



## CULTURAL, EDUCATIONAL, POLITICAL AND SOCIAL RIGHTS OF NON-CITIZENS

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### INTRODUCTION:

*“Lost rights are never regained by appeals  
to the conscience of the usurpers*

*but by relentless struggle ..... Goats are  
used for sacrificial offerings and not  
Lions”.*

*Bhimrao Ramji Ambedkar “The rights  
of every man are diminished when the  
rights of one man are threatened”.*

*-John F.Kennedy*

Every person should, by the virtue of their essential humanity enjoy all human rights. There may be exceptional distinction made between the citizens and non-citizens only if they serve a legitimate State objective and proportional to the achievement of that objective. A citizen is a person who is recognized by a State as having an effective link with it.<sup>1</sup> International Law allows each and every State to determine the qualification of its citizens. Citizenship can be acquired by being born in the Country (known as jus soli or the law of the place), being born to a parent who is a citizen of the country (known as jus sanguinis or the law of blood), naturalization or a combination of

these approaches. A non-citizen is a person who has not been recognized as having these effective links to the country where he/she is located. Every individual including the non-citizen should have the freedom from child labor, unfair trial, arbitrary arrest, inhuman treatment, arbitrary killing, slavery, invasions of privacy, refoulement and violation of humanitarian law. Non-citizens are also having the right to marry; right to consular protection; right to equality; social, cultural and economic rights; right to assembly; right to protection as minors; labour rights (for example, healthy and safe working conditions, Collective Bargaining and Worker’s Compensation); right to peaceful association; freedom of religion and belief. As all the human beings are entitled to equality in dignity and rights, States may draw distinctions between citizens and non-citizens with respect to political rights explicitly guaranteed to citizens and freedom of movement. In reality, there is a large gap between the rights that international human rights law guarantees to them and the realities that they face, Every non-citizen face official as well as an non-official discrimination. They experience language barriers, sexism, xenophobia, lack of political representation, racism and unfamiliar customs; difficulty in obtaining identity documents; difficulty in realizing their cultural, educational, social and political rights – particularly the right to work, right to healthcare and right to education and lack of means to challenge the violation of human rights effectively.

The situation has

<sup>1</sup> Held in the judgment of the International Court of Justice of 6 April 1955 in the Nottebohm case (Liechtenstein v. Guatemala)



worsened since 11<sup>th</sup> September 2001, as some Governments have detained the non-citizens in response to fears of terrorism. The narrow exceptions to the principle of non-discrimination which are permitted by International human rights law do not justify such persuasive violations of non-citizens

In 1985 the United Nations publically announced the “**UNITED NATIONS DECLARATION ON THE HUMAN RIGHTS OF INDIVIDUALS WHO ARE NOT NATIONALS OF THE COUNTRY IN WHICH THEY LIVE**” This declaration ensured that the fundamental human rights were guaranteed to non-citizens.

**WHO ARE NON-CITIZENS?**

The persons who are residing in a country other than the one in which they were born are called as non-citizens.

The non-citizens include

- Refugees
- Stateless Persons
- Trafficked Persons
- Migrant Workers
- Immigrants
- Non-immigrants
- Asylum seekers
- Rejected asylum seekers

**DEFINITION OF NON-CITIZENS:**

Article 1 of **United Nations Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they live, 1985** defines a non-citizen as “any individual who is not a national of a State in which he or she is present”.

Non-citizens must receive the same treatment as the nationals of the country in which they live.

**MEANING OF CULTURAL RIGHTS:**

Cultural Rights refers to the rights related to art and culture. Every person should have access to the culture and to participate in the culture of their Election. Cultural rights are nothing but the human rights.

Right to culture includes

- ❖ Right to cultural and artistic production
- ❖ Access to culture
- ❖ Right to cultural heritage
- ❖ Right to participate in cultural life

**MEANING OF EDUCATIONAL RIGHTS:**

Right to Education is also one among the human rights. **International Convention on Economic, Social and Cultural Rights (ICESCR)** recognizes the Right to free and Compulsory Primary Education to all.

Right to Education includes

- ❖ Right to access to education
- ❖ Right to free and Compulsory primary education



- ❖ A responsibility to provide basic Education for individuals who have not completed Primary Education
- ❖ An obligation to develop equitable access to higher education

**MEANING OF SOCIAL RIGHTS:**

Social rights refer to the rights which an individual is entitled within society in a social context. Social rights are the human rights.

Social rights include

- ❖ Right to an adequate standard of living
- ❖ Right to an adequate housing
- ❖ Right to adequate food
- ❖ Right to Education
- ❖ Right to Social Security

**MEANING OF POLITICAL RIGHTS:**

Political rights are those rights which provide opportunity to every person to lead a civilized social life.

Political rights include

- ❖ Freedom of Association
- ❖ Freedom of Assembly
- ❖ Right to vote
- ❖ Right to participate in Public Affairs
- ❖ Right to participate in Public Services

**REGULATIONS APPLICABLE TO FOREIGNERS IN INDIA:**

The extent Acts which are dealing with entry, stay and exit of foreign nationals in the

country are:

- I. Passport (Entry into India) Act, 1920
- II. Foreigners Act, 1946
- III. Registration of Foreigners Act, 1939
- I. THE PASSPORT (ENTRY INTO INDIA) ACT, 1920

The Act prescribes specific authorization of foreign nationals on their valid travel documents/passports for allowing entry into the country. Under this Act and the Rules made there under, the foreigners coming to India are required to get visa from Indian Missions/Posts.

**II. FOREIGNERS ACT, 1946**

The Act regulates the entry of foreigners into India, their presence therein and their departure there from.

- III. REGISTRATION OF FOREIGNERS ACT, 1939 AND THE REGISTRATION OF FOREIGNERS RULES, 1992

The Act and the Regulation mandates that certain categories of foreigners whose intended stay in India is more than the specified period, or as provided in their visa authorization, are required to get themselves registered with the Registration officer.

It includes:

- Arrival formalities
- Residential permit
- Report of absence from address
- Departure formalities
- Stay at hotels
- Prohibited places.



PROVISIONS IN INTERNATIONAL HUMAN RIGHTS LAW:

- **ARTICLE 16 OF UNIVERSAL DECLARATION OF HUMAN RIGHTS,1948**
- **ARTICLE 24 OF INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966**
- **ARTICLES 7 AND 8 OF UNITED NATION CONVENTION ON THE RIGHTS OF THE CHILD,1989**

- ✓ Everyone has the right to a nationality.
- ✓ No one shall be arbitrarily deprived of his or her nationality.

The Universal Declaration for Human rights (UDHR) has provided nearly 30 rights which is given in 30 articles, where it provides any person, without any discrimination, 30 rights, which every human being is entitled to.

*The following rights must be granted to foreigners so long as they do not exercise any activities which are contrary to laws.*

- ❖ 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 find a family
- ❖ Freedom of thought, opinion, conscience and religion
- ❖ The right to retain language, culture and

tradition

- ❖ The right to transfer money abroad
- ❖ 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 to join trade unions
- ❖ The right to social services, health care, education and social security

❖ The right to equal pay for equal work

- ❖ Protection from torture or cruel, inhuman, or degrading punishment
- ❖ Freedom from being subjected to medical or scientific experimentation without the a foreigner'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.

FUNDAMENTAL RIGHTS GUARANTEED UNDER INDIAN CONSTITUTION, 1950:

**The fundamental rights given to foreigners are given below:**





- ❖ Equality before law and equal protection of laws (**Article 14**)
- ❖ Protection in respect of conviction for offences (**Article 20**)
- ❖ Protection of life and personal liberty (**Article 21**)
- ❖ Right to elementary education (**Article 21A**)
- ❖ Protection against arrest and detention in certain cases (**Article 22**)
- ❖ Prohibition of traffic and human beings and forced labor (**Article 23**)
- ❖ Prohibition of employment of children in factories (**Article 24**)
- ❖ Freedom of conscience and free profession, practice and propagation of religion (**Article 25**)
- ❖ Freedom to manage religious affairs (**Article 26**)
- ❖ Freedom from payment of taxes for promotion of any religion (**Article 27**)
- ❖ Freedom from attending religious instruction or worship in certain educational institutions (**Article 28**)

While the foreigners enjoy the above fundamental rights, however they are not entitled to enjoy the rights mentioned in:

- ❖ **Article 15**- Prohibition of discrimination on the grounds of religion, race, caste, sex, or place of birth.
- ❖ **Article 16**- Equality of opportunity in matters of public employment.
- ❖ **Article 19**- Protection of certain rights regarding freedom of speech, etc.
- ❖ **Article 29** - Protection of language, script and culture of minorities,

- ❖ **Article 30** - Right of minorities to establish and administer educational institutions.

The Supreme Court of India as recently reaffirmed that the right to life and liberty (Article 21) is available to foreign nationals besides the citizens of India in response to a First Information Report (FIR) filed by Police against three Uganda nationals.

The Supreme Court of India observed that **“Article 21 of the Constitution [right to life and liberty applies to all citizens, whether Indian or foreign nationals. Their right to liberty could not be restrained by the police due to a business dispute.”**

#### ARTICLE 21 OF INDIAN CONSTITUTION, 1950:

No person shall be deprived of his life or personal liberty except according to the procedure established by law.

#### DEFINITIONS INVOLVING THE TERM FOREIGNERS AND THE SIGNIFICANCES:

**Asylum** – Legal protection provided by another country to a person who is not a citizen of that country but who flees to that country in order to escape the persecution which is committed in the person’s own country.

**Deportation** – Deportation occurs when a nation expelling a non-citizen back to the country from which he or she came.

**Detention** – The exercise of physical restraint upon an individual depriving him or her of liberty and holding him or her in government custody for reasons other than to face criminal charges.



1) Everyone has the right to liberty and security of person; No one shall be subjected to arbitrary arrest or detention

2) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release

3) Anyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings before a court.

**Discrimination** –It is treating people differently because of their race, religion, ethnic group, colour, creed, political opinion, or other status or characteristic, when there is no legal justification for doing so.

**Migrant Worker** – 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. The definition for migrant worker is mentioned in **International Convention on the Protection of All Migrant Workers and Their Families (1990)**.

**Refugee** – A person who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality, and is unable to or, owing to such fear, is unwilling to avail himself or herself of the protection of that country or return there because there is fear of persecution.” **(United Nations Convention Relating to the Status of Refugees**

1951 and Protocol 1967).

**Undocumented Non-citizen** – A person who is in a country in which he or she is not a citizen, without any legal right or permission to be present, and can be removed by that country. They can also be called as illegal alien, undocumented worker, undocumented migrant.

INTERNATIONAL INSTRUMENTS OF PROTECTION:

### 1. International Covenant on Civil and Political Rights (1976)

This covenant further prohibits the expulsion of lawful foreigner from a nation without fair procedures, except when national security does not permit. The alien must also be provided with representation.

### 2. Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live (1985)

Establishes the rights of legitimate aliens to “security”, “privacy”, “to be equal before the courts”, “to choose a spouse, to marry”, “freedom of thought”, “the right to leave the country”,

and the right to be joined by a spouse and dependent children (**Article 5**). Also, the Declaration makes clear that aliens have the right to a safe working environment (**Article 8**).

### 1. Convention Relating to the Status of Stateless Persons (1960)

Establishes a state’s obligation to “facilitate the assimilation and naturalization of stateless persons” (**Article 32**) as well as a



stateless person's right to the basic freedoms.

#### SECURITY DISCOURSE AND NON-CITIZENS:

Security discourse has impacted upon the treatment and perception of non-citizens in many ways. Throughout the Cold-War, security terminology was applied in many ways, for example, in favor of refugees and asylum-seekers as they sought refuge from the East to West. With the growth in the international migration, including refugee movements from the global South towards the global North and the changing nature of conflicts from International to internal character in the 1990s, refugees, asylum-seekers as well as irregular migrants have become viewed by receiving states as threats to national borders and security perceived as criminals and terrorists and collectively as threats to international peace and security.

#### CULTURAL RIGHTS OF NON-CITIZENS:

Every individual including the non-citizens having the liberty to follow their own culture and tradition as it their right which they acquired from their birth itself. Only if it is opposed to the Public Policy or if it is contradictory to the law of the country in which they live, the non-citizens can be prevented from following their right to culture. In other words, ***“No person including the non-citizens shall be deprived of his or her right to culture except according to the procedure established by law”.***

ARTICLE 29 OF INDIAN CONSTITUTION, 1950:

#### Protection of interests of minorities -

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

#### EDUCATIONAL RIGHTS OF NON-CITIZENS:

***“Education is for improving the lives of others”.***

***-Mariam Wright Edelman***

Education is a tool which is being used to enlighten each person in the world. Irrespective of the caste, creed, sex and religion, education should reach the people. The duty is upon the Parents as well as the State whom we fondly called as the second parent, must provide the minimal or elementary education to each person in the society. Education is a boon which must be properly utilized by humans. As various Acts/ Enactments/ Legislations and Rules and Regulations provides that the Education should be free so that the persons who could not able to afford for it, it is only the ***“Conventions”*** which states that ***“Right to Education is a Human Right”.***



ARTICLE 21A OF INDIAN CONSTITUTION:

The State shall provide free and compulsory education to all all children of the age of six to fourteen years in such manner as the State may, by law, determine.

ARTICLE 29(2) OF INDIAN CONSTITUTION:

No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds only of religion, race, caste, language or any of them.

**“Right to Life”** includes **“Right to Education”**

**“Right to Education”** includes **“Right to Free Education”**

ARTICLE 45 OF INDIAN CONSTITUTION:

State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, or free and compulsory education for all children until they complete the age of fourteen years.

WHY THE RIGHT TO EDUCATION SHOULD BE MADE?

Every person in the world, they may be rich or poor; men or women or transgender, married or unmarried, young or old, **citizen or non-citizen** should be provided the basic right to education. But it is only upon the State, to provide free or paid education. The growth and development of the Country is not depending upon the population rate and economic growth rate where it only depends

upon the **“literacy rate”** of the States. Thus, The State of Kerala occupies the first place to hold a place of cent percent literate State.

Non-citizens also play an important role in every part of the Country. They constitute a major role. It is one among the duty/obligation on the part of the State Government or Central Government to provide education to all and to supervise whether every citizen and non-citizen is provided the right that is, the right to education. If not, the State/Central Government has to taken stringent policies and guidelines to make it more enforceable.

SOCIAL RIGHTS OF NON-CITIZENS:

Social Right is a basic human right which should be provided irrespective of the caste, gender, race and religion. Social rights include every human right that is right to education, right to adequate standard of living, adequate food, adequate shelter, etc.

It is on the part of the State to ensure whether all the persons who are residing in the State are provided the social right or not. Social rights include the following rights;

- **Right to Adequate Standard of Living:**  
**“Right to Life” includes “Right to Adequate Standard of Living”.**

Citizens as well as the non-citizens should be given the right of adequate standard of living except certain persons like

- Fugitives
- Offenders
- Criminals
- Terrorists

○ Pr  
isoners Adequate standard of living should be provided to





- ✓ Non-citizens
- ✓ Invalids
- ✓ Public Servants, etc.

- **Right to Food:**

*“Right to Life” includes “Right to Food”.*

*“Right to Food” includes “Right to Unadulterated Food”.*

**CONSTITUTIONAL PROVISION RELATING TO RIGHT TO FOOD:**

- ❖ **ARTICLE 47**

This article spells out that it is the duty of the State to raise the level of nutrition and standard of living of its people as a primary responsibility.

As a developing Country like India, **“Poverty”** is the basic illness of the Country which should be eradicated only by means of providing this right that is, the right to food not only to the citizens but also for the non-citizens who left their own country and residing in the country which is not of their own.

In a Landmark case known as **PEOPLE’S UNION OF CIVIL LIBERTIES VS. UNION OF INDIA**, 2013 (10) SCC 1, it was held that the **“Right to Life includes Right to Food”**.

- **Right to Education as a Social Right:**

As right to education is not only a basic human right, it is also one among the social right which is to be achieved only by providing the right to all for free.

- **Right to Shelter:**

In a landmark case known as **“OLGA TELLIS VS. BOMBAY MUNICIPAL CORPORATION AND OTHERS”** 1985 SCC (3) 545 held that:

*“Right to Life” includes “Right to Livelihood”. “Right to Livelihood” includes “Right to Shelter”.*

- **Right to Social Security:**

Social Security means the guarantee provided by the State through its appropriate agencies against certain risks to which the members of the society may be exposed. Right to Social Security is an important social right among all.

In Indian Constitution, the Social Security provisions are enumerated in the

- ❖ Preamble
- ❖ **Fundamental Rights**
  - Article 14
  - Article 16
  - Article 19(1)(c)
  - Article 21
  - Article 23
  - Article 24
  - Article 35
- ❖ Directive Principles of State Policy
  - Article 39(a) to (f)
  - Article 39A
  - Article 41
  - Article 42



- Article 43
- Article 45
- Article 46 & 47.

In a case called as **CALCUTTA ELECTRICITY WATER SUPPLY (INDIA) CORPORATION VS. SUBHASH CHANDRA BOSE**, 1992 AIR 573, the Supreme Court of India held that

**“The ultimate aim of Social Security is to ensure that everyone has the means of livelihood and hence *Right to Social Security and Protection of Family* are an integral part of right to life”.**

Thus, Social rights are not only meant for the citizens of the Country but also for the non- citizens.

**POLITICAL RIGHTS OF NON-CITIZENS:**

Political Rights includes the right of persons to form associations and to form assembly. Every non-citizen is having a right to form **“peaceful association and peaceful assembly”**. They are also holding the **right to vote**, which is the most important political right.

Right to engage and participate in Public affairs and Public Services is also one amongst the inherent right of political right.

Though political right is not an **“Absolute Right”**, it should be given to both the citizens as well as the non-citizens in order to attain **“Equality”**.

**VIOLATION OF CULTURAL, EDUCATIONAL, POLITICAL AND SOCIAL RIGHTS OF NON-CITIZENS:**

There are many instances where the

cultural, educational, political and social rights of citizens itself are violated in every country. The procedure which the citizens of the country are following to enforce their rights are also applicable to the non-citizens in case of violation of their rights.

❖ **TYPES OF FUNDAMENTAL RIGHTS:**

- Fundamental rights only guaranteed to the citizens.
- Fundamental rights are guaranteed to all the persons irrespective of whether they are citizens or foreigners or legal persons.

• ***Fundamental rights only to citizens:***

There are certain fundamental rights which can be guaranteed only to the citizens of the country and which can be enforceable only by the citizens of the country.

✓ ***Example:***

**Article 19 of Indian Constitution, 1950** which guarantees **Protection of certain rights regarding freedom of speech and expression**

- ***Fundamental rights are guaranteed to all the persons irrespective of whether they are citizens or foreigners or legal persons :***

Irrespective of the caste, creed, sex, race and religion there are some fundamental rights which are provided by the State to the persons. Violation of the fundamental rights which are guaranteed to all the persons irrespectively are enforceable by any person.

✓ ***Example:***

**Article 21 of Indian Constitution, 1950** which talks about the **Right to Life**



PROCEDURE FOR ENFORCEABILITY OF VIOLATION OF FUNDAMENTAL RIGHTS ONLY TO CITIZENS AND PROCEDURE FOR ENFORCEABILITY OF FUNDAMENTAL RIGHTS GUARANTEED TO ALL THE PERSONS IRRESPECTIVE OF WHETHER THEY ARE CITIZENS OR FOREIGNERS OR LEGAL PERSONS:

- ❖ **Article 32 of Indian Constitution** provides **WRIT JURISDICTION OF SUPREME COURT** which states that a writ petition can be filed in India for the enforcement of fundamental rights.
- ❖ **Article 226 of Indian Constitution** provides **WRIT JURISDICTION OF HIGH COURT** which states that a writ petition can be filed in India for the enforcement of fundamental rights.

CONCLUSION:

Non-citizens are the persons who are residing in a country which is not of their own. They are facing huge difficulties like Gender differences, Educational differences, Employment difficulties, Identity Difficulties, etc. Instead of forcing the non-citizens to go back their own Country, we should invite them with a warm welcome and provide them the opportunity in Education, Employment, etc. It is not only the duty on the part of the Central and State Government, but it is also the basic human obligation on the part of us, to provide the non-citizens a basic standard adequate means of livelihood. Like the citizens, the non-citizens are also born in their own country but due to some internal or external forces, they may have been subjected to trafficking and other kind of violence's. In order to escape from all that chaos, they may flee from there. It is, therefore, every human

right to protect them and prevent them from all sorts of discrimination. There may be some reasonable discriminations imposed by the State or the Central in order to protect its own people. The Indian Constitution as a groundwork of India should be respected and admired by every person of citizens as well the non-citizens. The Cultural, Educational, Political and Social Rights are not absolute rights even to the citizens.

They are subjected to some reasonable restrictions. Based on the principle that **"Equals should be treated equal"**, every State should enable every non-citizen to follow and practice their own Cultural, Educational, Political and Social Rights. **Article 14 of Indian Constitution** clearly provides that **"The State shall not deny to any person equality before the Laws or the equal protection of the Laws within the territory of India"**. Thus, the non-citizens should be treated just like the citizens of the Country. There are various Acts, Rules, Regulations, Conventions and Recommendations that the non-citizens should be treated in equal with the citizens of their own country. But, in practice, the non-citizens are not treated with due respect. Therefore, there should be **Agencies and Organizations** which should be established by every Country to regulate and supervise whether the non-citizens are rejected of any of their Cultural, Educational, Political and Social rights.

**"I AM A CITIZEN, NOT OF ATHENS OR GREECE, BUT OF THE WORLD"**

**-SOCRATES**

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