

# Aliens –under International Law

## INTRODUCTION

In **law**, an **alien** is a person who is not a citizen or national of a given country, though **definitions** and terminology differ to some degree depending on the continent or region of the world. The term "**alien**" is synonymous to "foreign national". The term 'Alien' is generally associated with extraterrestrial beings on spaceships in outer space. In the legal aspect though, it refers to a foreign-born resident who is not a citizen by virtue of parentage or naturalization and who is still a citizen or subject of another country. It essentially means those who live in a state other than those of which they are 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 –

1. **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.
2. **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 basis such as tourists, permanent residents, student visa holders, etc.
3. **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.

When a person enters a foreign country, he becomes conditional to the municipal laws of said country, unless he is a diplomatic agent or a recognized official of that foreign government. An alien will not have the same 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 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 in the country due to 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 favourably, 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 basis 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 reasons for non admission. Admission of aliens is conditional. The state may introduce any legislation about this, as they feel fit. These are generally imposed after taking into account 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 exists 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 organisation. 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 organisation. 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 criterion that is determined by the state. Each country may differ on its criterion on undesirability of aliens. These criteria may also keep changing on the current climate of times like war or peace. In a situation of war, the state may expel any and all aliens of its enemy country. Although the decision is harsh, it is justified under International law. The 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, 10 RIAA, 528 (1903)]*, 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 defence, espionage or anything that concerns the security of a country.

### ***RIGHTS OF ALIENS***

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

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. 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. They are enumerated below –

**1. 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 retain language, culture and tradition
- The right to transfer money abroad

**2. 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
- 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

**3. 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

**4. 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
- The right to communicate at any time with the consulate or diplomatic mission of the country of which he or she is a national.

A State may not arbitrarily imprison an alien, or confiscate property without compensation, or make no effort to protect aliens from any foreseeable trouble that may face.

As stated in the *The Mavrommatis Palestine Concessions, Greece vs. Britain [(1924) PCIJ Reports, Ser. A, No.2,]* It is an elementary principle of International law that a State is entitled to protect its subjects, when injured by acts contrary to international law by another State, for whom they have been unable to obtain satisfaction through the ordinary channels.

### **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.

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

1. Whether it was done in accordance to legislations or arbitrarily
2. Whether it was done for a public purpose
3. Whether the aliens were discriminated
4. 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.

### **ALIENS AND PAKISTAN**

Indian law does not specifically define the term 'alien' although it appears in several pieces of Pakistan legislation. The term 'alien' is very wide and is also inclusive of refugees. Since it is not properly defined, the term alien can also include tourists and medical visa holders and permanent residents. The Constitution of Pakistan also highlights the stark difference between a citizen and a non-citizen clearly. Not all the fundamental civil and political rights that are available to Pakistan citizens are applicable to non citizens. The usage of the term 'citizen' and 'person' defines which applies to whom.

There are several fundamental rights that are applicable to both Aliens as well as citizens in Pakistan and they are –

1. Right to equality before law and equal protection of laws
2. Right to protection in respect of conviction for offences
3. Right to protection of life and personal liberty
4. Right to elementary education
5. Right to protection against arrest and detention in certain cases
6. Prohibition of traffic in human beings and forced labour
7. Prohibition of employment of children
8. Right to freedom of conscience and free profession, practice and propagation of religion
9. Right to freedom to manage religious affairs
10. Right to freedom from payment of taxes for promotion of any religion
11. Right to freedom from attending religious instruction or worship in certain educational institutions

The following fundamental rights are applicable to PAKISTAN citizens only and not Aliens.

They are –

1. No discrimination on prescribed grounds
2. Reservation in Public employment
3. Six types of freedom
4. Protection of language, script and culture of minorities
5. Right of minorities to establish and administer educational institutions