

CHAPTER 18 ALIENS

seizure, ↑

The term aliens is referred to those persons who live in a State other than of which they are the nationals. Thus, presence of the nationals of one State in the other State is legally termed as aliens. When a person enters a foreign territory, he becomes the subject to the municipal law of that country unless he is a diplomatic agent or is a recognized official of the foreign government. This rule is based on the principle that a State enjoys territorial sovereignty. Rules relating to admission of aliens, expulsion of aliens, expropriation of alien property and right and duties of aliens derive mainly from State practice, which is quite divergent, and also in certain cases from bilateral treaties. In the past, attempts have been made to codify the topic of aliens but they have not been successful except that of Havana Convention on the Status of Aliens of 1928.

Admission of Aliens :

No State is under a duty to admit aliens into its territory. The reception of aliens is a matter of discretion, and every State is by reason of its territorial supremacy competent to exclude aliens from the whole, or any part, of its territory.¹ Thus, the State has a right either to prohibit the entry of aliens or admit them into its territory. Justice Grey in *Nishimura Ekiu v. United States* observed that :

It is an accepted maxim of International Law, that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe.²

Protection of yourself from harm or death.

an airplane or helicopter

Admission of aliens may also be conditional. In such cases, the territorial State has a right to impose such conditions as it may deem proper. It is a matter for domestic legislation to lay down the conditions which may be imposed after taking into account the internal economic and foreign policies. For instance, a State may impose a condition that aliens shall not purchase immovable property, ships, aircrafts and the like. Prohibition on entry of aliens, admission of aliens and conditional admission of aliens is determined by an examination of immigration laws of several States which are different from one to another. Most of the States while admit certain classes of aliens such as students and tourists freely ; persons who come as immigrants, are subject to severe regulations. Aliens who are physically, morally or socially unfit are generally excluded from admission. Likewise, a State has a right to deport from its territory aliens whose presence therein may be regarded by it as undesirable. It is to be noted that the discretionary power of a State to admit as well as to deport an alien is unfettered, but in view of the increasing prominence of individuals, the discretionary powers do not conform to the present day International Law. It is desirable that certain rules are made to eliminate or at least minimise the discretion of a State in matters of admission and

1. Oppenheim, 'International Law', Ninth Edition, Vol. 1., pp. 897-898
2. 142 US 651, 659.

to be similar or the

an event where people gather together to support or oppose sth.

deportation of aliens.

An alien who seeks admission in the territory of a foreign State must carry a valid passport issued by a State to which he belongs. He must also obtain in advance, permission to enter in the State which is granted in the form of a visa. If an alien is found in a State without its permission he may be treated as residing illegally in that State. He may remain there at the mercy of that State and may be deported to the State to which he belongs. The decisions of the United Arab Emirates (UAE) in 1992 to deport a number of Pakistanis and Indians who were found to be residing illegally in that country following their taking part in violence, demonstrations and attacking the places of worship was not contrary to the rules of International Law.

RIGHTS OF ALIENS :

Law on the rights of aliens is not well settled. However, in the practice of States they are granted, depending on conventions or agreements, rights identical with the rights of their own citizens. The Second International American Conference held in Mexico in 1902 prepared a Convention relating to Rights of Aliens which in Article I adopted a principle that aliens enjoy the same civil rights as citizens of the State. However, the Convention was not ratified by the United States. Presently, aliens are granted rights in accordance with the practice of States.

An alien is entitled to certain minimum rights in a State where he resides so that he may enjoy his ordinary private life. While privileges which are granted to an alien may be revoked, the fundamental rights remain. Rights of aliens are normally prescribed in treaties of commerce and establishment. Such treaties, very often, insert 'national treatment clause' which means that aliens can only expect that treatment which is given by a State to its own citizens. They cannot claim to a favoured status. They possess all those procedural rights which are available to the citizens in a State.² They also possess substantive rights which are the rights of the citizens of the country.³ However, special civil and political rights are denied to them. Thus, right to vote, to hold public office, or to engage in political activities are usually denied to them. Although, they are not denied the right to work but they may be excluded from employment in certain professions, such as master, chief officer or chief engineer of a merchant ship. His rights of personal security and his personal liberty are as sacred as those of the citizens; his property rights; and rights under contract, limited as they may be, are entitled to the same protection of the law.⁴ If his rights are violated or if a wrong is done to him, he has access to the courts of the State for redress which are open to the nationals of that State upon the same footing as if he were a citizen.⁵

The principle of national treatment was supported by many jurists. While some States favoured it,⁶ many States opposed the principle.⁷ They supported the 'international minimum standard', or to say, a moral standard for civilised States in the treatment of aliens. A State which falls

1. Fenwick, 'International Law', p. 329.
2. *Ibid.*
3. *Ibid.*
4. *Ibid.*
5. *Ibid.*

Some States supported the principle at the Hague Codification Conference

to measure up to that standard incurs international liability. This standard is probably affirmed in the Declaration of the United General Assembly adopted in 1962 on Permanent Sovereignty over National Resources.¹ Many tribunals and claim commissions have also supported the international standard.² It is to be noted that the concept of national standard appears to be better than international minimum standard. A State may be put into difficulty in providing privileged treatment to the alien.

DUTIES OF ALIENS :

When an alien is admitted to a State either freely or upon conditions, he falls under its territorial supremacy, although he remains at the same time under the personal supremacy of his home State.³ He is therefore, unless he belongs to one of these special class (such as diplomat) who are subject to special rules under the jurisdiction of the State in which he stays, and is responsible to it for all acts he commits on its territory.⁴ He owe allegiance, for the duration of his residence, to the State within the territory of which he resides, and his responsibility to the local State continues as regards illegal acts committed by him while the territory concerned is, during war, temporarily occupied by the enemy.⁵

Since an alien is subject to the territorial supremacy of the local State, it may apply its laws to aliens in its territory, and they must comply with and respect these laws.⁶ The local State has a broad measure of discretion in its treatment of aliens subject to its treaty obligations, which are now extensive.⁷ Thus it can, unless prevented by treaty from doing so, exclude aliens from certain professions and trade, it can exclude them from holding or inheriting real property, or impose special restrictions upon them doing so.⁸

A State has wider powers in respect of resident aliens, i.e., those aliens who take up their residence either permanently or for some length of time than to those aliens who reside temporarily or who come as visitors. The former may be required to pay rates and taxes. They may be compelled to serve in the local police and the local fire brigade for the purpose of maintaining public order and safety, in case of need under the same conditions as that of citizens.⁹ However, he cannot be made to serve in the military forces.¹⁰

to force (somebody) to leave a country as a punishment.

EXPULSION OF ALIENS :

Expulsion is the banishment of an alien for violating the law of the State in which he has been residing or for interfering in its internal affairs. The right of a State to expel the aliens is generally recognized. This is regarded as one of the attributes of the territorial sovereignty of a State. A State may exercise the right of expulsion in respect of all the aliens, whether the alien is only on a temporary visit or has settled down for professional business or other purposes¹¹ on its territory. Although a State

1. See General Assembly Resolution 626 (VII), dated December 14, 1962.
2. See Neer Claim (1926), Roberts Claim (1926) ; Hapkins claim (1926).
3. Oppenheim, Op. cit., p. 905.

has a discretionary power to expel an alien the right must not be abused. The State of nationality of an alien expelled may assert the right to inquire into the reasons for his expulsion and the sufficiency of proof of the charges on which the expulsion is grounded.

Normally, an alien is expelled when his presence in the territory of a State becomes 'undesirable'. An alien may be deemed to be undesirable on a number of grounds which is determined by each State by its own criterion. The grounds for which an alien may be expelled may be different in time of war from time of peace. In time of war, a belligerent may expel all enemy subjects residing, or temporarily staying within its territory. Such a measure might appear harsh and cruel but they are justified. In general, in International Law. On expulsion of an alien in time of peace, opinion of writers and the practice of States differ substantially. Generally, aliens are expelled on grounds, such as (i) conviction for a crime relating to the security of a State; (ii) vagrancy; (iii) spying and political intrigue etc.

It is to be noted that the expulsion of an alien in theory is not a punishment. It is an administrative measure consisting in an order of the government directing a foreigner to leave the country. Expulsion must be effected therefore in a reasonable manner and without unnecessary injury to an alien. Detention prior to expulsion should be avoided unless the alien concerned refuses to leave the State or is likely to escape from control of the State authorities. An expelled alien is required to be given a reasonable time to settle his personal affairs before leaving the country.

An alien is not always given a right to challenge the order of the executive before the judiciary. It implies that the judiciary has a power to interfere only in those States where it has been empowered to review the order. However, the International Covenant on Civil and Political Rights has made it obligatory on the contracting parties for the review against an order of the executive under Article 13 which provides that an alien lawfully in the territory of a State may be expelled therefrom only in pursuance of a decision reached in accordance with law, and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before the competent authority or the person or persons especially designated by the competent authority. Thus, those States which have ratified the Covenant shall allow an expelled alien for review of his expulsion except in those case where the question of national security is involved. It is to be noted that the need for judicial review may hold good in those cases in which the determination of the status of the person concerned is involved, that is, when an alien asserts that he is not a foreigner but is the citizen of that country, or is otherwise entitled to remain in that country alone. However, judicial interference is neither desirable nor feasible where expulsion of the alien is ordered on compelling grounds on national defence or security or in the interest of general public.

Declaration of the General Assembly regarding Aliens :

General Assembly in 1985 adopted a Declaration on the Human Rights of Individuals who are not nationals of the country in which they live in order to make the position of alien clear. Article 4 of the Declaration provided that aliens require to observe the local laws and respect local customs and traditions. Article 5 provided for the enjoyment by aliens of

ALIENS
detrimental
access
unlike
religion

certain basic human economic and social rights. The Declaration under Article 6 prohibited the subjection of aliens to torture or to cruel, inhuman or degrading treatment, and under Article 7 restrained their arbitrary expulsion and prohibited their individual or collective expulsion on grounds of race, colour, religion, culture, descent or national or ethnic origin. The Declaration further provided under Article 9 that aliens shall not be arbitrarily deprived of their lawfully acquired assets. It is to be noted that some of the above provisions of the Declaration were laid down earlier in the Covenants on the Economic, Social and Cultural Rights and on Civil and Political Rights of 1966.

Expulsion en masse of Aliens : *en masse = as a single group, all together in a body as a whole*

In contrast to individual expulsion of an alien, expulsion en masse of aliens may also take place. International Law does not prohibit the expulsion en masse of aliens. However, en masse expulsions should be avoided in view of the fact that it is treated as an unfriendly act and in some cases may amount to breach of human rights.¹ When President Amin of Uganda ordered for the expulsion of Asians of non-Ugandan nationality, his action could not be challenged, though he was criticized vehemently for his action. The sudden en masse expulsion of Benin nationals from Gabon by President Bongo in 1977 was also a subject of criticism.² It is submitted that en masse expulsion must be condemned. It should be avoided so that the relations between the States may remain friendly. *seizure, take over*

EXPROPRIATION OF ALIEN PROPERTY :

It is a recognized principle of International Law that the private property of the aliens should be respected. If a State fails to protect, it becomes responsible under International Law. However, the expropriation of alien property for public purposes has not been considered to be contrary to International Law. It is generally agreed that this right is implied in the sovereignty of the State. However, the right is permissible solely for public purposes. It must not be arbitrary and must not be based on the application of duly adopted laws. The acts of a government in depriving an alien of his property must be followed by grant of prompt, effective and adequate compensation.)

However, the payment of compensation may be subject to exceptions such as under treaty provisions ; as a legitimate exercise of police power including measures of defence against external threats, confiscation as a penalty of crimes ; seizure by way of taxation or other fiscal measures ; loss caused indirectly by health and planning legislation and the concomitant restrictions on the use of property ; the destruction of property of neutrals as a consequences of military operations, and the taking of enemy property as part payment of reparation for the consequences of an illegal war.³

Aliens and India : *No need*

In India aliens are regulated by the Foreigners Act of 1946.⁴ Section 3(2)(d) of the Act has empowered the Indian Government to put any restriction on foreigners during their stay in India. However, the Government may exempt any category or categories of foreigners on the basis of reciprocity or otherwise. The right to expel an alien is conferred to

1. 'State Responsibility in International Law', Tenth Edition p. 351.
Nationals and International Law'

the Central Government by Section 3(2)(c) of the Act. Further, Section 11(1) of the Act has empowered the Central Government the right to enforce an order of the expulsion and also to prevent any breach of it, and the right to use such force as may be reasonably necessary for the effective exercise of such power. It is to be noted that in India, the State Government has no right to expel an alien. While the Preventive Detention Act confers the right to detain an alien with a view to making arrangements for the expulsion upon the State and the Central Government, and the satisfaction required by Section 3(1)(b) can be of either Government, expulsion can be done by the Central Government alone.

In India, a case came before the Court which is relevant to mention. In *Hans Muller of Nuremburg v. Superintendent Presidency Jail, Calcutta and others*,¹ a question arose as to whether there is any law in India, vesting the executive Government with power to expel a foreigner from India, as opposed to extraditing him. It was held that Entries 9, 10, 17, 18 and 19 in the Union List confer wide powers on the Center to make laws, among other things, about admission into, and expulsion from India, about extradition an alien and about preventive detention connected with foreign affairs. The Foreigners Act of 1946 deals, among other things, with the expulsion of an alien. It vests the Central Government with absolute and unfettered discretion and there is no provision fettering this discretion in the Constitution, an unrestricted right to expel remains. The Central Government can prescribe the route and the port or the place of departure and can place him on a particular ship or plane. This right of the Government to make the order vis-a-vis, the man expelled is absolute. However, if the person ordered to be expelled assert that he is not a 'foreigner', but is an Indian citizen he can have the same determined by a court of law.
