treaties are the milestone of human right history.¹⁰⁵ These are;

- Universal Declaration of Human Rights (UDHR) 1948
- International Covenant on Economic, Social, and Cultural Rights 1966
- International Covenant on Civil and Political Rights (ICCPR) 1966
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 1965
- Convention on the Elimination of all Forms of Discrimination against Women (1979)
- U.N. Convention Against Torture and other Cruel, Inhuman and Degrading, Treatment or Punishment (1984)
- Convention on the Rights of the Child (1989)
- International Convention on the Protection of the Rights of all Migrants Worker and Members of their Families (1990)
- Convention on the Rights of Persons with Disabilities (2006)

¹⁰⁵ Baylis, J., Smith, S., Owens P. (2014). The Globalization of World Politics: An Introduction to International Relations International. Oxford University Press, sixth edition, page no 361-375

Sometimes human rights become very critical in state sovereignty and safety as like Australia and the questions the human rights of asylum seekers. Terrorism and human trafficking are some issues where human rights become questionable.

Australia's Refugee Policy and Human Rights Violation

Australia refugee policy is being very critical for asylum seeker considering their human rights. Australia MDPs, offshore refugee policy, regional processing centre are becoming the epicentre for the human rights violation.¹⁰⁶ According to Human Rights Watch report (2015), Australian governments failed to protect human rights of refugees and asylum seekers. United Nation Refugee Agency (UNHRC) also criticised Australian offshore detention policy because of its “return-oriented” nature. Australian offshore detention centres are not only overcrowded but severely ignored the issue of minimum health and hygiene. The processing into the centre is not transparent and these became the symbol of mental and physical torture. Some media report also quoted that Nauru and Manus detention are not safe for asylum seekers. Manus detention centres also have gay asylum seekers. The report says that because of gay asylum seekers centre has a fear of harassment and sexual assault that's why PNG government has also offered cash to gay asylum seekers so that they go back their homeland.¹⁰⁷

Physical Condition of Detainees

In addition, the physical condition of the detainees is also critical. They lack of private space. They live in dormitories which had 50 beds in one room. Mental health staff also admitted that lack of privacy is a major concern. It is very difficult for detainees to find space for themselves and these conditions are the reason for anxiety or Post-Traumatic Stress Disorder. Condition of the processing detention centre is like a military camp because security staff is always there because of this asylum seekers become as a prison in these detention centres. Detainees are prohibited from leaving centre's gates and security guards are present everywhere in detention centres.¹⁰⁸

¹⁰⁶ *Amnesty International (2013), “This is Breaking People’ Human Rights Violation at Australia’s Asylum Seeker Processing Centre on Manus Island, Papua New Guinea.”, Amnesty International Publications, Landon (UK).

¹⁰⁷ Human Right Watch (2015), World Report 2016- Event of 2014, United States of America

¹⁰⁸ *Amnesty International (2013), “This is Breaking People’ Human Rights Violation at Australia’s Asylum Seeker Processing Centre on Manus Island, Papua New Guinea.”, Amnesty International Publications, Landon (UK).

According to Amnesty International 2013 Report, structure of detention centre was the combination of World War II era building with concrete walls and iron roofs which is very painful in the summer season. Detainees faced so much of problems in the detention centres; Security staffs of G4S were always present there and patrolled all areas of the detention centre. Nauru's climate is not good for people. Nauru is unfit for agriculture and natural vegetation. Along with, extreme climatic conditions and reliability is only on processed food leading to innumerable diseases among the locals. One can imagine the like and plight of the people who are forcefully detained in this region.

Asylum Seeker's Health and Human Right Violation

The human rights group condemns detention centre health facility. According to an eminent psychologist, Australia's detention centres are the factory of mental torture.¹⁰⁹ Immigration detention centre are always under probe because of health right of asylum seekers. Immigration detention has high rate of anxiety, depression, self-harm, suicide case and post-traumatic stress disorder. According to a medical professional, asylum seekers are under serious mental and physical illness in immigration detention centre. Nauru processing centre is infamous for hunger strikes and self-harm.¹¹⁰ In a Senate committee inquiry revealed that Nauru's detainee population were the victims of most mental illness. The mental health problems are not only in the Nauru detention centre, but it is also very common in Manus detention centre. According to DIMA reports, self-harm, threats of suicide and three suicides attempted in PNG processing detention centre between October 2001 and December 2002. Dutch psychiatrist Dr Maarten Dormaar was employed by International Organization of Migration in Nauru detention centre in mid-2002. He talks about the impact of offshore detention centres on the asylum seekers mental health. He said that he had not seen such torture till date. Mental health or psychiatric health treatment is essential for asylum seekers. He also told that he gave many reports on the mental illness of the Nauru detainees. Even Dr Dormaar resigned in protest over the condition in the camps and health issues. One could imagine the situation with the fact that People were facing irregular sleeping patterns. The major reason of lack of

¹⁰⁹ Henderson, C. (2014), "Australia's Treatment of Asylum Seekers from Human Rights Violations to Crimes against Humanity." *Journal of International Criminal Justice*, 12(5), 1161-1181.

¹¹⁰ Human Right Watch (2015), World Report 2016- Event of 2014, United States of America

sleep was anxiety of welfare of family member and uncertainty of future in detention centre.

Situation of Children and Women in Detention Centres

Women and children are also detainees in detention centres. They are also facing torture in detention centres. Rapes, sexual assaults are common in detention centres. In 2015, Minister of Immigration and Border Protection found evidence of at least three rapes in Nauru as well as a lot of sexual assault and sexual harassment, physical assault including women being offered longer showers if they allowed security guards to watch them, women being propositioned for sex and offered cigarettes in return.¹¹¹ A report found that between January 2013 and March 2014, there were 33 incidents of reported sexual assault (including children) in Australian network of detention centres.¹¹²

Children are also detainee in the Australia processing detention centres especially in Nauru processing centre. The detention centre on Nauru is an extremely dangerous and unsuitable environment for children because they have lack of education, or lack of childhood seeing the elder's suffering.¹¹³ Numbers of the children in detention centre is high. Due to children age, they need mental, physical and psychological development but Nauru processing centre environment is not safe for children, they are mentally and physically torture in centres as suicide, self-harm is very common in detention centre and it impacts on the mental health of children. A study on child asylum seeker founded that situation of offshore processing is disastrous for children detainee. According to the Independent Moss Report, sexual and physical assault is common in centre. Former psychiatrists and social workers released an open letter stating that Australia government aware of sexual assault but failed to act upon it.

The climate of Manus Island has always been between 30 to 40 degrees Celsius with high humidity. In rainy season, the situation become worse because the sewage smells in the camps, detainee does not have shoes and umbrellas to protect themselves from the rain. According to UN human rights worker, Asylum seekers are spending

¹¹¹ Durham, J. et al. (2016), "The Need for a Rights-based Public Health Approach to Australian Asylum Seeker Health.", *Public Health Reviews*, 37(1): 6

¹¹² Ibid

¹¹³ Farrell, Paul (2016), "UN to question Nauru over abuse of Children in Australian-run Detention" *The Guardian*, UK, London 13 September 2016.

between one and five hours a day in the queue for canteen, for toilets and shower. Lack of drinking water is also a major problem in detention centres. According to the doctor they need 5 litres to prevent dehydration but they did not have enough drinking water. As human Being, they have all the rights of having access to their essentials. Australia failed to provide them. Along with, Australian government did not regret for this situation even they continuously blamed the refugees for the situation. There are some group of people in Australia who believe that some of the refugees are taking advantage of the situations to get access into Australia.

Privatisation of Immigration Detention Centres and Violations of Human Rights

Privatisation of detention centre is the major reason behind human rights violation. Privatisation always makes sense in profit making business. Human right activists criticised privatisation of detention centre in Australia. The human right violation has increased after privatisation of IDCs. ACM contract (February 1998 to December 2003) was first phase of privatisation. ACM got three separate contracts: a general agreement, an occupational licence agreement and detention service contract. During ACM contract, self-harm, hunger strike, suicides were common in Australian immigration detention centre. According to UN working group, IDCs detainees were in the worst situation; self-mutilation and suicide, use of tear gas and water cannons were common. Children were also detained and they were affecting by these incident. The burden of mental illness was common in IDCs detainees. GSL company period also became the symbol of human rights violation. Australian human right commission said that company breached human rights and they failed to treat the detainee with humanity and dignity. Protest, self-harm and mental illness was remained a feature of IDCs. Population decreased rapidly during the GSL Company's period because it was asking to pay for detention facilities. Serco Ltd got third time tender of IDCs. This time again, Human right violation increased with detainees. Transfield Company has recently got a contract and this time detention centres are heavily privatised and human right violation is on the peak. According to a Recent report of detention centre, assaults, sexual abuse, self-harm attempts, child abuse and low standard of living condition are common phenomena.¹¹⁴

¹¹⁴ Farrell, P. (2017) "Immigration Department Suppressed Detention Contractor's Name due to Boycotts", The Guardian, 28 March 2017

Table-2.7: Contract with Private Companies for the Detention Centres

Organisation	Time period	Services provided	Total Aus Tender value (\$ millions)^a
Transfield Services (Australia) Pty Ltd	September 2012– March 2014	Nauru—Garrison support	\$351
	March 2014– February 2017 ^b	Nauru and Manus Island— Garrison support and welfare services	\$2190
G4S Australia and New Zealand	October 2012– March 2014	Manus Island— Garrison support	\$245
Save the Children	October 2012– June 2013	Care and support services	\$8
	August 2013– August 2014	Provision of services to minors	\$37
	September 2014– October 2015	Welfare and education services	\$100
	May 2014– January 2015	Refugee settlement services	\$15
The Salvation Army	September 2012– January 2014	Welfare support for single men	\$99
TOTAL			\$3045

Source: Australia National Audit Office (2016)¹¹⁵

¹¹⁵ *Australia National Audit Office (2016), “Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services” [Online: web] 13 June 2017 URL: <https://www.anao.gov.au/work/performance-audit/offshore-processing-centres-nauru-and-papua-new-guinea-procurement>

Conclusion

In this chapter, offshore and onshore policies have been explained in detail. Along with this, the aim and results of these two Australian policies are also explained in detail. Asylum seekers human rights violations are very controversial part of Australian refugee policy. Australian Refugee Policy has always been condemned by the human rights activists. Privatization did the worst condition of the detention centres. Women and children are soft target in the detention centres. Earlier study proof that Australian processing centres are not safe for the asylum seekers, detention centres should be close or should take some effective step for stop the human rights violation in detention centres.

Chapter-4

International Law and Obligations on Australia in Case of Human Rights Violations

Introduction

Refugee management has become one of the most important international issues in the present times. Australia hosting the largest immigration population in the world is facing the issue of one of the highest human rights violation ever in the human history. The International rules based mechanism is binding all the countries that are signatories to such conventions. In the case of Australia, it has ratified the UN Convention relating to the Status of Refugee 1951, and it also consented to the Refugee Protocol of UNO which says refugee rights are important it should be protect for the violation. Refugee convention main purpose was to help refugees and protect refugee rights and to ensure that it is the common burden sharing.¹¹⁶ Also, Australia ratified major human rights treaties, these are;¹¹⁷

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social, and Cultural Rights (ICESCR)
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)
- United Nation Convention Against Torture and other Cruel, Inhuman and Degrading, Treatment or Punishment (CAT)
- Convention on the Rights of the Child (CROC)
- Protocol against the Smuggling of Migrants by Land, Sea, and Air¹¹⁸.

¹¹⁶ Penovic, T. and Dastyari, A. (2007), "Boatloads of Incongruity: The Evolution of Australia's Offshore Processing Regime", *Australian Journal of Human Rights*, 13(33).

¹¹⁷ Ibid

¹¹⁸ This protocol prevented the smuggling of migrants by Land, Sea and Air, which protects the rights and humane treatment of smuggled migrants. It also protects particularly from abuse and inhumane treatment of organised groups, especially from international and transnational organised crime that work across country and maritime borders. This protocol is one of three protocols supplementing the convention against Transnational Organised Crime, adopted by UN General Assembly in 2000. Australia government ratifies this protocol on 27 May 2004. Durham, J. et al. (2016), "The Need for a Rights-based Public Health Approach to Australian Asylum Seeker Health.", *Public Health Reviews*, 37(1): 6.

Although it is not necessary that human rights violation takes place only during the war, in the present scenario, human rights are also violated by the country on the pretext of security, sovereignty, and to counter terrorism. In recent years, states adopted counter-terrorism policies which are often serious challenges to human rights and the rule of law. States are adopting counter-terrorism mechanisms such as torture and ill-treatment of refugees; detention centers option, which becomes symbols of torture and violation of human rights. Australia government also introduced so many policies which were related to the counter terrorism and prevent illegal migrants. Operation Sovereign Border (OBS) was one of them. Counter-Terrorism is one such objective of OBS. Terrorism has a real and direct impact on the human rights. The threat of terror attacks is a major reason of the refugee human rights violation.

The Breakdown of International Human Rights and Refugee Law by Australia

Right to Personal Liberty and Breaches International Human Rights Law

Right to personal liberty is the most important and elementary common law rights and one of the most fundamental human rights under international law.¹¹⁹ Article 9(1) of ICCPR provides that no one will subject of arbitrary detention. Use of detention with the arbitrary purpose breach ICCPR Article 9(1).¹²⁰ Article 9(4) provides that a person can be detained after the legal process in court. Court order will be decided that detention is lawful or unlawful, but Australia also breaches this article.¹²¹ CROC also prohibits arbitrary detention.¹²² Article 37 (b) of CROC prohibits the unlawful or arbitrary deprivation of liberty of children and stipulate that arrest, detention or imprisonment of a child must be ‘a measure of last resort and for the shortest appropriate period.’¹²³ But under Australia offshore processing, it requires unlawful migrants (includes children and women) will be detained until they get a valid visa or will be removed permanently from Australia.

¹¹⁹ Penovic, T. and Dastyari, A. (2007), “Boatloads of Incongruity: The Evolution of Australia's Offshore Processing Regime”, *Australian Journal of Human Rights*, 13(33).

¹²⁰ Taylor S. (2006) “Immigration Detention Reforms: A Small Gain in Human Rights”, *A Journal of Policy Analysis and Reform*, 13 (1): 49-62.

¹²¹ Ibid

¹²² Penovic, T. and Dastyari, A. (2007), “Boatloads of Incongruity: The Evolution of Australia's Offshore Processing Regime”, *Australian Journal of Human Rights*, 13(33).

¹²³ Ibid

Right to Basic Health and International Human Right Law

Right to health is based on human dignity. Access to basic health care service is fundamental human rights especially important for vulnerable persons those who are seeking asylum in detention centers. It is given in a significant number of international human rights treaties such as¹²⁴ Article 12 of ICCPR, Article 25 of Convention on the Rights of Person with Disabilities, Article 12 of CEDAW, Article 24 of CROC and Article 4 of ICERD. The UN Committee on Economic, Social and Cultural Rights has summarized in its General Comment that the Right to Health is favored in Article 12(1) of International Covenant on Economic, Social and Cultural Rights. It contains two elements: one is the right to timely and appropriate health care and underlying determinants of health, specifically “access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition, and housing, healthy occupational and environmental conditions. Second is access to health-related education and information, including on sexual and reproductive health”.¹²⁵ Australia breaches above both health rights. Detention center becomes the symbol of torture and mental illness. Depression, self-harm, suicidal ideation and post-traumatic stress disorder and high rate of anxiety are common in immigration detention centers.¹²⁶

Children Rights Violation in Detention Center and International Law

CROC is protecting children right worldwide. Article 19(1) protects children from the mental and physical violence while Australia detention centers situation is very harmful for children, the act of suicide and self-harm is common which affect the mental health of children. Article 28 requires children education should be provided in the detention center but in Nauru processing detention center, the schooling provided was an insufficient and other issue are also there like teachers were rarely paid. When refugees' children attend the school they were tortured by native children and they ask them to go their respective homeland, so they prefer to dropout. Under Article 27 of CROC, children should enjoy an adequate standard of living for their physical, mental, spiritual, moral and social development. Due to the children's needs and vulnerabilities, arbitrary detention arguably may amount to torture or cruel,

¹²⁴ Durham, J. et al. (2016), “The Need for a Rights-based Public Health Approach to Australian Asylum Seeker Health.”, *Public Health Reviews*, 37(1): 6.

¹²⁵ Ibid

¹²⁶ Penovic, T. and Dastyari, A. (2007), “Boatloads of Incongruity: The Evolution of Australia's Offshore Processing Regime”, *Australian Journal of Human Rights*, 13(33).

inhuman or degrading treatment in violation of Article 37(a) of CROC, Article 7 of the ICCPR and article 1 or 16 of CAT.

Principle of Non-Refoulement and Asylum Seeker of Australia

Australia offshore processing centers are still going on in Nauru and Manus island of PNG. Australia, PNG, and Nauru are the state party of Refugee Convention 1951 and 1967 Refugee Protocol. These Convention and Protocol provide that “every person has a right to seek and enjoy the asylum seeker without violation of their human rights” which means a person can take a asylum in other country with dignity. The Principle of Non-Refoulement is established under Article 33 of the 1951 convention. Article 33(1) provides that a member state of Convention cannot return any refugee¹²⁷ or asylum seeker¹²⁸ in any way whatever to any country or territories where his life or freedom would be threatened on basis of his race, religion, nationality, membership of a particular social group or political opinion. As a result, the principle of non-refoulement applies to risks of violations of the prohibition of torture and cruel, inhuman or degrading treatment or punishment, the right to life, and flagrant denial of fair trial and arbitrary detention¹²⁹ But Australia continued transfer of the asylum seekers forcefully. Nauru and Manus environment is not safe for a refugee which is discussed earlier.

Role of Nauru’s Government

Nauru is also the state party of the Refugee convention and under this convention it also has obligation to protect the human right of asylum seekers. Nauru government should also be blamed for violation of human rights violation in Australia’s offshore detention facilities. Independent MP Andrew Wilkie of Australia said that The Republic of Nauru is virtually a failed state and the government only survives with the

¹²⁷ According to the 1951 convention on refugee, a refugee is a person who (1) has a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion, (2) is outside the country of his or her nationality (or, if stateless, outside the country of his or her former habitual residence), and (3) is unable to avail himself or herself of that country’s protection or is unwilling to do so because of such fear.

¹²⁸ According to the UNHRC, An asylum-seeker is someone whose request for sanctuary has yet to be processed. Every person has the right to be an asylum seeker.

¹²⁹ *Amnesty International (2013), “This is Breaking People’ Human Rights Violation at Australia’s Asylum Seeker Processing Centre on Manus Island, Papua New Guinea.”, Amnesty International Publications, Landon (UK).

benefit of Australian financial and other assistance.¹³⁰ He also said that Australia needed a permanent and sustainable solution for asylum seekers. Matt Tinkler (2015 chief executive of Save the Children NGO) said that "There is no way the Nauru government would do this without the encouragement and imprimatur of the Australian Government,"¹³¹ offshore detention is at Limbo in Nauru and this was run by Broadspectrum limited which is a private company. Broadspectrum changed its name Transfiled Service to Broadspectrum limited; its owner was involved in the human rights abuses in the detention centres.¹³² Nauru government announced in 2015 that detention centre will not be closed; now detainees can go outside the detention centres.¹³³ According to UNICEF, Nauru government failed to protect asylum seekers rights; detention centres education, child protection, health or social welfare system which is required in detention centres.¹³⁴

Role of Papua New Guinea's Government

Manus Island is other detention in the PNG with severe human rights violation, exactly as that in Nauru. In 2016 PNG high court said that detention centres are unconstitutional it should not continue.¹³⁵ PNG government failed to protect human rights of asylum seekers in the detention centres. PNG also a state party of Refugee Convention and other important human rights treaty; it should implement the international law in detention centres. PNG being a big state among the microstates of the Pacific does not depend on Australians aid for its survival but still for extra perks PNG allowed the detention centres to be run and another reason could be to be good in Australian eye.

¹³⁰ Anna Henderson and Stephanie Anderson (2015) "Nauru to process all asylum seekers in offshore detention centre 'within the next week'; refugees among those to assess applications", News, Australia 5 Oct 2015

¹³¹ Ibid

¹³² Jarni Blakkarly (2016), "Nauru's detention centre: 'Many of us think of suicide'", Al Jazeera , Doha, Qatar, 30 May 2016

¹³³ Anna Henderson and Stephanie Anderson (2015) "Nauru to process all asylum seekers in offshore detention centre 'within the next week'; refugees among those to assess applications", News, Australia 5 Oct 2015

¹³⁴ Pamela Bovkoff et al (2016), "Australian High Court rejects challenge to offshore immigration detention" CNN International Edition, February 3, 2016

¹³⁵ Ben Doherty et al (2016), "Papua New Guinea court rules detention of asylum seekers on Manus Island illegal"the Guardian 26 April 2016

International Law and Obligations on Australia

What is International Law?

The important question is that how does International Law intervene in Australia's human rights violation at detention centers not only at offshore regions like Manus and Nauru but also in onshore detention centers? In this context, what international law is to understand? International law consisted of rules and principle governing the relations and dealing of nations with each other. International law has major fields which are:¹³⁶

- International Economic Law
- International Security Law
- International Criminal Law
- International Environment Law
- International Diplomatic Law
- International Humanitarian Law
- International Human Rights Law
- International Refugee Law

But in the Australian context, only international human right law and international refugee law will be discussed in further studies. As far as the subject of International Law is concerned, Customary Laws and Conventional Law include in its primary source. Under customary international law, the state follows some general practices; it's not under legal obligations. Customary law was codified under Vienna Convention on Law of the treaty. Conventional international law drives from an international agreement between the contracting state parties. Agreement made under the rule of international law with the obligations on member states under the Charter of United Nations. The International agreement makes laws for the parties to the agreement. Customary law and international agreement law has equal authority as International law. The general principle is common regarding the system of national law which is a secondary source of international law. States were the main subject of

¹³⁶ "International Law" Legal Information Institute, [online: web] Accessed 26 June 2017 URL: https://www.law.cornell.edu/wex/international_law

international law, but individual and non-state international organizations became the subject of international law especially after the end of Second World War.

International law imposes certain duties on individuals of nations. International organizations play very important role in it. United Nations is very important influential among international organizations.

Definition of State under International Law

The state is a historic institution. It came into view in 15th and 16th century. Treaty of Westphalia (1648) gave the official form to a state; it established the state as a 'sovereign unit'¹³⁷ and also made state as a principle actor in the international system. The classic definition of the state in international law is defined in Montevideo convention on the rights and duties of the state (1933). Under the Article 1 of Montevideo convention state has four characteristics:

1. A defined territory
2. A permanent population
3. An effective government
4. The capacity to enter into relation with another state

According to the Realist approach of International Relations, State is very important actors in the international system, and they always focus on power maximization behavior and self-interest. Because of self-interest, there is always a clash between state sovereignty and international law. According to the liberal approach of international relation, the state is emerged for the need of society and reflects the citizen's interest.

International Law and Australia's Sovereignty

There are major questions that what is more important state law or international law; How can implement international law in the international system and how international law can intervene in Australia state sovereignty on the question of

¹³⁷ Sovereignty was first defined by a French philosopher Jean Bodin; he defined sovereignty as 'the absolute and perpetual power of a commonwealth'. After Jean Bodin, Thomas Hobbes explained 'sovereignty as self seeking and power interested nature of human beings'. Hobbes defined sovereignty as a monopoly of coercive power and advocated that it be vested in the hand of single ruler (whether this was a monarch, oligarchic group or democratic assembly). In recent time, state has dualist nature of sovereignty one is internal and other is external. In internal sovereignty is the notion of supreme power within the state boundaries; external sovereignty is the notion in which state use the absolute and unlimited power on the world state. Heywood, A (2011), *Global Politic*, Palgrave Macmillan, Page no.111-135

human right violation? Along with these questions, Arrival of an unauthorized asylum seeker in Australia became public debate in recent years. Australian government linked it directly with border protection. Most of time The Minister for Immigration and Multicultural and Indigenous Affairs stated that Australia is a sovereign country and it has a right to defend the integrity of its border. It is also cleared that Australia has right to establish its immigration policy and can maintain its national security. The concept of sovereignty is changed in the modern era. Sovereignty concept is not absolute in 21st century because now the problems of this century are common for every state such as global warming, climate change, terrorism, human trafficking etc. Along with that this is the era of cooperation among states especially in economic, social and cultural relationship. So this is important that states have some common responsibilities, they cannot do everything whatever they want, whenever they want, to whomever they want. If the state does arbitrarily, then it will be a violation of the International law. Australia should respect certain obligation and rights if it wants to maintain its position within the international community.

Role of International Law in Australian Human Rights Violation

International law is playing very significant role in Australian human rights violation. There are two ways to interfere in human rights violations. One is bilaterally and second is multi-laterally. States can interfere bilaterally in particular country which is violating human rights. But the most important thing is that international actor always reacts according to their self-interest. For instance, there are two countries A and B; if Country A is violating human rights of asylum seekers or refugees than Country B will interfere only on its self-interest such as asylum seeker can be the people of country B citizens; or it may be the issue which can be related with its respect of country B at international level. There is a practical example of India and Pakistan; both countries raise voice against each other at international stage for human rights violation; Pakistan blames India for human rights violation in Jammu & Kashmir and India blame Pakistan for human rights violation in Sindh and Baluchistan. Bilateral interference is effective tool in the protection of human rights violations. In case of Australia, New Zealand gave the offer to the Australian government to resettle 150 refugees in one year term in 2016. Australia did not accept this till now. Australia did the agreement with USA former President Barak Obama to resettle refugee in the USA, but Obama's Successive government opposed this agreement. Australia also did

some agreement with Indonesia, Cambodia, and Vietnam, which is discussed in the earlier chapter; second is multilaterally; International Organization efforts always affected particular country to save the human rights. Multilateral resolution is more effective than bilateral resolutions. There are some important organizations which are contributing in protecting the human rights of refugee and asylum seekers in Australian offshore and onshore detention centers.

Contribution of Major International Organizations

Human rights violation of Australian detention centres is mostly condemned by the international organization and international NGOs. Further studies will explained the contribution of the major international organizations like United Nations High Commissioner for Refugee (UNHCR), Amnesty International and Human Rights Watch etc.

Amnesty International and Human Right Watch

Amnesty International Organization is an international NGO that “takes injustice personally.” Its major aims are protecting human rights, mobilizing people opinion and dialogue and pressuring governments to take action against human rights violation. Human Right Watch (HRW) is a non-profitable non-governmental human rights organization. It is known for accurate fact-finding, impartial reporting, effective use of media and targeted advocacy, often in partnership with local human rights groups.¹³⁸ The major aim of Human Rights Watch is to promote human rights and justice around the world. Human Rights Watch released an annual report card on the human rights violation over the 90 countries of the World. Human Right Watch criticized Australia detention policies in its 2017 report.

According to HRW, “PNG and Australia should move towards close to Manus Island Detention Centre because PNG Supreme Court already said that it is illegal and unconstitutional.”¹³⁹ HRW found Australia is not taking a step to close it: many refugees are afraid to leave the center due to the act of violence. According to HRW, “Refugee and asylum seekers in Manus have suffered enough, now it’s time to let

¹³⁸ *Human Right Watch (2017) [online: web] Accessed 25 June 2017 URL: <https://www.hrw.org/about>

¹³⁹ Helen Davidson and Ben Doherty (2017), “Human Rights Watch report card gives Australia a fail for offshore detention”, The Guardian, UK, London, 12 January 2017

them move on with their lives in safety and dignity.”¹⁴⁰ HRW also found that PNG was one of the most dangerous places in the world for women and girls in 2016.¹⁴¹ Nauru did not include in the report but HRW’s Australian director, Elaine Pearson, told Guardian Australia: “Nauru has been backsliding on human rights in the past year.”¹⁴² Nauru imposes many limits on freedom of expression and the media- it didn’t allow a foreign journalist to enter the country.

According to human rights watch and Amnesty International, Australian government is failed to protect the human rights of the refugee in Australia.¹⁴³ According to Anna Neistat (senior director of research at Amnesty International), “Australia policy of exiling asylum seekers who arrive by boat is cruel in the extreme” Anna conducted an investigation on the island for the organization. Australian Human Rights Commission (AHRC), the Office of the United Nations High Commissioner for Refugee (UNCHR), a Senate Select Committee¹⁴⁴ and government–appointed independent expert had each highlighted issues and called on the Australian government to change them. Amnesty International said that Australian government had violated ‘the rights to be free from torture’, other ill-treatment and arbitrary detention as well as other fundamental protections. Amnesty International and Human rights Watch found that the standard of medical care for the refugee and asylum seeker is very poor in Nauru but when International Health and Medical Services (IHMS)¹⁴⁵ staffs denied the Amnesty International allegations on health care in Nauru. Human rights and Amnesty International watched cases of violation and torture.

¹⁴⁰ Ibid

¹⁴¹ Ibid

¹⁴² Ibid

¹⁴³ Human Rights Watch (2016), “Australia: Appalling Abuse, Neglect of Refugees on Nauru” Accessed 26 June 2017 URL: <https://www.hrw.org/news/2016/08/02/australia-appalling-abuse-neglect-refugees-nauru>

¹⁴⁴ On 26 March 2015, the senate established the Select Committee on the recent allegation relating to the condition and circumstances at the regional processing centre in Nauru. *Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru” [online: web] accessed 26 June 2017 URL: http://www.aph.gov.au/select_regionalprocessingnauru

¹⁴⁵ A company hired by the Australian government, is the main health service provider for refugees and asylum seekers. Human Rights Watch (2016), “Australia: Appalling Abuse, Neglect of Refugees on Nauru” Accessed 26 June 2017 URL: <https://www.hrw.org/news/2016/08/02/australia-appalling-abuse-neglect-refugees-nauru>

Role of United Nations High Commissioner for Refugee (UNHCR)

A state cannot avoid its human rights obligations towards an individual. United Nations High Commissioner for Refugee (UNHCR),¹⁴⁶ the human rights committee (it is work on the principle of ICCPR), the Committee against Torture (which is monitors with the convention against torture), and other international bodies have confirmed, the state obligation towards protection of human rights. UNHCR concluded Australia on its Regional Resettlement Arrangement in May 2013, According to UNHCR, “Under international law, any excision of territory for a specific domestic purpose has no bearing on the obligation of a country to abide by its international treaty obligations which apply to all of its territories. UNHCR includes the 1951 Refugee Convention, to which Australia is a party....”¹⁴⁷ Along with UNHCR said that it is a joint responsibility of Australia and PNG. They should work together for the safeguarding the human rights of asylum seekers those who transferred. UNHCR confirmed that it is a legal duty under international law for care and protection of all asylum seekers those who transferred from Australia to PNG. Both states have equal responsibility.

Papua New Guinea’s obligation under international law is also same as any other sovereign country. PNG is obligated under the customary international law as a party state to the Refugee Conventions and its Protocol. It must respect the principle of avoidance of stateless which is a requirement of customary international law. International Commission of Jurists has observed that there should be protected against the threat to life or freedom.

Role of Other Important UN bodies in Australian Human Rights Violations

In September 2016, UN 73rd committee on the rights of the child was held in Geneva. Australia Nauru processing center was under hard scrutiny. United Nation was hearing over the treatment of child asylum seekers. Due to leakage of reports of The Guardian (August 2016) on Nauru detention centre, the domestic and international levels of the Australian government were widely condemned. These files were more

¹⁴⁶ It is an UN refugee agency, which work for the refugee resettlement all over the World. It was formed in 1950.

¹⁴⁷ *Amnesty International (2013), “This is Breaking People’ Human Rights Violation at Australia’s Asylum Seeker Processing Centre on Manus Island, Papua New Guinea.”, Amnesty International Publications, Landon (UK).

than 2,000, which was on detention center facilities especially the condition of the children. United Nations Committee had a question to the Nauru, to provide a protective environment in the detention center.¹⁴⁸ UN working document on Nauru, asked Nauru to clarify what has been done to protect child victims and child witnesses of sexual abuse, “including among asylum-seeking and refugee children, and to provide medical and psychological assistance.”¹⁴⁹ After this incident Australian government investigated these allegations of child abuse in Nauru and Manus. Australia has taken a significant step towards human rights violations after being under pressure. And it also put pressure on Nauru to secure the human rights of asylum seekers. So this is sure that international organization can play an effective role in the protection of Human rights. In addition, Office of the United Nations High Commissioner for Human Rights (OHCHR) is the main official leading body under the United Nations Secretariat whose major work is to promote human rights under international law. Under the term of international law is Universal Declaration of Human Rights 1948. OHCHR aim is to spread awareness for human rights. It wants to spread peace through dialogue and participation. Its main projects are handling by civil societies and working with the International Criminal Court.¹⁵⁰ OHCHR is also working for safeguarding the human rights violations in Australia.

Role of Domestic Human Rights Protection Bodies in the Protection of Human Rights Violation

Australian Human Rights Commission is one of the most important human rights protection body in Australia. Australian Human Rights Commission was established by the federal government under 1986 act, with the vision of “human rights: everyone, everywhere, everyday.” The Commission has made periodic inspection of the detention center to check the condition and human rights standards of the detention center. It also received complaints and conducted inquiries into a condition in immigration detention centers. Australian national human rights commission and Ombudsman are also playing a significant role in the protection of human rights.

¹⁴⁸ Farrell, Paul (2016), “UN to question Nauru over abuse of Children in Australian-run Detention” The Guardian, UK, London 13 September 2016.

¹⁴⁹ Ibid

¹⁵⁰ Joel, S. (2016), “Top 6 International Organisations that are fighting for Human Rights”, [online: web] Accessed 25 June 2017 URL: <https://yourstory.com/2016/12/human-rights-organisations/>

Humanitarian Aid as Australian Foreign Policy Major Objectives

Foreign policy is important as a mechanism through which usually national government manages the state's relations with other states and with international bodies, highlighting the role that choice and decision play in global politics.¹⁵¹ Australian government views are very inseparable (which is different from others) on the protection human rights. According to the Minister for Foreign Affairs, Australian Foreign policy has four major principles towards the human rights protection which are:¹⁵²

1. Human rights are important to foreign policy because the treatment of individual is a matter of concern to Australia
2. It is also mentioned in its foreign policy objective that the protection of human rights is important for Australia and it will help in border security and economic interest
3. Government policies on human rights are based on the Universal Declaration of Human rights and other HR law which protects the Human rights law.
4. Government considers attention should be given to the promotion, protection, and implementation of all human rights

The major question is that Australian foreign policy emphasizes on Humanitarian aid and be a part of the peacekeeping force, but is Australia's foreign policy supporting humanitarian issues *per se* or is it only an expeditionary force. But in last chapter this is discussed that human rights violation is at peak in Australia detention facilities, Australia is not successful in protecting the human rights of asylum seekers. So Australia should stop duality on the human rights issues because thing makes Australia humanitarian programme fake.

Australian Aspects

The Economic factor is very important in the Australian detention facilities because Australians are not happy to waste their tax money on detention facilities. The Australian government spent 415 million Australian dollars (US\$314 million) on its

¹⁵¹ Heywood, A (2011), *Global Politics*, Palgrave Macmillan, Page no.111-135

¹⁵² "The Place of Human Rights in Australian Relations", [online: web] Accessed 27 June 2017 URL:https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwi_ncni7d3UAhUIMI8KHaRMCd0QFggIMAA&url=http%3A%2F%2Fwww.aph.gov.au%2FParliamentary_Business%2FCommittees%2FHouse_of_Representatives_Committees%3Furl%3Djfa dt%2Fdialog%2Fdialog_ch3.pdf&usq=AFQjCNHUbY7hWzPNbvr6XzGdUMqxxDI_CA

Nauru operations in the fiscal year ending on April 30, 2015, nearly \$350,000 for each person held on the island in that year alone.¹⁵³ Australian taxpayers demand that it is our money; it should not be using on the asylum seekers those who are illegal. This tax money is for the citizen's development not for the outsiders; the social issue is also a very important in this context. Australian society gets diverse because of its immigration policies. Now people do not want more diversity in the country. As a result of terrorism and human trafficking, Australia has adopted detention facilities.

Solution for Human Rights Violations

Diplomatic Pressure

Diplomatic pressure is the use of diplomacy to affect the behavior of another government. Diplomatic pressure strategies are¹⁵⁴

- **Sanctions**

Sanctions are a very common tool in the diplomatic pressure. These are diplomatic sanction which includes limitations on travel, cancellations of meeting with a high-ranking official, withdrawing officials from an embassy or expelling officials from an embassy; Economic sanctions include a limitation on import and exports of the country; Military sanctions include arms embargoes, striking important targets to decrease a state's military capabilities.

Sanctions are very important to impose diplomatic pressure, especially on the weaker states. But in the context of Australia, sanction diplomacy is not effective because Australia already is a strong statement in Pacific region. USA, UK, China, Japan also need the support of Australia in this Indo-Pacific region.

- **Aid**

In international system, aid is an important tool for the diplomatic pressure, a huge amount of money given in aid to nations around the world every year in the form of humanitarian aid, military aid in the form of equipment, training,

¹⁵³ Human Rights Watch (2016), "Australia: Appalling Abuse, Neglect of Refugees on Nauru" Accessed 26 June 2017 URL:<https://www.hrw.org/news/2016/08/02/australia-appalling-abuse-neglect-refugees-nauru>

¹⁵⁴ Worthington, J. (2015), "How does Diplomatic Pressure Works?", [online: web] Accessed 23 June 2017 URL:<https://www.quora.com/How-does-diplomatic-pressure-work>

and intelligence. This sanction is also not applicable on Australia because Australia is also a topmost country which gives humanitarian aid to the various countries. Australia militarily is equally strong.

- **International Organization, Conference, and Meetings**

An international organization can play a very significant role in dealing with the human rights issue. These are the forums for diplomatic debate and deals like the United Nation, ASEAN, European Union, etc. International organizations can work effectively in the Australian human rights violation issue. These organizations can be pressurizing Australia to be a good citizen of the world system.

On the 60th year of The Universal Declaration of Human rights, Amnesty International's 2009 report gave some data of human right violation which is¹⁵⁵

- Individuals tortured or abused in at least 81 countries
- They face unfair trials in at least 54 countries
- They restricted their freedom of expression in at least 77 countries

Amnesty International's report show condition of human rights in the World, and this condition is shameful for the international community. The human right law is not binding on the states. So states always work rationally on any human right issues. Sovereignty, border security is first for states. States never interfere in other countries domestic issues without their self-interest. International community comes together against the human rights violation whether it's a strong country like Australia or a weak state like Syria.

Public Opinion and Human Rights Issues

Public opinion always plays a significant role in the protection of human right violation. Public opinion is a big factor in a democratic country. A political party always work towards the public opinion. On behalf of these things, Australian public opinion can also become one of the main opposers to the human rights violation at the detention centres and force the government to close these centres and give these refugees a proper home within Australia. According to Australia Institute poll May &

¹⁵⁵ United for human rights, "Violation of human rights" [online: web] Accessed 23 June 2017 URL: <http://www.humanrights.com/what-are-human-rights/violations-of-human-rights/>

June 2016, 63% of respondents oppose the bipartisan policy¹⁵⁶ of the government.¹⁵⁷ Two third of Australians believe that doctors working in Australia's offshore detention should be free to speak about the condition of detention centers. In 2016, New Zealand government proposed to resettle 150 Australia's detention centers refugee in a year. Majority of Australian population believe that New Zealand offer should be accepted. 22% Australians says that any asylum seeker who comes by boat should not be allowed in Australia. Peter Young and Paul Stevenson as a doctor and psychologists publicly condemned, physical and sexual abuse at the detention center. Another poll in September 66% Australian believe that Prime Minister should act urgently to resettle refugee and 75% said that PM Malcolm Turnbull and Bill Shorten, the leader of the opposition, should work together to find a solution.¹⁵⁸ United Nation General Assembly organized a summit on the movements of refugee and migrants on 19 September 2016, and Australian Prime Minister Turnbull attended this summit, he criticized Australia's detention facilities following The Guardian's publication of the Nauru files of more than 2,000 leaked incident reports. In these report, children tell situation in the detention center.

Public opinion can be a turning point in human rights violation. The public should be aware of the policy made by their government and should react rationally to it. There are some important issues in which public oppose refugees and asylum seekers in their country for security concerns as well as for social, political and economic reasons. Security concerns are major concern for Australian and hence always justify its refugee policies in context of nation security. Social concerns are also important for Australia because Australian society became more diverse and Australian people see it as a danger or loss of social values. Australia refugee policies are politically important, it affect domestic politics, national elections. Economic issues are also very important because Australian population is not satisfied with government's actions towards refugees. Because refugees resettlement programme cost is the tax money of

¹⁵⁶ Bipartisan policy means that Australia government adapting to thing one is its never allowed, those people who come by boat and other one is those who found to have a valid visa for protection they can come to Australia. Doherty, Ben (2016), "Majority of Australians say refugees who arrive by boat should be let in, poll finds", The Guardian, UK, London, 28 June 2016.

¹⁵⁷ Doherty, Ben (2016), "Majority of Australians say refugees who arrive by boat should be let in, poll finds", The Guardian, UK, London, 28 June 2016.

¹⁵⁸ Hunt Elle (2016), "Two-thirds of Australians want Nauru and Manus refugees to be resettled, poll shows", The Guardian, UK, London, 14 September 2016.

Australians. But as human beings, everybody should respect human rights of other people.

Role of Media in Protection of Human Rights

Amnesty International said that free news media would improve government with respect to human rights.¹⁵⁹ Due to some effective media reports, media affected government behavior towards human rights approach for example media report gave a direction to take steps against human rights violation. In the era of globalization media plays a very important role in spreading the real news of human rights violation. Free and fair media is very important in today's life. Media freedom is affected by different environments like legal, political, economic, professional environment.¹⁶⁰ These are some ways, which will help in making free and fair media. In the context of the legal environment, there should be constitutional protection mechanism for media's freedom; it should be free from the law which restricts their activities. In the political background, political people mostly use media for its own benefits, but in a political context, media should be free from censorship; it should be free from fear and physical violence against journalist; for free and fair media, it requires multiple competing sources. The Economic environment also plays a very important role in free and fair media. Media should be free from financial restrictions on production, distribution, and advertising; Professional environment becomes very helpful for the free and fair environment; journalists encourage serving watchdog, monitoring and reporting on government; it should play an important role to aware people of the country. Media should be considered as the voice of people.

Role of Civil Society and NGO's in Human Rights Violation

Civil society is making important contributions to protecting human rights. Civil society concept is abroad concept which includes all non-governmental organization action including domestic or international NGO's, advocacy organizations and individuals. Civil society role is very critical in both identifying and addressing human rights violation in the immigration detention system. In the case of Australia human right violations, civil society role is like a new born baby.¹⁶¹ Under civil

¹⁵⁹ Whitten-Woodring, J. (2009), "Watchdog or Lapdog? Media Freedom, Regime Type, and Government Respect for Human Rights", *International Studies Quarterly*, 53(3): 595-625.

¹⁶⁰ Ibid

society mechanism, NGO's playing an important role in the development of human rights. Major contribution of NGO's is ¹⁶²

- They mobilize public opinion and contribute a lot to society
- They work as pressure group and pressurize the government for human rights issues
- NGOs play an important role in developing countries for human rights development.
- They can pressurize the government to solve the human right violation in particular area. Human Rights Watch, Amnesty International are major NGOs those who protect human rights at worldwide.

Although, the work of a non-governmental organization has proved to be a milestone in the protection of human rights, but still there is a need to reform the NGOs. There are some suggestions for improving the status of NGO:¹⁶³

- They need to expand their programs, campaigns and projects time to time, regular programs will help to increase the awareness of human rights;
- They also need financial support so that they can work without interruption;
- Non-government organizations should properly define their objectives and priorities and create such strategies so that they can fulfill their objectives as quickly as possible;
- NGO's should put their program in writing and encourage their staff to take their aims with complete integrity.

Importantly, Australia has signed on Vienna Convention on Law of Treaties on 13 June 1974, under which the country is responsible for implementing the international law. According to paragraph 26 of Vienna Convention on Law of Treaties to act in

¹⁶¹ Pynt, B., "The role of civil society in monitoring human rights violations" [online: web] accessed 20 may 2017 URL:<https://www.ntcoss.org.au/wp-content/uploads/2014/09/Why-Human-Rights-Matter-The-Role-of-Civil-Society-in-Monitoring-Human-Rights-Violations.pdf>

¹⁶² Dighe, J.(2012), "Realization of Human Rights-Role of NGO", Legal Service and Legal Information, [online: web] Accessed 20 June 2017 URL:<http://www.legalservicesindia.com/article/article/realization-of-human-rights-and-role-of-ngo-1275-1.html>

¹⁶³ Ibid

good faith and implement the treaty provisions into its domestic law and policy.¹⁶⁴ According to this particular paragraph, domestic law cannot be the reason for failure of international treaty; it should be implementing with good faith.¹⁶⁵

Conclusion

Sovereignty, border protection, and human rights can operate as complementary, rather than opposing concepts. As a sovereign state, Australia has right to protect its border apart from being an important state player in the international system. Thus, it should take steps to protect human rights law and humanitarian treaties rather than breaching international human right law and humanitarian law.

¹⁶⁴ Dighe, J.(2012), “Realization of Human Rights-Role of NGO”, Legal Service and Legal Information, [online: web] Accessed 20 June 2017
URL:<http://www.legalservicesindia.com/article/article/realization-of-human-rights-and-role-of-ngo-1275-1.html>

¹⁶⁵ Ibid

Chapter -5

Conclusion

Australia's immigration policy was studied from the context of White Australia Policy; to examine the status of human rights violation in Nauru and Manus detention centres; and to understand the role of International community including states and international organizations especially United Nations in safeguarding the human rights in the detention centre of Nauru and Manus. Study found that White Australia Policy is still continuing in the form of offshore refugee policy which is discussed in the chapters. It was found that human rights standard is low in the onshore and offshore detention centres. Third objective was to understand the role of international community (states and international organizations) in safeguarding the human rights violations especially in case of Australian detention centres. As a result the study found that states like New Zealand, Indonesia, Vietnam, Cambodia, Malaysia, Nauru and Papua New Guinea helped Australia to resettle the refugees who come to Australia by boat. New Zealand proposed to Australia that it would resettle the 150 refugee in a year in 2016 but Australia did not accept this proposal because of concentrating on refugee pending deal with USA. Australia was focusing on refugee deal with USA which was for resettling refugees and agreement was signed between USA under Obama's administration and Australia under Turnbull in Sept. 2016 but Trump rejected this deal recently. But Australia signed bilateral agreement with Indonesia, Cambodia, Malaysia and Vietnam to prevent the boat people to reach Australia which was not done with a humane intention. Human rights issues of asylum seekers become the major bone of contention for Australia.

Testing of Hypothesis

There were two hypotheses which are the basis of this dissertation. First is that Australia's immigration policy from 1901 till now has not been changed much which is justified from the offshore refugee policy or Pacific Solution and the human rights violation at the detention centres of Nauru and Manus in PNG. Second is that Australia's offshore policy as a measure of safeguarding its border and sovereignty from terrorism and trafficking is to actually hide the racial discrimination it shows to non-European immigrants. The study becomes more interesting since Australian Aboriginals are yet to get a full-fledged constitutional Status in Australia (Indian

Express, 11.07.2017, p17) and the immigration policy will be stricter than what is expected from a democratic government. They are demanding more right.

Study examined that Australia's WAP is still continuing in the Australian immigration programme and refugee programme. Australia gives preference to those who are useful for Australia's development. Skilled migrants are the first priority for the Australia. Asylum seekers were sent to the detention centres until they get valid visa or removed finally from Australia. And those who come to Australia by air and got valid visa were allowed to stay who are mostly skilled and educated people wanting to migrate to Australia for better livelihood and are not necessarily from a war-torn region. This is a discriminatory behaviour with the asylum seekers. Under WAP non-Europeans were restricted and now under recent policies only skilled immigrants are acceptable in Australia. There is also discrimination on the basis of the religion like Muslim immigrants were treated as criminals and/or terrorist. The study found that they have some criteria for the Muslim asylum seekers; they have to learn English language or Australian traditional values. Study also found that there are some non-governmental organizations that helped Muslim immigration learn Australian values especially for Afghani asylum seekers. So as a result Australia still is continuing its discriminatory policies. Even though WAP was dismantled in the 1973 but the feature of WAP is still present in the Australian immigration policies.

Another important thing is that offshore policy became the symbol of the human rights violations of refugees. Study found that detention centre of Australia is becoming like a military camp and detainees were treated like war prisoners. They do not have rights to move freely even in detention centres. Human rights violation is at the peak in these detention centres. Men, women and children are not safe, trauma, illness, depression was followed with sexual assault and exploitation was found among these people during UN survey to Nauru and Manus, which was elaborated in the chapters above. Education and schooling of children is a big casualty in these centres.

The second hypothesis as mentioned earlier was that the immigrants were not allowed to protect the country from traditional and non-traditional security threats which is pretence. Australian government's Pacific Solution is brought out by the Howard Government who was known to be an Anglophile and a staunch supporter of the British legacy (White Australia Policy) of Australia and hence the 'Pacific Solution'

is more of racial discrimination rather than the concern of national security. Australia is also hiding its discriminatory policy behind the issues of border safeguarding, state sovereignty, terrorism and human trafficking. These issues are of utmost importance but to remove refugees is an inhuman act; especially when they were allowed to live in dire conditions and have nowhere to go.

Refugee's Problem and Role of Native States

The boat people were from Afghanistan, Sri Lanka, Iran, Iraq, and Syria. These countries have seen decades of internal turmoil and international intervention leading to the rise of terrorism, which made normal daily life impossible and most of the people fled their homelands in the hope to stay alive with family in some other land; hoping to find peaceful refuge. The most talked about topic in the recent times is international migration and refugee problem/crisis. The solution has to be humane and not “the Pacific Solution.”

The terror unleashed by Taliban in Afghanistan left 3,021 civilians dead and 4,507 were wounded in 2011. The misappropriation by the US troops also led many civilians to flee the country. Afghani civilians are always under threat of life, because of conflict between US troops and Taliban in Afghanistan. Withdrawals of US troops started from post-2014 from Afghanistan. After this terrorism become stronger than before, women and children are soft target by the terrorist. The major reason behind the migration of Afghan people is terrorism and failure of government structures to provide the security to their citizens. Afghanistan is still not safe for the Afghani people. State structure has totally failed to protect citizen from the terrorist attack.

Sri Lanka is a South Asian country who is facing ethnic conflict between Tamil and Sinhalese. About 50,000 people mainly Tamils, who remain detained in government camps. 7000 people have been imprisoned without trial and refused access to the Red Cross they are tortured by government Human rights defenders and journalists are killed, assaulted and jailed. Due to this Sri Lankan government refused to cooperate with United Nations Enquiries. Because of this people are under threat and they want to save their life so they are moving to other countries.

Iran is a West Asian country in which thousands of people protesting for democracy. They are facing unjust imprisonment since June 2009 Presidential election. Torture of political prisoners is common. Ethnic and religious minorities are also under the threat

of majority. Major threat for the Iranians is terrorism. Because of terrorism people are moving from their homeland.

Iraq and Syria is facing terror activities in its homeland. Islamic State of Iraq and the Levant (ISIL), also known as Islamic State of Iraq and Syria (ISIS) is a major terror group that became the symbol of torture and the epicentre of global threat. Iraqi people leave their home to save their lives from ISIS. Because of the threat of life people are moving towards other countries like USA, Canada, Australia and other European countries.

These countries are failed to protect their citizens. It is the responsibility of the state that they protect their native citizen's rights. Terrorism, civil war, instability of government, brutal regime of dictators is some important reasons behind the increasing numbers of refugees. This is most important to solve the refugees problems it is necessary to solve these issues. It is a responsibility to the every state to protect the human rights of its citizen's.

Role of States and International Organizations in Protection of Human Rights

Most important thing is that Human rights issues became important in the 21th century. International community should come together to safeguard human rights violation. State should protect the human rights beyond sovereignty or national interest. It's not a responsibility of one state or some states like USA, Canada and Australia. Everybody should come forward for the safety and security of human beings. States should protect their own citizen from human rights violation. There should be effective mechanism which can protect the human beings from torture and humiliation. International organization like UNO can play a significant role in safeguarding the human rights. These organizations can pressurise the states to safeguard its people.

Civil society and NGOs can also play a vital role in the protection of human rights violation. Amnesty International and Human Rights Watch role is milestone in the protection of human rights. Media can also play effective role in preventing human rights violations which I discussed in fourth chapter in detail.

Australian Immigration Policy in Context of Offshore Refugee Policy

Australian immigration policy which was started with the Immigration Restriction Act 1901 and it goes through various phases till 1901 to 2017. Earlier studies explained all

major phases of its immigration policy. In last three decade Australian immigration policy become the symbol of controversy and a lot of work is carried out to criticise Australia's discriminatory policy and making the policy makers aware of making policy friendly to multiculturalism.

Importance of the Human Rights

Human rights issues became important in the late 1980s when military conflicts were reduced considerably. Democratic states were increasing at that time. International order was totally changed during late 1980s it was unipolar world United States America was one and only who take the responsibility to protect the World from war and inhumane treatment. Now human rights have great concern. Major reasons behind the development of the human rights are

- Evolution of institutions developing human rights in 21st century
- Awareness about human rights and growth of the human rights organizations
- Reduction of arms conflicts on the regional and international levels between states
- Current focus of national leaders to promote human rights for their own vested interests has brought human rights to the lime light. Thus for good or bad the context of human rights become a weapon to reckon with.
- Significant political changes in the nations to adopt democracy in the Post World War era has also emphasised on Human Rights to be the basic right of an individual. Democratic Governments have been considered as a means of promoting human rights globally.

A Way Forward

The Refugee problem is a universal issue and needs a universal solution and not really "the Pacific Solution." It's not a responsibility of one country even it is an issue which should be solved collectively by every state. Similarly these issues are also the reason to bring together the countries in cooperation solving other related issues as well. There are some suggestions in which states can go about in dealing with the refugee and human rights issues. These are as follows;

National Inerrest

National interest comes first for every state. But state should be liberal on human rights issues. It is the era of cooperation among nations not to the absolute power which include cooperation in trade, culture, education, investment etc, so every state should come together against human rights violation. In case of Australia, it is doing well for refugees but human rights violation is black spot on Australia. Lack of implementation is also a major problem in human rights. It would not be entirely true if one says that Australia has done nothing for the refugees, but whatever is done is done in a half-hearted manner with no proper plan and implementation mechanisms.

Human Trafficking

The Pacific Solution has not really stopped human trafficking but is creating doors and windows open for trafficking. Human trafficking is forced labour, slavery, sexual slavery and others. Women and girl child was the major victim of human trafficking. Australia always justified its Pacific Solution to prevent human trafficking. Australia's policy should be more liberal in case of human rights. Indonesia can be a good partner of Australia to prevent human trafficking. Australia should have good relationship with the other Pacific Island nations to prevent human trafficking. Official Development Assistance (ODA) can do effective work to stop human trafficking. Maritime surveillance is also an effective method for preventing human trafficking. It is a collective duty for every state not only for one state so everybody should work together.

Maritime Piracy

Maritime piracy is not directly connected with the refugee and human rights issues but indirectly it is interlinked with these issues. Maritime piracy plays an important role to shape the refugee policy of the coastal states. The term Maritime piracy is broad in itself. It is difficult to define but according to the United Nations Convention of Law of Seas (UNCLOS) article defined maritime piracy. Maritime piracy includes robbery or criminal violence etc, by the private ships on the other ship which can be full of passengers or goods for robbery or human trafficking or other violence at the high seas. It is also an important international issue which is problematic for the Coastal states. Coastal states such as Australia make policies to prevent maritime piracy but the important thing is that this prevention policy should be implemented

with effective methods. Coastal states should be more attentive and cooperative with the regional countries in checking and dealing with maritime piracy.

Counter-Terrorism

Terrorism is a major issue which is responsible for the human rights violation and increasing the numbers of refugees. Terrorism is spreading like cancer in the whole world and the victim is human rights. States should come together to counter terrorism. Those states that are failed to prevent terrorism or those who allowed their land for the terror activity; should be separated from the International community such as Pakistan. There should be a strong commitment against terrorism. Every country should come together to counter terrorism on the international stage. International organization can also play an effective role to stop terrorism. They should attempt to make a draft against terrorism. For instance, Comprehensive Convention on International Terrorism can be effective in this issue. It will provide a legal framework which will be binding on all the signatories to deny funds and safe havens to the terrorist groups which was also proposed by India in 1996. Major objective of this convention are

- To have a universal definition of terrorism that all 193 member of the UNGA will adopt into their own criminal law
- to ban all terror group and shut down terror camps
- to prosecute all terrorist under special laws
- cross- border terrorism an offence worldwide

It is necessary for the international peace and security. And save human beings from the terrorism. If refugee solution is not found out then it can be have dangerous result of this it may be rise of terrorism or criminal activities in the detention centres.

Australia should adopt more liberal immigration policies like Canada which is resettling large numbers of immigrants recently. Australia can also take some effective steps from the European Union Countries Refugee policies. It will help to stop the human rights violation in Australia and also obstructing the possibility of the detention centres to become safe havens of terrorism.

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