

'Where Asylum ends extradition begins. Explain.

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1. Introduction

The word Asylum is Latin and originates from the Greek word 'Asyilia' which means inviolable place. The term is applied to those cases where the territorial State refuses to capitulate a person to the requesting state and provides accommodation and protection in its own territory. Therefore asylum involves two components, firstly, a shelter which is more than short-term protection; and secondly, a level of active protection on the part of the authorities having power over the territory of asylum.

Article 14 of the Universal Declaration of Human Rights recognizes the right of people to ask for protection from prosecutions of the sovereign authorities. Anyone can go to a different country and seek asylum. This right is also accessible for refugees who have committed political crimes. . But this is

provided on the condition that if your crime violates UN principles, then you are not entitled to seek asylum.

When there is a threat that the requesting States shall behave in a ruthless way with the surrendered person against the rules of the Civil Society, asylum is allowed by a territorial state.

The asylum is a political action and is connected with the characteristics of sovereignty. A supreme state is free to allow asylum to a person and it is always hidden with some political purpose. But sometimes it is extended for the maintenance of democratic norms, peace, human rights, and serving some greater social purpose of the society as a whole.

2. Meaning and Definition

By asylum we mean shelter and active protection extended to a political refugee from another state by a state which admits him on his request.

Asylum involves following 2 elements,

- 1) A shelter which is more than a temporary refuge.
- 2) A degree of active protection on the part of the authorities which have control over the territory of the asylum.

Right to asylum:

According to Art. 14 of the Universal Declaration of Human Rights – Everyone has right to seek and enjoy in other countries asylum from prosecution.

The declaration simply recognizes the right of asylum, it does not grant right to receive asylum. Such fugitive alien enjoys the hospitality of the state which grants him asylum, but it might be necessary to place him under surveillance, because to prevent such person from committing any political crime in their country.

Types of Asylum:

- 1. Territorial Asylum.**
- 2. Extra territorial Asylum**

1. Territorial Asylum.

Territorial Asylum: Territorial Asylum is granted by a state in its own territory and is considered as an attribute of the territorial sovereignty of the state. Article 1 of the Draft Declaration of Asylum as adopted by the United Nations Human Rights commission provided, Asylum granted by a state in the exercise of its Sovereignty, to persons entitled to invoke Article 14 of the Universal Declaration of Human Rights, shall be respected by all other states.

A state is free to grant asylum to the people of other states but this freedom can be restricted or regulated through treaties.

DALAI LAMA and Tibetan Followers:

Being oppressed from the repressive policies of China, Dalai Lama and some of his followers fled away from Tibet and sought political asylum in India. India granted political asylum to Dalai Lama and his followers.

It was an indication of territorial sovereignty of India.

China made a great hue and cry over it and alleged that India was interfering in the internal affairs of China. But as a matter of fact and in accordance with the principles of territorial asylum, India as a Sovereign State was within her right to grant asylum, to Dalai Lama and his followers. Since then Dalai Lama has been living in India and this is one of the points of irritation between India and china.

Refugees from Bangladesh:

The repressive policies and genocide committed by the military regime of General Yaha Khan forced millions of refugees to seek political refuge in India.

India liberally granted them political refuge

I. Political asylum

II. Refugee asylum

III. General asylum

I. Political asylum

Persons seeking asylum from persecution should not be subject to rejection at the frontier, or If there are overriding reasons of national security, or if it be necessary to safeguard the population, as in the case of a mass influx, asylum may be refused, but the state concerned should consider granting the person seeking refuge an opportunity, by way of provisional asylum or otherwise, of going to another state e.g., for so-called defector

II. Refugee asylum

for refugees with a well-founded fear of persecution in their own country persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of which that person is a national and is unable or, owing to such a fear, is unwilling to return to it.

III. General asylum:

For persons who have fled from their country to seek economic betterment, but do not have the status of immigrants. Such persons are not asylum-seekers but would be immigrants. Other persons may be genuine asylum-seekers, not for political or similar reasons but as a result of civil war in their own countries, or natural disasters such as famine or flood. Normally the need for such asylum will not be lengthy before repatriation

can take place, but the states offering temporary asylum may need international assistance in order to bear the burdens.

1. Extra territorial Asylum.

I. Diplomatic Asylum

II. Asylum in Warships

III. Asylum in the Premises of International Organizations

I. Diplomatic Asylum

- Oppenheim traces the history of diplomatic asylum in the ancient practice when the envoy's residence was considered in every respect outside the territory of receiving state and even extended to whole quarter of the town in which such residence was situated.
- This used to be called franchise du quartier and an inference from this was the so-called right of asylum, whereby envoys claimed the right, within the boundaries of their residential quarters, to any individual who took refuge there.
- Extra – territorial or Diplomatic asylum is granted by the state outside its territory. Eg. Its Embassy, consulates, public vessels, International organization, or warships.

II. Asylum in Warships

Warships enjoy immunity from the jurisdiction of all states except the flag state. If an individual after committing a crime on the territory of a coastal state takes refuge on board, he cannot be taken forcibly off the vessel. The Convention on Asylum adopted in 1928 by the Sixth International Conference of the American States and Tenth Conference of 1954 recognize the principle of asylum on warships for political offenders

but not for persons accused of common crimes.

III. Asylum in the Premises of International Organizations

There is no general rule or practice relating to granting of asylum in international organizations or specialized agencies of the United Nations. Some writers are of the opinion that such asylum should be given in extreme cases where the individual is in imminent danger, say from mob frenzy. This view seems to be reasonable in view of the expanding horizons of human rights.

The Asylum Case (Columbia v. Peru) – (1950)

Facts: The Colombian Ambassador in Lima, Peru allowed asylum to Víctor Raúl Haya de la Torre, head of the American People's Revolutionary Alliance Sanctuary in Columbia, after his faction lost a one-day civil war in Peru on 3 October 1949. The Colombian government granted him asylum, but the Peruvian government refused to grant him safe passage out of Peru.

Issue: Colombia maintained that according to the Conventions in force -the Bolivian Agreement of 1911 on Extradition, the Havana Convention of 1928 on Asylum, the Montevideo Convention of 1933 on Political Asylum - and according to American International Law, they were entitled to decide if asylum should be granted and their unilateral decision on this was binding on Peru.

Held: Both submissions of Colombia were rejected by the Court. The relevant treaties cited by Colombia were not ratified by Peru, and it was not found that the custom of Asylum was uniformly or continuously executed sufficiently to demonstrate that the custom was of a generally applicable character.