Asylum

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**Introduction**

For centuries States have granted protection to groups of people and single individuals escaping persecutions, discrimination, and oppression. Helping people who seek refuge and escape danger has had its fair share of history. Initially, it was said to be a religious commitment since a lot of religions are based on protecting life and helping strangers. The early concept of asylum was always related to a sacred place or in the same proximity of the holy place. The sacredness of the church or temple gave people refuge from manmade laws and regulations and provided them with protection that was based on religious terms or alters the protection itself. When the view of state sovereignty rose, the authority to grant asylum made a shift from religious bodies to nation states (Herlihy, Gleeson & Turner, 2010). The view of state asylum became an essential instrument in the associations amid states. At the beginning of the 20th century the concept of asylum got the recognition of being a human right in the international legal tools. This rose and climaxed in the Universal Declaration of Human Rights (UDHR) and made a distinctive mark in the embracing of the ideological transferal of Asylum from being an instrument of the state to asylum getting recognition as being an individual right. The article 14 of UDHR that was embraced in 1948, guaranteed to the individuals the right to pursue and relish asylum in other countries. Following, regional human rights tools expanded on this specific right, assuring the right to pursue and be given the grant to asylum in a foreign land. This was in harmony with the statute of the international conventions and state (Herlihy, Gleeson & Turner, 2010).

**Discussion**

Asylum a Human Right

The concept of a person’s right to pursue asylum progressed sideways more customary approach of asylum as a belief that states had the right to give people. By the time 20th century approached, this unconventional concept of asylum started getting mirrored in international tools. In light of the 1933 League of Nations Convention in the relevance of the International Status of Refugees, restricted participant states from refusing refugees from neighboring states entry in their state, and also from dismissing immigrants among their own borders (Herlihy, Gleeson & Turner, 2010). These changes were ignited due to the Second World War. Asylum grant came to the understanding of not being an Optional entitlement but as a compulsion of the countries. Countries were now under the responsibility of granting asylum to people who were stateless or individuals who were wronged by their own nation. As mentioned above in accordance with the Article 14 of the UDHR people were not guaranteed asylum but given the right to apply for it.

Refugee Convention

The 1951 convention which was in the relevance of Status of Refugees and later in 1967 its Optional Protocol which was also in the relevance of the Status of Refugees (Benson, 2008). When the talk is about the 1951 convention it launches and defines a refugee along with the principle of non-refoulment and also the rights which were given to the people who were given the refugee position. Granting the fact that the definition of 1951 convention for refugees is still the most prominent and dominant, the regional treaties have further revised the meaning of a refugee in answer to the displacement crises which were not roofed by the 1951 convention. It is not defined by the 1951 convention that how Stat parties need to make a determination to if a person lives up to the definition of a refugee or not. On the contrary, the development of asylum records and the status of refugee resolve are left to each of the State party to regulate. This ended up creating discrepancies within various states as government’s craft asylum laws which are made on the basis of various resources, histories in regards to forceful migration movement and the national security worries (Benson, 2008). Regardless of the differences that were present at the regional and national levels, the principal objective of the modern refugee system is to give protection to people who for forced to escape their household due to their countries being reluctant and incapable of protecting them.

Who exactly is a refugee?

In the light of Article 1 of the 1951 convention a refugee is explained as someone who is not living in his or her state of residence and nationality, someone who is denied, unwilling or unable to go back because of the fear of trial on the basis of religion, nationality, race, membership, social group or political opinion one belongs to (Benson, 2008). Relating this description, internally displaced persons (IDPs) – The people who are trying to escape violence or natural disaster, people who are generally stateless and living outside of habitual residence or are not facing any kind of trial. Also, the people who have escaped and crossed the international border because they wanted to flee widespread violence will not be considered as refugees in light of either the 1951 refugee convention or optional protocol 1967.

Appealing Asylum: Enforcement

The settlement and decision of asylum claims and grants lie with the individual states. Even though, a few states specifically the ones that cover the Council of the European Union, have put in efforts to conform to a uniform and constant asylum system (Crisp, 2019). The regional and international bodies are deficient when it comes to the jurisdiction to arbitrate the individual or per person asylum claims. Looking into the Dublin Regulation: Council Directive 2004/83/EC of 29April 2004 on the lowest for the criteria for the requirement and status of third country nationals or stateless individuals who on the other hand need the international safeguard and the content of the protection allowed. This is commonly known as the Qualification Directive. However, the regional and international bodies do arbitrate statements that are proclaiming violation of the human rights of refugees and the people who seek asylum. Regardless of the fact that there are disparities across and at times among the states, there are numerous commonalities midst the asylum processes of states who hold the national framework for granting the refugee status. Below is a simplified and general description of these processes (Crisp, 2019).

Analysis of Key Terms

To make an understanding of how these processes operate it is essential to figure out how specific key terms which are included in the 1951 convention are defined in light of domestic legal systems of certain countries (Harvey, 2015).

* Refugee: The state parties to the 1967 optional protocol and the refugee convention of 1951 have merged the definition of a refugee in regards to the convention in their domestic law. States that are also part of the OAU Convention 1969 or the Cartagena Declaration have also fused those tools’ bigger meaning of a refugee, giving recognition to the refugees who are escaping widespread violence and other collapses of the public order (Harvey, 2015).
* Asylum Pursuers: An individual who is living within a state party who has applied and asked for identification as a refugee. If a person seeking asylum is focused and firm to meet the actual meaning of a refugee, they are given the grant to Asylum (Harvey, 2015).
* Substantiated Fear: The specific states have deduced the 1951 Refugee convention’s necessity of an understandable fear of trial in order to require asylum seekers to show that there is a substantial possibility that they will have to undergo and suffer trial if they are taken back to their country of habitual residence and nationality. This is deliberated as both subjective as well as an objective standard. Even though a substantial fear mainly refers to a risk of trial, the people who have faced trial in the past are assumed to have a well-founded fear (Gil-Bazo, 2015).
* Trial/Persecution: the term persecution is not described in the 1951 convention or even the optional protocol 1967. In the effort to provide guidance on what persecution consists of, the European Union Council encompassed a non-thorough list in the Qualification Directive of acts that can be deemed persecution such as; the acts that involve sexual violence, physical or mental violence. Administrative, legal, judicial or police measures which are either discriminatory or are applied in a discriminatory way. A trial which is based on discrimination or is disproportionate. Rejection of judicial redress which in return results in discriminatory or disproportionate punishment, punishment or trial when an individual refuses to take part in a military service on the basis of conflict, where if one performs the military services inclusive of crimes or certain acts that fall under the exclusion clauses as mentioned in the Article 12 (Gil-Bazo, 2015). It is not necessary that the trial at issue does not need to be committed by a state actor, even if the persecutory acts are committed by a non-state actor may also qualify under the convention of 1951 where the state is unable to or is not willing to protect and safeguard a person who is claiming to have refugee status.
* On Reason of A casual nexus carries great necessity between the persecutory action and one of the five grounds. In practicality, it carries meaning that an applicant necessarily needs to show that one of the protected grounds was or will be the reason behind the prosecution (Gil-Bazo, 2015).
* Religion, Nationality, and Race: The applicants who are seeking asylum do not need to possess religious, national or racial characteristics in question that given that characteristic was credited to the person seeking asylum by the prosecutor and is the reason behind trial (Gorman, 2017).
* Political View: Similar to the three grounds mentioned above, political opinion might be attributed to the individual seeking asylum. There are certain debates in the United States that whether impartiality might qualify as a political opinion for the purpose of getting an asylum grant (Gorman, 2017).
* Membership in a particular Social Group: there seems to be lack of consensus in regards to which constitutes a specific social group and if the class of person not involved in the convention of 1951 who regardless face trial. The example of women and homosexuals can be taken. The European Union Council has made the statement that individuals might be put under consideration to constitute a specific social group when common immutable features are shared, a thing which is inborn to their existence or so fundamental to their existence that there is no way that they can change it (Gorman, 2017). At the same time have different identities in their own state of nationality or residence because they are perceived as different by the society.
* Particularly Serious Crime: Every country describes a serious crime differently. The UNHCR takes a particularly serious crime to be an act which comes under a capital crime or something which is gravely punishable. The UNHCR has recommended that there should be a balance created in the harshness of the crime against the harshness of the trial feared but this balancing test has not been widely adopted. It was said that the aggravated felony shall constitute a specific serious crime (Heijer, Rijpma & Spijkerboer, 2016). In light of the statute, aggravated felonies are inclusive of felonies of which the possible sentence is imprisonment for more than one year.
* Crime against Humanity, War Crimes: Counties apply the definition which has been given in the international humanitarian law, it has been articulated in the Articles seven and eight of the Rome Statute of the International Criminal Court (Heijer, Rijpma & Spijkerboer, 2016).

The National Process of Claiming Asylum

Usually, the refugee status is determined, or one can say the asylum settlements are done by an official from a chosen government department or agency. These officials need to have a solid platform of the refugee law. In the majority of the cases, the official will have to interview the individual who seeks asylum to make an evaluation of that person's credibility. All the burden lays on the asylum seeker to prove themselves that they fit the definition of a refugee, they are encouraged to provide as much supporting evidence as they can. Supporting evidence can be in the form of NGO reports, news articles, country reports, affidavits or in-person testimony of a witness (Heijer, Rijpma & Spijkerboer, 2016). Putting under consideration Article 31 of the 1951 convention, state parties give in their domestic law that a candidate's irregular entry, per se an entry without a visa will not be able to have a negative impact on the asylum-seeking candidate’s application. However, there are certain States who place a time restraint on how many days after entrance into the country premises, a person seeking asylum needs to make an application. There is a one year-imposed filing deadline on asylum applications, however, there can be exceptional cases for a few circumstances. In addition to making claims at the border, people in deportation proceedings can also make a rise in asylum claim, given that the claim made is timely.

 If the official finds out that the asylum seeker has a well-founded fear of trial on the basis of the five grounds, they are permitted to allow that person a claim to asylum. People who are granted asylum receive the residence permit along with another one for a dependent relative. Countries have provided that where the government denies the right to asylum to a candidate, the applicant who has been denied the right needs to receive an application for the denial (Heijer, Rijpma & Spijkerboer, 2016). The asylum seekers also have the right to ask for an appeal for the denied decision. Normally, a candidate might not be removed unless or until they have used all of their available remedies. The people who are eligible for asylum might, however, be also eligible for more limited forms of protection. These are inclusive of protection under the Article 3 of the convention against torture, it forbids any country from returning a person to a country where their safety is at stake and they will be a subject to cruel punishment or treatment. States also give the grant of complementary types of protection, for instance, subsidiary protection, withholding of removal and subsidiary protection to the people who do not meet the description of a refugee, but the life of those individuals will be in danger if they return to the state of nationality and habitual.

 Refugee Status Determination by the UNHCR

There are many states who have taken in a large number of the refugee population, but they are not a party to either the 1951 convention or the 1967 optional protocol or they do not have laws and policies in place to address the asylum-seeking claims (Campbell & Steel, 2015). These states are largely inclusive of countries that are in Asia and the Middle East with a large amount of refugee population, inclusive of Jordan, Malaysia, Lebanon, Pakistan, and Egypt. In such a case the refugee status of an individual is figured out by the field offices of the United Nations High Commissioner for Refugees UNHCR. The refugee status determination that is conducted by the UNHCR is pretty similar to the Asylum adjudications which are held by the states. After an individual has registered themselves with the local UNHCR office, people who are seeking asylum have to meet an Eligibility Officer who analysis their application and the supporting documents (Campbell & Steel, 2015). All the people who apply for asylum have the right to an in-person interview and they can also be accompanied by a legal representative. Asylum seekers also have the right to bring a witness, but UNHCR policy is that the testimony of the witnesses cannot be given in the presence of the candidate and should also not be given in the presence of a third party or another witness. All the candidates are informed in writing of the Eligibility Officer’s decision. When an eligibility officer denies an applicant of their plea, they deserve that the officer explains to them why they were denied. Further, as mentioned above as well, the candidates who have been denied refugee status are entitled to file for an appeal (Campbell & Steel, 2015).

 All the people who have been granted a refugee status as well as their relative who have been given the grant as well, are also issued a UNHCR Refugee Certificate which specifies that the person who holds this certificate is a refugee and therefore has the right to protection, inclusive of protection from refoulment. Regrettably, in practice issuance of a Refugee Certificate does not always make a guarantee of a person’s ability to work or give them protection from getting detained in the host country (Campbell & Steel, 2015). UNHCR generally makes a determination of the refugee status on an individual basis, however, the agency might afford prima facie refugee status to groups in the case where a substantial group of individuals have been displaced and require urgent protection. An example that can be taken under consideration to make a better understanding is UNHCR’s decision that they made in 2007 to give prima facie refugee status to people seeking asylum from the Southern and Central Iraq. UNHCR also helps facilitate resettlement to third countries where voluntary deportation or local integration is not possible (Burridge & Gill, 2017).

Particular Social Group

Let us start by discussing the “Matter of Kasinga”, the United States Board of Immigration Appeal BIA held the young women who were part of the Tchamba-Kunsuntu Tribe of Northern Togo who had not been imperiled to female genital mutilation, which was in the tribe’s practice, and who contrasted the practice constituted a specific social group (Burridge & Gill, 2017).

The criteria and procedure to identify a specific group are the United States is not that clear. In regards to the matter of Acosta, the BIA held the taxi-driver cooperative in EI Salvador which did not constitute a social group because their membership was not absolute. For the meantime, in regards to the matter of C-A-, the BIA held the non-criminal, uncompensated the informants in Colombia did not constitute a social group because they did not share a common unchallengeable feature, and because of the fact that they were not a visible group (Burridge & Gill, 2017). The nature of their work restricted them to work in secret. In Benitez Ramos v. Holder, this case was in concern of withholding of the removal claim which was filed by the Salvadoran national, The United States Court of Appeals for the Seventh Circuit did not only reject the social visibility obligation which was articulated by the BIA, it also criticized the BIA for the inconsistency applying its own criteria, pointing out the fact that the BIA itself did not always require social visibility when they evaluate that if a person is said to be a member of a particular group. Ever since, the particular social group has been defined as a group of people who all share similar, unchangeable characteristics (Giametta, 2018).

Now talking about the joined cases, Islam the United Kingdom House of Lords held the women in Pakistan constituting a social group, granting the right to asylum to two women from Pakistan who had escaped domestic violence. Cf., Matter of R-A-, 22 I&N 906 BIA 1999, which talks about denying asylum to women who claim membership in a social group that is defined as Guatemalan women, who have been intimately involved with Guatemalan men, who are under the belief that women are to live under male domination (Giametta, 2018). In accordance with the House of Lords, if such a vast description of a social group qualifies under the Convention will be depended on the evidence of how that particular group is treated in the country of nationality or habitual residence.

In A and Another v. Minister for Immigration & Ethnic Affairs 1997, the High Court of China denied the asylum grant of Chinese nationals who made claim to have a well-founded fear of trail because they sought to have another child regardless of China's one-child policy (Gorman, 2017). The candidate asking for asylum claimed that they are under the fear that they will be forced to go through the process of sterilization, and they also made the claim that they belong to that particular social group that comprised of “those who believed that having a single child restriction does not place on them, or those who are forced to go under the process of sterilization.” The Court denied the case and said it was too circular because it was not independent of the trial feared. On contradiction, the United States has given recognition to forced sterilization as a per se ground of persecution in its jurisdiction (Gorman, 2017).

Non-Refoulment and Countries of Transit

In Sale v. Haitian Ctr. Council, Inc 1993, The United States Supreme Court held that the United States was not in violation of refoulment compulsion then it gave back Haitians interdicted on the high seas given that the Haitian was not actually on the United States premises, hence the non-refoulment obligation did not apply in this case. The Inter-American Commission on Human Rights IACHR denied this reason (Gorman, 2017). They also said that the United States has violated the petitioners' right to ask for asylum and there right to life and liberty. Many of the people were arrested by the Haitian authorities, they were not even given the right to meaningful opportunity to make their claims arbitrated. The IAHCR also strongly held the fact that the United States had made a violation when it came to the Haitians right to freedom from discrimination, it was also noted that a more favorable policy was applied to Nicaraguans and Cubans (Gilbert, 2015).

In Abdi and Another v. Minister of Home Affairs, the Southern African Court denied the Government's argument that two Somali nationals, one who is an asylum seeker and the other a familiar refugee, being held in the Inadmissibility Facility detention center at the airport while they waited to be transferred to Kenya were outside the scope of South African Law. The Court also made the claim that it was immaterial that both of them left South Africa for Namibia before their detention and, being illegal entrants, were a subject to a Namibian Deportation (Gilbert, 2015).

Comparison of Asylum in the United Kingdom and the United States

The United Kingdom rendered political asylum to different people who were persecuted (Tutić & Liebe, 2018). There were people amongst those individuals who were part of the socialist movement that was given by Karl Marx. In regards to the endeavored bombing of Greenwich Royal Observatory that occurred in 1845 and also the Siege of Sidney Street which occurred in 1911, brought in the framework of the Propaganda of the deed actions, there were restrictions put on the political asylum (Tutić & Liebe, 2018).

The recognition of the right of Asylum of people was recognized by the United States as specified by international and federal law. A particular number of legally defined refugees who will be applying for the refugee status overseas, also the people who were applying for Asylum after they arrived in the United States, were admitted annually. The United States is home to more than 2 million refugees, it is one of the countries that has taken the most amount of refugees ever since World War II (Heesch, 2016). At the time of the 1990’s the United States accepted more than 100,00- refugees every single year, but ever since the 21st century started the rate of refugee intake has decreased to 50,000 per year because of the recent security issues. In regards to the people who seek asylum, it was seen that 86,400 people sought refuge in the United States since the early 2000s. Prior to the attack of 9/11 individual asylum candidates were analyzed in the private proceedings are the United States Immigration and Naturalization Services INS.

Regardless of all the things concerns and reservations have been raised in light of the United States Asylum and refugee determination processes. Recent empirical analysis done by three scholars defined the United States Asylum procedure as game of Refugee roulette; this is in regards of the fact that the results of the asylum determination independent in large part of the personality of the specific judge to whom the application has been randomly assigned to, instead of on the merit of the case (Meyers, 2016). The low number of refugees accepted from Iraq between 2003 and 2007 demonstrates the worry about the refugee processes of the United States. There was a report made by the Foreign Policy Association that stated that possibly the most puzzling feature of the Iraqi Refugee crisis has to be the incompetence of the United States to take in more Iraqi’s after the invasion of the country back in 2003. To this date, the United States has given the status of Refugee to less than 800 Iraqis, also to put under consideration is the fact that only 133 people were granted that right in 2007. One can see a huge contrast when the Vietnamese war is put under consideration (Ray, 2016). The United States took in more than 100,000 Vietnamese refugees who applied for Asylum midst of the Vietnam War.

**Conclusion**

When the modern International legal frame for the approach of Asylum is put under consideration in conjunction with the United States Refugee Act of the 1980, an individual is who fears to return back to their country because of the past persecution on the basis of their religion, race, ethnicity, political opinion and membership in a particular social group has the right to seek asylum. In the current times, things have changed to a great degree. People are denied the right to asylum on the basis of many factors. Nowadays, the issues that are faced in the granting of Asylum are one of the most crucial problems ever since the crisis that were faced around the time of the World War II (Giladi, 2015). Recent issues faced are making more people seek asylum but the acceptance rate has decreased to a great degree. The times are changing and so is the criteria on the basis of which the asylum seekers were accepted. Security issues have risen and due to the growth in the terrorism worldwide, countries have started to take the extra precaution when giving people the right to migrate into their countries. However, there are certain cases in which it was a given that the refugees are to be accepted but still there were issues seen. The Syrian war can be put under consideration, there were a lot of people who had a justified well-rounded fear of being massacred if they go back home, but still, not a lot of countries have taken in refugees as much as they should have. Never the less, asking for asylum is a right for everyone who lives up to the description of a refugee and should not be denied without a substantial reason (Giladi, 2015).

**References**

Herlihy, J., Gleeson, K., & Turner, S. (2010). What assumptions about human behaviour underlie asylum judgments?. *International Journal of Refugee Law*, *22*(3), 351-366.

Benson, C. J. (2008). Crossing borders: A focus on treatment of transgender individuals in US asylum law and society. *Whittier L. Rev.*, *30*, 41.

Crisp, J. (2019). Refuge Lost: Asylum Law in an Interdependent World. By Daniel Ghezelbash.

Harvey, C. (2015). Time for reform? Refugees, asylum-seekers, and protection under International Human Rights Law. *Refugee Survey Quarterly*, *34*(1), 43-60.

Gil-Bazo, M. T. (2015). Asylum as a general principle of international law. *International Journal of Refugee Law*, *27*(1), 3-28.

Gorman, C. S. (2017). Redefining refugees: Interpretive control and the bordering work of legal categorization in US asylum law. *Political Geography*, *58*, 36-45.

Heijer, M. D., Rijpma, J., & Spijkerboer, T. (2016). Coercion, prohibition, and great expectations: The continuing failure of the Common European Asylum System. *Common Market Law Review*, *53*(3), 607-642.

Campbell, E. J., & Steel, E. J. (2015). Mental distress and human rights of asylum seekers. *Journal of Public Mental Health*, *14*(2), 43-55.

Burridge, A., & Gill, N. (2017). Conveyor‐belt justice: Precarity, access to justice, and uneven geographies of legal aid in UK asylum appeals. *Antipode*, *49*(1), 23-42.

Giametta, C. (2018). New asylum protection categories and elusive filtering devices: the case of ‘Queer asylum’in France and the UK. *Journal of Ethnic and Migration Studies*, 1-16.

Gorman, C. S. (2017). Redefining refugees: Interpretive control and the bordering work of legal categorization in US asylum law. *Political Geography*, *58*, 36-45.

Gilbert, L. (2015). Gender-Based Asylum. *LAW, & SOCIAL MOVEMENTS*.

Tutić, A., & Liebe, U. (2018). Citizenship Status, Warm Glow, and Prosocial Behavior: A Quasi-Experiment on Giving Behavior by Host-Country Citizens and Asylum Seekers.

Heesch, M. (2016). Navigating the Doctrinal Tension in US Asylum Law. *Minn. J. Int'l L.*, *25*, 421.

Meyers, D. T. (2016). Victims of Trafficking, Reproductive Rights, and Asylum. *The Oxford Handbook of Reproductive Ethics*, 96.

Ray, S. B. (2016). Applying the US Constitution to Foreign Asylum Seekers: Exposing a Curious, Inconsistent Practice in the Federal Courts. *Marq. L. Rev.*, *100*, 137.

Giladi, R. (2015). A ‘Historical Commitment’? Identity and Ideology in Israel's Attitude to the Refugee Convention 1951–4. *The International History Review*, *37*(4), 745-767.