
RIGHT TO ASYLUM AND INDIAN JUDICIARY, AND ANALYSIS OF JUDGMENTS

Rohan Kaparwan, School of Law, Delhi Metropolitan Education (Affiliated to Guru Gobind Singh Indraprastha University)

ABSTRACT

This research paper investigates the Right to Asylum within the Indian judicial system, focusing on its historical context and practical application. Asylum, a concept with ancient origins, was formalized in the 20th century through year 1951 of Refugee Convention and year 1967 Protocol of the same, setting global standards for refugee protection. India, though not a signatory to the 1951 Convention, adheres to its principles through the 1967 Protocol and other international agreements. The paper reviews India's legal approach, governed by the Foreigners Act of 1946 and the Foreigners Order of 1948, which lack a cohesive asylum framework and result in inconsistent procedures for asylum seekers.

Significant judicial decisions, including National Human Rights Commission v. State of Arunachal Pradesh (1996) and Louis De Raedt v. Union of India (2001), reflect the judiciary's commitment to upholding international asylum norms and protecting refugees' rights. These cases illustrate the courts' proactive role in ensuring adherence to principles such as non-refoulement and due process.

Challenges such as procedural delays, legal ambiguities, and limited access to legal aid create barriers for asylum seekers. This paper argues that while judiciary has played a pivotal role for shaping asylum policy and reinforcing international standards, systemic reforms are necessary. Comprehensive asylum legislation and improved legal assistance are essential to address the existing gaps and ensure more effective protection for asylum seekers in India. The study highlights the need for a structured asylum framework to enhance consistency and fairness in the asylum process.

1. Introduction:

A cornerstone of international human rights law, right to asylum is the idea that people must be protected and given a place to live when they are being persecuted, subjected to violence, or face other grave threats in their native countries. It represents a cornerstone of global efforts to uphold the dignity and rights of those forcibly displaced, recognizing their inherent worth and the obligation of states to offer sanctuary and support. This research paper delves into the historical evolution, international legal framework, and crucial significance of analyzing the application of the Right to Asylum within the Indian judicial system.¹

Historical Development and International Legal Framework:

The concept of asylum has deep historical roots, tracing back to ancient civilizations where individuals sought sanctuary in temples or city-states to escape persecution or punishment. However, the modern understanding of asylum crystallized in aftermath of World War II and atrocities committed during that period. The 1951 Refugee Convention is the historic international agreement that outlines the rights of refugees and the responsibilities of nations toward them. It was created in response to the wartime refugee crisis. It defines the standards for determining a person's refugee status and enshrines the concept of non-refoulement, which forbids returning refugees to nations where they could face persecution.

The protection of asylum seekers and refugees is reinforced by a number of additional international agreements in addition to the Refugee Convention. These include human rights treaties, regional refugee conventions, and the Universal Declaration of Human Rights. These documents create the legal foundation for defending the right to asylum, placing a strong emphasis on the values of equality, deterrence, and availability of just and effective asylum procedures. Moreover, they reflect the collective commitment of the international community to uphold humanitarian values and ensure the protection of vulnerable individuals fleeing persecution or violence.

Significance of Examining its Application within the Indian Judicial System:

Analyzing the application of the Right to Asylum within the Indian judicial system holds

¹ Sinha, N.S. The Right to Asylum in India: An Examination of Domestic and International Norms. Indian Journal of International Law, vol. 59, no. 2, 2019, pp. 231-258

profound significance in several respects. Firstly, India, as a signatory to various international conventions and a country with a rich tradition of hospitality and tolerance, have a moral and legal duty to defend rights of refugees and asylum seekers. Understanding how these obligations are translated into practice within the Indian legal framework provides insights into the country's adherence to international norms and principles of refugee protection.²

Secondly, India's geopolitical context and demographic diversity render asylum issues particularly complex and contentious. The country has been a destination for refugees fleeing conflicts and persecution in neighboring countries, including Tibet, Sri Lanka, Afghanistan, and Myanmar. Examining how the Indian judiciary interprets and applies asylum laws in the context of these diverse migration flows sheds light on the challenges and opportunities in providing effective protection to refugees within the Indian context.

India's Stance on Asylum and Legal Framework:

India's stance on asylum is shaped by its constitutional principles, statutes, and policies. Everyone is entitled to certain fundamental rights under the Indian Constitution, including equality before the law and protection against discrimination. India abides by the provisions of the 1967 Protocol despite not being a signatory to the 1951 Refugee Convention. Asylum seekers are subject to regulations regarding their arrival, stay, and deportation under the Foreigners Act, 1946, and the Foreigners Order, 1948. Furthermore, administrative guidelines and directions regarding the handling of asylum seekers have been established by India, with a focus on non-refoulement and humanitarian concerns.

India's asylum policy is characterized by a case-by-case approach, lacking a formal refugee law or comprehensive asylum system. Asylum seekers often rely on ad hoc procedures and informal mechanisms to present their claims, leading to varying outcomes and legal uncertainty. While India has historically provided refuge to persecuted communities, its asylum policy remains largely ad hoc and lacks a structured framework for refugee protection.³

In summary, while India upholds certain international principles regarding asylum, its legal framework and policy implementation rely on ad hoc measures. Clarification and enhancement

² Ghosh, A.K. The Interface between International Refugee Norms and Indian Judicial Practice. *Journal of Human Rights and Development*, vol. 12, no. 1, 2020, pp. 67-89.

³ Foreigners Act, 1946 and Its Application to Asylum Seekers. *Indian Kanoon*. Available at: [Indian Kanoon](http://www.indiankanoon.org)

of asylum laws and procedures could ensure better protection for asylum seekers within India's jurisdiction. Asylum cases not only elucidates the legal standards and procedural safeguards applied in such cases but also offers insights into broader questions of constitutional interpretation and human rights protection in India.

In conclusion, exploring the application of the Right to Asylum within the Indian judicial system is imperative for understanding the country's compliance with international legal obligations, addressing the challenges of refugee protection in a diverse and complex context, and safeguarding constitutional principles of justice and equality. This research endeavor seeks to delve deeper into these issues, critically analyzing judicial decisions, identifying gaps and opportunities, and offering recommendations for advancing the protection of asylum seekers and refugees in India.

2. Legal Framework

International Conventions and Treaties:

Several international conventions and treaties form the legal framework for asylum rights globally. Adopted in year 1948, the Universal Declaration of Human Rights (UDHR) guarantees the freedom to apply for refuge in case of persecution. The year 1951 Refugee Convention and its year 1967 Protocol, which specify who qualifies as a refugee and lays out their rights, notably non-refoulement, are the cornerstones of refugee protection.⁴ These concepts are expanded upon by regional treaties that address displacement within certain areas, such as the 1984 Cartagena Declaration and the 1969 Organization of African Unity (OAU) Convention. India's Stance on **Asylum and Legal Framework:**

India's stance on asylum is shaped by its constitutional principles, statutes, and policies. Everyone is entitled to certain fundamental rights under the Indian Constitution, including equality before the law and protection against discrimination. India abides by the provisions of the 1967 Protocol despite not being a signatory to the 1951 Refugee Convention. Asylum seekers are subject to regulations regarding their arrival, stay, and deportation under the Foreigners Act, 1946, and the Foreigners Order, 1948. Furthermore, administrative guidelines

⁴ UNHCR. Convention Relating to the Status of Refugees (1951) and Protocol Relating to the Status of Refugees (1967). Available at: UNHCR.

and directions regarding the handling of asylum seekers have been established by India, with a focus on non-refoulement and humanitarian concerns.⁵

India's asylum policy is characterized by a case-by-case approach, lacking a formal refugee law or comprehensive asylum system. Asylum seekers often rely on ad hoc procedures and informal mechanisms to present their claims, leading to varying outcomes and legal uncertainty. While India has historically provided refuge to persecuted communities, its asylum policy remains largely ad hoc and lacks a structured framework for refugee protection.

In summary, while India upholds certain international principles regarding asylum, its legal framework and policy implementation rely on ad hoc measures. Clarification and enhancement of asylum laws and procedures could ensure better protection for asylum seekers within India's jurisdiction.

3. Case Studies

Notable Cases in Indian Jurisprudence on Asylum Claims:

1. National Human Rights Commission v. State of Arunachal Pradesh (1996):

- This case involved the treatment of Chakma refugees from Bangladesh in Arunachal Pradesh. The Supreme Court held that refugees, irrespective of their status, are entitled to fundamental rights under the Indian Constitution. It emphasized the principle of non-refoulement and directed the government to ensure the protection and welfare of the refugees.⁶

2. Louis De Raedt vs Union of India (2001) :

- Louis De Raedt, a Belgian national, sought asylum in India on grounds of political persecution. The Supreme Court reiterated India's commitment to international refugee law principles and emphasized the importance of individual assessment of asylum claims. It highlighted the duty of the State to provide fair and efficient asylum procedures, stressing the

⁵ Joshi, P. India's Asylum System: Analyzing Compliance with International Standards. *Indian Journal of Human Rights*, vol. 22, no. 1, 2018, pp. 40-60

⁶ National Human Rights Commission v. State of Arunachal Pradesh, (1996) 1 SCC 742. Available at: SCC Online

right to due process for asylum seekers.⁷

Analysis of Key Judgments:

- Across these cases, courts consistently emphasized India's commitment to international refugee law principles, particularly non-refoulement.
- Judicial reasoning often centered on upholding fundamental rights and ensuring due process for asylum seekers, regardless of their nationality or status.
- The principle of individual assessment of asylum claims emerged as a central tenet, reflecting the importance of considering each case on its merits.
- Courts underscored the State's obligation to protect and provide for refugees within its jurisdiction, balancing national security concerns with humanitarian considerations.

Comparison and Contrast:

- While the judgments reaffirm India's adherence to international refugee law principles, inconsistencies exist in their application. For instance, while some judgments emphasize the duty to protect refugees, others focus more on procedural aspects.

Overall, these cases illustrate the evolving jurisprudence on asylum claims in India, emphasizing the importance of upholding fundamental rights, adhering to international obligations, and providing fair and efficient asylum procedures.

4. Challenges and Issues

Challenges Faced by Asylum Seekers within the Indian Judicial System:

1. Procedural Hurdles:

- Lack of standardized asylum procedures: India lacks a formal refugee law or comprehensive asylum system, leading to ad hoc and inconsistent processes for asylum determination.

⁷ Singh, V. Judicial Interpretation of Refugee Rights in India: Insights from Louis De Raedt Case. *Journal of Indian Law and Society*, vol. 16, no. 1, 2022, pp. 50-68

- Lengthy and complex legal proceedings: Asylum seekers often face delays and bureaucratic hurdles in having their claims heard, resulting in prolonged uncertainty and vulnerability.⁸

2. Legal Ambiguities:

- Absence of clear legal framework: The absence of specific legislation or regulations governing asylum creates uncertainty regarding the rights and obligations of asylum seekers and the State.

- Interpretation and application of international law: While India is a signatory to international conventions related to refugees, there may be inconsistencies in interpreting and applying these principles in domestic courts.

3. Systemic Barriers:

- Limited access to legal assistance: Asylum seekers, especially those from marginalized communities, may lack access to legal representation, hindering their ability to navigate complex legal processes and present their cases effectively.

- Resource constraints: Overburdened courts and government agencies may lack the resources and capacity to effectively process asylum claims, exacerbating delays and backlogs in the system.

4. Access to Justice:

- Language and cultural barriers: Asylum seekers, particularly those from non-English-speaking backgrounds, may face challenges in understanding legal proceedings and communicating effectively with authorities.

- Discrimination and bias: Asylum seekers, especially those belonging to minority or marginalized groups, may encounter discrimination or bias within the judicial system, affecting the fairness and impartiality of asylum proceedings.⁹

⁸ Mehta, Priya. Legal and Bureaucratic Challenges Faced by Asylum Seekers in India. *Asian Journal of International Law*, vol. 11, no. 2, 2019, pp. 105-122

⁹ Verma, A. The Challenges of Access to Legal Assistance for Asylum Seekers in India. *Indian Journal of Human Rights*, vol. 24, no. 2, 2021, pp. 90-108

Addressing these challenges requires comprehensive reforms to strengthen asylum procedures, clarify legal frameworks, enhance access to legal assistance, and ensure fair treatment and protection for asylum seekers within the Indian judicial system. Efforts to uphold human rights standards, provide adequate support services, and foster greater judicial sensitivity to the plight of asylum seekers are essential to addressing these systemic barriers and ensuring that India meets its international obligations to protect refugees.

5. Judicial Activism and Precedents

Instances of Judicial Activism in Asylum Cases:

1. National Human Rights Commission v. State of Arunachal Pradesh (1996):

- In this case, the Supreme Court displayed judicial activism by affirming the fundamental rights of Chakma refugees and directing the government to ensure their protection and welfare. The court's intervention emphasized the judiciary's role in safeguarding the rights of asylum seekers and holding the State accountable for its obligations under international law.¹⁰

2. Louis De Raedt vs Union of India (2001):

- The Supreme Court's judgment in this case exemplified judicial activism by reiterating India's commitment to international refugee law principles and emphasizing the importance of fair and efficient asylum procedures. The court's proactive stance underscored the judiciary's role in upholding due process and protecting the rights of asylum seekers.

Landmark Judgments Shaping Asylum Law in India:

1. Mohd. Azam vs Union of India (2015):

- This landmark judgment by the Delhi High Court recognized the principle of non-refoulement and directed the government to refrain from deporting Rohingya refugees until their asylum claims were duly assessed. The judgment significantly influenced asylum law in India by affirming the importance of humanitarian considerations and adherence to international obligations in refugee protection.

¹⁰ Kumar, N. Judicial Activism and Human Rights in India: Lessons from the NHRC v. Arunachal Pradesh Case. International Journal of Human Rights Studies, vol. 19, no. 3, 2023, pp. 65-82.

2. Louis De Raedt vs Union of India (2001):

- The Supreme Court's decision in this case, which emphasized the individual assessment of asylum claims and the duty of the State to provide fair asylum procedures, set a precedent for future asylum cases in India. The judgment contributed to shaping asylum law by highlighting the judiciary's role in ensuring procedural fairness and adherence to international standards.

The judiciary plays a crucial role in protecting asylum rights and enforcing international obligations in India by:

- Interpreting constitutional and legal provisions in line with international refugee law principles, thereby ensuring that asylum seekers are afforded due process and protection.

- Providing remedies and safeguards against refoulement, arbitrary detention, and deportation, thus upholding the principle of non-refoulement and preventing violations of asylum seekers' rights.

- Issuing landmark judgments that set legal precedents and shape asylum law, thereby influencing government policies and practices related to refugee protection.

- Holding the executive accountable for fulfilling its obligations under international law and ensuring that asylum seekers are treated fairly and humanely within the Indian judicial system.

Overall, the judiciary's proactive role in asylum cases reflects its commitment to upholding fundamental rights, promoting justice, and ensuring compliance with international refugee law principles in India.¹¹

6. Policy Implications

Assessing the Impact of Judicial Decisions on Asylum Policy and Practice:

1. Influence on Policy Formulation:

- Judicial decisions have often influenced asylum policy by setting legal precedents and clarifying the legal framework governing refugee protection in India. For example, landmark

¹¹ Jain, S. Judicial Precedents and Government Accountability in Asylum Cases in India. Asian Journal of International Law, vol. 12, no. 2, 2020, pp. 90-105

judgments affirming the principle of non-refoulement have compelled the government to reassess its deportation policies and ensure compliance with international obligations.

2. Enhancement of Procedural Safeguards:

- Judicial decisions emphasizing due process and fair asylum procedures have prompted reforms in administrative practices and legal proceedings. Courts' insistence on individual assessment of asylum claims has led to the establishment of more structured and transparent asylum processes, enhancing procedural fairness and protecting asylum seekers' rights.¹²

Potential Reforms or Improvements to Enhance Asylum Protection:

1. Enactment of Comprehensive Asylum Legislation:

- India currently lacks a formal refugee law or comprehensive asylum system. Introducing dedicated legislation on asylum would provide clarity on asylum procedures, define the rights and obligations of asylum seekers and the State, and ensure consistency and fairness in refugee protection.

2. Strengthening Access to Legal Assistance:

- Improving access to legal representation for asylum seekers, especially vulnerable groups, is essential to ensure effective participation in asylum proceedings and safeguard their rights. Providing legal aid services and training for lawyers specializing in asylum law would enhance access to justice and procedural fairness.

Broader Implications for Human Rights and Refugee Law in India:

1. Promotion of Human Rights Standards:

- Judicial decisions affirming asylum rights contribute to promotion of human rights standards in India, reinforcing country's commitment to upholding fundamental rights and principles of equality, non-discrimination, and non-refoulement.

¹² Arora, S. Enhancing Procedural Fairness in Asylum Claims: The Influence of Judicial Decisions. Indian Law Review, vol. 16, no. 1, 2024, pp. 54-71.

2. Advancement of Refugee Law:

- The jurisprudence developed through asylum cases contributes to the advancement of refugee law in India, enriching legal scholarship and shaping policy debates on refugee protection. It also fosters greater awareness and understanding of refugee issues among the public and policymakers.

Overall, judicial decisions play a critical role in shaping asylum policy and practice, driving reforms to enhance asylum protection, and advancing human rights and refugee law in India. By upholding rights of asylum seekers and ensuring compliance with international obligations, judiciary contributes to fostering a more inclusive and rights-respecting society.

7. Conclusion

Key Findings and Arguments:

The paper explores the Right to Asylum within the Indian judicial system, examining its historical development, legal framework, and application through notable cases. It identifies challenges faced by asylum seekers, including procedural hurdles, legal ambiguities, and systemic barriers. Despite these challenges, judicial activism has played a crucial role in shaping asylum law, with landmark judgments affirming principles of non-refoulement, due process, and humanitarian considerations. The judiciary's role in protecting asylum rights and enforcing international obligations is highlighted, emphasizing its influence on policy formulation, enhancement of procedural safeguards, and promotion of human rights standards.

Reflection on the State of Asylum Rights in India and the Role of the Judiciary:

The analysis reveals both progress and shortcomings in asylum rights in India. While the judiciary has demonstrated a commitment to upholding asylum principles and protecting the rights of asylum seekers, systemic challenges persist, including the absence of comprehensive asylum legislation and limitations in access to legal assistance. The role of the judiciary as a guardian of fundamental rights and a check on executive action is pivotal in ensuring asylum protection. However, there is a need for greater consistency and coherence in judicial decisions, as well as concerted efforts to address systemic barriers and enhance refugee protection in India.