

---

# RIGHTS OF IMMIGRANTS UNDER NATIONAL & INTERNATIONAL LAW: ISSUES & CHALLENGES BEFORE IMMIGRANTS

---

Ms. Shivanjali Keshavrao Bhagat, Research Scholar, AKK New Law Academy & Research Center, Pune

## ABSTRACT

*“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Article 2 - Universal Declaration of Human Rights (UDHR), 1948<sup>1</sup>*

Across the world, people are on the move, looking for safer and better environments in which to live, find work and prosper. Around 42 million migrants, as per the United Nations High Commission for Refugees (UNHCR), have been forced to leave their homes and seek shelter in some other place because of conflict and repression. However, the scale of migration today is much larger than what have been anticipated by the UNHCR since migration has many forms and can take place because of varied reasons.<sup>2</sup>

When people cross the national borders during their migration, they are called immigrants or migrants from the perspective of the country which they enter. From the perspective of the country which they leave, they are called emigrant or out-migrant.

International human rights apply to all human beings, regardless of immigration status. Everyone – citizen or migrant, documented or undocumented – enjoys basic human rights such as the right to life, liberty, and security of person; freedom from slavery or torture; the right to equal protection of the law and freedom from discrimination; freedom from arbitrary arrest and detention; the presumption of innocence; and freedom of association, religion, and expression. These human rights are protected by international treaties, including the Universal Declaration of Human Rights,

---

<sup>1</sup> [https://www.theadvocatesforhumanrights.org/rights\\_of\\_migrants](https://www.theadvocatesforhumanrights.org/rights_of_migrants)

<sup>2</sup> Arthur C. Helton and Elina Jacobs, *What is Forced Migration?* *Georgetown Immigration Law Journal*, pp. 521-532, 522 (1999).

the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Several treaties specifically address the human rights of migrants, including the Convention relating to the Status of Refugees and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. These treaties outline rights of particular importance to migrants, including due process, family reunification, and asylum<sup>3</sup>.

### **Introduction:**

The immigrant comes under the list of most vulnerable members of the society. The violation of rights of immigrants is universal social problem and India is not exception to it. India gives ratification to many international instruments like UDHR, ICCPR, ICESCR etc. which provides protection of human rights of person irrespective of his nation, caste, colour, sex etc. then also the Indian legal system fails to protect the human rights of immigrants. Human rights violations against immigrants can include a denial of civil and political rights such as arbitrary detention, torture, or a lack of due process, as well as economic, social and cultural rights such as the rights to health, housing or education. The denial of migrants' rights is often closely linked to discriminatory laws. India has witnessed some severe waves of immigration flows since her independence. Rejected peoples like Indo-Pakistan refugees of 1947-48 due to the wake of partition, Burmese and Sri Lankan Indians immigrants have come to India. Political refugees and asylum-seekers like Tibetans, Sri Lankan Tamils, East Pakistani refugees in 1971, Chakmas, Bhutanese, Burmese, Mghan, Iranian and Somalis have come to India to save their life, liberty and property and to avoid political or ethnic persecution. There is also presence of Stateless persons who were emanated from forced immigration to India. Till today India is getting the regular flow of undocumented immigrants main from the neighbouring countries like Bangladesh, Pakistan and Sri Lanka. Apart from all these India also receives a good number of temporary immigrants who come to India legally as tourist, students, businessmen etc.

During the period of economic downturn, they are the first to lose their jobs, they work for the less pay for longer hour, even at the unhygienic workplaces. Many immigrants are facing the problems of poverty, unemployment which end up with the human rights violation, labour

---

<sup>3</sup> [https://www.theadvocatesforhumanrights.org/uploads/migrant\\_rights\\_fact\\_sheet.pdf](https://www.theadvocatesforhumanrights.org/uploads/migrant_rights_fact_sheet.pdf)

exploitation, abuse, harassment and discrimination. They become the victim of human trafficking, child labour and rising violence against women.

There are no well settled laws for the protection of human rights of the immigrants at the National and International level. So there is need to evolve the new legal framework for the protection of Human rights of the immigrants. This research paper tries to focus on the rights of immigrants India with special perspective of human rights.

### **Causes of Immigration :-**

Immigration means movement of persons from place to place, and this movement are not new one. Since ancient time people are on move from one country to another. In ancient times, nomadic tribes travelled from place to place in the search of fresh and fertile lands, good areas for hunting and fishing etc. In modern times, immigration still continues all over the world for different reasons. These grounds are distributed in two groups- 1. Push factors and 2. Pull factors.

1. **Push factors-** Push factor means these are reasons that compel or push people to leave the area of where they reside and settle someplace else. Common factors can include armed conflict, disaster exposure, gender inequality, lack of job opportunities, political corruption, and lack of access to competent healthcare and education. In simple terms, push factors are negative reasons that prompt individuals to leave.
2. **Pull factors** - Pull factors are, on the other hand, the exact opposite of push factors. They attract or pull people to move and settle in a particular area. Common pull factors may include better work opportunities, greater security, and access to adequate healthcare and education. Simply put, pull factors are positive reasons that prompt individuals to move.<sup>4</sup>

### **Issues & Challenges before Immigrants:-**

Followings are some issues and challenges faced by the immigrants-

---

<sup>4</sup> <https://www.lirs.org/causes-of-immigration/>

### **1. Language Barriers :-**

The language barrier is the main challenge as it affects the ability to communicate with others. This may negatively impact the quality of informed decision-making and the care experience for immigrants. Language barriers can also amplify the effects of other sources of disadvantage. In some countries, immigrants get substandard health care because they cannot speak the native language well. Moreover, the differences between the languages of the first generation and second-generation migrants can harm immigrants.

### **2. Lack of Employment Opportunities: -**

Immigrants are among those people who are most likely to face discrimination on the job. That is because there are many problems rooted in how assignments are designed and managed. Moreover, many immigrant workers are excluded from labour and safety protections that are enjoyed by native-born workers.

Newly arrived immigrants are usually disenfranchised in terms of their knowledge of the job market. At the same time, immigrant professionals face difficulties in obtaining recognition for foreign academic credentials. Therefore, better policies are required to help minimize the hurdles that refugees face in the employment process.

### **3. Housing :-**

Immigrants are probably the most vulnerable group when it comes to housing. That's because they face severe challenges finding safe, decent, and affordable housing. However, housing problems for immigrants are more than just the homeownership rate. Many of these recently settled immigrants are jobless and can't afford to pay rent. Moreover, there's a higher housing cost burden for illegal immigrants compared with their legal immigrant counterparts. These housing problems require national and local responses.

### **4. Access to Medical Services:-**

People should have access to health care services regardless of their nationality. However, immigrants have low rates of medical insurance coverage and poor access to

health care services. Besides, policy changes have limited immigrants' access to insurance and health care. These barriers range from financial limitations to discrimination and fear of deportation. This has contributed to growing concerns about immigrant's ability to participate in many free healthcare programs.

In many countries, undocumented immigrants aren't eligible to buy health insurance coverage. At the same time, research shows that immigrant families often forgo needed health care because they fear discrimination. Also, many immigrants are not eligible for subsidized participation in national health insurance programs.

#### **5. Transportation Issues :-**

The ability to drive a car can be essential to getting many everyday tasks done. However, immigrants have limited options when it comes to accessing reliable transport. One of the most significant difficulties immigrants face is the age-related unreliability of their vehicles. Therefore, getting to work and limited transportation are all genuine issues for immigrants.

Immigrants have problems with their travel primarily because they face auto-related issues, including their vehicles' age. Private transportation is also a problem since most immigrants can't obtain a driver's license.

#### **6. Cultural Differences :-**

The general understanding of immigrants is based upon falsehoods, misunderstandings, and myths. These false ideas cause large and unfair disparities in many aspects of their life. Even well-settled migrants face ongoing cultural and communication barriers. This can range from social customs to more significant issues such as religion. For instance, children may feel ashamed that they don't know the most famous music.

Fear and distrust of immigrants have fuelled the creation and success of cultural myths in many countries. Even deeds done with a good intention can come off as culturally insensitive. Therefore, people should keep an open mind and desist from perceiving anything that is different to be "wrong."

## 7. Raising Children:-

Growing up as the child of parents who immigrated to another country is not easy. The socioeconomic and psychosocial concerns that children of immigrants often face in a new country can be challenging. Depression, anxiety, and panic disorder are common among immigrants' children. The pressure that children of immigrant's face is high, and mental health support is low. Unlike adults, children are still in the process of creating their identities. Therefore, being caught between two cultures can create numerous internal conflicts. Research has shown that children of immigrants are more likely to struggle in school. Other forms of discrimination they may face include discrimination, isolation, and financial stresses.

## 8. Prejudice :-

Many immigrants experience discrimination. In fact, there's been a mammoth sweep of increased anti-immigration prejudice. These prejudices are exacerbated by how much news and information you consume. In particular, anti-immigrant attitudes sustain restrictive policies. The prejudice tends to be either against all minority ethnic and religious groups. For instance, more non-EU migrants feel they face discrimination in the UK than those from Europe. Many governments are stepping up efforts aimed at reducing discrimination and enhancing integration. That's why we see more anti-racism and prejudice reduction campaigns on TV.

One billion people, one-seventh of the world's population, are migrants. Despite these barriers, immigrants will continue to play an essential role in our communities and our economy.<sup>5</sup>

AHRC's partner organisation MASUM in West Bengal routinely sends information regarding the ill-treatments and human rights abused, including torture and extra-judicial executions, meted out on Bangladeshi migrants at the Indo-Bangladesh border, particularly by the Border Security forces. Migrants in that region also face the threat of trafficking and in many cases are illegally detained in prisons in India, despite clear provisions barring the arrest of foreigners who may have been trafficked. MASUM also sends information regarding the treatment of

---

<sup>5</sup> <https://nysiaf.org/the-8-biggest-challenges-facing-immigrants/>

Enclave Dwellers in India, who face peculiar issues due to the travails of history, and face issues of human rights abuses in the enclaves, including a lack of access to jobs, just policing and in many cases, basic amenities such as clean drinking water<sup>6</sup>.

### **Rights of Immigrants under National law :-**

India is also home to immigrants from bordering countries such as Sri Lanka, Bangladesh, Nepal and Pakistan, who are in India for economic, family reunion or other reasons. The Indian Constitution is the largest written constitution of the world which provides number of rights to its citizen and also to its non-citizens.

In Part III of our Constitution provided certain basic human rights to the non-citizen along with the citizen of India in the form of fundamental rights. In fact, part III of the Indian Constitution reflects the provisions which are laid down in Universal Declaration of Human Rights 1948, ICCPR and ICESCR. Part III of our Constitution attributes some rights as fundamental rights to the non-citizen as a 'person' that is these rights are available to all, citizen or non-citizen; such rights are, right to equality, right to life and personal liberty, right to religion, right against ex-post-facto criminal law, double jeopardy and self-incrimination, protection against arbitrary arrest and detention in certain cases, right against exploitation, enforcement of these rights under Article 32 of our Constitution.

Few rights are not available to the immigrants like non-discrimination in public places and holding public office and employment and six freedoms enumerated in Article 19 of the Indian Constitution, such as freedom of speech and expression, freedom of association, freedom of movement etc. Although these freedoms are recognized as the human rights instruments, but these are restricted for the immigrant people living in India.

### **Rights of immigrants under International Law :-**

The International Laws like, The Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) set out a broad range of basic human rights which apply to all immigrants, irrespective of their nationality, legal status or age. By virtue of these provisions, immigrants, whatever their immigration status, have an overarching right

---

<sup>6</sup> <http://alrc.asia/human-rights-of-migrants-under-threat/>

to the basic human rights. For example, the most fundamental principle is the non-discrimination principle, which prohibits all distinctions between people which are arbitrary, disproportionate or unjustifiable. More specific rights include 'life, liberty and security', freedom from torture, cruel or degrading treatment or punishment, full access to the court system, equality before the law, protection from 'arbitrary arrest, detention or exile', full procedural protection to them in case the child commits a crime or is associated with any kind of criminal process, payment of a fair wage for work performed, police protection from physical or sexual abuse, health care, shelter and other forms of social assistance essential for living a life of dignity<sup>7</sup>. But due to non-performance of these laws, there is a violation of rights of immigrants.

Even after ratifying the International instruments many countries failed to protect the rights of immigrants. In this study we have to study the determination of stateless person's status which is still in dilemma in some Asian countries particularly in India, Pakistan, and Bangladesh. There were a huge number of stateless persons are present without any valid status and who has no option to go to any other place. This is definitely violating the International Convention on Reduction of Statelessness.

### **Role of the judiciary for the protection of fundamental Right of immigrants: -**

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 said "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 National Human Rights Commission Vs State of Arunachal Pradesh<sup>8</sup>, the Supreme Court has held that the state is bound to protect the life and liberty of every human being whether he

---

<sup>7</sup><https://www2.ohchr.org/english/issues/migration/consultation/docs/National%20Human%20Rights%20Institutions/India.doc>

<sup>8</sup> (1996) 1 SCC 742



is a citizen or non-citizen. In this case a Public Interest Litigation was filed by the National Human Rights Commission under Art.32 for enforcing the rights under Art.21 of the Constitution of about 65,000 Chakmas. The facts of the case were that a large number of Chakmas who migrated from East Pakistan (Now Bangladesh) in 1964, first settled in Assam and Tripura and became Indian citizen in due course. Since the State of Assam had expressed its inability to rehabilitate all of them then about 65,000 of them were shifted to the State Arunachal Pradesh. They have been residing in the state for more than three decades and have raised their families in the State. Their children were born in India. They have developed close social, religious and economic ties. The All Arunachal Pradesh Student Union (AAPSU) had threatened to forcibly expel them from the state. Since all efforts to tackle the problem of their security had failed the National Human Rights Commission was compelled to approach the Supreme Court for appropriate relief.

The Supreme Court held that the State is bound to protect the life and liberty of every being whether citizen or non-citizen. It is the constitutional duty of the State to safeguard the life, health and well-being of Chakmas. The Court directed the State of Arunachal Pradesh to take all possible steps to ensure safety of their life and personal liberty. They shall be protected and any attempt to forcibly evict or drive them out of State by AAPSU must be repelled by force considered necessary to carry out the direction of the court.

*Ktaer Abbas Habib Al Qutaifi Vs. Union of India*, High Court of Gujrat held that the principle of non-refoulment avoid ejection of a displaced person where his life or freedom would be undermined by virtue of his race, religion, nationality, enrolment of a specific social gathering or political conclusion.

### **Conclusion:-**

In our modern time we see that the present World is facing the greatest challenge in protection of the human rights for the immigrants. They become the most neglected segment of the World community. The non-citizen populations are comprising of aliens, stateless persons, refugees, economic migrants, asylum-seekers and undocumented immigrants (who are called in India illegal immigrants).

There is a regular inflow of undocumented immigrants (who are called in our country as illegal immigrants) mainly from Bangladesh to the bordering states like West Bengal, Assam, Tripura,

and Meghalaya. These people even take shelter in big metros like Kolkata, New Delhi and Mumbai. Our Governmental agencies take drive to pick up these people and allegedly push back them into the border. Some are caught in the border and also detained and summarily deported. These incidents are not unknown and new but always get importance as the political issue. Sometime genuine Indians are also declared as illegal immigrants and process of deportation meted out to them accordingly.

Despite the commitments made in international and domestic law, the Indian legal system often fails to protect the human rights of immigrants. Human rights violations against immigrants can include a denial of civil and political rights such as arbitrary detention, torture, or a lack of due process, as well as economic, social and cultural rights such as the rights to health, housing or education. The denial of migrants' rights is often closely linked to discriminatory laws and to deep-seated attitudes of prejudice or xenophobia.

**Bibliography:-**

1. Arthur C. Helton and Elina Jacobs, What is Forced Migration? Georgetown Immigration Law Journal, pp. 521-532, 522 (1999).
2. M. P. Jain, Indian Constitutional Law, LexisNexis Pub, Nagpur
3. M.P. Tandon, Public International Law, Allahabad Law agency, Faridabad
4. Dr. Awasthi & Kataria, Law relating to Protection of Human Rights, Orient Publishing company, New Delhi.

**Webliography:-**

[https://www.theadvocatesforhumanrights.org/rights\\_of\\_migrants](https://www.theadvocatesforhumanrights.org/rights_of_migrants)

<https://writingexplained.org/immigrate-vs-emigrate-what-are-the-differences-between-immigration-and-emigration>

[https://www.theadvocatesforhumanrights.org/uploads/migrant\\_rights\\_fact\\_sheet.pdf](https://www.theadvocatesforhumanrights.org/uploads/migrant_rights_fact_sheet.pdf)

<https://www.lirs.org/causes-of-immigration/>

<https://nysiaf.org/the-8-biggest-challenges-facing-immigrants/>

<http://alrc.asia/human-rights-of-migrants-under-threat/>

<https://www.ohchr.org/EN/Issues/Migration/Pages/MigrationAndHumanRightsindex.aspx>