



# **PUBLIC INTERNATIONAL LAW**

BY –

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# ASYLUM: MEANING, TYPES, and RATIONALE

- Asylum is a Latin word and it derives its origin from a Greek word “Asyilia” meaning inviolable place.
- The term asylum in common parlance means giving protection and immunity by a state to an individual from their native country.


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- In day to day conversation, the term asylum is used interchangeably with the term refugee, there is difference between the two procedurally where a person who is still overseas seeks protection from a nation when given patronage after reaching there is given the title of a refugee whereas in asylum the person seeks the protection from a nation after reaching there and hence is known as asylee or asylum seeker.

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- Asylum is interpreted as a place of protection or refuge for a fugitive where he/she is given protection from trial and pursuit from their home country or to provide protection to a foreign citizen by a state against his own government.
  - The main purpose of asylum is to give shelter to those who have well-founded fear in their home countries of persecution.

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- The Universal Declaration of Human Rights under article 14 (1), provides that “Everyone has the right to seek and to enjoy in other countries asylum from persecution”.
  - The idea of Asylum remains that of personal immunity from authoritative steps of a decision maker than that of jurisdictional authority under whose power it falls. There are mainly two forms of Asylum:

# **(I) Territorial Asylum:**


- It is granted in the territorial boundary of a state providing asylum.
- Every sovereign state has the right to control and maintain jurisdiction on its territory, hence the decision to extradite someone or give them asylum is totally under its discretion.


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- Thus a state has territorial sovereignty over all its subjects and aliens.
  - This form of asylum is mainly given to people who have been accused of political offenses like sedition, treason, and espionage in their home country.
  - Territorial asylum is based mainly on the national law of the sovereign.


## **(2) Extra-territorial Asylum:**


- This form of asylum is usually granted by a state beyond its state territory and usually at places which are not a part of its physical territory.
- In such case, a state providing asylum in its embassy established in a foreign state is called Diplomatic Asylum.





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- Asylum may also be granted to asylee in Warships because they are exempted from the jurisdiction of the foreign state in whose water it is operating.
  - Such warships are under the patronage of the Flag state.

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- The same is not the case with merchant's vessels as they are not immune to the provisions of international law.
  - Hence, Extra-territorial Asylum is based on the framework of International Law Conventions.

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- The contemporary reasoning or rationale behind asylum must be understood via *Rationae Materiae* (Jurisdiction over subject matter) and *Rationae Personae* (Jurisdiction over a person).
  - A sovereign state has the right to exclude the involvement or interference by another sovereign over its territory.


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- This principle of sovereignty forms the basis for Territorial Asylum and by the very nature of this principle, it finds its extension to consulates, embassies, vessels, aircrafts belonging to the sovereign state.

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- In recent times, we have seen high profile individuals like Julian Assange and Edward Snowden seeking asylum under Ecuador and Russia respectively. In case of Julian Assange, the founder of WikiLeaks organization, he sought extraterritorial asylum under Ecuadorian Embassy after his extradition was approved by the UK to Sweden.
  - Whereas, Edward Snowden after exposing NSA illegal spying program sought refuge under territorial asylum after entering the territory of Russia.


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- Rationae Personae explains that certain individuals due to immunity granted to them due to their position or capacity, are not under the jurisdictional control of a state which would otherwise have exercised jurisdiction over them due to territorial sovereignty.
  - This form of special immunity is applicable to Diplomats, Heads of State, government officials on a certain mission etc.


# 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. India which is home to one of the largest refugee population in South Asia has no specific law dealing with the issue of asylum and is yet to enact one.


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- Refugee and asylum seekers in India are subject to various non-specific laws like The Registration of Foreigners Act, 1939, The Foreigners Act, 1946, Foreigners Order, 1948, and Passport Act, 1920.
  - There is no mention of the term ‘refugee’ in any of the National laws and asylum seeker and refugees in India are subject to the definition of ‘Foreigner’ as a person who is not a citizen of India as per the laws mentioned above.




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- These laws are used by the Indian government officials in order to deal with the intricacies arising out of the entry of refugees and asylum seekers in our country. Since there is no specific asylum policy in India, the government grants asylum on a case-to-case basis.

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- Congress MP Shashi Tharoor in the year 2015 introduced the Asylum Bill, 2015 which aimed to provide a legal basis to the issue of asylum in India. The bill is still pending and is yet to be taken up by the parliamentarians for consideration and evaluation.


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- 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.


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- 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.

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- 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.


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- 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.

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- 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.



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- 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.

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- 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.

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- 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.

Thank You!