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THE VISA AS AN INSTRUMENT OF POWER: BALANCING STATE SOVEREIGNTY AND INTERNATIONAL LEGAL OBLIGATIONS IN CONTEMPORARY GLOBAL MOBILITY - A HUMANITARIAN PERSPECTIVE

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Abstract

Visa, often perceived as a mere administrative formality, is a profoundly significant instrument at the nexus of national sovereignty, security, and global human mobility. It is the instrument on the basis of which power is measured of a nation's accessibility through the Passport Power Index. More than mere a travel and administrative document it is a power factor of a State's diplomatic comradery, trade status. The practice of visa being primarily a domestic law and policy driven has never been uniform since its inception and is also a reason for major international crisis relating to migration like illegal immigrants, refugee etc. This article traces the historical evolution of the visa from its ancient forerunners as a fundamental safe-conduct pass to its complex role in contemporary international law. It argues that while the visa remains a quintessential expression of state sovereignty over borders, its application is increasingly constrained and shaped by a multifaceted web of international legal frameworks, including bilateral and multilateral treaties, human rights law, and international security regimes. The paper aims to analyse the inherent strains between state control and the imperatives of globalized travel, trade from a humanitarian perspective, in response to global pandemics. It is an humble attempt to analyse identifies key challenges such as legal pluralism, data governance, and the weaponization of visa policy,

concluding that the future of visa regulation necessitates a nuanced approach that balances national prerogatives with evolving international legal norms and the realities of an interconnected world.

Keywords: Visa, Power, Migration, Rights, State Security

Introduction

The visa, often perceived as a mere administrative document, constitutes a profound instrument of state power operating at the juncture of national sovereignty, international security, and global human mobility. Beyond its administrative function, the visa serves as a quantifiable measure of a nation's diplomatic influence and economic status, as reflected in contemporary passport power rankings. The practice of visa regulation, primarily governed by domestic law and policy, has never achieved uniformity since its inception and remains a source of major international crises related to migration, including irregular migration patterns and refugee protection challenges.

As of mid-2024, the number of international migrants worldwide stood at 304 million (or 3.7 percent of the world's population), according to the most recent UN Population Division estimates.

This article traces the historical evolution of visa systems from their ancient predecessors as safe-conduct passes to their complex role in contemporary international law. It argues that while visas remain quintessential expressions of state sovereignty over borders, their application is increasingly constrained by a multifaceted web of international legal frameworks, including bilateral and multilateral treaties, human rights law, and international security regimes. The analysis identifies the inherent strains between state control and the imperatives of globalized travel, trade, and humanitarian protection, particularly in response to global pandemics and forced displacement crises. Often, travel visa regimes are a negotiation chip in broader geopolitical games.¹



Historical Evolution of Visa Systems

Ancient Origins and Early Development

The concept of official travel documents can be traced to ancient civilizations, where rulers issued safe-conduct passes to facilitate diplomatic missions and trade. These early visas were not much different from the diplomatic missions they accompanied, serving as tokens of goodwill and ensuring safe passage. During the Middle Ages, European monarchs and city-states began issuing "safe conducts" and "letters of safe passage." These documents allowed individuals to traverse often tumultuous lands safely and were ancestors to the modern passport and visa.²

The modern visa system emerged during the 19th century as nation-states developed more sophisticated border control mechanisms. The United Kingdom introduced the term "visa" in 1855, signifying a conditional endorsement within a passport, granting travelers permission to enter British territories. Other countries followed suit, formalizing their visa systems.³ The term "visa," derived from the Latin phrase "charta visa" (document that has been seen), initially referred to official endorsements on travel documents.

Post-World War Developments

The two World Wars significantly transformed visa systems, transitioning them from primarily diplomatic tools to instruments of national security and immigration control. The 1920 League of Nations Conference on Passports established early international standards, while the post-WWII era saw the proliferation of visa requirements as states sought greater control over population movements.⁴

Contemporary Digitalization and Biometric Integration

The 21st century has witnessed the digitalization of visa systems, incorporating biometric data, artificial intelligence, and inter-governmental information

sharing. This technological evolution has enhanced both security capabilities and the potential for discrimination and exclusion.⁵ The UN issues a travel document called the Laissez-Passer, which can be used in place of a national passport for official UN business. It's not a visa, but it facilitates travel for UN staff and officials.

Currently Visas are generally categorized based on their purpose of travel and whether prior permission is required.

- No visa required based on decisions of the nations involved
- Visa on arrival
- Prior visa for arrival

Common types include student visas, business visas, tourist visas, work visas, and transit visas. Some visas, like those for students or workers, require specific prior approval from the destination country, while others, like tourist visas, may be obtained with less stringent requirements.

Indian government ministry of external affairs allow-transit visa, tourist visa, X visa, Business Visa, Employment Visa, student visa, research visa, conference visa, Journalist Visa.

The Passport Power Index: Quantifying Visa Freedom

The concept of "passport power" has emerged as a critical metric for measuring the global mobility privileges associated with different nationalities. As of 2024, Europe and Asia-Pacific regions, and high-income economies in particular, continue to perform best in passport rankings, with France, Germany, Italy, Japan, Singapore and Spain occupying joint top positions for the world's most 'powerful passports'.⁶

As of July 2024, the Singaporean passport ranks among the highest, offering visa-free or visa-on-arrival access to numerous territories, followed by Belgian, Danish, New Zealand, Norwegian, Swiss,



and British passports, each providing visa-free or visa-on-arrival travel to 190 countries and territories. Conversely, the U.S. passport has dropped to 10th place in the 2025 Henley Passport Index—its lowest ranking ever.⁷

Implications of Passport Inequality

The disparities revealed by passport power indices reflect broader patterns of global inequality, historical relationships, and contemporary geopolitical dynamics. Citizens of developing nations often face significantly greater barriers to international mobility, perpetuating cycles of economic and social disadvantage.⁸

International Legal Framework Governing Visa Policy

Human Rights Law and Travel Documents

Universal Declaration of Human Rights (UDHR) - Article 13

Article 13 of the Universal Declaration of Human Rights establishes two fundamental components of the right to freedom of movement: (1) Everyone has the right to freedom of movement and residence within the borders of each State. (2) Everyone has the right to leave any country, including his own, and to return to his country.⁹ While this article guarantees internal movement within a state and the right to leave one's country, it notably does not establish a corresponding right of entry into other states.

International Covenant on Civil and Political Rights (ICCPR) - Article 12

Article 12 of the International Covenant on Civil and Political Rights incorporates the right to freedom of movement into binding treaty law: (1) Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.¹⁰ The ICCPR also provides that restrictions on freedom of

movement are limited to those necessary to protect national security, public order, public health or morals or the rights and freedoms of others.¹¹

International Covenant on Economic, Social and Cultural Rights (ICESCR)

While the ICESCR does not contain explicit provisions on freedom of movement, it establishes related rights that intersect with visa policy, including the right to work (Article 6), the right to an adequate standard of living (Article 11), and the right to education (Article 13), which may be limited when visa policies prevent access to educational opportunities abroad.¹²

The 1951 Refugee Convention and Visa Access

The Refugee Convention builds on Article 14 of the 1948 Universal Declaration of Human Rights, which recognizes the right of persons to seek asylum from persecution in other countries. The principle of non-refoulement, enshrined in Article 33 of the Convention, creates obligations for states regarding refugee protection that can conflict with restrictive visa policies.¹³ As parties to the Refugees Convention, states have agreed to ensure that people who meet the United Nations definition of refugee are not sent back to countries where their life or freedom would be threatened through the principle of non-refoulement.¹⁴

Regional Legal Instruments

European Union Framework

The EU has developed the most comprehensive regional approach to visa policy through the Schengen Agreement and subsequent regulations, the Common European Asylum System, and EU Visa Code and Visa Information System (VIS).¹⁵ Under this key policy, all 29 countries in the Schengen area apply the same visa rules. Non-EU nationals need a visa to enter the Schengen area for a visit of up to 90 days in any 180-day period.¹⁶



Recent statistics demonstrate the scale of EU visa operations: Schengen States received 11,716,723 visa applications in 2024, representing a 13.45% increase from the previous year. The approval rate was 84.14% of all applications, while 1,706,003 applications were rejected.¹⁷ More than half of the 9.7 million visas issued in 2024 allowed for multiple entries into the Schengen area.¹⁸ France granted the largest number of Schengen C visas (2.18 million), followed by Germany (1.24 million) and Spain (1.1 million).¹⁹

African Continental Framework

The African Union Agenda 2063 and visa liberalization initiatives, along with Regional Economic Community protocols (ECOWAS, SADC, EAC), represent continental efforts toward visa integration.²⁰ The 2024 Africa Visa Openness Index (AVOI) showed mixed progress: the average score decreased slightly from 0.485 (2023) to 0.479 (2024). Of 54 countries on the continent, 17 improved their AVOI score over the past year, 29 countries' scores remained unchanged, while eight countries scored lower.²¹

Notably, 26 African countries (44% of the continent) offered an e-visa for Africans in 2024, up from nine African countries (17% of the continent) in 2016.²² The top-performing countries achieved an average score of 0.910, with four countries offering visa-free access to all African visitors.²³

Americas Regional Approaches

Regional frameworks include the Inter-American Convention on Human Rights, MERCOSUR mobility agreements, and Caribbean Community (CARICOM) travel arrangements.²⁴ In the case of *Department of State v. Munoz* (U.S. Supreme Court, 2024) the question came up whether a U.S. citizen has a fundamental liberty interest in their noncitizen spouse being granted a visa to enter the country. The Court held that a citizen does not have such a fundamental right. This decision underscores the broad authority of the U.S. government in making visa and immigration

determinations and highlights the limits of constitutional claims in this area.

South Asian Association for Regional Cooperation (SAARC)

The SAARC Visa Exemption Scheme was launched in 1992 following the Fourth Summit (Islamabad, 29-31 December 1988), where leaders recognized the importance of people-to-people contact among SAARC countries. SAARC comprises eight member states: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka, representing 21% of the world's population and 5.21% (US\$4.47 trillion) of the global economy as of 2021.²⁵

In 2015, India decided that citizens of SAARC countries are eligible for Business Visa to India for up to 5 years.²⁶ However, political tensions have impacted the scheme: in 2025, India suspended the SAARC Visa Exemption Scheme for Pakistani nationals, requiring departure within 48 hours.²⁷

Challenges in Contemporary Visa Governance Legal Pluralism and Jurisdictional Conflicts

The intersection of multiple legal systems—domestic immigration law, international human rights law, refugee law, and bilateral agreements—creates complex jurisdictional challenges. States must navigate competing obligations while maintaining sovereignty over border control. The changing diplomatic relations and standards have huge impact on the visa policy of the system.²⁸

Data Governance and Privacy Concerns

The digitalization of visa systems raises significant concerns regarding cross-border data sharing and privacy protection, algorithmic bias in automated decision-making systems, and long-term data retention and surveillance implications.²⁹

Visa Weaponization and Diplomatic Coercion



The strategic use of visa policy as a tool of diplomatic pressure or economic coercion has become increasingly common. This "weaponization" of visas can violate principles of reciprocity and proportionality in international relations.³⁰

Pandemic Preparedness and Health Security

The COVID-19 pandemic highlighted the tension between public health imperatives and freedom of movement, leading to unprecedented travel restrictions and revealing gaps in international coordination mechanisms.³¹

Reducing Visa Inequality: Policy Recommendations

Multilateral Approaches

Enhanced International Cooperation requires a specific body to be constituted by the UN ECOSOC to monitor the visa policy of nations and to check the development of multilateral visa facilitation agreements, standardization of visa application processes and requirements, and creation of international visa portability mechanisms.³²

A specific convention and a specific visa-centric amendment in relevant human rights conventions must be made, especially starting from regional conventions.³³

Technology and Innovation

Implementation of blockchain-based digital identity systems, development of interoperable biometric databases with privacy safeguards, and artificial intelligence systems designed to reduce bias and discrimination are mandated.³⁴

Capacity Building and Technical Assistance

Infrastructure development assistance such as support for developing nations in establishing modern visa processing systems, training programs for consular

and immigration officials, and technology transfer and knowledge sharing initiatives must be made by UN and regional organizations with specific funds and rapporteur mechanisms.³⁵

Economic Incentives

Graduated visa fees based on economic development levels and preferential processing for citizens of least developed countries should be implemented. Regional development programs linked to visa facilitation should be established.³⁶

Human Rights-Based Approaches

Implementation of clear anti-discrimination guidelines for visa processing is mandatory, and regular monitoring and evaluation of visa decision patterns of nations is crucial, especially by an independent international organization which may look into transparency in visa refusal reasons and appeal procedures.³⁷

The UN shall specifically amend conventions and documents expressly providing visa provisions for refugees, asylum seekers, and stateless persons, and the documents should also ensure expedited processing for humanitarian cases and family reunification facilitation mechanisms.³⁸

Regional Case Studies

European Union: Integration and External Borders

The EU's approach demonstrates both the potential and limitations of regional integration in visa policy. While internal mobility has been largely liberalized, external borders have become increasingly fortified, raising concerns about "Fortress Europe" dynamics.³⁹

ASEAN: Economic Integration and Mobility

The Association of Southeast Asian Nations has pursued economic integration while maintaining



diverse visa policies, highlighting the challenges of balancing sovereignty with regional cooperation. Yet Asia as a continent lags behind in joint visa policy like Europe and runs on nations' diplomatic calls.⁴⁰

African Union: Continental Vision and Implementation Gaps

The African Union's Agenda 2063 envisions continental visa liberalization, but implementation remains challenged by capacity constraints and security concerns.⁴¹

Future Directions and Legal Evolution

Emerging Technologies and Border Management

The integration of artificial intelligence, blockchain technology, and biometric systems will continue to transform visa systems, requiring new legal frameworks to address privacy, accuracy, and fairness concerns.⁴²

Climate Change and Environmental Migration

As climate change drives new patterns of human displacement, existing legal frameworks may prove inadequate, necessitating new international agreements on climate-induced mobility.⁴³

Post-Pandemic Mobility Governance

The COVID-19 experience has highlighted the need for flexible, coordinated responses to global health emergencies while maintaining respect for human rights and international law obligations.⁴⁴

The present regime of visa is full of uncertainty and unreasonable discretion of the states often at the cost of lower income nations. Therefore, the visa regime requires great attention with the migration rate and travel rate like never before.⁴⁵

Conclusion

The visa system stands at a critical juncture in its historical evolution. While remaining a fundamental expression of state sovereignty, visa policies are increasingly constrained by international legal obligations, technological capabilities, and the realities of global interconnectedness. The stark inequalities revealed by passport power indices reflect broader patterns of global disparity that require coordinated international responses.

The future of visa regulation necessitates a nuanced approach that balances legitimate state security concerns with human rights obligations, economic development needs, and humanitarian imperatives. This balance can be achieved through enhanced international cooperation, technological innovation guided by human rights principles, and the development of more equitable and inclusive mobility governance systems.

The challenges identified—legal pluralism, data governance, visa weaponization, and pandemic preparedness—require multilateral solutions that transcend traditional boundaries between domestic and international law. Only through such coordinated efforts can the international community develop visa systems that serve both security and humanitarian objectives while reducing the inequalities that currently characterize global mobility.

As we move forward, the visa will likely remain a powerful instrument of state policy, but one that must increasingly accommodate the demands of an interconnected world and the fundamental human rights of all individuals, regardless of their nationality or economic status.

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