

## LEGAL BASIS FOR DIPLOMATIC ASYLUM'S ELIGIBILITY



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### **Abstract:**

*It has become increasingly complicated to make a sharp distinction between diplomatic asylum seekers and other types of refugees. A barrage of legal measures has thus been introduced to grant diplomatic asylum to politicians, intellectuals and outstanding personalities who seek asylum. This study deals with the legal basis by which diplomatic asylum is granted. The diplomatic asylum refers to a critical situation related to the flight of a political refugee to the territory of another country or to the headquarters of its diplomatic missions (consulate or embassy) within the country (taking Latin American countries as an example). It highlights the important legal basis for granting diplomatic asylum mainly: Humanitarian Considerations and the Consensual Basis.*

**Key words:** *Asylum; Consulate; Diplomatic Asylum; Diplomatic Mission; Embassy; Legal Basis.*

### **Introduction:**

World War II has seen several trends in refugee migration. After independence, a number of ethnic conflicts occur in newly independent states in Africa, Asia and many other parts around the world. It is a major cause of refugee crises which begin in the late 1940s and lasts up to the 1960s. From 1960s to 1980s, refugee crisis is the result of cold war between the United States, the former Soviet Union and the countries belonging to these ideologies i.e. the Cuba's refugees. Since the 1990s, the refugee crisis is caused by intense social, cultural and ethnic conflicts.

The right of asylum, which existed in ancient Greece, imperial Rome, and early Christian civilisation, is the right to seek and receive asylum from

persecution in other countries. On the grounds of having the power to exercise sovereign control over the people found on its territory, a State has the right to provide asylum to a person who seeks it. The reasons for granting asylum may differ; it could be given to prevent someone from facing legal action for his political or religious stands in their home country. Asylum can be granted for humanitarian reasons with consideration for the national security of the host country. It may be extraterritorial, internal, or any combination of these. The former is granted by a state on its territory, and the latter is granted to refugees by the government of the territorial state regarding the legations, consular buildings, international headquarters, and warships.

Nations have disagreed about the institution of diplomatic refuge under international law. The right to grant asylum has been viewed as a violation of the receiving state's sovereignty and a violation of the purposes of diplomatic law. However, some countries see it as a way to protect the rights and lives of those who are being persecuted because of their political and religious beliefs. Thus, the present paper aims at exploring the legal basis from which diplomatic asylum is granted. The researchers have used qualitative method to probe the legal ways used by different countries to grant asylum to people of special position or critical situation. The paper is divided into three sections. The first section is devoted to the Conceptual Framework in which asylum and diplomatic asylum are defined in addition to a number of related concepts. The second section is about international efforts made to guarantee the right of diplomatic asylum. The last section deals mainly with legal basis to grant diplomatic asylum. The paper is concluded with conclusion that summarizes the findings of our study.

## **FIRST SECTION:**

### **Asylum and Diplomatic Asylum: Conceptual Framework**

The principle of asylum is basically linked to envoy's immunities and the premises of the diplomatic mission. This principle has historically been in use in various forms by a number of peoples and states. In primitive diplomacy, the principle of asylum was regarded as taboo, and whoever took refuge in tribal elders and ancestors graves, temples and its neighbouring structures, as well as some tribal and clan property and the houses of the elders was safe.

In the past, the word refuge was used to denote places where civilians and criminals sought refuge from prosecution or enemy's vengeance. Then, the term "the right for asylum" came into being to denote the privilege that was intended for those places to protect those who seek refuge in. Therefore, asylum system seemed to have deep roots in religious beliefs and many references to the concept of

asylum are found in numerous sacred texts and appear in nearly all major religions, from the Judeo-Christian faith to Islam to Hindu mythology and Buddhist teachings. (Cheung, 2011, p. 14)

Asylum was emerged as a religious refuge and evolved into a regional one. But only after the establishment of permanent missions and the transition to permanent diplomacy in 15th century, it became diplomatic asylum. A number of countries began to witness what was known as diplomatic asylum granted by their missions abroad in a myriad of ways, especially after the adoption of the territorial and diplomatic privileges and immunities principles. Since that time, the scope of these immunities began to expand to include not only the diplomatic envoy, but also his headquarters including his home and workplace. This immunity was extended to the embassy of neighbourhoods. In the sixteenth century, the immunity of neighbourhoods was emerged, and access to mission headquarters was permitted only with the approval of the head of the diplomatic mission. (Denza, 2008)

However, the abuse of using the immunity of neighborhoods by some ambassadors created serious disputes between States. These disputes led to the abolition of the immunity of neighborhoods by the end of seventieth century, and the diplomatic asylum was granted only to the embassy premises. From the 16th century until the late 1800s, granting diplomatic asylum was limited to ordinary criminals who sought refuge in the premises of diplomatic missions seeking protection and escape from local authorities, as the access to them was prohibited without the consent of the head of the diplomatic mission. (UN General Assembly, 22 September 1975)

The category of political offenders or those who were persecuted for political reasons were not allowed to seek asylum to the premises of diplomatic missions. The territorial state can therefore prosecute and arrest these persons in these diplomatic premises if the head of the diplomatic mission refuses to extradite them. With the development of the territorial asylum and the recognition of the right to political asylum which appeared after the French Revolution (the 1793 Constitution decided to grant asylum in France to foreigners exiled from their countries because of the cause of freedom). The eligibility for diplomatic asylum evolved from granting asylum to ordinary criminals to political ones only. (UN General Assembly, 22 September 1975)

But, this kind of asylum lasted only until the mid-19th century. Countries began to avoid recognizing the eligibility of granting diplomatic asylum to any group, especially after the development of state sovereignty that destabilized the foundations of the theory of territorial extension as the basis for diplomatic immunities and privileges. However, granting the right of diplomatic asylum to the political criminals rather than ordinary criminals made states turn to denying it to any category by the second half of the nineteenth century.

In order to further clarify the term diplomatic asylum, it is important to address it etymologically:

### **A. The Definition of a Asylum**

The word asylum is taken from Latin word "Asie-acillon" which means anything that is sacred and cannot be violated or assaulted. As its meaning refers to a place that is characterised by of specific privacy, the word asylum has two meanings in Latin language: it can refer to the place or the territory in which a person is protected from harm, or the state of being protected. (Lambert et al., 2008)

A person who left their nation due to being subjected to human rights violations because of who s/he is or what s/he believes in. A person who seeks to be known as a refugee while residing in a State is referred to as an asylum seeker. If the asylum applicant satisfies the requirements for refugee status, they are awarded asylum. A person who is forced to leave his/her country in search of safety in another nation but whose claim has not been officially accepted as a refugee is said to be an asylum seeker.

Asylum is the state of being forced to migrate either due to a change of regime after a revolution, coup, compulsion or seeking an escape from terrorism or on religious, political, ideological persecution, racism or just reside permanently or temporarily in another country. (Al moataamed, 2008, p.605)

In international law, Asylum is defined as: "The protection granted by a state to an alien whose claim is made in its territory or abroad". The Political Dictionary defines "refugee" as a person who:

- Left his country because of fear or poverty.
- Intends to settle in the host country.
- Is stateless and lacks protection and national status. (Political Dictionary, 1845)

According to the 1980 Refugee Act, there is a defined definition of a refugee in terms of migration. Refugee is the person who flees their native countries because of immediate concern for his/her own life or the lives of his/her loved ones. Often, Refugees receive insufficient protection from the threat, making it impossible for them to prepare their escape. Sometimes Refugees' choices are made so rapidly that there is no time to gather crucial documents, like birth certificates or documents proving one's nationality. Usually, refugees travel to a camp where the UNHCR is responsible for their protection and apply for refugee status there. (Jody, 2017, p. 116) Now, however, there are a significant number of

involuntary migrants whose forced migration is caused by political change, and who have a "well-defined fear of persecution based on their race, sexuality, religion, nationality, membership of a particular social group, or political opinion.

Instead of requesting refugee status from the UN, they move directly to the nation where they seek to be resettled. Direct applications for asylum and refugee status are made to the government after they arrive. They are kept in custody in several nations whilst the government makes its judgment. They are considered resettled refugees as soon as a government accepts their application. When an application is rejected, the person is deported and usually sent to their native country, where they may be subject to harsh penalties. (Jody, 2017, p. 116)

### **B. Definition of Political Refugee**

Many different research and papers look at the humanitarian and security aspects of political refugees' life. It is crucial to bring up these issues in public discourse, especially in light of the ongoing, brutal confrontations that have forced hundreds of politicians to flee their homes or look for safety abroad. The normative framework that allows or forbids such involvement, or the political engagement of refugees and asylum seekers in decision-making, is generally left up to the individual judgment of host or origin nation.

As a legal term, political refugee is a person who has migrated from his/her country of origin, or has been deported by intimidation and terrorism for political, racial or sectarian reasons. This person has turned to another country seeking protection and subsistence because s/he is deprived of the right to return to his/her country of origin. Political refugee is defined as a citizen who leaves his homeland either because of his/her own choice as the regime has changed, internal revolution or a coup, or because s/he is forced to leave the country to escape from persecution for political, ideological, racial or religious reasons. A political refugee is also defined the political refugee as: person who has fled his country because of (1) political, or religious persecution. (Bacaian, 2011, p. 10)

Different norms and practices can either encourage or discourage political refugees from participating in political life of their countries. They frequently have few opportunities to participate, which contribute to their continued marginalization. In order to ensure greater social inclusion and strengthen democratic norms and practices, there is a need for a wider discussion among policymakers, academia, and international and regional organizations. This discussion should examine the participation of political refugees in political processes of countries of origin.

## C.Principles of Political Asylum

### 1. Principle of Non-Refoulement or Expulsion

The State has the right to accept or reject a refugee on its territory, but it does not have the right to take measures such as expulsion or expulsion after taking the decision as not to allow the refugee to enter or remain in its territory. The principle of non-refoulement or expulsion is the decision of the prohibition of returning a refugee is not to a country of persecution is not taken by the country of origin but by the country in which he/she was persecuted. The country has the power to grant or refuse asylum. If it does not wish to accept a refugee, it must secure a temporary protection or send the refugee to another country where he/she is safe and not threatened. (International Review of the Red Cross)

The establishment of the UN after World War II provided a fresh push for the strengthening of principle of Non-Refoulement or Expulsion in international law. As a result, millions of individuals sought safety from wars and atrocities in another host nation. The 1949 Geneva Convention on the Protection of Civilians in a time of War, Article 45 stated that "in no circumstances shall a protected person be transferred to a country where he or she may have reason to fear persecution for his or her political, social, or cultural beliefs, or for any other reason." This was the first time the prohibition of refoulement was applied universally in that time period. The principle of Non-Refoulement or Expulsion was also strengthened by Article 33 of the 1951 Geneva Convention pertaining to Refugees' status, which states that:

“No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” (as cited in Molnár, 2016, p. 52)

The development of the international legal basis of nonrefoulement shows the necessity of further broadening and perfecting its application as well as the reason for its existence. Following the non-refoulement principle's inception in the diplomatic asylum context, its subsequent involvement in international human rights law, convergences regarding the principle's content might be seen in the recent diplomatic behaviours regarding granting diplomatic asylum. However, there are still certain contentious issues and hazy boundaries that have emerged via the practical application of the principal and are the occasionally inconsistent State political and economical interests.

## 2. Principle of Non-extradition of Political Criminals

Principle of Non-extradition of Political Criminals refers to the prevention the return a refugee to a state of persecution. In this case, the country of origin may not be the refugee's country of origin, but the country where s/he is persecuted. The country's authorities can grant or denying asylum. If it does not accept the refugee, it may secure temporary protection or send him or her to a country where he or she is safe. (Refugee Convention, 1951, art. 33/1)

Humanitarian ethics are essentially the foundation of the practice of refusing to extradite (often involving in the granting of asylum) those charged or found guilty of political offenses. The principal of non-extradition of political criminals has gained significant importance as political upheaval and revolution have become a defining characteristic of the modern era. However, nations have also a shared interest in preventing and punishing common criminal activity. Therefore, extradition agreements have been made to make it easier to send people who have been charged with or found guilty of common crimes back to the nation that has the authority to punish them. (Gold, 1970, p. 191)

### D.Types of Refuge

#### 1. Regional refuge

Any person forced to from his or her homeland because of external assault, occupation, foreign dominance, or events significantly disrupting public order in any part or all of his or her place of origin or nationality. (A guide to international refugee protection and building state asylum systems Handbook for Parliamentarians, 2017) )Regional refuge makes it easier for the host country to accept a political refugee and ensure his or her safety, here a number of regional refuge examples:

- The First Secretary of the Polish Embassy in Stockholm sought asylum for himself and his family.
- While she was in the United States, the Polish cellist also requested political asylum and supported the solidarity Movement in Poland.

#### 2. Diplomatic Asylum

Diplomatic asylum is a kind of refuge that a state grants in places outside its physical territory including: embassies, consulates, warships, aircraft and military bases abroad. As far as the immunity of the diplomatic mission headquarters is concerned, question of whether the diplomatic mission has the right to grant asylum to ordinary or political criminals within its headquarters has come to the fore. Legally speaking, there is no legal basis for allowing the diplomatic missions to grant asylum to ordinary or political criminals because it violates the

right of the host country to exercise its sovereign on its territory. The article 41 A of the 1961 Vienna Convention on Diplomatic Relations stipulates that the diplomatic mission headquarters shall not be incompatibly used under any circumstances with the functions of the mission as set forth in general international law.( UN General Assembly, 22 September 1975)

The offering of asylum by head of mission, military camp, aircraft, and battleship commanders to persons charged with or found guilty of political offenses is known as diplomatic asylum. The diplomatic official offers such sanctuary inside the boundaries of his mission. Historically speaking, the right to asylum in diplomatic missions had vanished and was no longer recognized by international law. There was a propensity to view this conduct as having no legal justification other than tolerant acceptance. However, there were actually a number of instances during the 19th century where the refuge was provided under the presumption of an asylum right. (Duncan, 1955, p. 103)

## **2.1 Types of Diplomatic Asylum: Mission Headquarters**

**2.1.1 Asylum in Embassies:** Asylum in embassies is wrongful interference in the internal affairs of the state and detracts from the territorial sovereignty of the state. Without a legal basis for the granting of diplomatic asylum, it has been rendered invalid. (Except for some unstable States (Latin America). The 1961 Vienna Convention on Diplomatic Relations made no reference to the use of embassies in granting asylum, as stated in article 41: "We shall not use the home of the Mission inconsistently with its functions, as stated in this Convention or general international law, or in any special agreement between the states. (Vienna Convention, 1961, )

**2.1.2** According to this paragraph, diplomatic asylum is sometimes granted to diplomatic missions, and prohibited, considering the political interest. Diplomatic asylum has no basis in international law, and this does not prevent states from having special agreements to grant diplomatic asylum to their missions in cases of extreme necessity and humanitarian considerations in a specific time. (Vienna Convention , April 18, 1961)

Third-country nationals who have sought asylum to the Embassy of a foreign state: the host state will be obliged to deport the refugee to the State to which the Embassy that grants the asylum belongs where it can guarantee him/her protection. The Embassy notifies the ministry of foreign affairs of the State accredited to it and undertakes the procedures of the deportation of the political refugee, in total secrecy, outside the country of the embassy of the asylum. After granting the refugee the asylum, the embassy that grants the asylum has to ensure the safety of the refugee's transfer. For example, the ambassador of Poland in Japan who sought refuge to the United States embassy in Tokyo in 1981 was granted a



political asylum on the pretext of the imposition of control over his country. (Mcfadden, 1981)

### **2.1.3 Asylum of a National of the Same State to a Foreign Embassy**

This is one of the most complicated cases of political asylum. Number of difficulties may arise during the negotiations between the ambassador and the local authorities, including the questioning of the political status of the refugee by the state. This may lead to impose a siege on the embassy to prevent his transfer and considers him as an ordinary criminal that needs to be extradited. The local authorities may break into the embassy ignoring the mission's requests, and arrest the political refugee. Cardinal Joseph, for instance, went to the US Commission in the wake of the Hungarian Revolution in 1958 in Budapest, and he stayed there for 15 years. (Hanni, 2009, p. 121)

Whether on its own territory or in a third country to which it extradites the refugee applicant, every member state is required to make sure that every refugee applicant has the right to seek asylum in a foreign country. The government may not extradite an applicant to a third country if the third country's refugee laws prohibit that applicant from applying for asylum. The government is required to evaluate each refugee applicant's circumstances on an individual basis. It may not send the refugee to a third country if there is any problem about his or her eligibility to apply for asylum there as John Doe et al (2011) state:

Every Member State has the obligation to ensure that every refugee claimant has the right to seek asylum in foreign territory, whether it be in its own territory or a third country to which the Member State removes the refugee claimant. To the extent that the third country's refugee laws contain legal bars to seeking asylum for a particular claimant, the Member State may not remove that claimant to the third country. [...] [T]he Member State must conduct an individualized assessment of a refugee claimant's case [...]. If there is any doubt as to the refugee claimant's ability to seek asylum in the third country, then the Member State may not remove the refugee claimant to that third country. (para 94)

### **2.1.4 Seeking Asylum in Consular**

There was no consensus on whether the consular has right to grant asylum in consular facilities before Vienna Convention on Consular Relations of 24/04/1963. Several treaties and Domestic laws and regulations prevent consuls from using consular facilities to grant asylum, but in some cases asylum has been granted to those people who flee from riots, but people who flee from justice or security authorities have been prevented from the asylum. The Vienna Convention on Consular Relations provides, in article 31, paragraph 2, that: " The authorities of

the receiving State shall not enter that part of the consular premises which is used exclusively for the purpose of the work of the consular post except with the consent of the head of the consular post or of his designee or of the head of the diplomatic mission of the sending State. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action." Article 55 stipulates that all persons enjoying privileges and immunities shall respect the laws and regulations of the receiving State and shall not interfere in its internal affairs. It also prohibits them from using the consular premises in a manner inconsistent with the exercise of consular functions. (United Nations, 1963)

The granting of political asylum in consulates is rare because seeking asylum at diplomatic missions is better. In most cases where the consulate has granted asylum, the refugee is extradited to the authority of the receiving country. Although there is no legal basis for the consulate to be able to grant asylum, it can grant temporary shelter to persons under threat of mob attack or some irresponsible members of the community.

## **THE SECOND SECTION:**

### **International Efforts to Guarantee the Right of Diplomatic Asylum**

#### **a. Vienna Convention of Diplomatic Relations 1961**

The Vienna Convention did not deal with the issue of the right of asylum. It should be considered in a special convention at a later stage. Only in this area, it refers to article 41, paragraph 3, as follows: "The Mission house shall not be used in any manner inconsistent with the functions of the mission as set forth in this convention or other rules of general international law or in any special agreements in force between the State of accreditation and the State of accreditation". This does not mean that the matter should not be dealt with in the light of general international law and in the light of the State's practice of the right of asylum, as well as of certain conventions and the opinions of jurists that have been subjected to this subject, especially since the chapter of the 1961 Vienna Convention contained, in addition to article 41, paragraph 30, the following text : "Affirming the need for the rules of customary international law to continue to regulate matters not expressly regulated by the provisions of the Convention." We therefore consider it necessary to address this subject in view of its historical and current importance. (United Nations, 24 April 1963)

### **b. Havana Convention on Asylum, 1928**

The American States signed in Havana on 20 February 1928 a Convention on Asylum, in which they established a complete regulation of the provisions relating to diplomatic asylum and the conditions for its use. Article 1 of the Convention states: "It is prohibited to grant refuge in military missions, warships, military camps or aircraft to persons accused or sentenced for ordinary crimes or deserters of the army or navy. If the accused or convicted of ordinary crimes takes refuge in one of the aforementioned places, they must be extradited upon request of the local government." The second article states: "Diplomatic asylum must be respected whenever it is permitted at the territorial State, whether as a right, as the result of human tolerance, or as an application of its customs or agreements and conciliation." This agreement also outlines a number of conditions that must be adhered to in order for the asylum to be valid including:

1- Asylum shall be granted only in cases of extreme necessity and within sufficient time to ensure safety from another place. The donor of the asylum shall immediately report the incident to the local authorities. The authorities of state request that the refugee leave its territory as soon as possible. The diplomatic representative may also request the necessary guarantees to ensure the safe and secure extradite of the refugee from the country.

2- A refugee may not be disembarked anywhere near the territory of a State of refuge or in a place very close to that territory.

3- During the period of asylum, a refugee is prohibited from carrying out acts that violate public security. (Regional Refugee Instruments & Related, Convention on Asylum, 1928)

The Havana Convention on Asylum of 1928 establishes a number of regulations pertaining to diplomatic asylum, but it is devoid giving the State granting asylum the absolute authority to grant asylum as having legal significance for the territorial State.

### **c. Caracas Convention on Diplomatic Asylum, 1954**

The Caracas Convention on Diplomatic Asylum was signed on 28/03/1954. It is considered as a step forward by the Inter-American Zone, taking into account many of the provisions of the Montevideo Convention of 1939, most importantly:

1. Article 1, paragraph 1: obligates the contracting States to respect the refuge granted in their confrontation, as a contractual obligation arising from the said Convention.

2. Article 2: establishes that the State has exceptional power to grant asylum.

3. The State of refuge shall be competent to adapt the nature of the crime attributed to the refugee or the reasons for his persecution by determining the degree of use involved in the refugee situation.

4. The content of article 60 clearly indicates the meaning of urgent cases.

5. Article XX, which provides that political asylum shall not be granted under conditions of reciprocity. (Text in OAS)

In the light of what has mentioned above, it seems that disagreement still exists between states and scholars on the theoretical and legal basis of the eligibility to grant diplomatic asylum. Arguably, there is no general agreement on this basis that explains the delay to conclude an international agreement regulating the granting of diplomatic asylum until now.

## **THIRD SECTION:**

### **Legal Basis to Grant Diplomatic Asylum**

Most scholars have denied the right of diplomatic asylum or the eligibility of diplomatic asylum for any category because it contradicts the sovereignty of the country of the region. They also allowed the entry of headquarters and forcible storming, in case the ambassador refuses to hand over the refugee voluntarily. However, some scholars did not completely exclude the right for asylum at the headquarters of diplomatic missions, for a number of important considerations:

#### **1. Humanitarian Considerations**

Asylum was primarily formed in Latin America, and it is today a legal matter governed by regional conventions. This type of asylum was also practiced by European legations. However, diplomatic asylum grants in the twentieth century reveal that it was only granted in exceptional circumstances and on a humanitarian basis. Historically, people sought refuge in both diplomatic premises and consulates because both are immune to the authority of other countries.

When a person requesting diplomatic refuge faces a severe risk of having their human rights violated without any protection, the right to diplomatic asylum may be properly granted on humanitarian grounds. The humanitarian asylum is granted when a threat to life or limb is assessed to be imminent. In fact, preserving

human rights is one of the key objectives of asylum organizations, which includes also the idea of diplomatic asylum. In circumstances when risks to fundamental human rights exist, human rights duties under contemporary international law may offer an alternative legal foundation for granting diplomatic asylum. The concept of diplomatic asylum will be presented as human rights dilemma in which both the decision to grant or deny asylum may contribute to abuses of fundamental human rights. ( Hughes-Gerber, 2021).

Granting asylum for humanitarian consideration is divided into four stages:

- 1) Diplomatic asylum as a religious asylum, when criminal offenders sought asylum in sacred places.
- 2) Diplomatic asylum after establishment of first permanent missions, when common offender sought asylum in places of diplomatic envoys.
- 3) Diplomatic asylum as protection in diplomatic premises only for political offenders.
- 4) Diplomatic asylum as codified legal institute or protection on humanitarian considerations.( Abou hif, 1967, p.148)

Different opinions and views of scholars and practices of some countries, especially Latin- American countries were reviewed concerning the use of the system of diplomatic asylum for political criminals. Among which there were several agreements regulating the system of diplomatic asylum. At the practical level, there are incidents related to the possibility of granting diplomatic asylum and the disputes arising from it. The incidents happened after granting diplomatic asylum to Cardinal mindszenty by the US embassy in Budapest in 1956, for human reasons and with the disagreement of Hungarian government. He remained in the embassy until 1971, after an agreement between the US and Hungarian governments. Under this agreement, Cardinal mindszenty was allowed to leave the country. It is worth noting that the US does not recognize that the diplomatic asylum has any basis in international law. (Last, 2012)

## **2. Consensual Basis of the Territorial State**

Many scholars have linked the eligibility for diplomatic asylum to the consensual basis of the territorial State, without distinction between States that have international agreements and States that do not have international agreements. In this regard, while some have distinguished between these States in reference to the existence and absence of international agreements among them.

It can therefore be said that the immunity of premises, places, contents, funds, archives and documents of diplomatic missions is generally absolute, and

the local authorities cannot enter the premises without the approval of the head of the diplomatic mission. The absolute immunity of diplomatic premises can be summarized as follows:

1.The State accredited to the mission shall provide special protection to the premises against any intrusion, damage and prevent any breach of the security, attack on the mission or injury to its dignity.

2.No inspection, seizure, execution or confiscation of any premises, furniture, funds or means of transport shall be carried out.

3.These decisions may not be communicated to any official papers as a formal warning, declaration or message except by the Ministry of Foreign Affairs.

4.In case that parts of the Mission's premises are acquired for the benefit of the State accredited to it for the purpose of implementing a public project, cooperation and appropriate compensation for such appropriation shall be paid for the public good.

5.Diplomatic asylum may not continue to be granted at the Mission's premises, where the Mission is required to hand over a refugee accused of a common crime directly to the local authorities and work to bring to an end the granting of asylum to political refugees, since the granting of diplomatic asylum is not a right of diplomatic missions, but of the State in which they are accredited to. If extradition is refused, the State which has been accredited does not have the right to forcibly enter to arrest political refugees, but it may resort to other means.

6.The immunities of a diplomatic mission shall remain in force even in an armed conflict or in the severance of diplomatic relations, including archives and documents. (Last, 2012)

### **Conclusion:**

As we arrive to the end, it was concluded that the idea of granting asylum has historically been religious; this comes after a strong refugee's conviction that fleeing to the holy sites can provide security. As the term of asylum has developed over time to be used in other field, diplomatic asylum (in its broadest sense) appears to be linked to what a State grants within its territory (territorial asylum), or in a place outside its territorial jurisdiction, i.e., the asylum granted by States within their embassies (or sometimes consulates) or on board warships and military aircraft located abroad or within foreign military bases.

Eligibility for diplomatic asylum is based on two basic considerations: human considerations and the consensual basis of the territorial State. There is a clear disagreement among scholars who are in support of the idea of protecting a political refugee in the premises of diplomatic missions. This is due to the fact that many countries in the world, if not most, do not accept the idea of diplomatic asylum.

After investigating the legal basis for diplomatic asylum's eligibility, the following recommendations are made:

1. A number of regional and international conventions, declarations, and treaties on the protection of refugee rights are provided by international law. But there is no convention on diplomatic asylum. Since there is no single asylum law at the international level; each state has developed its own procedures to grant asylum. As a result, there is no consistency in municipal law regarding asylum. It is high time the international community established some rules regarding the asylum situation.

2. The International law is silent on both diplomatic asylum as well as refugees. Asylum seekers issues are dealt with on the basis of international relations liable to be changed anytime. Therefore, there is a need to formulate a comprehensive law on refugees providing them a legal status, protection, economic well being and social absorption.

3. A special law on refugees will assist in preventing various awkward diplomatic situations.

4. For programs for refugees to be implemented effectively, close communication between the law-making and implementing agencies is necessary. These programs should be sufficient to meet the needs of the refugees in a specific location.

5. The international community needs to work on resolving disputes around the world that are causing the formation of refugees.

6. Throughout the world, a number of international organizations are dedicated to the welfare of refugees, but they frequently deal with financial limitations. This issue has to have a workable solution.

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