

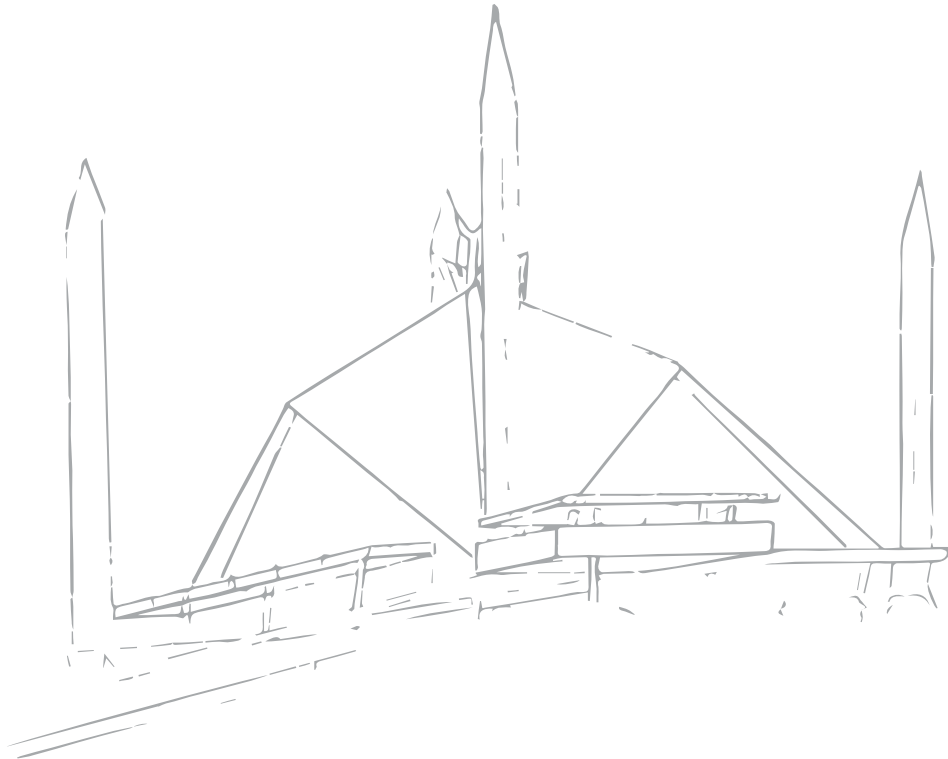


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Immigration and Citizenship in Islam and the Laws of Pakistan and Saudi Arabia: A Comparative Study

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Abstract

Immigration to prosperous—or taking refuge in safe—lands has become one of the most serious international issues in our time. People from all over the world in general and war hit Muslim countries in particular migrate to the countries which are safe and can offer a peaceful and prosper life with better financial conditions. Despite the fact that Islamic teachings regarding immigration and nationality are more generous, liberal and based on humanity, the role of Muslim countries particularly in the recent refugee crises in Syria has not been satisfactory. This paper discusses the teachings of Islamic Law regarding immigration and nationality and evaluates the practice and laws of Islamic Republic of Pakistan and Kingdom of Saudi Arabia in this matter and points out some serious inconsistencies of the legal system of these countries with Islamic teachings. This papers argues that, since Islam encourages all Muslims to migrate to the Dār al-Islām (the term used for Muslim state in Islamic law) and binds the Muslim government to accept the Muslims migrating there and also Islam binds the Muslim government to accept the application of nationality put forward by a non-Muslim person, the citizenship laws of Pakistan and Saudi Arabia, as incorporated in the Pakistan Citizenship Act 1951 and Saudi Citizenship System respectively has many inconsistencies with the teachings of Islamic law. The paper also points out some inconsistencies of these laws with the international human rights law. The paper, thus, urges these countries in particular and all Muslim countries in general to incorporate the humanitarian and generous nature of Islamic law in their immigration and nationality laws and bring these laws in conformity with Islam because this is an obligation on them for recognizing Islam to be the state religion. The inconsistencies with International human rights law will automatically be resolved in that case.

Keywords: *Immigration, Citizenship, Pakistan, Saudi Arabia, Dār al-Islām*

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1. Introduction

According to the popular belief, humanity began its journey on the earth from Sri Lanka¹ but now the specie, known as human being, is inhabitant of six continents with all diversities in color, race, ethnicity, language, custom and religion. All this happened because of massive migrations which human being made across the history.² There had been various factors –detailed discussion of which is not of our concern for this study– which encouraged or compelled people to migrate from one territory to the other so that they would be able to lead a prosperous life, improve their living standard and/or find safety from the persecution, violation of fundamental rights and effects of wars in their native countries.³ The technological advancement in the means of transportation has made it easier for mankind to change their territories. This, on the one hand, led the number of immigrants across the globe to increase, and, on the other hand, called for comprehensive legal system which would govern the affairs related to immigration, citizenship, nationality and asylum. Consequently, almost every country on the planet has formulated a combination of laws which govern the matters pertaining to immigration and citizenship.⁴

Like other countries, Islamic Republic of Pakistan and Kingdom of Saudi Arabia also, as we shall discuss, have comprehensive laws regarding citizenship and immigration. Since both the countries recognize Islam to be the state religion and the *Shari'ah* shall be complied with in making laws,⁵ the immigration laws of these countries, as a legal and constitutional obligation, should be in accordance with the principles of *Shari'ah*. Believing in the

¹ Ronit Ricci, *Islam Translated: Literature, Conversion and the Arabic Cosmopolis of South and Southeast Asia*, (Chicago: The University of Chicago Press, 2011) P. 136.

² Al-Fāruqī, Ismā'il al-Rājī (d. 1986), *Triologue of the Abrahamic faiths*, (Riyadh: International Islamic Publishing House, 1995) P. 49.

³ Teichmann, Iris, *Immigration and the Law* (Mankato: Black Rabbit Books, 2006) P. 8

⁴ Ibid.

⁵ Article 2 of *the Constitution of Pakistan 1973* acknowledges Islam to be state religion and article 227 of the constitution promises that all laws shall be brought in conformity with the principles of Islam and no new law shall be made inconsistent with *Shari'ah*. The article 1 of the Saudi Arabian *Basic Law of Governance 1992*, –which is quite similar to constitutions elsewhere– affirms the Qur'an and the Sunnah to be the constitution of the Kingdom.

universal brotherhood⁶, Islam –as we shall discuss, has built its immigration and citizenship laws on very liberal and generous foundations. Despite the fact that Islamic law of immigration and citizenship is quite generous and flexible, these two countries – particularly Saudi Arabia– are generally known for the strict immigration laws.

In the following an attempt would be made to answer the questions; “are the immigration and citizenship laws of Pakistan and Saudi Arabia consistent with Islamic laws? Is there any contradiction in these laws with international human rights law? And how the inconsistencies, if any, can be removed?

2. Immigration and Citizenship

Before going to the detailed discussion, it seems appropriate to define what immigration, citizenship and nationality exactly are. Thus, in the following these terms are being defined briefly.

2.1. Immigration

Black’s law dictionary defines immigration as “*The coming into a country of foreigner for purposes of permanent residence*”. The same dictionary differentiates immigration from emigration as the former denotes the coming into other country while the later refers to the act of leaving one’s own country.⁷ John bouver defines immigration as “*The removing into one place from the other*”.⁸ Oxford Dictionary of Law defines the term as “*The act of entering a country other than one’s native with the intention of living there permanently*”.⁹ The Merriam-Webster Dictionary of Law defines the term as “[T]o come into a country of which one is not a native for permanent residence”.¹⁰

Looking into these different definitions, one can reach to the conclusion that ‘immigration’ has some essentials which

⁶Ismā’īl al-Rājī traces the concept of universal brotherhood in the teachings of Jesus Christ. He, further claims that it was promoted by his followers and Islam also believes in it. See: *Dialogue of the Abrahamic Faiths* p. 57.

⁷ Henry Campbell Black, M.A., *Black’s Law Dictionary*, (St Paul: West Publishing Co, 1979) 676.

⁸ John Bouvier, *A Law Dictionary Adapted to the Constitution and Laws of the United States of America and of the Several States of the American Union*, (Philadelphia: George W. Childs, 1862) 1:606.

⁹ Elizabeth A. Martin MA ed., *Oxford Dictionary of Law*, (London: Oxford University Press, 2001) 241.

¹⁰ "Definition Of IMMIGRATION". 2019. *Merriam-Webster.Com*. <https://www.merriam-webster.com/dictionary/immigration>.

distinguish this kind of movement from others. The first essential is entering in a country to which the person is not native. Thus, moving within one's own country or moving to another country to which a person is citizen – as the case of a person who has dual citizenship when he moves from one country of his citizenship to the other– will not be regarded to be immigration. The second character of this movement is the intention of the person that he will settle in the new country permanently. He might get naturalized¹¹ there or find some work as an immigrant worker.¹² This distinctive feature distinguishes immigration from ordinary tourist or other visitor as the former does not have any intention to return to his own country while the latter is for a temporary period of time to a certain work and he intends to go back to his own country.¹³

2.2. Citizenship

Black's law dictionary defines citizenship as "*the status of being a citizen*".¹⁴ This definition does not provide a clear understanding of the term.¹⁵ Bouvier, whose law dictionary has been adapted to the laws and constitution of the United States of America, did not even define the term citizenship. Instead, he defines the term citizen which gives idea of citizenship as it is the status of the person who is 'citizen'. In his words citizen is "*one who, under the constitution and laws of the United States, has a right to vote for representatives in congress, and other public officers, and who is*

¹¹ Naturalization is one of the modes of acquiring citizenship as it is the process by which any country grants citizenship to any foreigner. See, PH Collin, *Dictionary of Law*, (London: Bloomsbury Publishing Plc, 2004) 198. Being the same concept, the application of naturalization varies from one jurisdiction to the other and the conditions for naturalization are also different in different countries. Some most common conditions for naturalization include residence for a certain period, education, good character and fluency in the official language of the country.

¹² Dudley L, Poston Jr., and Leon F. Bouvier, *Population and society: An introduction to demography*, (Cambridge University Press, 2010) p. 197.

¹³ Poston Jr, Dudley L., and Leon F. Bouvier, *Population and society: An introduction to demography*, (Cambridge University Press, 2010) p. 197.

¹⁴ Black, *Black's Law Dictionary*, 222.

¹⁵ The understanding of this term depends on the understanding of the term 'citizen'. To fill the gap, the dictionary provides quite a clear definition of citizen. It says "*One whom, under the Constitution and laws of the United States, or of a particular state, is a member of the political community, owing allegiance and being entitled to the enjoyment of full civil rights*". See, Black, *Black's Law Dictionary*, 221.

qualified to fill offices in the gift of the people".¹⁶ After a considerable search in different dictionaries I could find the most comprehensive definition of citizenship in Collins Dictionary of Law. It is defined as "*the legal link between an individual and a state or territory as a result of which the individual is entitled to certain protections, rights and privileges, and subject to certain obligations and allegiance*".¹⁷ Looking what has been written about the definition of 'citizen' and 'citizenship', one can easily arrive at the same and single conclusion of the different wordings. That is, the citizenship is a status, available to all citizens, comprising of two basic essentials. First of all, the citizens have all the political rights i.e. that have right to vote for public offices. Further, they are entitled to certain protections from their respective states. Secondly, they owe allegiance and loyalty to the state or territory to which they are citizens. John Mathiason summed up these two essentials as he describes the citizen to be the person belonging to a nation or state who pledges his allegiance to the state and in return is entitled to protection which would be provided by the state. In a nutshell, citizenship is a barter in which one party extends his loyalty to the other in return of certain rights and protections.¹⁸

2.3. Nationality

Nationality has been defined by Henry C. Black in his famous law dictionary as "*the quality or character which arises from the fact of a person's belonging to a nation or state*".¹⁹ This definition shows the resemblance of nationality with citizenship. Bouvier defines the term as "*the state of a person in relation to the nation in which he was born*".²⁰ On the face of it, this definition is not inclusive to the kinds²¹ of nationality other than the nationality of birth or origin. Bouvier, however, in his other law dictionary provides a much better definition of the term which makes nationality quite similar to citizenship. He defines nationality as "*Character, status, or condition with reference to the rights and duties of a person as a member*

¹⁶ Bouvier, *A Law Dictionary*, 231.

¹⁷ *Collins Dictionary of Law*. S.v. "citizenship." Retrieved June 16 2019 from <http://legal-dictionary.thefreedictionary.com/citizenship>.

¹⁸ John, R. Mathiason, *World Citizenship: the individual and international governance*, (New York: New York University, 1997). Available at:

<http://www.un.org/esa/socdev/egms/docs/2012/WorldCitizenship.pdf> last accessed, June 17, 2019.

¹⁹ Black, *Black's Law Dictionary*, 925.

²⁰ Bouvier, *A Law Dictionary*, 1357.

²¹ These kinds include, nationality by marriage and naturalization.

of someone state or nation rather than another".²² W.J. Stewart defines nationality as "the legal relationship between a person and a state".²³ This definition is *prima facie* ambiguous because it is not certain to which relation it refers with the words "the legal relationship". Further, the definition would have not been exclusive if the article 'the' -which specifies and particularizes general things - had not been there at the beginning of the definition. This is because in that case the definition could include any sort of legal relationship of any person with any state. The oxford law dictionary provides a definition similar to that of citizenship. It defines the term as "the state of being a citizen or subject of a particular country".²⁴

The combination of all these diverse definitions of nationality provides one clear picture of the notion of nationality. According to that, the nationality is a legal bond between an individual and a particular state which binds the individual to extend his loyalty to the state and in return enjoy protection, legal rights and privileges. Ivan Shearer and Brian Opeskin summed up the concept of nationality in words as follows;

"Under domestic law, a national owes a duty of allegiance to the State, and may be obliged to pay taxes and render military services to that State. A national has the right of permanent residence and the right to participate in public life and, in most countries, enjoys social benefits available only to nationals".²⁵

2.4. Difference between Citizenship and Nationality

The terms citizenship and nationality are very often used interchangeably and mostly common people take them as synonym.²⁶ There are, therefore, some countries where nationality and citizenship are taken as a same concept. These countries include Canada, the United States of America (USA), Australia and Turkey.²⁷ However, in technical and legal sense these two are

²² John Bouvier, *Bouvier's Law Dictionary A Concise Encyclopedia of The Law*, (St. Paul: West Publishing Company, 1914) 3: 2297.

²³ *Collins Dictionary of Law*. S.v. "Nationality." Retrieved June 19 2019 from <http://legal-dictionary.thefreedictionary.com/nationality> .

²⁴ Elizabeth ed., *Oxford Dictionary of Law*, 325.

²⁵ Ivan, Shearer and Brian Opeskin, "Nationality and Statelessness" in Brian Opeskin, Richard Perruchoud and Jillyanne Redpath-Cross, eds. *Foundation of International Migration Law* (Cambridge: Cambridge University Press, 2012) 93.

²⁶ Ivan, Shearer and Brian Opeskin, *Foundation of International Migration Law*, 95.

²⁷ Thomas Faist ed, *Dual citizenship in Europe: From nationhood to societal integration*, (Hampshire: Ashgate Publishing, Ltd., 2012) 8-9.

quite different terms having different meanings and implications in other parts of the world.²⁸ There are two major differences between the citizenship and nationality. The first and foremost distinction between the two terms is that, the nationality is usually a subject of public international law as under the public international law this is an affiliation of an individual with a particular state by virtue of which the state may impose certain responsibilities on the individual and can exercise its jurisdiction on him. The individual has right against the state to be protected by providing consular advice abroad and diplomatic help where possible. Citizenship, on the contrary, is a notion which is used in domestic law of the country whereby the citizens have political and civil rights: they can vote and be elected for the public offices.²⁹

The other difference between the two terms is that citizenship is the legal connection between person and state whereby a citizen enjoys full civil and social rights against his affiliation with the state. In this context, the citizenship of any state is beyond the color, religion, ethnicity and race of the person. Nationality, on the other hand, is the social, historical and ethnic bond of a person with other people of the same background. In this context, the term nationality is more similar to the term ethnicity and a state may, thus, comprise multiple nationalities and some nationalities could not have their own state. In this perspective the citizenship is the creation of the state as the state grants, and at times snatches, citizenship to the individuals while the nationality is the bases for the nation-state.³⁰ In this context, citizenship is created by operation of law and a person can acquire any sort of citizenship given under the law of any state while nationality, as that is membership of an individual in a community with shared history, culture and tradition, is beyond the need of any legal operation in its existence.³¹

²⁸ Stefan Kadelbach, "Citizenship Rights in Europe" in Dirk Ehlers ed, *European Fundamental Rights and Freedoms*, (Berlin: De Gruyter Recht, 2007) 547.

²⁹ Kim Rubenstein, "Globalization and Citizenship and Nationality" in Catherine Dauvergne ed, *Jurisprudence for an Interconnected Globe*, (Farnham: Ashgate Publishing Ltd, 2003).

³⁰ Olivier W. Vonk, *Dual Nationality in the European Union*, 21.

³¹ Faist, Thomas, ed, *Dual citizenship in Europe*, 9.

3. Immigration and Citizenship in Islamic Law

Before going into the detailed discussion of Islamic law of immigration and nationality, it seems appropriate to discuss the various kinds of people residing in an Islamic state. According to the classification made by Islamic law, there are three classes of people living in *Dār al-Islām*³², a term used for Islamic state.

3.1. Muslims:

The Muslim citizens of *Dār al-Islām*, are those who, by virtue of being Muslim, have the right of citizenship. Muslim jurists have established that a Muslim is by birth citizen of *Dār al-Islām*. As far as the current legal and political situation is concerned, based on the *Ḥanafī* definition of *Dār al-Islām*, all the Muslim majority states –where Muslims are in government – are *Dār al-Islām*. Muslim scholars of modern era differ on the issue whether or not more than one *de jure* *Dār al-Islām* are allowed under Islamic law. Some scholars opine that it is permissible to have more than one *Imām*³³ while others hold that it is not permissible to have more than one *Imām*.³⁴ Even after the *de facto* establishment of numerous Muslim states, Muslim jurist did not consider the Muslims of

³²In order to determine what makes any territory *Dār al-Islām*, Shams al-Dīn Abū Bakr Muḥammad b. Abī Sahl al-Sarakhsī (d. 1096) gives one simple principle i.e. the dominance over any territory. Thus, if Muslims have dominance over a territory and they have capability of enforcing the *Shari'ah* of Islam; the territory will be regarded to be *Dār al-Islām*. Conversely, if a territory is under the dominance of non-Muslims the territory would be *Dār al-Kufr*. See: *al-Mabṣūṭ*, 10:193.

³³ See, Muhammad Munir, *Sharia'ah and Nation-State: The Transformation of Maqasid al-Shari'ah Theory*, (Jakarta: International Conference on "The Practice of Islamic Law in the Modern World", 2014).

³⁴ These scholars base their opinion primarily on the *Ḥadīth* which has been narrated by Imam Muslim which reads; "إذا بويع لخليفتين فاقتلوا الآخر" *منها*". This means "When bay'ah is concluded for two Khalifah, kill the second one". See, Muslim, *Ṣaḥīḥ Muslim*, Bāb Idha Buyi'a Li Khalifatayn, 3:1480. The *Ḥadīth* has also been narrated by many other *Muḥaddithūn* including Imam Aḥmad b. Ḥanbal, See Abū 'Abdullah Aḥmad b. Muḥammad b. Ḥanbal al-Shaybānī, *Musnad al-Imām Aḥmad b. Ḥanbal*, (Cairo: Dār al-Ḥadīth, 1995) and Imam Abū Dāwūd, see, Abū Dawūd Sulaymān b. al-Ash'ath al-Sijistānī, *Sunan Abī Dāwūd*, Bāb Dhikr al-Fitan Wa Dalā'iluhū, (Beirut: Dār al-Risālah al-'Ālamiyyah, 2009) 6:302.

Muslim Spain to be non-citizens in Abbasside caliphate.³⁵ The Kuwaiti Encyclopedia of Fiqh concludes;

"من المتفق عليه بين الفقهاء أن المسلمين يتوارثون فيما بينهم مهما اختلفت ديارهم ودولهم وجنسياتهم، لأن ديار الإسلام كلها دار واحدة لقوله تعالى {إنها المؤمنون إخوة}، وقوله صلى الله عليه وسلم: المسلم أخو المسلم ولأن ولاية كل مسلم هي للإسلام وتناصرهم يكون به وله".³⁶

"Among what have been unanimously decided by jurists is that the Muslims inherit each other no matter how their residences, countries and citizenship differ because all the lands of Islam (*Diyār al-Islām*) are –based on the Allah’s word “[A]ll Believers are but brothers”³⁷ and the *Ḥadīth* “Muslim is brother of Muslim”³⁸ –one single land because *wilāyah* of every Muslim is for Islam and their mutual support is for, and based on, Islam.

Thus, a Muslim –irrespective of his birthplace or nationality – is by birth citizen of *Dār al-Islām* whenever he enters into the territory of Muslims or when any non-Muslim embraces Islam in *Dār al-Islām*, he becomes citizen and ceases to remain *Dhimmī* or *Musta’min*, whatever he may have been previously.³⁹

3.2. Dhimmī:

A *Dhimmī* is the non-Muslim citizen in *Dār al-Islām*, who has contract with the government according to which he pays a

³⁵ Muslim jurists did not apply the rules applicable to Muslims – particularly in Muslim personal law and conflict of laws – on the Muslims of Spain in Baghdad and vice versa. For details see, Mushtaq, *Jihad Muzahamat Awr Baghawwat*, 126-133.

³⁶Wazārah al-Awqāf, *al-Mawsū’ah*, 3:28. Professor Muḥammad Salām Madkūr has also given the same opinion in his book on Islamic law on wills. See, Muḥammad Salām Madkūr, *al-Waṣayā fī ‘l-Fiqh al-Islāmī*, (Cairo: Dār al-Nahḍah al-‘Arabiyyah, 1962) 54.

³⁷*Al-Qur’ān*, 49:10.

³⁸ The *Ḥadīth* has been narrated by many *Muḥadithūn* including al-Ḥākīm, see, Abū ‘Abdullah al-Ḥākīm Muḥammad b. ‘Abdillah b. Muḥammad al-Nishāpūrī, *al-Mustadrak ‘Ala ‘l-Ṣaḥīḥayn*, (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1990) 2:10 and Imam Ibn. Mājah, see, Ibn. Mājah Abū ‘Abdillah Muḥammad b. Yazīd al-Qazwīnī, *Sunan Ibn. Mājah*, Bāb Man Warā fī Yamīnihī, (Beirut: Dār Iḥyā’ al-Kutub al-‘Arabiyyah, n.d) 1:685 and al-Bazzār, see, al-Bazzār Abū Bakr Aḥmad b. ‘Amr b. ‘Abdilkhālīq b. Khallād al-‘Atakī, *Masnadal-Bazzār al-Baḥral-Zakhkhār*, (Madīnah: Maktabah al- ‘Ulūm Wa ‘l-Hikam, 2009) 15:255.

³⁹ Ibid.

certain amount of tax and in return enjoys protection and certain rights and immunities.⁴⁰

⁴⁰The term *Dhimmī* has been defined in different words, for example, the Kuwayti Incyclopedia of Fiqh defined it in words that read; “والذمي في ” *“Dhimmī is the contracting person among non-Muslims who got protection of his life, property and religion by paying Jizyah”* See, *Mausū’ah al-Fiqhiyyah al-Kuwaitiyyah*, 37:168. Dr. Sa’dī Abū Ḥabīb defined it as “الذمي: هو المعاهد الذي أعطي عهداً يامن به على ماله وعرضه ” *“Dhimmī is the person who concluded a contract [with Muslim government] by virtue of which he secures his property, honor and religion”*. See, *al-Qīmūs al-Fiqhī*, 138. The basic essentials, from all the definitions, appear to be a contract between Muslim government and non-Muslim individual according to which the non-Muslim pays *Jizyah* (tax) and becomes permanent citizen of *Dār al-Islām*. The basic purpose of the contract of *Dhimmah* is firstly to facilitate the non-Muslims to observe the Islamic way of life and realize the beauty of Islam and secondly to bring the war with the non-Muslims to an end as the *Dhimmah* contract binds them to obey the laws of Islamic state and be a peaceful person in the Islamic society. See, Al-Kāsanī, *Badai’*, 7:111. As far as the non-Muslims, who are eligible for the contract of *Dhimmah*, are concerned the people of book (*Ahl al-Kitāb*) i.e. Christians and Jews are allowed to be brought under the *Dhimmah* contract by the verse of the *Qur’ān* that reads; “وَلَا يُجْرِمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلَا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ قَاتَلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ ” [9:29] “Fight those people of the book who do not believe in Allah, nor in the Last Day, and do not take as unlawful what Allah and His Messenger have declared unlawful, and do not profess the Faith of Truth; (fight them) until they pay *Jizyah* with their hands while they are subdued [Translation by Mufti TaqīUsmani]”. Apart from them, the Zoroastrians are made eligible for the *Dhimmah* contract by the *Hadith* of the Holy Prophet –Peace and blessings of Allah Almighty be upon him – which reads; “سنوابهم سنة أهل الكتاب”. “Do with them [Zoroastrians] the way you do with the people of book” See, Mālik b. Anas b. Mālik al-Aṣḥabī, *Muwaṭṭā’ al-Imām Mālik*, Bāb Mā Jā’a Fī Jizyati Ahl al-Kitāb (Beirut: Mu’assasah al-Risālah, 1412AH). In some other versions of the *Hadith* the marriage with Zoroastrians and legality of their *Zabīhah* are specifically excluded and Muslims are prohibited from these by the words “غير ناكحي نسائهم و لا آكلي ”. See, Abū Bakr b. Abī Shibah ‘Abdullah b. Muḥammad b. Ibrīhīm al- ‘Abasī, *al-Muṣannaf fi’l Aḥādīth Wa’l Āthār*, (Riyadh: Maktabah al-Rushd, 1409AH), 3:488. The polytheists of Arabia and apostates are not eligible for *Dhimmah*. The former because of the verse of Qur’an “You will have to fight them until they submit [48:16]” and the latter for the reason that apostate is supposed to be killed, if he does not repent, and *Dhimmah* is meant to protect. See, Abū Muḥammad Mawfaqal-Dīn ‘Abdullah b. Aḥmad b. Qudāmah al- Maqdisī, *al-Mughnī*, (Cairo:

3.3. *Musta'min*: A *Musta'min* is a person who enters into the territory of Muslims with permission for specific purpose –such as trade– and has intention to return to his country of citizenship. The concept of *Amān* by acquiring which a person becomes *musta'min* is quite similar to what we now know as visa.⁴¹

3.3. Immigration and Citizenship in Islam

Islamic law is quite generous with respect to the immigration and citizenship. *Dār al-Islām*, according to the teachings of *Qur'ān* and the *Sunnah*, is bound to open its doors for the immigrants irrespective of their religion. There are dozens of Quranic verses and the traditions of the Holy Prophet –peace and blessings of Allah be upon him– which show the liberal and generous nature of Islam in this regard. In the following we shall explore some precedents from the teachings of *Qur'ān* and the *Sunnah* with respect to all of the above classes of people.

As for as Muslims concern, Islamic law encourages them to migrate to *Dār al-Islām* so that they will be able to order their lives in accordance with Islamic teachings without any hindrance and all their affairs will be administered in an atmosphere of Islam. But, if Muslims citizens of a non-Muslim state do not migrate to the territory of Islam and wish to live there, they, on the one hand, shall be excluded from the jurisdiction of Muslim government and, on the other hand, the Muslim government shall not be responsible to protect their rights and they will not have any rights in the *Bait al-Māl*. The Holy Prophet –peace and blessings of Allah be upon him– has been reported to command;

“When you confront your enemy from polytheists, offer them three options and approve if they accept any of these and hold your hand from them. Then invite them to embrace Islam and if they accept it refrain from them and encourage them to migrate from their territory to the land of Muslims by informing them that they shall enjoy all the rights of the Muslim citizens and they will be responsible for all such duties. If they denied migrating, inform them that they shall be like Muslim villagers and the rules of Allah regarding other Muslims shall

Maktabahal-Q₇ hirah, n.d) 9:3. There is no disagreement among the jurists about the above mentioned rules. The jurists differ whether or not the polytheists of *'Ajam* are eligible for the *Dhimmah* contract. According to *Hanafī* School of law they are eligible for *Dhimmah* on the basis of analogy with Zoroastrians. Imam al-Shafī'ī is, however, of the other opinion that these people are not eligible for *Dhimmah*. See, Kamāluddīn Muḥammad b. 'Abdul Wāḥid al-Sīwāsī, *Fath al-Qadīr*, (Beirut: Dār al-Fikr, n.d) 6:48.

⁴¹ Ibid.

apply to them and they shall not be entitled for financial benefits from Bait al-Māl."⁴²

As far as the *Dhimmī* is concerned, Islam binds the government to accept the application of citizenship made by any non-Muslim.⁴³ The rationale behind this obligation is that, Islam does not want to be in a state of war with non-Muslims and the contract of *Dhimmah* is a clear indication of the end of war from the part of a non-Muslim and as an obligation the Muslim government is made bound to accept such application. Furthermore, as the *Dhimmah* contract is binding on the Muslim government, the government does not have right to renounce the citizenship of a non-Muslim however, certain acts from the *Dhimmī* –such as the *Dhimmī* flees to *Dār al-Ḥarb*– lead to the termination of the contract.⁴⁴ The contract is not only binding as normal contracts it also bears some sort of sacredness which is why the 'Umar b. al-Khattāb, the second caliph of Islam –may Allah be pleased with him– said, when he was asked to give some advice, “I advise you to fulfill Allah’s convention –which He made with the *Dhimmīs*– because that is the convention of your Prophet and the source of the food for your dependents (referring to the taxes collected from them).”⁴⁵

Lastly, Islam allows the government to give *Amān* to non-Muslims to enter to the territory of Islam. *Qur’ān* says “And if any one of the polytheists seeks your protection, give him protection until he listens to the Word of Allah, and then let him reach his place of safety. That is because they are a people who do not know.”⁴⁶ The basic purpose of the *Amān* is to facilitate Muslims of *Dār al-Islām* and non-Muslims of *Dār al Kufr* in the international trade. The rules of *Amān*, under the *Shari’a*, are quite flexible. According to Islamic law –as a matter of general principle–, every competent Muslim citizen can provide *Amān* (issue visa) for an alien national⁴⁷ however under the concept of public interest the ruler can restrict general public from issuing *Amān* and delegate this authority to particular department.⁴⁸ There are certain procedures by which a *Must’amin*

⁴²Muslim b. al Ḥujjaj al Qushayrī (d. 875), *Sahīh Muslim*, (Riyadh: Bait al-Afkar al-Duwaliyyah, 1998), P. 720, Number 1731.

⁴³Abdul Karīm Zidān, *Ahkām al Dhimmīyyīn wa al-Must’aminīn fī Dār al-Islām*, (Beirut: Mu’assasah al Risālah, 1982) P. 30.

⁴⁴Muḥammad Amīn b. ‘Ābidīn (d. 1836), *Radd al Muḥtār ‘alā al Durr al Mukhtār*, (Beirut: Dār al Fikr, 2000) V. 4 P. 212.

⁴⁵Muḥammad b. Ismā’īl al Bukhārī (d. 870), *Sahīh al Bukhārī* (Beirut: Dār Tuq al Najāt, 1422 AH), V. 4 P. 98 Number 3162.

⁴⁶Al Qur’ān, 9:6.

⁴⁷Abū Yūsuf Ya’qūb b. Ibrāhīm (d. 798), *al Khirāj* (Cairo: al Matba’ah al Salafiyyah, 1382 AH) P. 205.

⁴⁸Zidān, *Ahkām al Dhimmīyyīn wa al Must’aminīn fī Dār al Islām*, P. 30.

can avail the status of *Dhimmī*. These procedures include, the application extended by the *Must'amin* and overstay from the prescribed time period fixed by the government.⁴⁹ Thus, a *Must'amin* can become citizen of *Dār al-Islām* by application at any time and by continuous stay there for a period, generally, more than one year.⁵⁰

4. Immigration and Citizenship in Saudi Arabia

4.1 Citizenship of Saudi Arabia

Kingdom of Saudi Arabia has codified its citizenship laws in the *Nizām al-Jinsiyyah al-Arabiyyah al-Sa'ūdiyyah*, or Saudi Arabian Citizenship System (the system hereinafter), which was adopted on September 23, 1954 and it came into force in the same year. The section 2 of the system says that the system does not have retrospective effect thus all the citizenship granted according to the previous system are valid.⁵¹ There are various modes by which the Saudi citizenship is either determined or granted. These modes are the following;

1. Original Saudi Arabian – The section 4 of the system prescribes the original citizens of Saudi Arabia. These are (a) the people who acquired the Ottoman citizenship before, or in, 1332 AH -1914 CE, (b) the Ottoman citizens born inside the Saudi territory, or resided there, between 1332 and 1345 and did not avail any other nationality and (c) the non-Ottoman citizens who resided inside Saudi Arabian territory from 1332 AH until 1345 and did not acquire any other nationality.

⁴⁹This is when, while granting *amḥ n* to the individual, if the Muslim ruler stipulates that if the *Musta'min* stays more than a certain period – generally one year – the *Jizyah* will be imposed on him and he will be *Dhimmī* in the *Dār al-Islām*. Overstaying by *Musta'min* in that case will be an implied contract of *Dhimmah* on his behalf and he will become *Dhimmī*. Imam al-Zayla'ī says; “ إذا دخل الحربي دار الإسلام بأمان لا يمكن أن يقيم فيها سنة ” which means “[W]hen a *Ḥarbī* enters into the territory of Islam with protection, it would not be allowed to him to stay more than one year and the Muslim ruler will stipulate that if he stays one year, the *Jizyah* would be imposed on him.”. See, 'Uthmān b. 'Alī b. Miḥjan Fakhrūddīn al-Zayla'ī, *Tabyīn al-Ḥaqā'iq Sharḥ Kanz al-Daqā'iq*, (Cairo: al-Maṭba'ah al-Kubrā al-Amīriyyah, 1313AH) 3:268.

⁵⁰Shams al Dīn Abū Bakr Muḥammad b. Abī Sahl al Sarakhsī (d. 1096), *Al Mabsūt Lil Sarakhsī* (Beirut: Dar al Fikr, 2000) V. 23 P. 212.

⁵¹S 2, *Saudi Citizenship System*.

2. Saudi Arabian by Birth—There are a number of people who have, or may have Saudi citizenship by birth. According to the system a person, born –inside or outside Saudi Arabia– to Saudi father or Saudi mother and unknown father or born inside Saudi Arabia to unknown parents is regarded to be Saudi citizen by birth. Further, a foundling in the Saudi territory is considered to be born inside Saudi Arabia unless proven otherwise.⁵² Apart from that, any person born inside Saudi Arabia to non-Saudi father and Saudi mother can be granted Saudi citizenship if he (a) has permanent residence i.e. *Iqāmah* in Saudi Arabia, (b) is known for good behavior, (c) has command and is fluent in Arabic language and (d) applies for Saudi citizenship after one year of reaching to the age of majority.⁵³

3. Saudi Citizenship by Marriage—Any foreigner woman marrying to a Saudi man can apply for the Saudi citizenship on the basis of her marriage however, a foreigner man marrying to a Saudi lady does not have this right. Thus, he cannot apply for Saudi citizenship on the basis of marriage.⁵⁴

4. Saudi Citizenship by Naturalization—Legally speaking, any foreigner can apply for Saudi citizenship if he (a) is of legal age, (b) is fluent in Arabic language, (c) is of sound mind, (d) lives in Saudi Arabia for a period of minimum five years with permanent residence i.e. *Iqāmah* (e) does not have any criminal record, (e) has legal income and (f) is known for good behavior.⁵⁵ Further, the wife of naturalized Saudi citizen also has the right to acquire Saudi citizenship and the dependents of that person residing in Saudi will automatically become Saudi citizens.⁵⁶

This was the legal position but in reality Saudi Arabia is known for not granting citizenship for any foreigner. The reasons behind this perception about Saudi Arabia is (a) the very conditions required for the application are quite tough and it is near to impossible for a person to fulfill these (b) and then the Saudi minister of interior has right to reject the application of citizenship without assigning any reason and (c) the common practice which has been observed for a long period is that Saudi Arabia very rarely accepts any citizenship applications and the destiny of the most applications, despite fulfillment of these conditions, is none other than rejection.

⁵²S 6, *Saudi Citizenship System*.

⁵³S 8, *Saudi Citizenship System*.

⁵⁴S 16, *Saudi Citizenship System*.

⁵⁵S 9, *Saudi Citizenship System*.

⁵⁶S 9, *Saudi Citizenship System*.

5. Immigration and Citizenship in the Islamic Republic of Pakistan

5.1. Citizenship in Pakistan

Pakistan has codified its citizenship law in the *Pakistan Citizenship Act 1951* (hereinafter the act) which was adopted on April 13, 1951 and it came into effect on the same date. Keeping the space limit in mind, the citizenship law of Pakistan is explained briefly in the following.

1 Citizens at the time of the act—The section 3 of the act says that any person whose parents or grandparents were born in Pakistan, or any person who was naturalized as British subject in Pakistan or any person who migrated to Pakistan before commencement of the act is regarded to be Pakistani citizen.⁵⁷

2 Citizenship by birth—According to the section 4 of the act, any person born in Pakistan, provided that his father is not an enemy of Pakistan and/or not enjoys immunity from Pakistani laws, is Pakistani citizen by birth.

3 Citizenship by descent—According to the section 5, if one of the parents of the person is Pakistani citizen then the person has the right to get Pakistani citizenship.

4 Citizenship by migration—According to the section 6 of the act any person who migrated from Indian Territory before 1st January 1952 with the intention to reside permanently in Pakistan, will be regarded Pakistani citizen by migration.

5 Citizenship by marriage—The section 10 of the act provides to the woman who gets married to a Pakistani citizen the right to acquire Pakistani citizenship on the ground of her marriage. Like the Kingdom of Saudi Arabia Pakistan does not provide to foreigner male spouse of the Pakistani women the right of citizenship on the bases of marriage.

6 Citizenship by Naturalization—The section 9 of the act authorizes the federal government to naturalize any person to become Pakistani citizen in accordance with *the Naturalization Act, 1926*. The section 3 of *the Naturalization Act, 1926* authorizes the federal government to issue the certificate of naturalization to a foreigner if he (a) is of the age of majority, (b) is neither a Pakistani citizen nor is citizen to any state of which a citizen is according to

⁵⁷S 3, *The Pakistan Citizenship Act, 1951*.

Pakistani law is prevented from naturalization, (c) has lived in Pakistan for a period of 12 months after his application of naturalization, (d) is of good character and (e) has adequate knowledge of the language which has been declared by the government to the language spoken by the ordinary Pakistani people.⁵⁸

6. IHRL and Pakistani and Saudi Citizenship Laws

There are several international human rights conventions -to which Saudi Arabia and Pakistan are party- which insure the equal rights of man and woman. These international human rights instruments include the Universal Declaration of Human Rights (UDHR) 1948⁵⁹ and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which was adopted by the United Nations General Assembly in 1979, of the latter is specifically intended to ensure gender equality and eliminate discrimination against women. The article one of CEDAW defines discrimination to be “*any distinction, exclusion or restriction made on the bases of sex which has the effect of purpose of impairing or nullifying the recognition, enjoyment or exercise by women*”⁶⁰. Furthermore the article 2 of the International Covenant on Civil and Political Rights (ICCPR), 1966 is also devoted to ensure the gender equality.⁶¹ Despite the fact these two countries are party to all these international human rights treaties; the citizenship system of the countries is discriminatory as only female spouse of a Saudi and Pakistani citizen can apply for citizenship on the basis of marriage which means that marriage with women citizen of these countries does not give rise to any right of citizenship.

In Pakistan, however, the Federal Shariat Court sensed this contradiction and in a *suo motu* judgment in 2006 declared the section 10 of the act to be in contradiction with Islamic law -for being discriminatory-, the article 2A and 25 of *the Constitution of Pakistan 1973* and international human rights law as well.⁶²

⁵⁸S 3, *the Naturalization Act 1926*.

⁵⁹Article 2, *Universal Declaration of Human Rights, 1948*.

⁶⁰Article 1, *Convention on the Elimination of all forms of Discrimination Against Women, 1979*.

⁶¹Article 2, *International Covenant on Civil and Political Rights, 1966*.

⁶²FSC (2006) 1/K.

7. Compliance with Islamic Law

From what we have discussed we can point out two major inconsistencies which these laws have with the principles of Islamic law. These inconsistencies are;

1. As we have discussed earlier, every Muslim is *de jure* citizen of any state which claims to be Islamic. This is because *Dār al-Islām* cannot close its doors to anyone who wants to be its citizen particularly Muslims as they are regarded to be citizens by default and they do not need any application to acquire citizenship.
2. We have also discussed earlier that citizenship, once awarded, cannot be renounced by the government under Islamic law but both the Saudi system⁶³ and Pakistani act⁶⁴ authorize the respective governments to renounce the citizenship on certain grounds.

8. The *Dār al-Islām* and Nation-State; the Root of the Problem

Keeping in the view the war crises in Syria which claimed lives of thousands of people, the role of Muslim countries in general and Saudi Arabia in particular is not satisfactory. Saudi Arabia, on one hand did not ratify the Refugee Convention 1951 and on the other hand did not open its borders fully⁶⁵ for the refugees who would flee Syrian war which left them vulnerable to choose the form of death by the burning bombs of Russian jets, drowning in the deep sea while attempting to flee to the safe -but far- lands and starvation⁶⁶.

The root of the crises is the so called nation state system. The notion of nation state system, which has its roots in the treaty of

⁶³S 13, *Saudi Citizenship System*.

⁶⁴S 16, *the Pakistan Citizenship Act, 1951*.

⁶⁵According to the data provided by UNHCR there are around only 500000 Syrian refugees in Saudi Arabia and the number of refugees is in hundreds in other gulf states. See <http://www.dw.com/en/arab-monarchies-turn-down-syrian-refugees-over-security-threat/a-19002873> last accessed on 14 June, 2019.

⁶⁶ In January 2015 the ministry of social in Saudi Arabia imposed ban on the adoption of the Syrian and other foreign orphans by Saudi nationals. The ministry decided not to provide any financial assistance for the parents who adopted any such foreign orphans. See for details; <http://www.arabnews.com/saudi-arabia/news/693726> last accessed on 14 June, 2019.

Westphalia which was concluded in 1648 and in which the territorial integrity of the European states was acknowledged and a long war came to end.⁶⁷ Ismā'īl al-Rājī discussed the foundations on which the concept of nation state system is based i.e. biological, geographical, psychological, historical and political bases which in a combination constitute an identification of all the members of one nationality having these five aspects in common. On the other hand, the notion of *Dār al-Islām* believes in universal brotherhood which invites all the members of human kind irrespective of nationality, race, color, religion and historical backgrounds to become its citizens. Ismā'īl al-Rājī, diagnosed the problem with nationalism which has become disturbing for vulnerable humanity in our time as he wrote "*nationalism seeks to shut itself from the humanity by setting for itself a temple, or holy ground, out of a piece of real estate it cuts off from the earth, and girds itself against human kind by restrictive citizenship and immigration laws.*"⁶⁸

9. Conclusion and Recommendations

From what we have discussed earlier it can be concluded that the principles of Islamic law regarding immigration and citizenship has been compromised in Pakistani and Saudi citizenship laws. Furthermore, the laws are inconsistent with certain aspect of IHRL. Therefore, it is suggested that both countries should bring their laws in conformity with IHRL and incorporate the generous and humanitarian principles of Islamic law in their citizenship laws. In addition, both countries should ratify the Refugee Convention 1951 and bring the provisions of the convention into practice in letter and spirit. That is the only way; these countries can on the one hand comply with Islamic law and on the other hand get out of the embarrassment in front of the international community when their Muslim brothers cannot find protection in Arab lands and Western countries have opened their hearts to accept them.⁶⁹

After complying with the principles of Islamic law and standards of international human rights law, these two countries can

⁶⁷Farr, Jason, "*Point: the Westphalia legacy and the modern nation-state*, (International Social Science Review 80, no. 3/4 2005) 156-159.

⁶⁸Ismā'īl al-Rājī, *Dialogue of the Abrahamic Faiths*, p. 56.

⁶⁹ According to an Amnesty International report Germany and Serbia together have received 57% Syrian assylum applications from 2011 to 2015. The report can be seen at: <https://www.amnesty.org/en/latest/news/2016/02/syrias-refugee-crisis-in-numbers/>. Last accessed October 2 2019.

successfully persuade other Islamic countries to follow them and bring flexibility in their immigration and citizenship laws. This will enable the entire Muslim world to deal with the crisis of refugees of the war hit regions like Syria, Iraq and Afghanistan. This answers the counter argumentation as well which suggests that the large number of refugees in these two countries will create much disturbance and problem for the countries. Because, if all Muslim countries do comply with the above mentioned recommendations, the refugees will disperse in various countries and by this the crisis would be dealt with in a more efficient manner.