

Law of Asylum

Introduction

International refugee law, both on universal and regional planes, protects people who seek asylum from persecution, and those who have been recognized as refugees. This branch of international law overlaps to some extent with international human rights law, which means that its fundamental principle called "right to asylum" is complemented by human rights considerations and obligations, and it is interpreted with the legal toolbox developed for the interpretation of internationally protected human rights. The domestic implementation by States of the individual right of asylum continues to raise controversies and grave concerns alike (e.g. the access to asylum procedures is getting harsher and harsher).

Meaning and Definition

The word asylum is Latin term derived from the Greek word "Asylos" which means immovable place. Asylum means provide shelter and protection given by another state in its territory when its own state consider him as offender. In Asylum another state in which decline to surrender a person to requesting state. Asylee- A person who enjoy asylum is consider as Asylee. The concept of asylum is very old and traditional and it is opposite to extradition. Extradition is a delivery of an accused or a convict to the requesting state.

Definition: -

"To provide shelter and protection by a host state to a citizen of another state, is called asylum."

Explanation: -

The grant of asylum is an old international doctrine. But lacking general rules for its regulation in the premises of international law. Asylum is the extension of shelter and protection to an alien by a sovereign in case where there is a danger to the life of the alien or he is in fear of being prosecution in his state by the his opponent government due to the divergent political, social or religious views as between him and his government.

"Asylum" is the protection a State may afford to an individual by letting him enter the territory of the State and allowing him to stay within it. A State has a nearly unfettered discretion to grant this protection to any alien it wishes. But the term "asylum" is not employed in ordinary cases of admission of aliens; it is reserved for cases where the alien in question has left his country for what may roughly be characterized as political reasons, and is admitted to another country.

Kinds of Asylum

There are two kinds of Asylum:-

1. Territorial Asylum

2. Extra-Territorial Asylum

Territorial Asylum

When Asylum is granted by a state within its territory is consider as Territorial Asylum. Territorial Asylum is based on the territorial sovereignty over all people who is found under the territory of that state. A state has right to admit or expel any person found in its territory. The grant of territorial asylum therefore depends upon the discretion of a state. The state is not under the legal obligation to grant asylum to fugitive.

Extra-territorial Asylum

When asylum is granted by a state outside its own territory is consider as extra-territorial asylum. When asylum is granted in embassy, consular premises which is situated in the territory of other state is consider as granting asylum in the territory of other state. Diplomatic asylum is a part of extra-territorial asylum. Diplomatic asylum is based on the consideration that embassy premises are regarded as outside the jurisdiction of state in which that embassy is situated. In other words the grant of asylum on places not forming its physical territory is said to be extra-territorial asylum. Extra-territorial asylum may be given at any of the following places:

- i. **Asylum in legation or Diplomatic Asylum:** - The grant of asylum by a state in its embassy premises situated in foreign state, is said to be asylum in legation or diplomatic asylum. It is so because the embassy premises are considered to be excluded from the territorial jurisdiction of the state where it is situated.
- ii. **Asylum in Consulates:** - In consulates also the asylum may be granted to any person in the same way as in the case of asylum in legation premises.
- iii. **Asylum in Warships:** - Asylum may also be granted in warships, because men of war and public vessels of a foreign are exempted from the jurisdiction of the state in whose ports or waters may be found. Rather, they are under the jurisdiction of the flag state.
- iv. **Asylum In Merchant Vessels:** - In merchant vessels the asylum cannot be given except where there is a treaty between the states. The reason that merchant vessels cannot grant asylum is that, they are not excluded from the jurisdiction of the state in whose waters or ports it is found.
- v. **Asylum in the Premises of International Institutions:** - Asylum may also be granted in extreme danger to life in the premises of international institutions.

Basis of Asylum

State has sovereign right to control over the individuals which found within the territory of that state. According to Article 1 of "The draft convention on territorial asylum adopted by General Assembly in 1974" it was stated that granting asylum is the sovereign right of a state. Territorial

asylum depends on the Municipal Law. State has complete freedom to put restriction on their territorial jurisdiction right by concluding treaties. If a state concludes treaties for extradition of a fugitive criminal, there arises a legal obligation on its part to surrender them to requesting state. In such case a state cannot give the territorial asylum to those who found in its territory. Asylum granted by one state is to be respected by all other state.

Circumstances in which asylum cannot be granted:-

1. Territorial asylum cannot be granted who has committed a “crime against peace”, “crime against humanity” & “war crimes”.
2. Asylum cannot be granted when person is convicted or engaged in international crimes like genocide.
3. State cannot granted to person who are involved in the activities contrary to the principle of the United Nation. If asylum is granted in these cases then sanction will be imposed by UN to that state who granted the asylum.

Reason for granting Asylum

1. Asylum is granted to save a person from the jurisdiction of local authorities. When there is circumstances in which person has feared that he/she cannot get fair trial.
2. Asylum can be granted on extra legal grounds or on humanitarian grounds.
3. National Security also plays an important role in granting asylum.

State may grant asylum after taking into consideration of any of the above factors. Sometime granting asylum is also lead to strained relationship between states despite a clear provision in the declaration on territorial asylum, that granting asylum by the state should not be consider as unfriendly act.

LEGAL STATUS OF ASYLUM: NATIONAL AND INTERNATIONAL LEVEL

National and International law are the only two forms which support and govern the practice of Asylum

ASYLUM SYSTEM IN PAKISTAN

Pakistan is not a party to the 1951 Convention relating to the Status of Refugees/1967 Protocol and has also not enacted any national legislation for the protection of refugees nor established procedures to determine the refugee status of persons who are seeking international protection within its territory. Such persons are therefore treated in accordance with the provisions of the Foreigners Act, 1946.

In the absence of a national refugee legal framework, UNHCR conducts refugee status determination under its mandate (Statute of the Office of the United Nations High Commissioner

for Refugees adopted by the General Assembly Resolution 428 (V) of 14 December 1950) and on behalf of the Government of Pakistan in accordance with the 1993 Cooperation Agreement between the Government of Pakistan and UNHCR. Pakistan generally accepts UNHCR decisions to grant refugee status and allows asylum-seekers (who are still undergoing the procedure) as well as recognized refugees to remain in Pakistan pending identification of a durable solution.

Afghan refugees: In February 2007, the Government of Pakistan concluded a registration exercise of Afghan refugees living in Pakistan and issued Proof of Registration (PoR) cards to them, which provide temporary legal stay in Pakistan, freedom of movement and exemption from the application of the Foreigners Act, 1946. Approximately 1.34 million Afghans are currently holding PoR cards. These cards are currently valid until 31 March 2017. Only new born children to Afghan PoR cardholders can still be registered by the Government of Pakistan while newly arriving Afghans with international protection needs (please see details on what constitutes international protection needs in the below information leaflets) will need to go through the refugee status determination procedure conducted by UNHCR.

In the International sphere, the body of laws governing Asylum are the 1951 United Nations Refugee Convention signed in Geneva and supplemented by its 1967 New York Protocol. The Geneva Convention along with the New York Protocol is considered as the Cornerstone of the International legal regime towards the protection and security of Refugees. The Convention Relating to the Status of Refugees, or 1951 Refugee Convention, is a UN treaty defining who a refugee is and sets out rights for the asylum seekers and the duties of the nation's granting it. Overall this treaty governs how states allowing asylum seeker and refugees in their territory should treat these people. India is not a signatory to the 1951 Refugee Convention and its 1967 Protocol. Asylum is considered an International practice based on Human Rights which take the shape as a customary law with time because once it is found in some of the practices of the state without any legal basis, it creates an international obligation on the state to uphold this customary practice.

CORRELATION BETWEEN EXTRADITION AND ASYLUM

Extradition is mainly the surrendering of a fugitive by one state to another for the intention of criminal prosecution. This is a way of providing legal assistance between two sovereign states on the basis of some bilateral treaty or ad hoc agreement. Asylum, on the other hand, is about offering protection to those at risk of the legal framework operating in their home country. It is at times said that asylum ends where extradition initiates. Both of them are not identical and have procedural and functional differences which have evolved with time.

Extradition aims at securing criminal justice and denying safe haven to fugitive leading to a stable transnational criminal cooperation between the sovereign states. Whereas Asylum seeks to provide a safe and secure living for individuals on the run from their home country in order to avoid political persecution. Granting asylum is clearly distinguished from the order to refuse

extradition even though the two can be intertwined at times because there can arise two possibilities where a person's extradition might be sought when they are an asylee or they may apply for asylum at a time when they are being asked to extradite by their home country. Any extradition request made to a state for an asylum seeker must be in compliance with the principle of non-refoulement in International law enshrined under article 33 of the 1951 Geneva Convention. The decision to extradite is left with the judicial authorities and the issue of asylum is dealt by the executive decision on practical and political grounds most of the times. These concepts are conflicting in nature and are not mirror image of one another which strive for their different goals and ideals. A request for asylum cannot be considered if there is an extradition case pending and the court of law, would not hear extradition case against an individual granted asylum in their country.