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RIGHTS OF ALIENS IN INTERNATIONAL LAW

INTRODUCTION

The term 'Alien' is usually related to aliens on extraterrestrial being in space, within the legal aspect though, it refers to a foreign-born resident who isn't a citizen by virtue of parentage or naturalization and who remains a citizen or subject of another country. It essentially means those that live in a state aside from those of which they're nationals. The presence of such people in other states is legally termed as 'aliens. There are several variations to the term 'alien' that are as follows:

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- **ILLEGAL ALIEN** – It refers to a person who is residing in a country without any legal right to be there or without proper documentation. They may have entered a country through an illegal migration process.
- **LEGAL ALIEN** – It refers to a wide gamut of persons who are allowed to reside in a country either on a temporary or non-temporary bases such as tourists, permanent residents, student visa holders, etc.
- **ENEMY ALIEN** – An enemy alien is a citizen or national of a country which is currently involved in any conflict or warfare with the country he currently resides in.¹

When an individual enters a foreign country, he becomes subjected to the municipal laws of said country, unless he's a diplomatic agent or a recognized official of that foreign government. An alien won't have an equivalent rights and duties as that of the nationals. The main disadvantage is that aliens possess no right of entitlement to enter or live in a foreign country. They are subject to

¹Aliens – Admission, Expulsion and Rights under International Law, Legal Bites Law & Beyond (April 15th, 2020, 7:12 AM) <https://www.legalbites.in/aliens-international-law/>

several strict rules and procedures such as the obtainment of a visa, or national identity card which includes details of how long they may stay and where they may work and so on. The laws of the state in which the alien resides are applicable to him. Some laws of his origin country may also be applicable but not enforceable. Aliens generally are not allowed to vote nor are they allowed to become government officials. Although, he will be liable to pay tax for his local residence. All basic human rights treaties such as the Universal Declaration of Human Rights apply to aliens. The treatment of enemy aliens may differ from the treatment of other legal aliens residing within the country because of the hostile nature of relations between the countries.

ADMISSION OF ALIENS

It is not obligatory for countries to admit and welcome aliens into their country, unless and until specified by some treaty that the country has ratified. It is entirely up to the discretion of the state and every state by its territorial supremacy is competent to exclude aliens from whole or part of its territory. A country is also allowed to treat the aliens less favorably, in comparison to its citizens. For example, aliens in Denmark are not allowed to own land. Not allowing aliens to enter a country is not an international offence. Countries may deny admission to aliens on the idea of several reasons like unfriendly relations with the alien's origin country.

A country is also not liable to provide the grounds on which the alien was denied permission to enter the country. Although, generally the state does present the explanations for non-admission. Admission of aliens is conditional. Any legislation may be introduced on this subject. These are generally imposed after taking into consideration the internal economic and foreign policies of the state. Aliens such as student visa holders and tourists are admitted freely in almost all countries. Immigrants, though are subject to some strict regulations. Sometimes, aliens that are deemed socially, physically and morally not fit may also not be given admission.

There exist several treaties that allows a right of entry of a foreign national into a country. A famous one is the Vienna Convention on Diplomatic Relation of 1961. It states that not only the members of the diplomatic mission but the other members of party such as the couriers also possess a right to enter. The right to enter a foreign country can also be based on the diplomatic privilege to cross the land of a 3rd state in order to reach the territory of the state in which the diplomat is accredited. These privileges are also extended to members of international tribunals and members

of international organization. Provisions similar to these have also been given in the Vienna Convention on Consular Relations of 1963.

EXPULSION OF ALIENS

Expulsion generally means the act of forcing some out of an organization. Likewise, the expulsion of an alien means banishment of an alien from the territory due to the violation of any law or any reason the state deems fit. It is the right of the state to deport anyone whose presence is considered as undesirable. An alien who has been expelled is required to leave the territory of the state within a stipulated time period. They are generally provided with enough time to settle personal affairs. This must not be confused with the term 'deportation'. Expulsion means the prohibition to live within the territory whereas deportation is the removal of the person from the territory and sending them back to their country of origin. Deportation is the performance of the expulsion order.

Expulsion is not a form of punishment, rather it is an action that is taken by the government of a country redirecting a foreign national to leave its territory. The process of expulsion must be done effectively without causing any grievance or injury to the alien. An alien may be expelled no matter whether he is there as a tourist, or settled there permanently if the government feels so. This right should not be abused by the governments, who may tend to expel enemy aliens on a discriminatory basis.

Aliens are generally expelled because they are 'undesirable'. Their undesirability is based on a number of criteria that is determined by the state. Each country may differ on its criterion on undesirability of aliens.² These criteria may also keep changing on the current climate of times like war or peace. The state has the power to expel any and all aliens belonging to its enemy country in a situation of war. Although the decision is harsh, it is justified under International law. The

² ALIENS - ADMISSION, EXPULSION AND RIGHTS UNDER INTERNATIONAL LAW LEGAL BITES - LAW AND BEYOND, <https://www.legalbites.in/aliens-international-law/> (last visited May 13, 2020)

expulsion of aliens during a time of peace may vary and may be due to several reasons. It may be due to violation of laws, committing a crime against the security of the state, espionage, and so on.

For example, in the **Boffolo case** [Italy vs. Venezuela]³, an Italian was expelled from Venezuela and it was held that a State possess a general right of expulsion, but it can be resorted to only in extreme circumstances and accomplished in a manner that is least injurious to the person. In addition, the exact reason for the expulsion must also be provided when the international tribunal demands for it.

The right to judicially challenge the order of expulsion is not provided to all aliens. The judiciary is empowered to review these ordered only in limited situations. There are several states that have ratified treaties that allow aliens to challenge this order except when the alien is being expelled in cases related to national security. Judicial review is feasible in a scenario wherein the alien claims to not be a foreigner but a citizen of the state. It is unfeasible when the alien is being tried for crimes in relation to defense, espionage or anything that concerns the security of a country.

CONSTRUCTIVE EXPULSION

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The compulsory departure of an alien might also be achieved by a State by means of coercive acts or threats that are as a result of the State instead of a formal decision or order. In some cases, aliens are compelled to depart a country under the guise of a “voluntary departure program” which was in fact compulsory. These coercive measures which deprive an alien of any real choice aside from to go away the country are sometimes cited as “constructive expulsion”.⁴

The Iran-United States Claims Tribunal has addressed variety of claims concerning “constructive expulsion”. The two essential elements of the notion of “constructive expulsion” that emerge from the relevant decisions of the Tribunal are summarized as follows: “Such cases would appear to presuppose at least

1. That the circumstances in the country of residence are such that the alien cannot reasonably be regarded as having any real choice, and

³ 10 RIAA, 528 (1903)

⁴ MANAGEMENT, UNITED NATIONS DEPARTMENT FOR GENERAL ASSEMBLY AND CONFERENCE, REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE SIXTY-SIXTH SESSION (5 MAY - 6 JUNE AND 7 JULY ... - 8 AUGUST 2014) (United Nations) (2016)

2. That behind the events or acts leading to the departure there is an intention of having the alien ejected and these acts, moreover, are attributable to the State in accordance with principles of state responsibility.”⁵

AN INJURY TO THE STATE

*“An injury to a national is an injury to the State itself, and accordingly, the injured State is entitled to bring a claim against the responsible State to protect itself.”*⁶

Capacity of a state to bring claims from acts contrary to international law committed by another state. A state can take up the case of its subjects when injured by acts contrary to international law committed by another State, from whom they have been unable to obtain satisfaction through the ordinary channels.⁷

TWO STANDARDS

“International minimum standard” -- developing country

*“Criteria is that the acts should amount to an outrage, to bad faith, to willful neglect of duty, or to an insufficiency of governmental action so far short of international standards that every reasonable and impartial man would readily recognize its insufficiency”*⁸

“National standard” -- developed country

- A State is only responsible for damage caused by private persons to the persons or property of foreigners if it has manifestly failed to take such preventive or punitive measures as in the circumstances might reasonably be expected of it had the persons injured been its own nationals.
- Rationale: as a matter of international law, the standard of treatment is to be defined in terms of equality under the local law.

RIGHTS OF ALIENS

The laws on rights to aliens still remain rather questionable. However, on the basis of several agreements and treaties they are granted rights that are almost identical to those of citizens with a

⁵ Supra Note 4

⁶ Greece vs. Britain (1924) PCIJ Reports, Ser. A, No.2

⁷ DEPORTATION OF MYANMAR NATIONALS: SINGAPORE BACKTRACKS ON LANGUAGE OF "DEPORTATION" I ON SINGAPORE, <http://ionsg.blogspot.com/2019/09/deportation-of-myanmar-nationals.html> (last visited May 13, 2020)

⁸ Neer Claim (United States v. Mexico) (1926) 4 R.I.A.A. 60. In 1924.

few exceptions. For example, aliens may be provided the right to equality but not the right to vote. They are entitled to all basic human rights in the country which he lives in, so he may be able to live in peace.⁹ Aliens possess all procedural rights available to the citizens. Several civil and political rights may not be provided to aliens. They may not be allowed to hold public office and may also be denied the opportunity to be employed in certain professions such as those that deal with the national security.¹⁰

His personal rights are exactly the same as those of citizens. Aliens possess the right to access courts and seek the protection of the law if any of his rights have been violated. Aliens are as much as people as the citizens of the country. There should be a proper standard of treatment awarded to the aliens of any country. There exists an 'international minimum standard of treatment.' Any state that violates this may incur some international offence.

In 1985, the United Nations proclaimed the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live. The Declaration was designed to ensure that the fundamental human rights provided in the International Covenants on Human Rights would also be guaranteed to non-citizens.¹¹ They are binding upon the countries that have ratified them.

In the Declaration, non-citizens have been termed as aliens. Article 5-10 talks about the rights that are available to them.¹²

❖ EXPROPRIATION OF ALIEN PROPERTY

The action by the state or an authority of taking property from its owner for public use or benefit is known as expropriation. An alien is subject to restrictions before owning property in a state. In the event that he lawfully possesses property, international law requires the State to protect his property rights by giving him access to court remedy. A state, although has the rights to expropriate the property of aliens if the necessary conditions are not met. Expropriation of property means the deprivation of property against the payment of compensation.

⁹ ALIENS - ADMISSION, EXPULSION AND RIGHTS UNDER INTERNATIONAL LAW LEGAL BITES - LAW AND BEYOND, <https://www.legalbites.in/aliens-international-law/> (last visited May 13, 2020)

¹⁰ Supra Note 9

¹¹ THE RIGHTS OF NON-CITIZENS, <http://hrlibrary.umn.edu/edumat/studyguides/noncitizens.html> (last visited May 13, 2020)

¹² Supra Note 9

To determine whether the expropriation was lawful, the following are considered –

- Whether it was done in accordance to legislations or arbitrarily.
- Whether it was done for a public purpose.
- Whether the aliens were discriminated.
- Whether appropriate compensation has been paid.

Every state has the legitimate right to expropriate property. Some western countries maintain that expropriation is legitimate only if it complies with the international minimum standard. The process of expropriation is done through several means. The extremes of expropriation involves bringing in soldiers to evacuate the people. The lesser obvious means involve imposing rates of taxation so as to drive them out of business, in case of a corporation. Acts that cause rapid rates of depreciation to the property of the alien may also be considered as expropriation.

A compensation should be paid to be paid to the alien whose property has been expropriated. The calculation is based on the market value of the property before the announcement of the expropriation. For the compensation to be useful for the alien, it must be paid in the form most effective to him. It is generally paid in the currency of the country he is staying in, where he can then change the currency to suit his needs.

INTERNATIONAL CONVENTIONS

UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)

❖ HISTORY

The world is aware about the two great world wars that took place between 28 Jul 1914 – 11 Nov 1918 and 1 Sep 1939 – 2 Sep 1945. The UDHR was born as part of the emergence of the United Nations (UN) due to the atrocities during World War II.

United Nations General Assembly at its third session on 10th December 1948 as Resolution 217 at the Palais de Chaillot in Paris, France. Of the then 58 members of the United Nations, 48 voted in

favor, none against, eight abstained, and two did not vote.¹³ It was written by an International committee chaired by Eleanor Roosevelt.¹⁴

❖ ABOUT THE DECLARATION

A declaration is a document stating standards or principles, but which is not legally binding.

The Declaration consists of a preamble and thirty articles:

- The preamble sets out the historical and social causes that led to the necessity of drafting the Declaration.¹⁵
- Articles 1-21 provides civil and political rights like:
 1. Articles 1–2 established the basic concepts of dignity, liberty, and equality.
 2. Articles 3–5 established other individual rights, such as the right to life and the prohibition of slavery and torture.
 3. Articles 6–11 refer to the fundamental legality of human rights with specific remedies cite for their defense when violated.
 4. Articles 12–17 established the rights of the individual towards the community (including such things as freedom of movement).
 5. Articles 18–21 sanctioned the so-called "constitutional liberties", and with spiritual, public, and political freedoms, such as freedom of thought, opinion, religion and conscience, word, and peaceful association of the individual.
- Articles 22–27 sanctioned an individual's economic, social and cultural rights, including healthcare. Article 25 states: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services." It also makes additional accommodations for security in case of physical debilitation or disability, and makes special mention of care given to those in motherhood or childhood.

¹³ Universal Declaration of Human Rights, United Nations (April 18, 2020, 5:35 PM), <https://www.un.org/en/universal-declaration-human-rights/>

¹⁴ HUMAN RIGHTS DAY 2017: WHAT IS UNIVERSAL DECLARATION OF HUMAN RIGHTS NDTV.COM, <https://www.ndtv.com/education/human-rights-day-2017-on-december-10-what-is-universal-declaration-of-human-rights-1785863> (last visited May 13, 2020)

¹⁵ ALICE DOUMANIAN. TANKARD, THE HUMAN FAMILY, HUMAN RIGHTS, AND PEACE. A SOURCEBOOK FOR THE STUDY AND DISCUSSION OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, A LAY VERSION FOR THE COMMON MAN, WOMAN, AND CHILD (The Center for Teaching about Peace and War) (1973)

- Articles 28–30 established the general ways of using these rights, the areas in which these rights of the individual cannot be applied, and that they cannot be overcome against the individual.¹⁶

These articles are concerned with the duty of the individual to society and therefore the prohibition of use of rights in contravention of the needs of the United Nations Organization. The influence of the UDHR has been substantial. Its principles are incorporated into the constitutions of most of the quite 185 nations now within the UN. Even though a declaration isn't a legally binding document, the Universal Declaration has achieved the status of customary law of nations because people regard it "as a common standard of accomplishment for all people and all nations" and may be a powerful tool in applying diplomatic and moral pressure to governments that violate any of its articles

The 1968 United Nations International Conference on Human Rights advised that the Declaration "constitutes an obligation for the members of the international community" to all persons. The Declaration has served as the foundation for two binding UN human rights covenants: The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The principles of the Declaration are elaborated in international treaties such as the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of Discrimination Against Women, the United Nations Convention on the Rights of the Child, the United Nations Convention Against Torture, and many more.¹⁷

THE REFUGEE COVENTION

¹⁶ Tae-Ung Baik, *Emerging regional human rights systems in Asia* (Cambridge University Press) (2012)

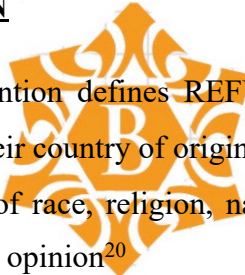
¹⁷ <https://courses.lumenlearning.com/suny-hccc-worldhistory2/chapter/the-universal-declaration-of-human-rights/>

❖ HISTORY

The Refugee Convention was adopted in 1951 in Geneva, Switzerland and is the first international instrument to place legal restrictions on State parties' power to expel foreigners.

The Convention entered into force on 22 April 1954, and it has been subject to only one amendment in the form of a 1967 Protocol, which removed the geographic and temporal limits of the 1951 Convention.¹⁸ According to the UNHCR Report 2015, world is facing worst refugee crisis since World War II. Almost 1% of Earth's population is an asylum seeker either internally displaced or a refugee.¹⁹

❖ ABOUT THE CONVENTION

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- The logo of Burnished Law Journal is a stylized orange and white emblem with the letters 'B' and 'L' intertwined. Below it, the text 'BURNISHED LAW JOURNAL' is written in a red, serif font.
- Article 1 of the Convention defines REFUGEE as someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion²⁰
 - The convention is both a status and a right based instrument and contains a number of provisions on fundamental principles and most notably regarding non-discrimination on the basis of sex, caste, religion, nationality etc., non-penalization i.e. except a few exceptions' refugees are not be penalized for illegal entry on stay and non- refoulement. E.g. Dalai Lama came to India for protection when China attached Tibet and he was given the status of political refugee.
 - Article 33 lays down the prohibition of “refoulement” according to which no State party “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

¹⁸ Mary Ellen. Toffle, English communication for social and human services: a cultural-linguistic approach (Celid) (2017)

¹⁹ Global Trends - Forced Displacement in 2018 - UNHCR UNHCR Global Trends 2018, <https://www.unhcr.org/globaltrends2018/> (last visited May 13, 2020)

²⁰ The Convention and Protocol Relating to the status of Refugees , UNHCR (April 18th 2010, 5:56 AM), <https://www.unhcr.org/3b66c2aa10>

opinion.²¹ Since all the asylum seekers are presumed to be refugees until proven otherwise they benefit from the protection under Article 33 of the convention unless their claim to refugee is rejected. Such protection against the refoulement cannot be invoked by refugees who pose a security threat to the country or those who have committed serious crimes. Principle set out in Article 33 applies on the refugees only and the people not recognized under it can be expelled. This principle of “non-refoulement” has become a cornerstone of international refugee law and it has been argued that it is now part of customary international law.²²

- A refugee who is lawfully in the territory of a State party benefits from the additional protection available under article 32 which prohibits expulsions save on grounds of national security or public order.²³ Article 32 contains some procedural safeguards e.g. Expulsion can be made in accordance with the due process of the law, refugees have the right to submit evidence to clear himself etc.

DECLARATION ON THE HUMAN RIGHTS OF INDIVIDUALS WHO ARE NOT NATIONALS OF THE COUNTRY IN WHICH THEY LIVE

❖ HISTORY

In order to recognize the protection of the Human Rights and fundamental Freedoms provided for in International Instruments for the people who are not the nationals of the county. This Declaration was adopted by the General Assembly by resolution 40/144 on 13th December, 1984.

❖ ABOUT THE DECLARATION

The Declaration serves as a guide for states as they design and implement laws to protect human rights.

²¹ Supra no. 9

²² CONVENTION RELATING TO THE STATUS OF REFUGEES OHCHR, <https://www.ohchr.org/en/professionalinterest/pages/statusofrefugees.aspx> (last visited May 13, 2020)

²³ DISCUSSION PAPER ON EXPULSIONS DISCUSSION PAPER PAGE 3 EXPULSIONS OF ALIENS IN INTERNATIONAL HUMAN RIGHTS LAW PDFSLIDE.NET, <https://pdfslide.net/documents/discussion-paper-on-expulsions-discussion-paper-page-3-expulsions-of-aliens-in-international.html> (last visited May 13, 2020)

- Article 1 defines the term ALIEN as any individual who is not a national of the State in which he or she is present.
- Articles 5 – 10 of the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live sets out the rights of non-citizens

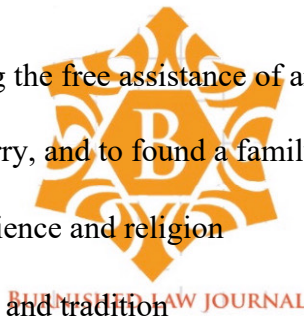
The rights provided by the declaration are as follows:

Aliens must receive the same treatment as nationals of the country in which they live with regard to the following rights:

- The right to life and security of the person, including freedom from arbitrary arrest or detention
- Protection against arbitrary or unlawful interference with privacy, family, home or correspondence.
- Equality before the courts, including the free assistance of an interpreter
- The right to choose a spouse, to marry, and to found a family
- Freedom of thought, opinion, conscience and religion
- The right to retain language, culture and tradition

The following rights must be granted to aliens so long as they do not interfere with national security, public safety, public order, public health or morals or the rights and freedoms of others:

- The right to leave the country
- The right to freedom of expression
- The right to peaceful assembly
- The right to own property individually or in association with others
- Liberty of movement and freedom to choose their place of residence within the borders of the country



-The right of spouse and minor or dependent children to join a lawful alien, as provided by national law

Aliens lawfully residing in the country must be granted the following rights so long as they observe the country's laws and respect the customs and traditions of the people:

-The right to safe and healthy working conditions, fair wages, and equal pay for equal work

-The right to join trade unions

-The right to social services, health care, education, and social security

The following additional rights of aliens are particularly enumerated in the Declaration:

-Protection from torture or cruel, inhuman, or degrading punishment

-Freedom from being subjected to medical or scientific experimentation without the alien's free consent

-Protection against arbitrary or unlawful expulsion from the country

-The right to defend oneself from expulsion, except where compelling reasons of national security require otherwise

-Protection from being arbitrarily deprived of lawfully acquired assets

-The right to communicate at any time with the consulate or diplomatic mission of the country of which he or she is a national.



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INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

❖ HISTORY

The United Nations International Covenant of Civil and Political Rights (ICCPR) attempts to ensure the protection of civil and political rights. It was adopted by the United Nations' General

Assembly on December 19, 1966, and it came into force on March 23, 1976. There are currently 74 signatories and 172 parties to the ICCPR.²⁴

The International Covenant on Economic Social and Cultural Rights, the Universal Declaration of Human Rights, and the ICCPR, are collectively known as the International Bill of Rights.

❖ ABOUT THE CONVENTION

The ICCPR recognizes the inherent dignity of every individual and undertakes to market conditions within states to permit the enjoyment of civil and political rights.

Countries that have ratified the Covenant are obligated “to protect and preserve basic human rights and compelled to need administrative,²⁵ judicial, and legislative measures so on guard the rights enshrined within the treaty and to supply an efficient remedy.”

The general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens.²⁶ Aliens receive the advantage of the overall requirement of non-discrimination in respect of the rights guaranteed within the Covenant, as provided for in article 2 thereof. This guarantee applies to aliens and citizens alike. Exceptionally, a number of the rights recognized within the Covenant are expressly applicable only to citizens (Article 25), while Article 13 applies only to aliens.

Aliens thus have an inherent right to life, protected by law, and should not be arbitrarily bereft of life. They must not be subjected to torture or to cruel, inhuman or degrading treatment or punishment; nor may they be held in slavery or servitude.²⁷ Aliens have the complete right to liberty and security of the person. They have the proper to liberty of movement and free choice of residence; they shall be liberal to leave the country. Aliens shall be equal before the courts and

²⁴ SUMMARY: INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR) CCLA, <https://ccla.org/summary-international-covenant-on-civil-and-political-rights-iccpr/> (last visited May 13, 2020)

²⁵ Ajaz Ahmed & Aneel Salman, *Clean Development Mechanism (CDM) Business in Pakistan: Perceptions and Realities*, 51 THE PAKISTAN DEVELOPMENT REVIEW, 303–316 (2012)

²⁶ GENERAL COMMENT ADOPTED BY THE UNITED NATIONS HRW, <https://www.hrw.org/legacy/campaigns/migrants/docs/comment86.htm> (last visited May 13, 2020)

²⁷ UNIVERSITY OF MINNESOTA HUMAN RIGHTS LIBRARY, <http://hrlibrary.umn.edu/gencomm/hrcom15.htm> (last visited May 13, 2020)

tribunals, and shall be entitled to an honest and public hearing by a competent, independent and impartial tribunal established by law in the determination of any criminal charge or of rights and obligations during a suit at law.

They may not be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence. They have the proper to freedom of thought, conscience and religion, and therefore the right to carry opinions and to precise them. Aliens receive the advantage of the proper of peaceful assembly and of freedom of association. Their children are entitled to those measures of protection required by their status as minors. In those cases where aliens constitute a minority within the meaning of article 27, they shall not be denied the proper , in community with other members of their group, to enjoy their own culture, to profess and practice their own religion and to use their own language. Aliens are entitled to equal protection by the law.²⁸ There shall be no discrimination between aliens and citizens within the application of those rights. These rights of aliens could also be qualified only by such limitations as could also be lawfully imposed under the Covenant.

THE RIGHTS PROTECTED UNDER THE ICCPR INCLUDE:

Article 6 – Right to life.

Article 7 – Freedom from torture.

Article 8 – Right to not be enslaved.

Article 9 – Right to liberty and security of the person.

Article 10 – Rights of detainees.

Article 11 – Right to not be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12 – Freedom of movement and choice of residence for lawful residents.

Article 13 – Rights of aliens.

Article 14 – Equality before the courts and tribunals. Right to a fair trial.

Article 15 – No one can be guilty of an act of a criminal offence which did not constitute a criminal offence.

Article 16 – Right to recognition as a person before the law.

²⁸ GENERAL COMMENT ADOPTED BY THE UNITED NATIONS HRW,
<https://www.hrw.org/legacy/campaigns/migrants/docs/comment86.htm> (last visited May 13, 2020)

Article 17 – Freedom from arbitrary or unlawful interference.

Article 18 – Right to freedom of thought, conscience and religion.

Article 19 – Right to hold opinions without interference.

Article 20 – Propaganda for war shall be prohibited by law.

Article 21 – Right of peaceful assembly.

Article 22 – Right to freedom of association with others.

Article 23 – Right to marry.

Article 24 – Children’s rights

Article 25 – Right to political participation.

Article 26 – Equality before the law.

Article 27 – Minority protection.²⁹

LIMITATIONS- Article 4 of ICCPR allows for certain circumstances for States Parties to derogate from their responsibilities under the Covenant, such as during times of public emergencies. However, State Parties may not derogate from Articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18.

OPTIONAL PROTOCOLS-

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• **FIRST OPTIONAL PROTOCOL:**

This protocol allows victims claiming to be victims of human rights violations to be heard. The Human Rights Committee (Committee), which is established by the Covenant, has the jurisdiction to receive, consider and hear communications from victims. The first Optional Protocol came into force with the Covenant. There are currently 35 signatories and 115 parties to this protocol.

• **SECOND OPTIONAL PROTOCOL:**

This protocol aims to abolish the death penalty. It was entered into force on July 11, 1991 and it currently has 37 signatories and 81 parties.

²⁹ *International Covenant on Civil and Political Rights*, OFFICE OF UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

- **ENFORCEMENT**

Article 2(2) of ICCPR provides that State Parties are to take the “necessary steps.... to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.” Countries that have ratified the ICCPR must take steps in their own jurisdictions to recognize the acceptance of this international covenant because, in “international law, a signature does not usually bind a State. The treaty is usually subject to a future ratification, acceptance, approval or accession.”

In addition to State Parties’ formally adopting and recognizing the ICCPR in their jurisdiction, Article 28 of ICCPR provides for a Human Rights Committee (Committee) to be established for monitoring the State Parties’ implementation of the Covenant. State Parties are required to submit reports to the Committee for review, on measures used to adopt and give effect to the rights enshrined in the ICCPR.

As mentioned above, the First Optional Protocol allows victims of human rights violation to be heard by the Committee. However the ICCPR also provides in Article 41 that a State Party who claims another State Party is not fulfilling its obligations to implement ICCPR, may make written submissions to the Committee for consideration. Also, non-governmental organizations (NGOs) may also participate in ensuring that values under the ICCPR are protected by submitting ‘shadow reports’ and highlight areas for consideration by the Committee.³⁰

INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES (ICRMW)

- ❖ **HISTORY**

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) was adopted by the UN General Assembly on 18 December

³⁰ SUMMARY: INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR), CANADIAN CIVIL LIBERTIES ASSOCIATION (Oct. 27, 2015), <https://ccla.org/summary-international-covenant-on-civil-and-political-rights-icpr/>.

1990 and entered into force on 1 July 2003. It is the most recent UN human rights treaty to come into force. 39 Countries are signatories out of the 55 Parties.³¹

❖ ABOUT THE CONVENTION

The Convention calls for efforts by the signatory states to ensure that the working and living conditions of illegal migratory workers and their families are not worse than of the legally resident foreign population, particularly with regard to legal issues related to safety, healthcare and human dignity.³²

Article 1

The present Convention is applicable to all migrant workers and members of their families without distinction of any kind such as sex, race, color, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

It shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence.

Article 2

For the purposes of the present Convention:

Part -I The term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.

³¹ *Human Rights*, UNITED NATIONS TREATY COLLECTION (Apr. 19, 2020), https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-13&src=TREATY.

³² *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)*, HUMAN RIGHTS (Sept. 20, 2019), <https://www.humanrights.ch/en/standards/un-treaties/migrant-workers/>.

Part-II of this UN convention contains 93 clauses and is the longest human rights convention altogether. In accordance with other human rights conventions, contracting parties are obliged to warrant the human rights of working migrants listed in this convention without discrimination.

In Part III these human rights specific to migrants are listed separately.

Part IV concerns itself with further rights of migrant workers that regularly reside in the country and postulates the entitlement to equal treatment as nationals regarding access to education, the housing market, social security and healthcare facilities.

Part V contains regulations concerning specific categories of foreigner like cross-border commuters, seasonal laborer's and travelers.

Part VI lists regulations dealing with working migrants without a residence permit. In this case, the Convention calls for measures to prevent or reveal illegal and covert migration flows as well as illegal employment. Should measures to legalise the situation for persons concerned be taken into consideration, these measures should take into account the reasons for immigration, the length of the stay and work, as well as the family situation.³³

MONITORING PROCESS

In Article 72 the Committee on Migrant Workers, consisting of 10 independent experts, is mentioned. After 41 states had ratified the Convention in 2010, the Committee was extended to 14 members. The contracting parties are obligated to submit a report on their efforts to implement the regulations of the convention within one year of its entry into force and all five years thereafter.

³³ *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, OFFICE OF UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>.

According to Art. 76, the member states can allow the Committee to receive and assess state complaints, and according to Art. 77 to receive and assess individual complaints as well. The individual complaints procedure enters into force if ten states have issued a respective declaration.³⁴

COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

The 10-person Committee on the Protection of the Rights of All Migrant Workers and Members of their Families monitors the compliance of member states with the respective Convention of 1990. After 41 States had ratified the Convention, the number of Committee members was increased to 14. The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families meets twice a year in Geneva. Their first meeting was held in March 2004.

Its tasks include the reviewing of State Reports (the first report is due one year after the entry into force of the Convention and all five years thereafter). According to Article 77 of the Convention, the Committee is also empowered to accept and consider individual complaints. However, this Individual Complaint Process is not yet in force since it has not been accepted by a minimum of 10 contracting states.³⁵

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (ICERD)

❖ HISTORY

The ICERD is a treaty, adopted in 1965 by the United Nations General Assembly. The UK signed the ICERD on 11 October 1966 and 'ratified' it (that is, became bound by it) on 7

³⁴ *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)*, HUMAN RIGHTS (Sept. 20, 2019), <https://www.humanrights.ch/en/standards/un-treaties/migrant-workers/>.

³⁵ Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, HUMAN RIGHTS (Oct. 19, 2011), <https://www.humanrights.ch/en/standards/un-bodies/cmwf/>.

March 1969. The ICERD was adopted in response to growing racial discrimination in the 1960s. There are 82 signatories and 182 parties to this convention.

Parties to the ICERD ‘condemn racial discrimination’ and commit ‘to the elimination of racial discrimination in all its forms.’ States promise to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law.³⁶

❖ ABOUT THE CONVENTION

States commit to make it a criminal offence to ‘disseminate’ (spread) ideas based on racial superiority or hatred.³⁷ States also agree to criminalize acts of violence, or acts ‘inciting’ (encouraging) violence, against any race or group of persons of another colour or ethnic origin. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is the principal international treaty for the elimination of racism, racial discrimination, and other forms of intolerance.

ICERD defines discrimination as “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”³⁸

It requires countries to review governmental, national, and local policies, and to amend or repeal laws and regulations that have the effect of creating or perpetuating racial discrimination, including those that affect indigenous people, women and non-citizens.

The ICERD is monitored by the Committee on the Elimination of Racial Discrimination (CERD) which consists of 18 independent human rights experts from different

³⁶ Sam Grant, *What is the International Convention on the Elimination of Racial Discrimination?*, EACH OTHER UK (Mar.21, 2017), <https://eachother.org.uk/explainer-convention-elimination-race-discrimination/>.

³⁷ WHAT IS THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF RACIAL DISCRIMINATION? EACHOTHER, <https://eachother.org.uk/explainer-convention-elimination-race-discrimination/> (last visited May 13, 2020)

³⁸ INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION OHCHR, <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx> (last visited May 13, 2020)

States which are parties to the convention, elected for 4-year terms. All States party, must regularly submit reports detailing what steps they have taken to eliminate racial discrimination.³⁹

All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Convention and then every two years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of “concluding observations”.

In addition to the reporting procedure, the Convention establishes three other mechanisms through which the Committee performs its monitoring functions: the early-warning procedure, the examination of inter-state complaints and the examination of individual complaints. The Committee meets in Geneva and normally holds two sessions per year consisting of three weeks each.

The Committee also publishes its interpretation of the content of human rights provisions, known as general recommendations (or general comments), on thematic issues and organizes thematic discussions.⁴⁰

Part-I

Article 1 defines “racial discrimination” and its applicability on states which not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens. Article 2-4 states what the States must condemn such as discrimination, segregation and any propogandas furthering the same.

Article 5 states the foll. Rights:

- a) The right to equal treatment before the tribunals and all other organs administering justice;

³⁹ Sam Grant, *What is the International Convention on the Elimination of Racial Discrimination?*, EACH OTHER UK (Mar.21, 2017), <https://eachother.org.uk/explainer-convention-elimination-race-discrimination/>.

⁴⁰ *Committee on the Elimination of Racial Discrimination*, OFFICE OF UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, <https://www2.ohchr.org/english/bodies/cerd/>.

- b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
- c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- d) Other civil rights, in particular:
 - (i) The right to freedom of movement and residence within the border of the State;
 - (ii) The right to leave any country, including one's own, and to return to one's country;
 - (iii) The right to nationality;
 - (iv) The right to marriage and choice of spouse;
 - (v) The right to own property alone as well as in association with others;
 - (vi) The right to inherit;
 - (vii) The right to freedom of thought, conscience and religion;
 - (viii) The right to freedom of opinion and expression;
 - (ix) The right to freedom of peaceful assembly and association;
- e) Economic, social and cultural rights, in particular:
 - (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
 - (ii) The right to form and join trade unions;
 - (iii) The right to housing;
 - (iv) The right to public health, medical care, social security and social services;
 - (v) The right to education and training;
 - (vi) The right to equal participation in cultural activities;
 - (f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

Part-II

Articles 8-16 discusses the formalities and activities of the Committee on the Elimination of Racial Discrimination (CERD).

Part-III

Articles 17-25 deal with the process of becoming a signatory of the conventions which states that a country must be a part of United Nations to become a signatory and then later ratify. It also states that any dispute between member states will be dealt with by the International Court of Justice (ICJ).⁴¹

ASPECT IN INDIAN LAW**PRACTICE OF DUALISM**

The practice of dualism in India is prevalent on the basis of the following articles enshrined in the Constitution of India. While Article 51 promotes International relations. Article 253 limits that by stating that any convention or treaty, if to be incorporated in domestic law must be through legislation. Furthermore, Art. 51 is a part of Directive Principles of State Policy which are not enforceable in the court of law.

Art. 51. Promotion of international peace and security The State shall endeavor to

- (a) promote international peace and security;
- (b) maintain just and honorable relations between nations;
- (c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and encourage settlement of international disputes by arbitration.

Art. 253. Legislation for giving effect to international agreements

⁴¹ *International Convention on the Elimination of All Forms of Racial Discrimination*, OFFICE OF UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>.

Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

This by no means, has limited the judiciary for taking into consideration International Laws as can be seen in the case of *Vishaka vs. State of Rajasthan*⁴², where no law was prevalent in India

In *Maganbhai Ishwarbhai Patel vs. Union of India*⁴³, the Supreme court on 9 January, 1969, had said once a treaty was concluded by the Government in exercise of its sovereign powers, it was the duty of all three branches - Legislature, Executive and Judiciary - to help implement it if it was within the constitutional framework.

JUS COGENS- CERTAIN FUNDAMENTAL, OVERRIDING PRINCIPLES OF INTERNATIONAL LAW.

Article 53 of the Vienna Convention on the Law of Treaties (VCLT): “[A] treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law.”

e.g.- prohibitions against crimes against humanity, genocide, and human trafficking.⁴⁴

CUSTOMARY INTERNATIONAL LAW-

International obligations arising from established international practices, as opposed to obligations arising from formal written conventions and treaties.

Results from a general and consistent practice of states.

e.g.- the doctrine of non-refoulement.⁴⁵

⁴² Vishaka and others vs. State of Rajasthan and Others AIR 1997 SC 3011.

⁴³ Maganbhai Ishwarbhai Patel vs. Union of India 1969 SCR (3) 254.

⁴⁴ *Jus Cogens*, CORNELL LAW SCHOOL, https://www.law.cornell.edu/wex/jus_cogens.

⁴⁵ *Customary International Law*, CORNELL LAW SCHOOL, https://www.law.cornell.edu/wex/customary_international_law.

In the case of *Ktaer Abbas Habib Al Outaifi v. Union of India & Ors.*⁴⁶, non-refoulement was recognized under Article 21 by the Gujarat High Court.

THE ROHINGYA MUSLIM CRISIS

The Rohingya, who numbered around one million in Myanmar at the start of 2017, are one of the many ethnic minorities in the country. Rohingya Muslims represent the largest percentage of Muslims in Myanmar, with the majority living in Rakhine state. They have their own language and culture and say they are descendants of Arab traders and other groups who have been in the region for generations. But the government of Myanmar, a predominantly Buddhist country, denies the Rohingya citizenship and even excluded them from the 2014 census, refusing to recognise them as a people. It sees them as illegal immigrants from Bangladesh.

Since the 1970s, Rohingya have migrated across the region in significant numbers. Estimates of their numbers are often much higher than official figures. In the last few years, before the latest crisis, thousands of Rohingya made perilous journeys out of Myanmar to escape communal violence or alleged abuses by the security forces.

The exodus began on 25 August 2017 after Rohingya Arsa militants launched deadly attacks on more than 30 police posts.

In January 2020, the UN's top court ordered the Buddhist-majority country to take measures to protect members of its Rohingya community from genocide. But the army in Myanmar (formerly Burma) has said it was fighting Rohingya militants and denies targeting civilians. The country's leader Aung San Suu Kyi, once a human rights icon, has repeatedly denied allegations of genocide.⁴⁷

Many refugees ended up fleeing to Bangladesh and India. India chose to deport them but in its affidavit to the Supreme Court on the question of deportation of Rohingya refugees to Myanmar, the Union government took the plea that as India is not a signatory to the Refugee Convention of

46 1999 Cri.L.J. 919.

47 *Myanmar Rohingya: What you need to know about the crisis*, BBC (Jan.23, 2020), <https://www.bbc.com/news/world-asia-41566561>.

1951 or the Protocol of 1967, it is not bound by the principle of 'non-refoulement' or not sending back refugees to a place where they face danger.

However, the United Nations High Commissioner for Refugees (UNHCR) said that they are bound by international law to protect refugees who face danger in their home country. The UNHCR's India headquarters in New Delhi said: "The principle of non-refoulement is considered part of customary international law and therefore binding on all states whether they have signed the Refugee Convention or not. In addition, India is party to major international human rights instruments such as the International Covenant on Civil and Political Rights, Convention on the Elimination of All Forms of Discrimination against Women and Convention on the Rights of the Child."⁴⁸ It is important to note that while this is a customary international law, there is no implementation of it as such. The law does not also take into consideration that India does not have the resources to handle such refugee immigration and already has an influx of refugees and illegal immigrants. Despite the fact that upon independence and partition in 1947, India faced a refugee crisis with mass casualties, riots, and heavy death tolls on both sides of the border.⁴⁹ The law cannot be blatantly applied on a country which has valid reason to not conform to the law in place.

FUNDAMENTAL RIGHTS GIVEN TO NON-CITIZENS AS WELL-

In Indian law, the framers of the constitution had taken great caution, as to what rights should be given to and what rights should be abstained from the foreign nationals. Certain such rights given to foreign nationals, by the Indian Constitution are: -

Article 14- right to equality before law and equal protection of laws

Article 20- right to protection in respect to conviction for offences.

48 Aishak Chanda, *UNHCR: India bound by law not to deport Rohingyas*, THE NEW INDIAN EXPRESS (Sept. 20, 2017), <https://www.newindianexpress.com/nation/2017/sep/20/unhcr-india-bound-by-law-not-to-deport-rohingyas-1660231.html>.

49 Sanya Samtani, *Deporting Rohingya Refugees: Indian Supreme Court Violates Principle of Non-refoulement*, OHRX, <https://ohrh.law.ox.ac.uk/deporting-rohingya-refugees-indian-supreme-court-violates-principle-of-non-refoulement/>.

Article 21- right to protection of life and personal liberty.

Article 21A-right to elementary education.

Article 22- right to protection against arrest and detention in certain cases.

Article 23- prohibition of traffic in human beings and forced labour

Article 24- prohibition of employment of children in factories etc.

Article 25- right to freedom of conscience and free profession, practice and propagation of religion.

Article 26- right to freedom to manage religious affairs

Article 27- right to freedom from payment of taxes for promotion of any religion.

Article 28- right to freedom from attending religious instructions or worship in certain educational institutions.⁵⁰

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These rights are a part of fundamental rights given to us in part 3 of our constitution. These rights are not reserved for any individual group or community, and is applicable to each and every 'person' residing on the territory of India.

Isaac Isanga Musumba and Ors. Vs. State of Maharashtra and Ors.51-

In a recent judgment, in response to the FIR registered by the Maharashtra Government, against three Ugandan citizens, including advisor to the President of Uganda, which was quashed by the Supreme court. It has reaffirmed that Article 21 of the Constitution is available even to the foreign nationals. A vacation bench of justice A.K.Patnaik and Ranjan Gogoi said⁵²:

50 Neha Mishra, *Are foreign nationals entitled to the same Constitutional Rights as the citizens of India?*, IJLLJS 7-8 (2014).

51 MANU/SC/0725/2013.

52 Neha Mishra, *Are foreign nationals entitled to the same Constitutional Rights as the citizens of India?*, IJLLJS 8-9 (2014).

“Article 21 of the constitution [right to life and liberty] applies to all citizens, whether Indian or foreign nationals. Their right to liberty cannot be restrained by police due to a business dispute. Our country gets a bad name because of the acts of few police officers, and it is unfortunate that the Mumbai Police, instead of protecting the rights of these foreign nationals, filed an FIR against them and the charges are baseless.”

In ***Sarbananda Sonowal v. Union of India and another***⁵³-

In a Writ Petition under Article 32 of the Constitution of India was filed by way of public interest litigation for declaring certain provisions of the Illegal Migrants (Determination by Tribunals) Act, 1983 (IMDT Act in short) as ultra vires of the Constitution of India, and consequent declaration that the Foreigners Act, 1946 and the Rules made there under shall apply to the State of Assam.

The grievance of the petitioner was that the IMDT Act has completely failed to detect and deport foreigners illegally residing in the State of Assam. Under the IMDT Act, if an illegal migrant takes the plea that he is an Indian, the burden of proving that he is not a citizen of India shifts on the prosecution.

This and among other provisions were alleged as unconstitutional since the Union of India or State are overburdened to prove a fact that is completely within the knowledge of the accused illegal migrant. It was argued that this burden on prosecution of proving an illegal migrant as non-citizen of India comes in the way of protecting the security of the nation and its border. It is in this background that PIL was filed.

The Supreme Court struck down the IMDT Act as unconstitutional and issued certain directions to the Union of India. While doing so the Supreme Court dealt with the issue of rights of aliens who have legally entered into India. After referring to the juristic writings of Oppenheim’s “International law” (p.400, 401, and 413) and J.G Starke’s “Introduction to International Law” (p.351) and a specific reference to Article 13 of ICCPR, the Supreme Court held that in respect of

53 MANU/SC/5514/2006.

an alien who is lawfully in India under a valid passport and visa, is entitled to have an opportunity to represent before an order of expulsion is passed.⁵⁴

Article 13 of ICCPR, the Supreme Court held that in respect of an alien who is lawfully in India under a valid passport and visa, is entitled to have an opportunity to represent before an order of expulsion is passed. The Supreme Court observed that:

“Like the power to refuse admission this is regarded as an incident of the State's territorial sovereignty. International law does not prohibit the expulsion en masse of aliens. Reference has also been made to Article 13 of the International Covenant of 1966 on Civil and Political Rights which provides that an alien lawfully in the territory of a State party to the Covenant may be expelled only pursuant to a decision reached by law and except where compelling reasons of national security otherwise require, is to be allowed to submit the reasons against his expulsion and to have his case reviewed by and to be represented for the purpose before the competent authority. It is important to note that this Covenant of 1966 would apply provided an alien is lawfully in India, namely, with valid passport, visa, etc., and not to those who have entered illegally or unlawfully.... Having regard to Article 13 of the International Covenant on Civil and Political Rights, 1966, an alien lawfully in a State's territory may be expelled only in pursuance of a decision reached in accordance with law”.

⁵⁴ *DOMESTIC APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW IN INDIA – EXECUTIVE, LEGISLATIVE AND JUDICIAL EFFORTS: A CRITICAL APPRAISAL*, SHODHGANGA, <https://shodhganga.inflibnet.ac.in/bitstream/10603/76456/14/chapter%208.pdf>.

CONCLUSION

Law is transient just as the times are. The need for rights of aliens can arise during travel, search for job opportunities, countries in conflict or when a community is being ethnically cleansed. The people from such countries are aliens but that does not by any means take away the basic rights of a person. Whether, a legal immigrant or an illegal one, no one should be treated less than a person. Which is why, there are multiple conventions in place to govern the rights of aliens.

Law is of course not perfect to ensure that these rights are guaranteed as there are many things that are still not taken into consideration. Human life is above all but such can only be ensured with the right means. Many countries still struggle with problems regarding aliens such as illegal immigration and the butterfly effect caused by them in a society. To a country, a citizen is prioritized over an alien. In a matter of racial discrimination, which is still a big issue all over the world, people do now raise their voice over such and its moreover a matter of changing mindset even with the law in place. Looking at it objectively, neither party is wrong for illegal immigration or for the denial of the same. There is hope that countries will come together and ensure a way for the better implementation of law and rights of aliens without causing any harm to their own sovereignty as well.

