

The Solution for Asylum Crises around the World: International Law Needs Help from Islamic Law

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Abstract

This study is aimed at finding suitable solutions to the issues related to asylum as part of international law. The right to asylum is entirely dependent on the discretion of the host countries as no country is bound to provide this right to the refugees on humanitarian grounds. The number of refugees and asylees is increasing day by day which reflects that either there exist certain loopholes in international law or it is not being followed in true spirit. The removal of such loopholes in international law is necessary in order to bring peace and stability in the world. On the other hand, the Islamic law of asylum and peace contains a lot more depth as compared to the International Law regarding the asylum and refugee crises. A comprehensive study of the topic shows that at times the International Law is either silent or provides no suitable solution to the problem. In these circumstances, the Islamic Law provides complete guidance, and resorting to the same will provide solutions to the problems faced in international law. Therefore, observing Islamic Law of Asylum will provide tenable solutions to the refugees and asylum crises being faced worldwide. This research will attempt to answer few important questions like, what are the shortcomings in the international law regarding asylum and what are the possible solutions to make the international law more effective. What is the nature and scope of peace in Islam from which the Islamic law of Asylum has been derived? What are the principles of Islamic law regarding Asylum? How Islamic law can play its role in resolving the recent refugee and asylee crises? What are the relevant applications of Islamic law of asylum in the modern world? The study will also give a snapshot of the Islamic teachings and rulings pertaining to asylum. Finally, the study will evaluate the question of whether and how the Islamic Law can play a role in resolving the ongoing crises of asylees and refugees. The study will evaluate on how the

consideration of Islamic law can contribute in increasing the effectiveness of the international law to serve the wider humanitarian purposes.

Islamic Law of Peace (Aman):

Introduction:

Some international relations norms were described by classical Muslim jurists (between Muslims and non-Muslims states). They split the universe into two sections, dar al-Islam and dar al-Harb, based on these relationships. Imam Abu Hanifa divides the world into three dars ul-Islam, each of which has the authority to apply Islamic law on its territory. A dar al-Harb was a piece of land that lacked one of the conditions listed above. According to Abu Hanifa and his followers, a land that had excellent relations with Muslim governments and supported the creation of an Islamic state was likewise a Dar-ul-Sulah, while other Muslim jurists referred to it as such. Imam Shafi and other Muslim jurists divided the world into three sections: Dar ul-Islam, where Islam reigns supreme, Dar ul-Harb, where non-Muslims dominate and Islamic law is not enforced, and Dar ul-Sulah, where Muslims peacefully follow their religion and have excellent ties with Muslim states.¹

Concept of Aman:

Aman is a refuge granted by a Muslim authority or individual to non-Muslims in a Muslim region, including slaves and women. All Muslims are required by Islamic law to provide sanctuary to non-Muslims who seek it. The Malikis and Hanbalis provide a minor the right to get aman for a year.² "Aman" is a protection offered by a Muslim conqueror to people who pay the poll tax or jazia.³ Aman is a promise of security for an individual or organisation belonging to dar al-Harb in an Islamic state for a set period of time. It safeguards Musta'min's life and property. On the other hand, all Muslims are obligated to respect the status of aman.⁴

Types of Amaan:

Official aman (general aman) and unofficial aman are the two basic categories of aman according to classical Muslim jurists. For example, Hazrat Muhammad (SAW) granted Hazrat Au Sufiyan particular aman and the people of Makkah broad aman.

Official Aman:

An official aman is when an imam or his emissaries grant aman to an individual (non-Muslim) or a group by a peaceful accord (unconditional) (general aman). According to prominent Muslim jurist Al-Sarakhsi, an imam in a Muslim state has the authority to grant aman to a large crowd of non-Muslims.⁵ Furthermore, if amicable relations (without a contract) exist with non-Muslim governments, the Muslim state can grant permission to its subjects to seek shelter in the Muslim state individually as well as collectively. Only an individual permission can be given by a Muslim, but the imam or authority of the Muslim state must authorise the collective consent. A non-Muslim, on the other hand, has no right to give aman to anyone in a Muslim state.”⁶

Unofficial Aman:

Islam also grants the right to bestow aman, which refers to unofficial aman, to an individual or a group (specific aman). Muslim jurists agreed on the formal aman issued by the Imam, but they disagreed on the unofficial aman. The Maliki, Shafa’i, and Hanbali jurists all grant a slave the right to provide aman, however the Hanafi do not grant a slave the right to deliver aman to a non-Muslim. Al-Awazi, on the other hand, allowed the khawarjis the right to grant aman. Children and insane people have no right to grant asylum, while Imam Abu Hanifa and Shafa’i both allowed a rational youngster (with discretion)⁷ to do so. Similarly, Muslim jurist al-Awazi granted a ten-year-old child the right to get aman. A dhimmi has no right to bestow aman to anyone, according to all Muslim schools of thought.⁸

Conditions and duration of Aman:

According to Hanafi jurists, the following circumstances apply to aman:

1. Muslims can give aman in Dar ul-Islam when their position becomes weaker than that of non-Muslims.
2. Aman cannot be provided by an insane or immature individual.
3. Only an adult and mature individual has the authority to give aman.
4. Non-Muslims and Dhimmis cannot supply aman to anyone in a Muslim state since they are not as trustworthy as Muslims and may be suspicious in their dealings.”⁹
5. A Muslim present in non-Muslim land and a dhimmi, members of dar al-Ahd, or aman seekers who joined Muslims in combat would not be entitled to offer aman, according to the four Sunni schools of thought.¹⁰

Limitations on Right of Aman:

The Musta'min enter Dar al-Islam for a year with Muslim authority's permission (like a visa), after which they must return or live as dhimmis after paying Jazia. Aman would be beneficial to Muslims, according to Hanafi and Maliki jurists. Aman must not be a threat to Muslims in the future, according to Shafa'i and Hanbali thinkers. A spy, for example, will not be given aman. If someone requests to live in a given location, he will not leave without the consent of the imam or any other controlling authority in the Muslim state. He can enter Haram Makkah and the Prophet's Mosque without authorization, according to Hanafi jurists (SAW). Jurists from the Shafa'i and Maliki schools of thought forbid them from entering Haram Makkah. Enemies who enter al-Haram, according to Imam Shafa'i, shall be killed. They are only allowed to enter these areas for the benefit of Muslims.¹¹ Imam Abu Hanifa and his follower, Imam Muhammad, declared that they would not be slain or expelled from the holy city of Haram. They would not be murdered, but they would be exiled from al-Haram, according to Imam Abu Yusuf.¹²

Termination of Aman:

For a variety of causes, Musta'min's status may come to an end:

1. Duration of stay has come to an end.
2. Giving forth misleading information.
3. Instructions about their consent were broken.
4. Providing secrets of a Muslim state to its adversary.¹³
5. Hanafi jurists believe that the imam has the authority to close aman when it is not in the best interests of Muslims.¹⁴

Dhimmah:

The word dhimma is derived from the noun dhimmi, which refers to a contract that ensures the safety of non-Muslims. As a result, the term dhimmi refers to a contract of protection and care. As a result, a Muslim state's permanent minorities are known as dhimmi, who pay taxes (jazia). Furthermore, because it is a worth (importance) deal, the imam or his subordinate decides on this arrangement. Non-believers will be regarded Musta'min, according to the Hanbali school of thinking, if the agreement of dhimma was not permitted by the imam. The Imam has the authority to keep this agreement going. Because Islam mandates that agreements and pacts be respected, a Muslim government cannot declare war on dhimmi after granting them dhimmi status. Allah (SWT) says: "Fulfil the Covenant of Allah

when ye have entered into it, and break not your oaths after ye have confirmed them; indeed ye have made Allah your surety; for +137 Allah knoweth all that ye do”.¹⁵

Conditions for Dhimma:

The following conditions for obtaining dhimma status are described by Muslim jurists: dhimma status will be granted to non-Muslims and People of the Book, but not to polytheists of Makkah because they had no choice but to accept Islam.¹⁶ For example, Allah says in the Holy Quran, “You fight against them (Polytheists of Arab) otherwise, they must accept Islam.”¹⁷ However, Majusi (Sabians) are qualified for dhimmi status since they are close to the People of the Book, as recounted by Hazrat Abdul Rehman bin A’ouf, who declared that the Holy Prophet told us to treat Majusi (Sabians) as dhimmi.

The following criteria was likewise agreed upon by Hanafi, Shafa’i, Zahari, Abazia, Imamia, and Zaidan. Jazia would be collected from every non-Muslim, according to Imam al-Awazi, Thauri, and Malaki (both Arabs and non-Arabs). Nonetheless, all Muslim schools of thought agreed that an apostate was ineligible for Dhimmi status and that if he did not repent, he would be murdered. Furthermore, the dhimma contract has no set duration because it attempts to safeguard people’s lives and property as needed.¹⁸

Termination of Dhimma:

Dhimmi rights will be abolished, according to Dr. Muhammad Hamidullah, if he engages in one of the following activities:

1. Against Islamic lands and defiance of government directives.
2. Jazia’s refusal.
3. Spying for the enemy or granting shelter to enemies of the Islamic state are both examples of terrorism.
4. Adultery of a free Muslim woman.
5. Resemblance to Allah, His Prophets, or the Holy Book.
6. Preaching to a Muslim in order to convert him to Christianity is a form of apostasy.
7. Involving behaviours that are contrary to Islamic teachings.
8. Furthermore, engaging in commerce with those who have an illegal interest.¹⁹

Rights and Duties of Dhimmi:

Dhimmi have Shariah rights as well as other rights that are not in conflict with Islamic values. They are free to disseminate religious materials and pursue religious debates within the Muslim state's legal boundaries. In the courts, they have equal access to justice. They may construct their own temples or churches, with the exception of Aasar-Muslimin localities (around or in premises of Islamic heritage buildings or places etc.). They are not compelled to dress as Muslims for fear of seeming as slaves. The fact that a dhimmi cannot become a general or president of a Muslim state has been attacked.

The solution to this argument is that a Muslim state is established on pure Islamic belief, and a non-Muslim who refuses to believe in this religion is not made the head of the state, because the head of the state is accountable for upholding Islamic principles in an Islamic state.²⁰ However, he is given the privilege to become a minister and an envoy of a Muslim state based on his abilities; for example, before accepting Islam, the Holy Prophet appointed Amr Ibn Umayyah al-Zamari as an ambassador to Abyssinia.²¹

Musta'min:

Musta'min is a Dar al-harb affected person who has applied for a temporary residence permit in Dar al-Islam. In general, jurists use the term Musta'min only to refer to those from Dar al-Harb; people from Dar ul-Islam, Dar al-Ahd, and Dar al-Sulah are not included in this phrase because they already agree with Dar al-Islam. As a result, a Muslim scholar named Dr. Abdul Kareem Zaidan coined the term Musta'min to describe anyone who entered Dar al-Islam for a temporary stay. Musta'min have the same rights and responsibilities as dhimmi, however they are exempt from paying taxes. They have all of the rights that a political asylee in a foreign country has in current times.²²

Principles relating to Asylum in Islamic International Law:

In Islamic law, there are some principles that govern the concept of asylum.²³ Which are based on Islamic teachings (the Holy Quran, Sunnah, and juristic writings), historic Arab traditions, and Islamic legal instruments, among other things. These are beneficial in dealing with international refugee legislation. The following are the derived principles:

1. The principle of Humanity
2. The principle of non-Refoulement

3. The principle of non-Discrimination
4. The principle relating illegal entry of Asylum seekers

The principle of Humanity:

In Islam, the notion of asylum is founded on humanity, which forbids a refugee from being returned to a place where he may suffer threats to his basic freedoms and rights, such as persecution, torture, degrading treatment, or other inhumane treatment. Those accused of political offences cannot be extradited until they have been proven guilty, according to Islam.²⁴ As a result, a person seeking asylum in a Muslim country is not obliged to show what form of persecution he endured in his home country. Many scholars underlined the need of Muslim migration to Abyssinia and Madinah to avoid Quraysh hostility, according to UN High Commissioner for Refugees Antonio Guterres, which actually gave a source to develop excellent ties between asylum benefactors and asylum seekers. It also built a foundation of cooperation between refugees and their hosts based on the values of charity and hospitality.²⁵

The principle of non-Refolement:

Returning the Musta'min to their state or any place where his or her life may be jeopardised is forbidden in Islam. In a Muslim polity, Aman is also a vow to the Musta'min. As a result, sending the guy back knowing that his life will be in risk in that territory is treacherous. Whether they are Musta'min or dhimmi, Islamic law prohibits all attempts to expatriate them. All Muslim jurists agree that asylum seekers and refugees will not be turned away without their consent. Furthermore, Islam requires an Islamic state to take all necessary steps to provide their complete protection, without prejudice.²⁶ Allah (SWT) also mentions the worth of people who assist humanity in the Holy Quran.²⁷ Allah commanded His Prophet (SAW) to help those who did not travel with the Muslims. "But if they (the believers) seek your help in religion, then it is your duty to help them, except against a people between whom and yourselves there is a treaty."²⁸

The principle of non-discrimination:

Islam promotes equality and opposes discrimination against minorities living in Islamic states, whether permanent (dhimmi) or transient (Musta'min). They have full legal protection for their religious practises. Once non-Muslims have been granted aman, Muslims have a theological obligation to provide them with a fair environment free of prejudice.²⁹ Allah (SWT) commands Muslims to respect the dignity of all people, regardless of their status, religion, or sects, in the Holy

Quran. Muslims are forbidden from abusing the gods of non-believers since doing so would be disrespectful to Allah. In a Muslim state, this behaviour will also aid in the creation of harmony between Muslims and non-Muslims.³⁰

The principle relating to the illegal entry of Asylum seekers:

Islamic law contains a wealth of information for anyone seeking asylum in a Muslim country. Muslim jurists have issued counsel to anyone who cross a Muslim state's border without the state's permission. They mainly agree that anyone who enter a Muslim state without authorization to flee injustice in their own country should be granted aman. Furthermore, they are not punished for entering the country illegally. In modern refugee law, this principle has been accepted.³¹

Status of Asylum in International Law:

Although asylum had been practised before to the Treaty of Westphalia in 1648, there was no specific document or legislation governing it. Farmers, traders, religious preachers, and other persecuted people may be able to seek asylum in another country. Two phrases were employed in the early days of asylum: "exile" (for migrants fleeing for various causes) and "suppliant" (for asylum providers). Similarly, until that time, asylum had no legal standing in Europe, and it was seen as a right of the persecuted. Asylum, on the other hand, was regarded a sovereign privilege of the state in the ninth century. It was exercised at the international level as a given right to an individual against his own state. The term "refugee" was coined during the First World War, when the settlement of refugees became a major concern. To begin with, it was acknowledged as an international organisation that was restricted to a few groups in specific regions, such as Europe. There were more developments (covered in following sections) to the notion of refugee after WWII, which led to the creation of a refugee convention.

Types of Asylum in International Law:

In International, Asylum is divided into two major categories: territorial Asylum and extraterritorial Asylum or diplomatic Asylum

Territorial Asylum:

Territorial asylum is when a person is granted asylum by another country on its territory. In fact, due of its exclusive control over its territory, a state has the power to offer territorial sanctuary. States are not obligated to give asylum under

international law. Other governments, on the other hand, must recognise the state's prerogative to provide asylum, according to the United Nations General Assembly. In the 1950 asylum case *Columbia v. Peru*, the International Court of Justice accepted the validity of territorial asylum.

Extraterritorial Asylum (Diplomatic Asylum):

Extraterritorial asylum, which includes shelter in spaceships, aircraft, military bases, and a state's embassy, is also known as diplomatic asylum. This sort of asylum is now confined to asylum in an embassy for diplomatic purposes, among other things.³² It is less valued since the asylum seeker may be afraid of interference from his own government because the diplomatic mission is in his country. Furthermore, the receiving state may be viewed as interfering with another state's jurisdiction.³³ Due to having exclusive sovereignty over its area, a state's agreement is required. For example, in 1985, South African authorities arrested Dutch activist Klaas de Jonge and later allowed him to seek sanctuary in the Dutch consulate in Pretoria. The South African authorities refused to allow them to move him to another location. He was forced to spend two years in an unmanaged building under the protection of the Dutch police.³⁴

Due to its control over its territory, the willingness of the origin state is required for diplomatic refuge in the above-mentioned circumstance. As a result, the scope of diplomatic asylum is limited. As a result, the concept of extraterritoriality of asylum is dismissed. For example, the League of Nations Committee of Experts for the Progressive Codification of International Law's Sub-Committee on Diplomatic Privileges and Immunities stated that extraterritoriality has no relation to reality and can lead to intolerable situations.³⁵

Sources of International Asylum Law:

The Universal Declaration of Human Rights (UDHR) of 1948, the Convention on Political Asylum of 1933, and the Vienna Declaration on Human Rights and Programming of Action of 1993 are some of the international texts that deal with the right to asylum (as a granted right) (which are detailed under). According to these treaties, the state has the power to provide asylum, and these instruments only require state parties to respect that right.³⁶

The 1951 Refugee Convention proposes the status of refugees, their rights, and state parties' obligations to refugees, but it makes no mention of asylum as a right in any of its articles. The preamble, on the other hand, demands that refugees be granted all of the rights outlined in the Universal Declaration of Human Rights

(UDHR) of 1948. As a result, the right to seek and receive asylum from persecution is described in article 14 of the UDHR. Furthermore, the ICCPR, 1966, simulates Article 13(2)³⁷ of the UDHR. The right to flee and return to one's own country is described in Articles 12(2)³⁸ and 12(4)³⁹ of the ICCPR. "No one shall be subjected to torture, or to cruel, inhuman, or degrading treatment," says Article 5 of the UDHR, which is also included in the Refugee Convention and Article 7 of the ICCPR. The right to flee persecution is guaranteed under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of 1984, as well as Articles 3 and 33 of the Refugee Convention.⁴⁰

International Agreements:

The following are the primary sources of international asylum law:

The United Nations, 1948:

The list of human rights was formalised in the United Nations charter and the Universal Declaration of Human Rights (UDHR). For example, the right to asylum is mentioned in article 14 of the 1948 Universal Declaration of Human Rights, which states, "Everyone has the right to seek and to enjoy sanctuary from persecution in other nations."⁴¹

Declaration on Territorial Asylum, 1967:

At the international level, the 1951 Refugee Convention was unable to meet all of the standards for asylum. Many attempts were made to correct the weakness in the right to asylum. As a result, the General Assembly of the United Nations adopted the 1967 Declaration on Territorial Asylum. It dropped the word "right" from the title, as defined in the Declaration's first paragraph: "Asylum provided by a state in the exercise of its sovereignty...shall be acknowledged by all states."⁴² Rather than Article 33 of the 1951 Refugee Convention, this agreement is based on the principle of non-refoulement with additional exclusions that provide more protection against expulsion of refugees. These exceptions will only be applied to individuals for the following reasons: population safety, state security, or mass movement management.⁴³

Regional Agreements:

Some regional asylum treaties, which are not legally binding but provide direction to nations at the national level, are a source of asylum seekers. In Latin America, for example, the Montevideo Treaty for Political Asylum was signed in 1889. In

the Middle East, the United Nations Relief and Works Agency for Palestine Refugees works, and in Africa, the Organization of African Unity drafted the Convention on Refugee Problems in 1969 for refugees. The Caracas Convention on Territorial Asylum and the Caracas Convention on Political Asylum, both established in 1954, were another regional organisation. Furthermore, the European Union enacted numerous laws and directives concerning refugees in Europe under Title IV of the Treaty creating the European Community.⁴⁴

The Principles Relating to Asylum in International Law:

The 1951 International Refugee Convention establishes some basic rules for international protection of refugees who may be seeking asylum. For example, the concept of non-refoulement puts an obligation on nations not to deport asylum seekers to areas where their lives are in danger. Asylum seekers and refugees must not be given preferential treatment because of their religion, sect, nationality, or race, according to the principle of non-discrimination. Furthermore, the refugees will be protected only on the basis of humanity. Similarly, someone who enters another country illegally to flee persecution in his home country will not be prosecuted. However, there is a need to take substantial steps to follow these regulations at the regional and international levels, which will aid in overcoming the growing issue of asylum seekers with UNHCR's 1950 and countries' involvement.⁴⁵ The rules governing international asylum law are as follows:

- The Principle of Non-refoulement
- The Principle of Humanity
- The Principle of Non-discrimination
- The Principle relating Illegal Entry of Asylum Seekers

The Principle of Non-refoulement:

The term "non-refoulement" comes from the French word "refouler," which meaning "to return." In terms of migration, refoulement entails returning asylum seekers to their home country or any other country where they may experience hostility, brutality, humiliation, or maltreatment. The principle of non-refoulement precludes states from deporting asylum seekers who enter the country unlawfully and without identification from a location where they may face danger.⁴⁶ It is a cornerstone of international asylum and refugee law, promising to protect human rights defenders from persecution, torture, and other forms of abuse. Because it is a violation of human rights to send a refugee back to a place where his life may be in danger.⁴⁷

The Principle of Non-refoulement in International Instruments:

This principle was enshrined in the 1951 Refugee Convention, which forbade a refugee from returning to his home country or any other region of the world where his life was threatened owing to discrimination based on religion, nationality, or political beliefs. Similarly, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, and the International Covenant on Civil and Political Rights, 1966, both ban refoulement of refugees. Despite the fact that the ECHR did not explicitly prescribe the rule of non-refoulement, it did explain article 3 of the 1951 Refugee Convention. Similarly, the European Union's Qualification Directive prohibits governments from sending people back to their home countries or other regions of the world where they may receive death threats as a result of the worst political situations involving armed conflicts.⁴⁸

The scope of Principle of Non-refoulement:

The concept of non-refoulement is an exclusive stance in international refugee law that states that any refugee or asylum seeker who wants some privileges in a state to avoid persecution will not be sent back.⁴⁹ Article 1 of the 1951 Refugee Convention also bans nations from excluding foreigners.⁵⁰ The Inter-American Court of Human Rights held in *Pacheco Tineo v. Estado Plurinacional de Bolivia* that the state was obligated to provide refuge due to non-refoulement because the individual's life and self-respect were threatened in his home country. As a result of the principle of non-refoulement set forth in article 22(8) of the American Convention on Human Rights of 1969, he was granted protection.⁵¹

The Principle of Non-discrimination:

Non-discrimination is a key principle in international refugee law, and it also applies to the right to asylum. The 1951 Refugee Convention stated that "the contracting states shall apply the provisions of this convention to refugees without discrimination as to race, religion, or country of origin," and that "the contracting states shall apply the provisions of this convention to refugees without discrimination as to race, religion, or country of origin."⁵² Furthermore, the principle of non-discrimination regarding asylum was described in the first paragraph of the Declaration on Territorial Asylum, 1967, as follows:

Noting that the Charter of the United Nations declares the goals of maintaining international peace and security, developing friendly relations among all nations, and achieving international cooperation in solving international problems of an

economic, social, cultural, or humanitarian nature, as well as promoting and encouraging respect for human rights and fundamental freedoms for all, regardless of race, sex, language, or religion.⁵³

The Principle related to Illegal Entry of Asylum Seekers:

The rule of exemption from penalty is discussed in Article 31 of the 1951 Refugee Convention. When a person enters a state without permission to flee a life-threatening situation, he is not charged with illegal entrance. He will be penalised for his illegal behaviour if he fails to produce any proof of his right to remain in the state. He cannot, however, be returned to his own country, where he may face persecution. As a result, he is protected from repatriation under Article 33 of the 1951 Refugee Convention.⁵⁴ Similarly, Article 31(1) of the 1951 Refugee Convention requires a state party not to impose penalties for asylum applicants who enter the country illegally. However, minor penalties may be imposed on those who have committed significant offences (war crime, crime against humanity etc.).⁵⁵ However, the punishment will be imposed only after a thorough investigation of the accused individual, and it will not be extended for an indefinite period of time, depriving him of his right to asylum.⁵⁶ As per the article 31 (1) of Refugee Convention, 1951:

“Refugees who come directly from a territory where their life or freedom is threatened in the sense of Article 1 enter or are present in their territory without authorization are not subject to penalties if they present themselves to the authorities promptly and show good cause for their illegal entry or presence.”⁵⁷

The Principle of Humanity:

The right to seek asylum is based on the idea of humanity, not nationality, race, or religion. As a result, humanitarian principles regarding asylum are included in international and regional instruments, such as article 3 of the United Nations Declaration on Territorial Asylum, 1977, which states, “The member states of the Council of Europe reaffirm that the grant of territorial asylum is a peaceful and humanitarian act and shall not be regarded as an act unfriendly to any other state and shall be respected by all states.” The principle of humanity is defined as follows in article 2 (2) of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969: “The granting of sanctuary to refugees is a peaceful and humanitarian act and shall not be seen as an unfriendly act by any member state.” The General Assembly of the United Nations passed Resolution

No. 50/152. In paragraph 13 of Resolution No. 501 152 from 1995, the principle of humanity is defined.

Challenges Related to Asylum:

Limitations of International Law of Asylum:

A few accords relating to asylum exist in international law, and they were thoroughly explored in Chapter 4 of this book. Despite the inclusion of provisions linked to asylum in these treaties, international asylum law has several limits that make it difficult to exert influence in the resolution of refugee crises in many regions of the world, such as Syria and Myanmar. For example, when thousands of Rohingya Muslims were forced to migrate to neighbouring countries like Bangladesh, Malaysia, Thailand, and Indonesia, they were terrified of being sent to an island where they would suffer harsh climatic conditions.⁵⁸

The following shortcomings in international asylum law limit its scope in terms of asylum:

Lacunae in the Scope of International Legal Instruments:

Modern refugee legislation has a restricted reach in some circumstances, for example, it does not give comprehensive protection for IDPs, which is not indicated in major refugee treaties such as the 1951 Refugee Convention. There are a few tools that deal with IDPs, such as Francis Deng's Guiding Principles on Internal Displacement from 1998 and the Special Representative of the Secretary General.⁵⁹ Similarly, certain people have been denied any form of protection, as stated in Article 1(D) of the 1951 Refugee Convention:

“This Convention does not apply to anyone who are currently receiving protection or assistance from United Nations institutions or organisations other than the United Nations High Commissioner for Refugees.”

When such protection or aid has ceased for any reason, and their situation has not been definitively resolved in accordance with applicable resolutions issued by the United Nations General Assembly, these people are ipso facto entitled to the benefits of this Convention.”⁶⁰

As a result, roughly 3 million Palestinian refugees were denied UN High Commissioner for Refugees protection because they received aid from the UN

Relief and Works Agency for Palestine Refugees in the Near East. Similarly, some groups, such as refugee women and children, are not given further protection.

The Imposition of Asylum:

The right to asylum under modern refugee law is entirely dependent on the decision of nations. For example, while the Universal Declaration of Human Rights of 1948 recognised the right to asylum, it did not impose a matching duty on states. As a result, asylum as a means of obtaining refugee status had been overlooked for a long time.⁶¹

After WWII, the Refugee Convention of 1951 was developed to address the influx of refugees into European countries, which limited the scope of this international convention. As a result, new principles for the protection of asylum seekers must be created to keep the situation under control, such as the concept of non-refoulement, which gives stronger protection against deportation of asylum seekers to a country where they are persecuted. As a result, in the current world, there is a need to develop an inclusive solution for asylum seekers who are being overrun by states.⁶²

The Comprehensive Right of the State:

The right of the state to grant asylum is a broad one. Individuals are guaranteed protection as members of states under the norms of international instruments, which give the state complete jurisdiction.⁶³ Individuals alone have the right to seek asylum in another country. For example, article 14 of the 1948 Universal Declaration of Human Rights states that “everyone has the right to seek and enjoy sanctuary from persecution in other nations.”⁶⁴

Similarly, the remainder of the international agreements on asylum and refugees provided the state a broad jurisdiction to grant asylum. “It shall lie with the State giving asylum to analyse the reasons for the grant of refuge,” says article 1 (3) of the 1967 Declaration on Territorial Asylum.⁶⁵ “A person's right to seek and acquire refuge shall be granted in conformity with the laws of such countries and international agreements,” says article 12(3) of the African Charter of Human and Peoples Rights, which was adopted in 1981.⁶⁶ In fact, states are more likely to safeguard their political interests than to promote the humanitarian needs of refugees.

Main Challenges: Jurisdiction of State, Humanitarian Crisis & Temporary Protection during Process:

The following are the primary issues that governments face in the international asylum law regime:

- Considerable of the issues that international law faces include the issue of state jurisdiction, which causes some conflict between nations, particularly in the extraterritorial asylum context. As a result, the state's statement of jurisdiction now has a significant impact on protection. As a result, nations are hesitant to accept international protection outside of their borders through agreements with other states that are responsible for asylum seeker protection. While the European Union has a "integrated border management"⁶⁷ strategy in place with the help of the Global Approach to Migration, which coordinates human trafficking and raises the risk of asylum seekers being deported.⁶⁸
- According to the UNHR study, this is a world of discrimination, armed conflicts, civil wars, and internal strife. While international laws are ineffective in providing protection from persecution in impacted areas, local laws are. People are forced to move from these unstable locations, which affect many parts of the world, as a result of severe human situations. As a member of the international community, it is every state's responsibility to ensure that domestic rules do not cause disruption in other areas. For example, European Union policies imposed greater obligations on Syria's neighbours. As a result, to deal with the international refugee problem, cooperation legislation and legal policies are required. Furthermore, the vulnerability of asylum seekers necessitates temporary protection while their application for asylum or refugee status is being processed.⁶⁹
- The main problem of this century (foreseen in the early years of refugee history) is the need for an international effort to address the root causes of mass migration. On the other hand, the importance of effective protection of the right to flee has been overlooked at both national and international levels. As a result, the current scenario necessitated strong surveillance rules based on the right to survival of persons in the form of active protection, regardless of border, nation, or sect.⁷⁰ As a result, rather than preventing migration, it is the obligation of all states to address the core causes of the refugee crisis.⁷¹
- The humanitarian situation in Somalia, Rwanda, Liberia, and now Syria forces national and international laws on refugees to be reconsidered, which is a problem for international law on asylum. The majority of states have failed to provide adequate security within their borders. The refugee

crisis not only exposes international law's flaws, but it also necessitates appropriate laws, policies, and practises to handle the current situation and prevent more human calamity.⁷²

Legal Status of Refugees on Borders: A Legal Vacuum:

The current refugee situation on the borders, as well as their deplorable living conditions in camps, pose a challenge to current international asylum laws. Even within the asylum-seeking process, asylum applicants have faced numerous obstacles in recent years, including unfairness, exploitation, and prejudice. For the most part, their claims are regarded as suspect. They are sometimes denied of their rights, including as the right to work, health care, and support, throughout the asylum application process.⁷³

In reality, state decisions on asylum are dominated by national interests rather than humanitarian considerations. Some instances are as follows:

- Because the barrier across their borders is also a measure to limit refugee claims in Europe, European states' reactions to asylum seekers are not good in the form of stringent domestic legislation. For example, German Chancellor Angela Merkel apologised for her generous immigration policy. Similarly, European countries wish to follow Germany's and Sweden's lead, regardless of their immigration policy, in refusing to add to the difficulties of migrants who may seek refuge.⁷⁴
- In certain host countries, refugees have restricted legal status; for example, Syrian refugees and asylum seekers in Lebanon have no legal status (which is not party to Refugee Convention, 1951). It only gives refugees a limited legal standing because of customary international law and human rights law, which oblige host countries to allow refugees to enter. As a result, they are denied specific benefits such as the right to work, birth registration, and marriage, among others. For example, the Norwegian Refugee Council polled 1,256 people, and over 73 percent said they had difficulty relocating out of specialised areas such as camps or shelter homes.⁷⁵

Along with the previously mentioned flaws in international refugee law, it faces a number of other challenges for which a long-term solution is required:

- Because it is vital to handle the issue of human trafficking on borders and the security of asylum seekers, robust regulations relating to refugee trafficking across borders are required. In the Lebanon district of Jounieh, for example, about 75 Syrian women who were forced into prostitution

were discovered. They were treated inhumanely since they were victims of numerous terminal ailments.⁷⁶

- According to a BBC World report, immigrants, particularly refugee seekers, are compelled to sell their organs to a trader Abu Jaafar (not a real name) in the northern area of Beirut, Lebanon, who smuggles them to other nations for a high price.⁷⁷ Furthermore, international law's main ignorance of sexual crimes against mentally disabled people in Iraq and Lebanon is a societal challenge of the twenty-first century.⁷⁸
- The restrictions governing entry, such as visas, deportation, and denial of claims in immigration offices in both the home and host nations, hinder asylum seekers from being admitted. The problem can be managed by enacting policies with a human face on a global and national level.⁷⁹ While the asylum system, IDP movements, and already overburdened states closing their borders are all major concerns today.⁸⁰

The predicament of refugees in various regions demonstrates the disparity between theory and practise in the current world when it comes to asylum and refugees. For example, the Syrian crisis has impacted more than half of the population, with 3.2 million people fleeing to Iraq, Turkey, Lebanon, and Jordan. The majority of those affected by the crisis are children, with UNICEF reporting that 230 million refugee children are living in deplorable conditions in armed war zones.⁸¹ As a result, laws governing asylum are required that give a complete answer to the current refugee problem.

Contribution & Effect of Islamic Law of Asylum to serve Humanity at International level:

In industrialised countries such as the United States, Australia, and Germany, the number of asylum applications has surged in recent years. Most applicants are from countries where the political situation is deteriorating owing to civil wars and armed conflicts, such as Afghanistan, Libya, Syria, and Iraq. International efforts to control the influx of asylum seekers are insufficient. Asylum seekers can also generate issues for host countries, such as rehabilitation or settlements. As a result, there have been various difficulties surrounding asylum seekers, such as some bogus demands for rights. Asylum seekers, on the other hand, may experience considerable difficulties in obtaining asylum. However, there is a critical need for time to develop affective ways to preserve a balance between international commitments and better preparation to address the current refugee crisis.⁸² This worrying situation suggests that more comprehensive regulations are needed to handle the refugee issue by addressing the multiple flaws in international law.

Application of Islamic Law of Asylum on Contemporary Asylum Law:

Asylum seekers' challenges necessitate collaboration between different legal systems in order to find a long-term solution. Because it has the capacity to apply to the current asylum issue due to the following approaches, Islamic law of Aman may contribute to the resolution of this dilemma:

Theoretical Approaches:

- The main motivation behind the norms of Islamic law of aman is to promote the wellbeing of all people without discrimination.
- It consistently denies any persecution of human beings and advocates migration from hostile lands to peaceful lands (whether Muslim or non-Muslim) for man's safety.
- It deals with all forms of refugees seeking protection, including refugees, asylum seekers, and internally displaced persons (IDPs).
- It does not give the state broad authority to grant asylum rights.

Practical Approaches:

Asylum law in Islamic law provides a framework of protection based on practical techniques established from early Muslim experiences.

Contribution of Islamic Law to the Protection of Humanity:

A thorough examination of Islamic regulations from a modern perspective reveals that specific sorts of protection are still admired today. Those who come to the Muslim state for conventional reasons such as trade, job, or education, as well as those who seek shelter in times of need, will be given security.⁸³ As a result, in light of the dire circumstances, it is necessary to apply Islamic morality to refugees, which will aid in the resolution of problems such as the refugee crisis in the following ways:

The Relation of Cooperation between Refugees and Hosts:

Because their lives and beliefs may be threatened in their states, Islam provided an endurable role model for the security and privileges of asylum seekers and refugees (his or her own country etc.). Early on, the Holy Prophet (SAW) established a number of exclusive instances to control the refugee problem. These guidelines (which have already been detailed) may prove to be useful in addressing the global refugee issue by enhancing asylum rules. To begin with, it is critical to address the issue of employment by giving jobs and labour

opportunities to refugees in host countries. They are not a burden to their hosts in this way. When Hazrat Muhammad (SAW) and a large number of his companions came to Madinah, they experienced refugee settlement and employment issues. The challenge of building a spirit of collaboration amongst refugees (Muhajir) and supporters was resolved by the Holy Prophet (SAW) (Ansar). They were able to live in Madinah because they set an example of sacrifice by sharing their possessions and taking responsibility.⁸⁴

Similarly, Muslims gave historical examples of cooperation, such as Hazrat Umar saying that his partner would work in the field and that he would stay with the Holy Prophet (SAW) to learn the Holy Quran, which he would receive after his return. On the second day, he (partner) would go to the field to labour, while Hazrat Umar stayed with the Holy Prophet to learn about Islam. Another example of the spirit of assistance was when a Madinah citizen said to Hazrat Abdul Rahman ibn 'Auf that he would share all of his property evenly between them, but Hazrat Abdur Rahman ibn 'Auf refused and requested money for his business, as well as guidance in finding a market. He laboured all day and gratefully returned his money. Later in life, he became a wealthy member of his community who was always willing to assist the poor and needy.⁸⁵

The above-mentioned form of relationship between supporters and visitors in Madinah represented Islamic principles in terms of assisting refugees in an unfamiliar land. These approaches could be useful in addressing the current refugee crisis.

The Collective Responsibility of Muslim States and Individuals:

Islamic law has the potential to provide a respectable solution to the asylum and refugee crises in the benefit of humanity without putting undue strain on any one nation (host). Islam also establishes specific rights and responsibilities for both hosts and guests when it comes to refugees. For example, upon arriving in Madinah, the Holy Prophet (SAW) established a document (the Pact of Madinah) to impose duties on the ruling authority and the people. He established a constitution that governed ties between Madinah's various groups. It created the groundwork for healthy relations between adherents of other religions, such as Jews, Christians, and Muslims. The Holy Prophet (SAW) was chosen as the commander in chief of a collective army, which gathered all the tribes of Jews (save Najran) and Muslims on one platform, as a result of his honesty and worthy behaviour toward others. Madinah was declared a "Haram," which signifies a protected boundary for all people, regardless of their religion.⁸⁶ "The Valley of

Yatherib must constitute an inviolable territory for the parties to this pact,” the second clause of the Madinah Pact said.⁸⁷ Similarly, the strangers were mentioned in the third clause “The protected alien is treated the same as the original member: he is not to be hurt, and he is not to break the commitment himself. Without the permission of the original member, protection cannot be granted (by protected).”⁸⁸ The current refugee crisis must be addressed in light of Muslim refugee practises in Madinah, using the ideas of collective responsibility for host countries, asylum seekers, and refugees.

The Long-term Solution of Refugee Crisis in Present Era:

In Islamic law, the commitment to protect and aid forced migrants is designed to alleviate societal misery since the denial of human rights leads to a large-scale crisis from which it may be hard to save other parts of the world. Islamic law provides an exclusive framework for resolving the refugee crisis, which leads to the resolution of common problems on a global scale.⁸⁹

As a result, Islam not only provides a practical method to the protection of asylum seekers, but it also supports the assistance of refugees at this time. Islam’s refugee beliefs and regulations are not only compatible with present refugee law, but they also provide a more inclusive solution to the current refugee problem.⁹⁰ Islam has several forms of protection (such as aman and dhimma) that help with regional issues such as asylum and refugee settlement, particularly in the Muslim world.⁹¹ Some of the rules that apply can be inferred from the philosophy and practises of Islamic aman law, such as:

- It also provides a thorough statute (law of aman) to ensure support prior to, during, and after the refugee status application procedure.
- Laws relating to the responsibilities of associated authorities with a greater sense of support and protection are required.
- Since it also puts some obligations on host countries in terms of refugee support, it may be useful in putting a practical stop to the refugee crisis.
- It is not a source of animosity between nations because the problem of refugees is social and humanitarian in character.
- When hostility and persecution reach a breaking point, Muslims must migrate to a country of peace, even if it is a non-Muslim nation, and give shelter to oppressed people regardless of their beliefs.
- Asylum is not confined to particular holy sites such as the Kabbah or the Prophet’s Mosque (SAW), but it obligates all Muslims to help them in times of need.

Conclusion:

The refugee situation is not confined to a single country or region. As a result, the modern world must treat this as a global issue, because rejecting asylum claims through stringent measures such as border closures and deportation is not the best solution for the flow of asylum seekers and refugees. Asylum applicants may face a slew of challenges as a result of these situations. As a result, the burden of refugees falls more heavily on neighbouring countries, potentially destabilising them. The current situation necessitates a balanced system of asylum protection that can address the needs of both nations and asylum seekers. This is a well-known international law institution that was derived from state practises and historical conventions. The survival of the right to asylum is not a result of international law, but it has grown in importance since the turn of the twentieth century. As a result, people seek asylum in another state or a territory under its control. It is governed by humanitarian values such as non-refoulement, non-discrimination, and no penalty for asylum seekers who enter the country illegally. Domestic and international legal agreements accept the right of a state to provide asylum based on its territorial jurisdiction or through institutions such as an embassy, a warship, or a boat. Despite the importance of asylum in the current situation, it receives less attention at the international level than refugee status. It is recognised by international law as a unique right of a state, which has complete authority to accept or deny an asylum claim. In this sense, states may consider their asylum policies in order to balance their security and resources, and then determine whether or not to grant asylum.

Many historical religions and civilizations, including Judaism, the Greeks, and Christianity, acknowledged asylum as a standard of protection against persecution. Through the notion of aman, Islam not only maintained this norm, but also gave it new meaning and practise.

It has numerous distinguishing characteristics that provide various grounds of protection for asylum seekers, which may be pertinent to the current asylum situation.

- The most important characteristic of asylum in Islam is that it grants an individual the right to seek asylum, and it is the responsibility of the Muslim state and Muslims to provide him with a safe haven. It imposes a religious obligation on Muslim states to provide sanctuary to avoid any cruelty on a first-come, first-served basis (because due to the expansion of

territory and new form of states, individuals cannot give asylum on their behalf).

- Asylum seekers are treated as guests rather than as a burden in Muslim states, and it is the obligation of the entire Muslim community to assist the host state in accommodating them.
- He does not need to establish the severity of the persecution or how many domestic forums the victimised people approach in order to obtain the status of Musta'min.
- Furthermore, it applies to all Musta'min kinds (aman seekers like refugee seekers, stateless and IDPs etc.).

In fact, the growing refugee crisis around the world takes advantage of inadequacies in international asylum legislation. When the Islamic law of aman is applied in its original spirit, it has the potential to help settle the refugee crisis. In Islam, a larger meaning of asylum and refugee applies to all forms of refugees, including stateless people, asylum seekers, internally displaced people, and refugees, among others, and they are all treated equally under Allah's sovereignty. Refugees are split into numerous categories in international law, each with different rights under state sovereignty. Furthermore, all refugees, whether Muslims or non-Muslims, are treated fairly in Islamic territory.

To summary, Islamic law provides asylum seekers with a rich source of protection that includes both theoretical and practical techniques. Furthermore, its regulations improve refugee support through asylum law, which reflects the changing realities of migration in today's world. Islam has the potential to play a significant role in the internal and external ties between Muslims and non-Muslims. Even now, it may be useful for some international law ideas. As a result, the current situation requires Muslim countries to resurrect the law of aman in order to contribute to modern refugee and asylum laws in order to make them more protective, particularly for children, women, and internally displaced persons (IDPs). It may be achievable if the Muslim world bridges the gap between theory and practise by implementing real-world solutions within its borders. As a result of the unclear and unfortunate situation on Syria's, Iraq's, and now Burma's borders, the entire globe has benefited. These circumstances necessitate additional research and analysis to address current international law and ensure stronger protective regulations for asylum seekers and refugees.

Recommendations:

Although Islamic law provides applicable norms and acceptable procedures to the right to asylum, there is a need to raise awareness about asylum seeker protection.

Furthermore, due to the potentially devastating implications of deporting refugees, it should only be used in extreme circumstances to safeguard national security or public order; and

The following recommendations are to deal with the growing asylum issue that has engulfed the entire world:

- By adopting asylum policies, we can reduce the threat of damage to asylum seekers, preventing them from being persecuted or mistreated.
- There is a need to raise awareness of the importance of protecting asylum seekers and refugees around the world.
- A global system of burden sharing is required, which must be implemented through international legislation and the cooperation of various legal streams.

Other suggestions include the following:

The Collective Responsibility of States:

The refugee crisis and asylum problems are not unique to any one region or country. As a result, closing borders or enforcing severe immigration laws creates barriers for both states and asylum seekers. First, these approaches should be rejected because they unfairly burden some members of the international community, disrupt state relations, and destabilise those states that continue to accept refugees internally. Second, because they are not a compassionate response to a request for asylum, closed borders, rejections, and push-backs should not be accepted. They must concentrate on their asylum policies in the face of new problems in order to avoid any human disasters such as violence and terrorism anywhere in the world.

The Individual Responsibility of States:

1. Each state must assess the fairness and efficiency of its asylum and immigration policies, including its asylum appeal system, on an individual basis. Furthermore, well-reasoned conclusions contribute to decision-making transparency in both positive and bad situations. They should improve domestic protection and aid laws for refugees, asylum seekers, forced migrants, and internally displaced persons.
2. States must cooperate with the High Commissioner for Refugees in order to ensure effective coordination of measures taken to address the issue of asylum.

3. In addition, the system of protection for those who fear persecution at home should be improved by better balancing the interests of the international community with the needs of individuals seeking protection from persecution in their host country.

Need of Extra Protection for Unprotected Factions:

Some groups, such as women, the elderly, and children seeking asylum, require more protection from sexual harassment and abuse during the asylum process. They should only give additional protection for as long as it is required to ensure that they are not subjected to persecution in host countries. Furthermore, those fleeing persecution cannot always be expected to leave one country and enter another in a timely manner, and as a result, they should not be penalised for entering or remaining unlawfully in the country where they seek asylum.

The Role of International Organisations:

International organisations should take an active part in addressing these issues.

- a) To lessen the fear of persecution during the asylum application process.
- b) To instil in states a sense of responsibility for the protection of asylum seekers.
- c) To prevent destabilising those governments that continue to accept asylum seekers and to adopt the global burden-sharing system.

Global Cooperation:

Because granting asylum may impose undue obligations on some countries, the only way to solve the refugee problem satisfactorily is to eliminate all ambiguity in the world. Recent enormous migrations of people fleeing civil wars, military occupations, natural catastrophes, terrible human rights violations, or simply bad economic situations have highlighted the urgent need to reformulate the international legal structure that deals with asylum seekers' issues. Furthermore, all states in the international community should share equally in the care of refugees seeking asylum. It may be acceptable to establish a global fund to which each state would contribute proportionally and from which each state would get compensation for the costs of caring for persons in need of protection.

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