

## **ANALYSIS OF THE RIGHT TO FREEDOM OF MOVEMENT IN INTERNATIONAL AND INDIAN CONTEXT**

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### **ABSTRACT**

The Right to Leave is an important aspect of Right to Movement and is recognised in various known Human Rights instruments, notably, the *Universal Declaration of Human Rights* ('UDHR') and the *International Covenant on Civil and Political Rights* ('ICCPR'). However, it is still not a complete right as it is not backed by a State duty of admission. This Article throws light upon the various provisions contained in the aforementioned instruments including the African Convention, American Convention and the European Convention. Besides the provisions, the Article contains the analysis of various cases. *Per contra*, Indian cases have also been dealt with. As one goes further, the conclusion sought to be achieved by the Author is that there remains practical as well as legal impediments to the full realisation of Right to Movement as a significant Right.

**Keywords:** Right to Movement, Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), significant right.

### **FREEDOM OF MOVEMENT**

#### **\* INTRODUCTION**

Movement is not only a word for moving or showing motion, but it under the modern jurisprudence is that right which indispensable from human being. Its nature of being indispensable from human has led it to be associated with right to life.

The Right to Leave is an important aspect of Right to Movement and is recognised in various known Human Rights instruments, notably, the *Universal Declaration of Human Rights*

(‘UDHR’) and the *International Covenant Of Civil and Political Rights* (‘ICCPR’).<sup>1</sup> However, it is still not a complete right as it is not backed by a state duty of admission.<sup>2</sup>

※ **THE RIGHT TO FREEDOM OF MOVEMENT**

The right to freedom of movement appears basically in 3 broad manifestations in the *UDHR* and the *ICCPR*. First, it enshrines the right to move freely *within* a country and to choose one’s place of residence there.<sup>3</sup> Secondly, it includes the right to cross an *international* border, as the right to leave any country, including one’s own.<sup>4</sup> Thirdly, it extends to the right to return to one’s country.<sup>5</sup> This is coupled with the right to seek and enjoy, in other countries, asylum from persecution.<sup>6</sup>

This Article is thus, basically concerned with the second principle, although, in order to understand the philosophical underpinnings of free movement as a free personal liberty (or, in current discourse, a human right), it necessarily examines the first principle also. Here the regulation of *international* movement paralleled controls on internal movement in the State and the development of the passport as a document for international travel was an extension of instruments that monitored movement *within* States and country. This is coupled with the right to seek and enjoy, in other countries, asylum from persecution.

This article also attempts to do so chronologically, it also picks up on the theme of ‘liberty’ in classical, Enlightenment and liberal consciousness having a link and consistent ideal, encapsulated in contemporary thought by the framework of human rights law.<sup>7</sup> However, there are numerous contemporary paradigms of State practice which curtail the right to free movement and the right to leave one’s country, as expressed in various international and regional human rights instruments.<sup>8</sup> Following are the two dimensions discussed in terms of classical and modern thoughts which in short, enlists the development of the principles in detail.

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<sup>1</sup> *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3<sup>rd</sup> sess, 183<sup>rd</sup> plen mtg, UN Doc A/810 (10 December 1948) art 13(1) (‘UDHR’); *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 12(1) (‘ICCPR’).

<sup>2</sup> *Van Duyn v Home Office* (C-41/74) [1974] ECR 1337.

<sup>3</sup> *UDHR* art 13(2); *ICCPR* art 12(2).

<sup>4</sup> *UDHR* art 13(2); *ICCPR* art 12(2).(ibid).

<sup>5</sup> ibid

<sup>6</sup> *UDHR* art 14(1).

<sup>7</sup> Prevention of Discrimination and Protection of Minorities, *The Right of Everyone to Leave Any Country, Including His Own, and to Return to His Country*, UN ESCOR, 40<sup>th</sup> sess, Agenda Item 15(e), UN Doc E/CN.4/SUB.2/1988/35 (20 June 1988) [30].

<sup>8</sup> *Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 4 November 1950, 213 UNTS 222 (entered into force 3 September 1953), as amended by *Protocol No 14 to the Convention for*

\* *The Right to Leave One's Country in Classical Thought*

The right to freedom of movement — including the right to leave and return to one's own country — has its origins in ancient philosophy and natural law. Visualising the vision of Socrates, Plato wrote:

“We further proclaim to any Athenian by the liberty which we allow him, that if he does not like us when he has become of age and has seen the ways of the city, and made our acquaintance, he may go where he pleases and take his goods with him. None of us laws will forbid him or interfere with him. Anyone who does not like us and the city, and who wants to emigrate to a colony or to any other city, may go where he likes, retaining his property.”<sup>9</sup>

The classical conception of freedom of movement was regarded as integral to personal liberty, which was limited to certain adult males. This is reflected in the classical writings of Epictetus, who described ‘freedom’ as meaning: ‘I go wherever I wish; I come from whence I wish’.<sup>10</sup>

\* *The Right to Leave One's Country in Modern International Law*

In the modern period, some of the first to write about the right to free movement were lawyers setting out the principles of the ‘law of nations’ (international law). The writings of Hugo Grotius (1583–1645)<sup>11</sup> had enormous influence on the development of international law.

○ *Grotius*

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*the Protection of Human Rights and Fundamental Freedoms*, opened for signature 13 May 2004, CETS No 194 (entered into force 1 June 2010) art 2 (‘*European Convention on Human Rights*’); *American Declaration of the Rights and Duties of Man*, signed 2 May 1948, UN Doc E/CN.4/122,

<sup>9</sup> Crito 51d–e, quoted in Sharon M Meagher, *Philosophy and the City* (State University of New York Press, 2008) 22.

<sup>10</sup> Quoted in Maurice Cranston, ‘The Political and Philosophical Aspects of the Right to Leave and to Return’ in Karel Vasak and Sidney Liskofsky (eds), *The Right to Leave and to Return: Papers and Recommendations of the International Colloquium Held in Uppsala, Sweden, 19–20 June 1972* (The American Jewish Committee, 1976) 21

<sup>11</sup> Grotius is known as the ‘father of the law of nations’: Oppenheim, above n 3, [43]: ‘the book of Grotius obtained such a world-wide influence that he is correctly styled the “Father of the Law of Nations”’. See also Hamilton Vreeland, *Hugo Grotius: The Father of the Modern Science of International Law* (Oxford University Press, 1917).

“Grotius declared the principle that ‘every nation is free to travel to every other nation’ to be a ‘most specific and unimpeachable axiom of the Law of Nations, called a primary rule or first principle, the spirit of which is self-evident and immutable’.<sup>12</sup>

✱ **RIGHT TO FREEDOM OF MOVEMENT**

✱ **UNDER UDHR.**

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the basis of freedom, justice and peace in the world community,

Whereas disregard and contempt for human rights have resulted in heinous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the population around the world,

Whereas it is necessary, if man is not to be forced to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be guarded by the rule of law,

Whereas it is essential to promote the development of friendly relations between countries,

Whereas the peoples of the United Nations have in the Charter reimposed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women, also have determined to promote social progress and better standards of life in larger aspect of freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the upliftment of universal respect for and observance of human rights and basic freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest significance for the full realization of this pledge,

Now, Henceforth, THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples

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<sup>12</sup> Hugo Grotius, *The Freedom of the Seas* (Ralph van Deman Magoffin trans, Oxford University Press, 1916) 7 [trans of: *Mare Liberum* (first published 1609)].

and all nations, to the end that every individual and every organ of society, keeping this Declaration persistently in mind, shall strive by teaching to promote respect for the rights and freedoms and by progressive means, national and international, to secure their universal and effective recognition and vista, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.<sup>13</sup>

✳ **UNDER ICCPR**

The International Covenant on Civil and Political Rights defends the fundamental right to life and says that no one can be tortured, enslaved, arbitrarily imprisoned, made to do forced labour, or be restricted from such basic freedoms such as movement, expression and association.

Article 12 of the ICCPR<sup>14</sup> states:

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.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (French word "ordre public"), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the this Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country or land.

✳ **OTHER CONVENTIONS**

- The CONVENTION ON THE RIGHTS OF THE CHILD contains this right in Article 10:
  1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious method. States Parties shall further ensure that the submission of such a request shall do no adverse consequences for the applicants and for the members of their family.
  2. A child whose parents reside in different States shall have the right to maintain on a routine basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end, and in consonance with the obligation of States

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<sup>13</sup> [www.un.org/en/universal-declaration-human-rights/](http://www.un.org/en/universal-declaration-human-rights/)

<sup>14</sup> [www.hrw.org/legacy/campaigns/israel/return/iccpr-rtr.htm](http://www.hrw.org/legacy/campaigns/israel/return/iccpr-rtr.htm)

Parties under Article 9, Paragraph 1, State Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are in consonance with the other rights recognized in this Convention.

- The INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES<sup>15</sup> contains this right in Articles 5, 8 and 39:

#### Article 5

For the purpose of the present Convention, migrant workers and members of their beloved families:

- (a) Are considered as documented ,if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party;
- (b) Are considered as non-documented or in an irregular situation if they do not abide with the conditions provided for in subparagraph (a) of the present article.

#### Article 8

1. Migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others and are in consonance with the other rights recognized in the Convention.
2. Migrant workers and members of their families shall have the right at any time to enter and remain in their Nation of origin.

#### Article 39

1. Migrant workers and members of their families shall have the right to liberty of movement in the territory of the State of employment and freedom to choose their residence there.
2. The rights mentioned in paragraph 1 of the present Article shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security,

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<sup>15</sup>[www.claiminghumanrights.org/freedom\\_movement\\_definition.html](http://www.claiminghumanrights.org/freedom_movement_definition.html)

public order (ordre public), public health or morals, or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

✳ **AFRICAN CONVENTION**

The African Charter on Human and Peoples' Rights (also referred as the “Banjul Charter”) is an international human rights instrument that intends to promote and protect human rights and fundamental freedoms in the African continent.

**PROVISIONS**<sup>16</sup>

The right is also contained in AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS Article 12:

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he follows the law.
2. Every individual shall have the right to leave any country including his own, and to return to his own country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.
3. Every individual will have the right, when persecuted, to seek and obtain asylum in other countries according to the laws of those countries and international conventions.
4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken according to law.
5. The mass expulsion of non-nationals will strictly be prohibited. Mass expulsion shall be that which aims at national, racial, ethnic or religious groups.

✳ **AMERICAN CONVENTION**

**OBJECTIVES**<sup>17</sup>

Reaffirming their intention to collect in this hemisphere, within the skeleton framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential basic rights of man;

Recognizing that the essential rights of men are not derived from one's being a national of a certain nation, but are based upon attributes of the human personality, and that they henceforth,

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<sup>16</sup> [www.claiminghumanrights.org/freedom\\_movement\\_definition.html](http://www.claiminghumanrights.org/freedom_movement_definition.html)

<sup>17</sup> [www.cidh.oas.org/basicos/english/basic3.american%20convention.htm](http://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm).

justify international protection in the form of a convention reinforcing or supplementing the protection provided by the law of the American states;

Considering that the principles have already been set forth in the Charter of the Organization of American States, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights, and that they have been reaffirmed and refined in other international instruments, worldwide as well as regional in ambit;

Reiterating that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear can be achieved only if plights are created in which everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights; and

Considering that the Third Special Inter-American Conference (Buenos Aires, 1967) approved the incorporation into the Charter of the Organization of broader standards with regard the to economic, social, and educational rights and resolved that an inter-American convention on human rights should determine the structure, competence, and proper procedure of the organs responsible for these enshrined matters,

### **PROVISIONS**

Article 22 Freedom of Movement and Residence.<sup>18</sup>

1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.
2. Every person has the right to leave any country freely, including his own motherland.
3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent essential in a democratic society to prevent crime or to protect national security, public safety, order public, public morals, public health, or the rights or freedoms of others.
4. The exercise of the rights recognized in Paragraph 1 may also be restricted by law in defined zones for reasons of the public interest.
5. No person can be expelled from the state of which he is a national or be deprived of the right to enter it.

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<sup>18</sup> [www.cartercenter.org/resources/pdfs/peace/democracy/des/amer\\_conv\\_human\\_rights.pdf](http://www.cartercenter.org/resources/pdfs/peace/democracy/des/amer_conv_human_rights.pdf)

6. An alien lawfully in the territory of a State Party to this Convention may be expelled from it only followed by a decision reached in accordance with the law.

7. Every person has the right to seek and granted asylum in foreign territory, according to the legislation of the state and international conventions, in the event he is being pursued for political offenses or related crimes.

8. In no case, an alien can be returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.

9. The collective expulsion of the aliens is prohibited.

✱ **EUROPEAN CONVENTION**

Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and the First Protocol.

**PROVISIONS.**

Article 2 of the Freedom of movement.

1. Every person lawfully within the territory of State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Every person shall be free to leave any country, including his own also.

3. No restrictions shall be placed on the exercise of these rights other than such as are according to law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and reasoned by the public interest in democratic society.

• **INDIAN CONSTITUTION AND FREEDOM OF MOVEMENT.**

Article 19 (1) (d) guarantees to all citizens of India the right “to move freely throughout the territory of India”. This right is, but subject to reasonable restrictions mentioned in clause (5) of

Article 19, i.e. In the interest of general public or for the protection of the interests of Scheduled Tribal people.

Article 19 (1) (d) of the Constitution of the India,1950 provides the citizens a right to go wherever they like in Indian Territory without any kind of restriction whatsoever. They can move from one State to other and also from one place to another place within any State of India.

This freedom cannot be snatched by any law except within the limits of Article 19 (5). In this way Constitution stresses that the entire country is one unit so far as the citizens are concerned. The object is to create the sense of nationality in the minds of all the citizens.

### **Grounds of Restrictions:**

The State under clause 5 of Article 19 may impose reasonable restrictions on the freedom of movement on two grounds:

- (1) In the interest of general public,
- (2) For the protection of interests of the Scheduled Tribes.

Furthermore, above movement has always been subject to lawful state restrictions.

In *N.B. Khare v. State of Delhi*,<sup>19</sup> the petitioner was served with an order of externment by the District Magistrate, Delhi, to remove himself compulsorily from Delhi district and not to return there for three months.

Besides this, the order was made under East Punjab Safety Act, 1949. The petitioner contended that the order imposed unreasonable restrictions on his right to move freely, because: (a) the externment order also depended on the subjective satisfaction of the Executive, and (b) the Act did not fix any minimum time after which the order cannot continue.

The Supreme Court laid down that the mere fact that the power to make the order of externment was given to the State Government or District Magistrate whose satisfaction was final, did not itself make the restriction unreasonable.

Finally, it was held by the Apex Court that the mere fact that the order depended on the subjective considerations of the executive, cannot make the restriction unreasonable because the

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<sup>19</sup> AIR 1950 S.C. 211.

desirability of passing such an order in emergetic plight, had to be ultimately left to an officer in charge.

- **LANDMARK PRONOUNCEMENTS BY JUDICIARY.**

### **FOREIGN CASES**

#### *Kant Kwong v. PCGG*<sup>20</sup>

In this particular case, The right to travel, along with the right to freedom of movement, are constitutionally guaranteed rights. The Petitioners had been barred by the government from leaving the country. This was done via a Hold-Order. The petitioners contended that this was violative of their right to travel. The Court held that the Hold-Orders impaired the petitioners' constitutional right to travel. The Hold-Orders had already expired and further the grounds for their issuance had also become moot. The Court said, "The right to travel and to freedom of movement is a fundamental right guaranteed by the 1987 Constitution and the Universal Declaration of Human Rights to which the country of Philippines is a signatory. That right extends to all residents regardless of nationality. And everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law. Though ,such right is not absolute but must be subjected to the State's inherent police power upon which the Hold-Orders were premised, no 'good reasons' have been given which could justify the continued enforcement of the Hold-Orders." Therefore, the Court held that the government had abused its discretion in maintaining the Hold-Orders for an infinite length of time, as to do so arbitrarily violated the petitioners' fundamental right to freedom of movement. It cited the UDHR in the judgment too.

#### *Marcos v. Manglapus*,<sup>21</sup>

In this case, it was observed that though the right to return to one's country is not constitutionally protected, it is a generally accepted principle of international law, and thus a part of domestic law. It is not an absolute right. Public interest grounds limits it.

The Petitioner, former president Ferdinand E. Marcos, was deposed. Near death, he wished to return to the Philippines. The new president, Corazon C. Aquino, refused. The Supreme Court dealt with the Petitioner's petition for mandamus. The petitioner argued it was unconstitutional to forbid him from returning under the guarantees of due process, the liberty of abode, and also the

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<sup>20</sup> 156 SCRA 222, G.R. No. L-79484 (1987).

<sup>21</sup> 177 SCRA 669, G.R. No. 88211 (1989)

right to travel. The Petitioner also argued that his right to return to the Philippines was guaranteed under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The government argued that the right of the State to national security triumphed individual rights. The Court said, "It must also be emphasized that the individual right involved is not the right to travel from the Philippines to other countries or within the Philippines. These are what the right to travel would normally mean. Essentially, the right involved is the right to return to one's country, a totally distinct right under international law, excluded from, although related to the right to travel. Thus, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights treat the right to freedom of movement and abode within the territory of a state, the right to leave a country, and the right to enter one's country as separable and distinct rights.

As ratio decidendi, the Court allowed the government's ban on Marcos' and his family's return. Both the majority and dissenting opinions cited the UDHR broadly.

*Hong Kong : Gurung Kesh Babadur v. Director of Immigration*

Under Hong Kong law, non-residents were afforded all of the rights as residents except for the right of abode. In this particular case, a citizen of Nepal in 1995 moved to Hong Kong as a dependant to his wife, a permanent resident of Hong Kong. He then developed two businesses. In 1997, after travelling abroad, he was denied entry into Hong Kong in concordance with a change in Hong Kong law that had occurred. The Court of Final Appeal held that the Nepalese citizen, even though not a permanent resident, was allowed to re-enter the country. Under the Basic Law (which had incorporated the ICCPR), non-permanent residents of Hong Kong had the right to travel. Thus, to restrict his ability to travel would definitely be to act against the spirit of the protections afforded by the Fundamental Law.

**INDIAN CASES**

*State of U.P. v. Kaushalya*,<sup>22</sup>

It was laid down that the right of movements of the prostitutes can be restricted on the grounds of public health and in the advancement of the public morals. The right of the citizen to move freely can also be restricted in the interests of Scheduled Tribes. The objective is to protect the original tribes which are mostly settled in North-East. These tribes have their own culture, linguism, traditions and manners.

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<sup>22</sup> AIR 1964 S.C. 416

It was considered important to impose restrictions upon the entry of outsiders to these areas. It was feared that uncontrolled mixing of the tribes with the other people might produce unwanted effect on the tribal people.

*Ajai Canu v. Union of India*,<sup>23</sup>

The Supreme Court has held that the imposition of wearing helmets by drivers of two wheelers had been made for the good of the people and it was thus, a reasonable restriction on the Freedom of Movement.

*Satwant Singh Sawhney v. Ramarathnam*,<sup>24</sup>

In the absence of a hardcore law regulating the issue of passports, the refusal of passport by the executive who acting in his/her discretion, constitutes a violation of the citizen's right to leave his country. "The Universal declaration of human rights-"Everyone has the right to leave any country including his own" is applicable to every person. It does not apply to criminals avoiding penalties or political agitators, etc. likely to create international tensions or persons who may disgrace our country abroad. Finally it was observed that "whatever the view of countries like the U.S.A. where travel is a means of spending one's wealth, the better view in our country is that a person is ordinarily entitled to a passport unless, for reasons which can be established to the satisfaction of the Court, the passport can be validly refused to him."

*Maneka Gandhi v. Union Of India*,<sup>25</sup>

The passport of the daughter-in-law of the former Prime Minister was impounded on the ground that her presence was likely to be required in connection with the proceedings of commission of inquiry. The Court held that an order impounding a passport must be made quasi-judicially. The *audi alteram partem* rule (no judgment without a fair hearing) must be regarded as incorporated in the passport law by necessary implication, since any procedure which dealt with the modalities of regulating, restricting, or even rejecting a fundamental right has to be fair, not "arbitrary, freakish or bizarre".

"Things have changed, global awareness has dawned. The European Convention on Human Rights and bilateral understandings have made headway to widen freedom of travel abroad as integral to liberty of the person. And the universal Declaration of Human Rights has proclaimed

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<sup>23</sup> (1988) 4 S.C.C. 156.

<sup>24</sup> [1967] 3 SCR 525.

<sup>25</sup> AIR 1978 SC 597.

in Article 13, that everyone has the right to leave any country including his own, and to return to his country. This human planet is our single home, though geographically variegated, culturally diverse, politically pluralist in science and technology competitive and co-operative in arts and life-styles a lovely mosaic and, above all, suffused with a cosmic unconsciousness of unity and inter- dependence.”

- **CONCLUSION**

This article has examined why the right to freedom of movement came to be embodied in the *UDHR* and, by extension, in subsequent universal human rights instruments. As the foregoing discussion has illustrated, the notion of freedom of movement has a long intellectual history. Its lineage can be traced to the long-standing political ideal of free movement as a fundamental element of personal liberty. For this reason, it was perhaps regarded as having a natural place in the world’s first universal human rights treaty.

The right to leave any country is not only a freestanding right but is reinforced by, and gives meaning to, other human rights. The UN Commission on Human Rights has explained that it is a imbibed element of personal liberty, and is necessarily inherent in the prohibition on arbitrary arrest, detention or exile, the right to seek asylum and the prohibition on arbitrary deprivation of nationality. The right to freedom of thought and expression, especially ‘the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers’, moreover depends on the right to free movement for its full actualisation.

Despite this, the right to leave remains impeded by both practical and legal measures. Though, the present Article has been necessarily selective in the parallels and examples drawn upon to illustrate the normative developments in the history of freedom of movement as a legal principle, it has revealed a surprising consistency over time in the gap between legal and philosophical principle, on the one hand, and on the other hand, State practice.

Though the right to leave a country is now a basic principle of human rights treaty law, it is not an absolute right and cannot be equated with a right to migrate permanently. At a bare minimum, it must permit movement on a temporary basis and enable the rights with which it is connected to be fulfilled. Reconciling the individual right, as an expression of personal liberty, with the interests of states has been — and still remains — a challenge.