

Universal Declaration of Human Rights- Right to seek Asylum

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Abstract

Article 14(1) of Universal Declaration of Human Rights provides every human being right to seek asylum in any country. States have been providing asylum to individuals who fear persecution from their own country due to political crimes. Asylum seekers on many occasions are misconstrued as refugees, there exist vast difference, while asylum is a protection provided by the state and refugees are merely individuals who are displaced and are recognised as refugees under the convention of refugees, 1951.

The purpose of the paper is to determine the nature of asylum, specifically in recognizing rights of asylum seeker, analyse the evolution of concept of asylum with reference to existing status of the asylum seeker, principals of asylum, thereof finding loopholes in the present situation i.e. infringement or breach of right of asylum seekers and the regulatory framework of various countries in regard to asylum seekers.

The research paper shall include and discuss in detail the concept of asylum with special reference to the regulations of the countries that have recognized asylum; it shall analyse the present situation of asylum seekers of various countries. It shall also discuss the nature of asylum.

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Introduction

Early concepts of asylum were always linked to a holy place or proximity to that place. The sanctity of the temple or church provided a sanctuary from manmade jurisdiction and provided religious protection, or altar, protection. As the notion of state sovereignty began to grow, the power to grant asylum shifted from religious institutions to nation states. State asylum became an important tool in the relations between states.²

Asylum as a human right got recognized in 20th century, it was through universal declaration of Human Rights the ideology of asylum shifted from being a state instrument to being an individual right. The granting of asylum came to be understood not as a discretionary prerogative power, but as an obligation of states. States now had a responsibility to grant asylum to stateless persons or people persecuted by their own state.³

The 1951 League of Nations ‘ Convention Relating to the International Status of Refugees’ restricted member states from denying refugees of other states from entering their territory. Asylum is the protection that a state provides on the territory or in some other place which is under the control of that state and is given to a particular person seeking shelter under it. It is a concept of “people before borders”. Asylum on many occasions is confused with refugees, while asylum is a form of protection given by a state and the latter are the individuals who seek benefit from that protection.

Article 14 guarantees every person right to seek asylum in other countries. It states:

- (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Research Methodology

The paper is based on doctrinal method of research which includes secondary data as articles, books, journals referring to nature of asylum, status of asylum seekers and their rights.

Limitations

The paper shall include the regulations of Universal Declaration of Human Rights in context to asylum. It shall discuss various regulations of the country that recognize asylum and analysing their laws. Analysing rights asylum seekers and infringement of the same.

²*History of Asylum*, ASYLUM INSIGHT (Sep. 25, 2018) <https://www.asyluminsight.com/history-of-asylum/#.W6Br-IUzbIU>.

³*Ibid.*

Asylum differentiated from Refugee status

Asylum is a kind of protection provided by state to people who fear persecution in their own country whereas refugees fall under the classes of people who seek protection under the former.

Countries through their constitution have expressly accepted the concept of asylum. Mozambique does the same through Article 20 of the Constitution of Mozambique on 'Support for the Freedom of Peoples and Asylum'. After a general provision in paragraph 1 stating that 'the Republic of Mozambique supports and shares the fight of peoples for national liberation and democracy', paragraph 2 goes on to recognize a right to be granted asylum in the following terms: 'The Republic of Mozambique grants asylum to foreigners persecuted by reason of their fight for national liberation, democracy, peace and the defence of human rights'. Paragraph 3 of article 20 then refers the determination of refugee status to the law: 'The law defines the status of political refugees'. This structure reflects the dual nature of both institutions and the conceptualization of asylum as a right (of individuals) intimately linked to the fight for democracy".⁴

The states not only should be provided to people but should respect and recognise other states providing asylum. Article 1(3) of the declaration states asylum to be a sovereign right which means the power to decide grounds for granting asylum rests with the state.

Asylum in Senegal

Hissen Habre, former President of the Republic of Chad, who found asylum in Senegal is an example of asylum being limitless under International Law, though extradition is an exception. International Court of Justice under Article 7(1) of the convention on torture examined the principle of *aut dedere aut judicare* in regard to Senegal.

India's stand on Asylum

Asylum seekers and refugees form a major part of India's population. India has one of the largest refugee populations in South Asia, but still there is no concrete legislation that deals with asylum or refugees law. India is not a signatory to United Nations Refugee Convention on the status of refugees, or its protocol of 1967 that states the rights and services host states must provide refugees. Bill on asylum was introduced in December 2015 to have a written law in regard to refugees and asylum seeker, though there are no law in existence till today.

Types of Asylum

⁴Gil-Bazo & María-Teresa, *Asylum as a General Principle of International Law*, OXFORD ACADEMIC OUP ACADEMIC (Sep. 25, 2018), <https://academic.oup.com/ijrl/article/27/1/3/2362480>.

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1. Territorial Asylum: Territorial Asylum is provided by the state to for the protection of those who may be prosecuted for political offences, but it does not protect criminals. The best example of territorial asylum is Dalai Lama of Tibet(in India).⁵
2. Extra- territorial asylum: the asylum is not granted in its physical territory, but in a notional manner such as legation or consular premises, warships.

The Debate on Asylum

Until the 1970s, the legal literature on the protection of those fleeing persecution focused on the institution of asylum. Grahl-Madsen's work, published in two volumes in 1966 and 1972 (originally conceived as a three-volume publication), constituted the first comprehensive analysis on the status of refugees in international law, prompted by developments following the adoption of the Refugee Convention and its Protocol.

However, Grahl-Madsen did not just analyse the status of refugees by reference to the Refugee Convention. On the contrary, he devoted his second volume to asylum, entry, and sojourn, grounding the debate on refugee status within the existing framework of protection in international law⁶. Writing in 1972, he noted that 'it is significant that scholars in many countries are seriously exploring the question [of a 'right of asylum' for the individual] with a view to finding a suitable form for a binding international instrument guaranteeing the individual a right to be granted asylum'. And he, himself, felt the need to contribute further to that debate by dedicating a monograph to asylum in 1980, which included a proposal for an international treaty on the matter.

Grahl-Madsen explains in detail the background and context for his draft Protocol and, in particular, the considerations that led him to propose what he himself calls a low-keyed instrument.⁷ He also noted that, in addition to the traditional 'right of asylum', understood as the right of a state to grant asylum, 'lately one has also come to speak of a 'right of asylum' for the individual'.⁸ In his view:

"The idea that States might agree on a binding convention guaranteeing the individual a right to be granted asylum is not entirely utopian. As a matter of fact, in many countries there are provisions of municipal law laying down a more or less perfect right of asylum for

⁵ ASYLUM POLICY IN INDIA TO THEPOINT(2017), <https://www.2thepoint.in/asylum-policy-in-india/> (last visited Sep 25, 2018).

⁶*Supra* note 4.

⁷*Ibid.*

⁸*Ibid.*

individuals ... In some countries such provisions are embodied in the national constitutions; in others they are of statutory character”.⁹

While article 22(7) of the American Convention on Human Rights, 1969 recognises ‘the right to seek and be granted asylum’, article 22(8) enshrines the principle of non-refoulement. The Court therefore chose to interpret the right to non-refoulement to include a right to asylum in the specific circumstances of the case. The Court also confirmed the interpretation that article 22(7) on the right to asylum enshrines a right of individuals, which imposes specific procedural obligations on states, including giving them access to asylum procedures.

The Constitutional Nature of the Right to Asylum

Today, constitutions worldwide recognise the right to asylum in their bill of rights and in doing so they represent a continuation in the ancient normative character of the institution to inform conceptions of society for the wellbeing of individuals.

Indeed, an exploration of constitutions around the world shows that the right to asylum is enshrined in most constitutions of countries across different legal traditions. The constitutions of Angola, Bénin, Bolivia, Bulgaria, Burundi, Brazil, Cape Verde, Chad, China, Colombia, Costa Rica, Cuba, Democratic Republic of Congo, the Dominican Republic, Ecuador, Egypt, El Salvador, France, Germany, Guatemala, Guinea-Conakry, Honduras, Hungary, Italy, Ivory Coast, Mali, Mozambique, Nicaragua, Paraguay, Peru, Portugal, Spain, and Venezuela all recognise the right to asylum¹⁰. They all draw from the liberal-democratic tradition that emerged from the French Revolution, changing the conception of the state and of the relationship between individuals and the state.¹¹

Article 13 of the Cuban Constitution constitutes one of the most detailed provisions on constitutional asylum¹²:

“The Republic of Cuba grants asylum to [individuals] persecuted because of their democratic ideals against imperialism, fascism, colonialism and neo-colonialism; against discrimination and racism; for national liberation; for the rights of workers, peasants and students; because of their progressive political, scientific, artistic, and literary activities, because of socialism and peace”.

Conclusion

⁹*Ibid.*

¹⁰*Ibid.*

¹¹*Ibid.*

¹²*Ibid.*

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The article has observed the constitutions of nations speaking to various frameworks and customs and has discovered that the long verifiable convention of shelter as a statement of sway has now been combined with a privilege of people to be conceded refuge of protected rank, which thus is perceived by universal human rights instruments of local scope

The subtleties of what particular security refuge gives, who is qualified for advantage from it, and also its disparagements or special cases are a long way from settled, however a reductionist methodology that precludes the presence from securing haven in global law since it needs establishing in a worldwide arrangement of all-inclusive degree neglects to perceive the significance and job that this organization still plays in the present scan for wellbeing as an issue of universal law. As International human rights checking bodies and worldwide courts are called to analyse states direct in connection to displaced people and others qualified for refuge, the reaction of the researcher can't be quiet. A methodological methodology that assesses the various measurements of global law and the translation of its tenets in the more extensive setting of state hone crosswise over various legitimate customs is called for, making the examination of shelter genuinely worldwide.