

INTERNATIONAL LAW AND THE ORDERLY MOVEMENT OF PEOPLE

Migration for employment is an integral part of globalisation. It begets a life free of want, hunger, and deprivation. A crucial feature of the policy-oriented migration is its dependence on documents. The policy-oriented migration transcribes two logics for the introduction of passports, which include 'the need of the receiving state for some identification'¹ and 'its desire for some guarantee that there is country to which a received visitor can return.'² Correspondingly, the international human rights law and international migration law developed post WWII profoundly emphasize on the concept of 'right to leave' and puts an obligation on the state of origin to protect the potential migrant workers.

The integration of the concept of 'right to leave' as an assertion for the right to movement gains its source from the ancient practice. However, its origin should be 'read against the historical backdrop of imperial trade expansion'³ and its idea has been used as a logical interference from history. Hence, 'international law had a symbiotic relationship with migration.'⁴ Prior to the 1789 when Jeremy Bentham coined the term international law, the Latin expression '*jus gentium*' was used to refer the *law of nations*. The branch of State Responsibility of States for Injuries to Aliens developed during this period is one of the highly developed branches of international law and it set a code of customary law for the treatment of aliens in ancient Rome. It was widely expressed in the writings of ancient scholars of international legal scholars.

Likewise, the customary international law developed for the protection of property rights of aliens was developed in contention between the Latin American doctrine of national treatment and western doctrine of Minimum International Standard. The doctrine of national treatment supported the claim for equal treatment of aliens and citizens. In contrast, the doctrine of the international minimum standard asserted that aliens should only be treated with minimum human rights standard. The modern international legal regime developed under the positivist tradition fused the traditional norm of State Responsibility with the minimum standard principle, which is embedded in a large number of treaties, and jurisprudence, thus becoming customary international law and to a greater extent it has also been absorbed by the modern human rights treaties.

Hence, the concept of freedom of movement or 'right to leave' has evolved as a general principle of international law and it affirms the cosmopolitan values, that liberty of movement is an essential condition for the free development of persons. This has been recognised in a

¹Higgins, Rosalyn (1973), "The Right in International Law of an Individual to Enter, Stay in and Leave a Country", *International Affairs*, 49(3): 341-356

²Ibid pg. 354s

³Mac Adam, Jane (2011), "An Intellectual History of Freedom of Movement", *Melbourne Journal of International Law*, 12: 1-3-

⁴Chetail, Vincent (2013), "The Human Rights of Migrants in General International Law: From Minimum Standards to Fundamental Rights", *Georgetown Immigration Law Journal*, 28 (225): 225-255

wide range of instruments ranging from general customs of states⁵, in all regional instruments⁶, and in the case of special classes of aliens like refugees and stateless people making it *opinion juris*. Thus, right to leave is a cardinal principal of international human rights law.

Despite the widespread popularity of the concept of 'right to leave' and its extensive obligation put on the state of origin; many states have continued the old colonial practice and have polarised the workers based on their class and gender like Indian Emigration Act of 1983. This put obstacles on their freedom of movement and gives space for illegal routes and agents to process their emigration. One of the developing practices of twenty-first century is the polarisation of labours into the categories of high-skill and low-skill workers. The high skill workers are recruited with favorable policies on the other hand low-skill are further pushed into informality. Globalisation entails the transfer of people and the exchange of resources. According to the World Bank Report of 2015, the Global South homes to 705 million poor people in 2015 as compared to 2.2 million poor people in 1970 and among them India stands out the with the largest number of people living under extreme poverty. Using the 'right to leave' as a guarantee for the freedom of movement of all class of workers, this paper aims to recommend norms to ensure safe decent conditions to the workers to reap the maximum benefits of migration in the age of globalisation. The paper also aims to do the comparative study of the laws regulating emigration in India and Philippines.

⁵International Human Rights Instruments which are widely ratified by the states and become a customary international law. These includes article 13.2 of Universal Declaration of Human Rights, 12.2 of International Covenant on Civil and Political Rights, article 5 (d) (i) of International Convention on the Elimination of All Forms of Discrimination Against Women, and Article 18.1 of International Convention on the Rights of Persons with Disabilities.

⁶Augsburg Settlement of 1555, Treaty of Westphalia of 1648, Treaty of Paris of 1763, Treaty of Vienna of 1809, French Constitution of 1791, Act of the United States Congress of 1868, European Convention for the Protection of Human Rights and Fundamental Freedoms of 1963, African charter on Human and People Rights of 1981, Convention on Human Rights and Fundamental Freedom of 1995, Arab Charter on Human Rights of 2004, and Treaty on the Functioning of the European Union and Directive 2004/38/EC of the European Parliament and of the Council, 2004. Right to Leave is also enshrined in Regional Trade Treaties. They are the Treaty Establishing the Common Market for Eastern and South Africa adopted by COMESA of 1993, Protocol on the Establishment of the East African Community Common Market adopted by EAC of 2009, Treaty of the Economic Community of West African States of 1993, Treaty of the Southern African Development Community of 2001, Treaties of the Association of South East Asian Nations, Treaties of the Asian-pacific Economic Cooperation, Andean Labour Migration Instruments of 2003, Border Integration Zones in the Andean Community of 2001, Protocol to the Charter of the Organisation of Central America of 1991, Agreement on the Movement Across Neighbouring Borders between the Member States of Common Market of the South and Temporary Entry for the Business Persons of the North American Free Trade Agreement