

***Exclusion provision in the 1951 Refugee Convention:
Some thoughts on recent developments***

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Abstract

A few recent events remind us students of refugee studies that the question of refuge, its meanings and its relevance in the age of information, globalization and post colonialism are alive and while not so much as unresolved, prone to constant questioning nonetheless. This is the initial premise with which this short essay seeks to view contemporary trends and readings of the 1951 Refugee Convention. The trigger is a series of events which brought Chelsea Manning, Julian Assange and Edward Snowden into center stage, their actions questioned under the most draconian national laws and the vigorous debates that followed about how each one should be dealt with. Manning, Assange and Snowden are only new entrants to the world where a combination of actions and dissent/disagreement with the establishment (and thereby questioning the very basis of so called democratic and free societies) led to a simple flight at first and then a search for “home”. In adopting the title of that famous fictional account published in *The Atlantic* in 1863 by Edward Everett Hale, of a man who was forced to go into exile, these are classic contemporary accounts of men “without a country”.

A little more than six decades ago, the 1951 Refugee Convention was adopted to remedy just that, ensure that no man lives “without a country”. Race, religion, nationality, political opinion and membership of a particular social group – the primary categories in respect of which an asylum seeker needs to prove that she had genuine fears of persecution, also evolved in relation to the simultaneous proliferation of regional and international instruments that we gave ourselves as a protection from denial of rights and freedom. To its credit and evidence that the refugee convention was alive to changes and developments at the national and international level, regional mechanisms evolved out of the rich body of law and individual countries also developed domestic mechanisms that not only depended on the UN mechanism but also gave to it, in terms of newer ways of thinking about asylum.

And yet, Snowden, Assange and others who called the bluff of states like US or India (in case of say M F Hussain) became untouchables in the eyes of those who have the last say in matters of asylum and protection of refugees. Can Snowden, Assange and Manning (in August 2013, Manning was convicted and sentenced to 35 years in prison apart from being “dishonourably” discharged from the US Army) or many others similarly placed, be considered “refugees” or have no choice but be overshadowed and branded as “criminals”, allegations that have not been put to tests in all cases? How does the 1951 Refugee Convention (Article 1A [defining a refugee] and Article 1F(b) [the “exclusion clause” which excludes a person from being recognized as a refugee on the grounds that “he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;”]) view such instances? Does refugee law disclose its limits in such instances where a real possibility is the loss of one's country, an end that the existing refugee protection institution is expected to remedy?