AN ANALYTICAL AND HERMENEUTIC INTERPRETATION OF IMMIGRATION LAW AND PRACTICES IN INDIA

[1]PRIYAM JAIN, [2]KUSH KHANDELWAL

[1,2]Student Symbiosis Law School, Hyderabad – BBA LLB – 2nd Year

Abstract - The concept of people moving permanently or temporarily from one place to other is referred to as migration. Although the trace of this concept can be drawn out to exist for a long time, in modern time migration exists in various forms. When the migration deals with the movement between nations by crossing the boundaries it is referred to as immigration. The law situated to deal with immigration is known to be the immigration law. This paper is set to expand upon the immigration laws in India. There are various acts that contribute towards immigration laws in India. The authors expand upon The Passport India Act (1920), The Foreigners Act (1946), The Registration of Foreigners Act (1950), and The Immigration Act (2000). Further this paper explores the recent trends in immigration law in India with respect to commerce, the Indian entertainment industry, foreign students and the real estate sector. The authors further analyze the future of immigration in India. The second half of the paper deals with expanding upon the effect of immigration. Further lay down "The Bangladesh Story" revolving around the post war migration (1945-1961). An elaboration of comparison of immigration law in India with respect to that of United States of America is expanded upon.

Keywords - Migration, Immigration, India, Bangladesh, US

I. INTRODUCTION

The advent of globalization saw and brought about various changes in the mindsets of the Indians and more number of people started immigrating to various parts of the world for basic necessities, livelihood, good standard of living, change in life pattern, more economic opportunities and better shelter. This change was the initial movement when the process of immigration, migration or emigration started in India. This led to better future prospective and growth of the country as a whole and led to economic, social and political stability. The simple definition of immigration was basically people or citizens of a country transpiring or moving from one country to another in search of basic shelter, livelihood or new latitudes and suitability's.

However, during this process the most difficult hardship or hurdle for immigrants or migrants of India or any other country was to avail the citizenship, visa and allowances of the country they were shifting to. This issue was the prime reason why Immigration laws came into existence and their amenability was actually taken in to consideration. Various countries in the world came up with their immigrations laws, policies and acts however India on the contrary did not incorporate a new policy or legislation but this principle of immigration and securing and governing the rights and needs of the citizens was provided and incorporated by the Indian Constitution under Article 5 to 11.

The Indian Constitution defined what citizenship is, who can immigrate, who can enter India, who is an Indian and various other important and beneficiary questions were answered. Article 5 defined who constituted to become an Indian and who has his domicile as India by setting out various parameters:

1. Anyone who is born and brought up in India and its territory
2. Anyone who's either parent was born and brought up in India and its territory
3. Anyone who is an ordinary citizen of India or has been for more than 5 years

Further Articles 6-9 talked about the status of persons who can claim to be Indians. Article 10 talks about the continuity of such citizens. Further Article 11 talks about the discretionary power with the Parliament to amend or incorporate any new provision in the hind sight of migration or immigration laws in India. To understand the various provisions or legislations incorporated by the Parliament and law making bodies of India we would take the reference of various policies and acts implemented.

The Passport (Entry in India) Act, 1920

The following act was incorporated in 1920 and came into existence to help and ease the process for foreigners entering India. This Act explicitly states about the importance and need of foreigners to get visa from Indian Missions and Consulates and also it further elucidates about the necessary documents or legal formalities required to be submitted or carried along during the travel.

The Foreigners Act, 1946

This act came into existence because of the huge influx and demand of foreigners to visit India for leisure or employability or work. This act regulates the procedure and regulations of how these foreign nationals can enter India and their place of residence in India until their departure. This Act in furtherance has these features:

1. Key definition of who is a foreigner
2. Power to make orders
3. Change of name
4. Obligatory notifications and obligations of hotel keepers
5. Power to control places visited by foreigners
6. Determination of nationality
7. Burden of proof
8. Power to delegate authority
9. Penalties and fines and protection of these foreigners

The registration of Foreigners Act, 1939
This act came into existence because it was a noticed trend that many foreigners who visited India for shorter durations wanted to stay longer or settle and extend their visas. So this Act regulates who can stay in India and for what duration post their visa specified time.

The registration of Foreigners Rules, 1992
This act was an added feature of the above act which more clearly and broadly defined what is an Act, certificate of registration, form, passenger, registration officer, tourist, seaman etc. this act was more of a regulatory act to maintain and keep up with the standards of various already existent acts and precedents.

The Foreigners Order, 1948
This act was enacted to provide specifications related to registration of their foreigners, role of civil authorities in their regulation and duties and needs of catering of ports/airports. The features of this Order where:

1. Power to grant or refuse permission to enter India
2. Power to grant permission to depart from India
3. Power to examine persons
4. Liability of master of vessel to remove a foreigner
5. Restrictions of sojourn of India
6. Protected areas
7. Restriction on employment
8. Expenses of deportation

The Immigrants (Expulsion from Assam) Act, 1950
This act was needed since there was a large influx of illegal immigrants from Bangladesh and Myanmar in Assam and it was important to filter the Indians with the others and send the illegal migrants back to their place of origin. This act directed such persons to remove themselves from India or Assam and gave such orders to be expedient or necessary and as a threat to the nation.

The Immigration (Carrier's Liability) Act, 2000
This act was introduced since it became a noticed trend that a huge number of immigrants travelled and settled in India with invalid or incorrect travel documents. This act regulated the entry of foreigners in India and made no one enters India illegally or without valid documents or else a penalty of rupees of One Lakh would be levied.

II. RESEARCH OBJECTIVES

1. To elucidate the importance of immigration law and its practice in India
2. To critically evaluate the various Acts and provisions available
3. To categorize and understand who is a foreigner and various policies regulation their entry and exit
4. To define and assimilate the various regulations and policies governing Visa and Passport, Citizenship requirements and pathways
5. To study and analyze the recent trends and future of immigration laws
6. To analyze the relation of immigration laws with commerce, entertainment industry, foreign students, real estate etc.
7. To compare and evaluate the effect of immigration in India with respect to Bangladesh, United States and the NRC Conduct
8. To counter the challenges faced and provide plausible solutions and recommendations.

III. RESEARCH METHODOLOGY

The research methodology adopted by the researchers is doctrinal and quantitative in nature and includes the use of various laws, policies, rules and statutes and information available from second hand sources including books, magazines and journals. The researchers have also collected data available from various other research papers published by renowned research scholars.

Scope
Immigration law and policies in India have a very wide and broad scope in its application and existence. This law exclusively governs and regulates the entry and exit of foreigners in India and it is the most important law in order to avoid illegal influx of immigrants and migrants. The scope of the topic is such magnanimous because of the reasons people migrate or immigrate to various places or countries that is political instability in some regions, economic shift in trends, for better opportunities and employability and some for personal reasons. Therefore the scope of this topic is so extensive and wide and it is very important to understand and apply it in a practical and optimistic manner.

Regulations and Policies governing Visa

The Indian regulations governing the visa are established and introduced by various acts and policies we have already discussed. However, the above policies were introduced with the help of the Ministry of Home Affairs (HMA) and The Government of India. All over the world to regulate the entry and exit of foreigners in or around India, the government has have implemented various Indian regimes and Missions all across the world and this led by Foreign Regional Registration Offices, district administrators and state administrators and the home departments. These are some of the crucial agencies regulating the polices of visa in India or Abroad for India.

The main of allocating Indian visa is based on the principle of non-discrimination and keeping in mind key aspects of security, national interest and reciprocity of considerations. Also it a noticed fact that India provides visa to most of the nationals through its normal procedure however for certain nationals there are other prescribed or prerequisites to be followed and orderly maintained. The concept of legality and rights of every citizen to acquire a visa is not completely true, since some of the citizens can be denied the visa for various criterions and rules which are mandated to be followed.

Visa in general is a document or rather a paper on which a price is levied upon and every country has a different charge according to its economic standards and various other measures, however in India it is regulated by the Government of India and the detailed list of fees applicable is available on its website.

General requirements for Issuance of a Visa

1. Foreigners must have a valid passport or any other internationally known travel document
2. For various neighboring countries visa is issued on arrival based on the economic and political relations with that country
3. The applicants applying for visa must apply to a valid mission meaning that mission should have the jurisdiction to grant such visa, if however this is not accessible then the visa can be provided on additional charges

IV. VARIOUS CATEGORIES OF VISA

1. **Transit Visa** – It is generally issued for up to 15 days and person applying should have a return ticket from that particular national and only 2 entries are issued to each applicant.
2. **Entry Visa** – It is mostly issued to anyone who is a origin of India, or who has parents or siblings as residents of India, who is a foreigner holding a valid passport.
3. **Tourist Visa** – As the name suggest it is issued to foreigners travelling to India and looking to settle or gain some employment or just for recreational purposes, meeting relatives, friends etc. This visa is issued generally for a term of 180 days, however if an applicant wishes to extend his or her stay they can approach the concerned FRRO within their 180 days of arrival. The Indian missions can issued multiple visas for a maximum period of 5 years to nationals such as Argentina, Brazil, Chile, Finland, South Korea, Vietnam, Luxembourg etc. also this visa is not convertible or extendable to any other visa or travel documents except in exceptional circumstances.
4. **Employment Visa** – This visa is granted to those who come to India seeking employment opportunities and is valid for a period of one year. One important condition is that a person applying for the same must have some form of confirmation or clarification from the applied company or organization.
5. **Project Visa** – It is similar to employment visa but it is specifically executed for applicants in the field of Steel and Power Sector Projects.
6. **Student Visa**- It is given to students coming for pursuing their education in India and is given for a period of 5 years on an average. The important requisite being that the student must possess a valid admission letter to any university applied or claimed and must have a no objection certificate from the Ministry of Health.
7. **Journalist Visa** – It is issued to journalists, representatives of media, press, radio, travel promotion, bloggers, advertisers, social promoters etc. and is available and valid for a due time of 6 months period. These applicants must apply and get confirmation from the External Public Division of Mass Media and sanction from the Press Information Bureau.
8. **Business Visa** – It is valid for a period of 5 years and it is granted by the missions or posts of various countries and it is allowed for people trying to set up industrial or a business venture and trying to possibly try and explore various avenues under business and its opportunities provided in India.
9. **Missionary Visa –** These are issued to the foreign missionaries and only those carrying a valid no objection certificate are allowed to be granted under this scheme of visa.
10. **Conference/ Seminar Visa**- It is granted to various students, academicians, scholars, PhD holders for attending conferences or seminars in and around India and is granted by the various departments or ministries under the Government of India.

Some other forms of visa available are:

1. Mountaineering visa
2. Research visa

3. Medical and medical attendant visa
4. Universal visa

Pakistani nationals and issuance of Visa
The visa can be granted to Pakistani foreigners only after the sanction of various concerned authorities and after getting clearance from the central ministry under the government of India. These applicants once they enter India must register themselves at a designated post within 24 hours of their arrival at the destination Within India. Also these foreigners are allowed to enter and exit India only through some listed check posts.

Chinese nationals
Applicants visiting India from China are granted visa for a period of 3 months and it can further be extended to 3 months more by applying to the concerned ministry in charge.

Citizenship requirements and Pathways
Presently in India the Citizenship requirements and pathways are regulated by the Indian Constitution through Articles 5-11 and it provides for citizenship categorized based on place of birth and further divides the same in order of preferences.

Citizenship by Birth
The act of 1955 specifies that a person is considered to be an Indian citizen by birth if he or she is born after 26 January 1950 and before 1st July 1987 without his parents being of the same nationality. However a person is considered to be a citizen by birth if both his parents are Indian by nationality and he or she is born after 3rd December, 2004.

Citizenship by Descent

1. If a person is born after 26 January 1950 and before 10th December, 1992 and his or her father is a citizen of India by birth. But if the father is not a citizen by birth then the child won't be a citizen of India.
2. If a person was born outside India during the period of 10th December, 1992 and 3rd December, 2004 and one of his parents was a citizen of India by birth at that time and if not then he or she is not considered to be a citizen of India.

Citizenship by Registration
By this provision a person a register to become a citizen of India according to Section 5 of the Citizenship Act but requires to fulfil certain prerequisites:

1. An Indian origin person living in India for 7 years before making an application
2. A person who is an ordinary citizen in any other country
3. A person married to a citizen of India
4. Minors of couples who are citizens of India
5. Person of full majority whose parents are citizens of India

Citizenship by Naturalization
A person can avail this benefit if he or she has lived in India for more than 12 years and was living in India one year before making this application and should meet the requirements of the Scheduled Act. However the same can be waived off if the Central government does not think the person is deemed to be fit as a citizen of India.

Overseas Indian Citizen
This right is basically applicable to individuals who were born in India but have attained citizenship of some other country, however they cannot be claimed as citizens of India since they already have a citizenship and the government of India does not allow dual citizenship.

Future of Immigration in India
The current laws on immigration have a very wide scope however there are certain provisions which in future can be changed or amended and better changes can be incorporated. In far sight what can be implemented is to put a cap on the number of people entering the country so that it does not become too overcrowded and the resources don't fall short and there is no risk of any contingencies. Also in some cases there is no limit on the duration of stay for applicant whose spouse is on a long term visa and this problem needs to be solved so that people don't misuse the same and take undue advantage. Also what can be done is that the spouses should be allowed for a short settlement period and then requested to be sent back or else spouses should be allowed to accompany their loved ones if they boost the country's economy and don't become a burden or a liability.

One major issue is the influx of illegal migrants in the country, this needs to be technically reduced to a number which is 80 % less than the current number in order to eradicate possibilities of any problems or fallacies. However in the near future it is possible that due to increase in influx of migrants to India it has boosted the country's economy massively and has impacted huge economic growth in a positive direction and roadmap. Also because of various immigrants the businesses are flourishing and the inter-country trade is increasing and boosting the economies of all countries included in this exchange.

Another important element is that in the near future the number of people wanting to work in India will increase, since the current standards show that a wide variety and sum of people want to visit India and start their companies and settle and this shows that India is

capable of catering to everyone's needs and has enough sources to garnish everyone's wants and demands.

Lastly what can be done is that the government can introduce some stringent measures and policies to reduce the possibility or chance of a mishap and also to avoid the abuse of such policies and also not to overburden the Indian economy.

Recent Trends in Immigration Law in India

During the ancient times there was no law for regulation immigration policies and frameworks and during the British Era the concept of Athiti Devo Bhavo was followed that meant guests are our God and keeping this in mind every person entering our country is like our God and we should respect them and take care of them as our own brothers and sisters. However soon as problems increased and times changed various sectors started to be linked with the law of immigration and the statutes and acts found place in Indian History and origin. Some of the recent developments and changes introduced are as follows:

Immigration and Commerce

Over the years it is a noticed trend that due to the advent of globalization, the technological advancements and the internet the influx of immigrants for the purpose of commerce and work has boosted the economy of the country and has contributed to the positive development of the nation. These advancements have led to rapid demand of people to come to India and settle and flourish their business and this has indeed put India on a reputable position on the world map.

Immigration and Entertainment Industry

India is one of the most known and reputed countries for the magnanimity of its rich movie culture and the interest of citizens in the media and entertainment industry. This has helped many foreigners to come and settle in India and work for this entertainment industry and this is also one of the major reasons how Indian cinema is globally recognised and acclaimed. Many of the foreigners take an Indian visa to enter this magnifying industry that has so much to offer and cater to the needs of every person.

Immigration and Foreign Students

It was noticed and an accepted fact that mostly Indian students used to go abroad for further education and settling but now due to great infrastructural development and increase of academic institutions and advancement in studies have attracted foreign students to the country and this has led to rapid demand of Indian education to foreign students. The various requisites and provisions provided to the students like internships, part time jobs and attractive student discounts have led to increase in demand. Also due to high demand of foreign students to come and settle in India the government had introduced Student visa applicable for 5 years to make education in India more feasible and accessible.

Immigration and Real Estate

The various regulations policies and their ease of applicability have led to rapid growth of the real estate sector. Also many people due to low standard of living in India come to settle in India from various countries and try to buy property as a mark of investment since India is the most rapid growing and transpiring economy. The real estate sector has seen great advancements since immigration laws have become lenient in application and taxing policies encourage such investment from foreigners. Also the policy of Foreign Direct Investment has eased and helped the Indian economy to grown and enlarge.

Comparison and effect of Immigration in India with respect to the world \

It is seen that two major concerns the world faces when talked about immigration are illegal migrants and the migrants who are believers and followers of Islam. Indian government passed the Citizenship (Amendment) Bill, 2016 which tried to solve the problems of migrants of Bangladesh, Afghanistan and Pakistan as long as they were not Muslim and also it was promised that the same would turn into a law and these migrants from neighboring countries will acquire rights of citizenship, however this law never came into force.

The Bangladesh Story

Being of the adjacent countries it is studied and noted that the most number of immigrants come from Bangladesh to India for better standard of living, job opportunities and settling here for business, relatives etc. however it was seen that the number of migrants from Bangladesh used to be a massive number during the early 1900's but now the number has drastically dropped, one of the reasons for the same is the strict implementation of policies and laws on immigration. Also it is to be believed that most of these immigrants started going to various gulf countries and some parts of Europe where accessibility and convenience was better and the opportunities and regulations were not that limited and strict. However one of the prime reasons for policies being made stricter were because of the increase in number of illegal immigrants from Bangladesh.

India and the US Connect

India and US both are countries receiving the most number of immigrants from all over the world coming for settling in. better opportunities, high standard of living etc. research provides that currently there are about 34 million legal immigrants in the US and that shows the policies and regulations out there are

supportive and suitable for migrants from all over the world to come and settle prosperously. Some of the key features of the US laws and practices in immigration set up are:

1. Family based immigration – In this type an immigrant is allowed to gain citizenship if he or she has a spouse, sibling, parent or child living in the US and this enables them to become green card holders. This phenomenon is called as the chain migration where individual families build their chain and this chain keeps on extending and connecting all other families thereby forming the chain of all lawful immigrants.
2. Refugee admissions – In 2018 around 22, 491 refugees were given shelter in the US and this showcases how they contribute towards the world and humanity in general and this shows how the polices or accommodative of these exceptions.
3. Employment based green cards- This policy caters mostly to the working class migrants who have come to the US to gain expertise in their desired field, increase the country's economy and help settle their business or job. They are also enabled to receive a green card.
4. Diversity visas – This is a type of policy introduced to cater to 50,000 lucky immigrants to gain the US green card. It is in the form of a lucky draw and citizens from countries like Mexico, Canada, India and china who record the most number of legal migrants are not allowed to participate and other countries are given a chance to improve.
5. H-1B Visas – This visa is applicable only to the high skilled workers or employees who indeed contribute to their maximum potential to increase the economy of the US and who are known to settle for longer periods and these people are issued temporary employment visas.

Conclusion Immigration law and policies in India have a very wide and broad scope in its application and existence. This law exclusively governs and regulates the entry and exit of foreigners in India and it is the most important law in order to avoid illegal influx of immigrants and migrants. Recent advancements in various fields have led to rapid demand of people to come to India and settle and flourish their business and this has indeed put India on a reputable position on the world map. It is seen that two major concerns the world faces when talked about immigration are illegal migrants and the migrants who are believers and followers of Islam.
Lastly the discrepancy between the polices planed by the government and the execution of such policies by the authorities has led to a massive implementation gap. Adding to this mishap are the discursive gap and the efficacy gap. Although the policies are ideal on paper the practice is far from perfect, which interns contributes to a policy failure. Therefore we would conclude by saying that immigration policies and laws should be transformed and be made more accessible and eased however the progress in its direction over the recent years is showing that it will be positive in future. \

SUGGESTIONS

1. The national government must promote the concept of a training program prior to the departure.
2. It should be the duty of the Indian government to educate the migrants about the potential turbulence that might arise, further the government should expand on the same by informing the migrants about the potential cause of the turbulence which ought to be political rather religious. For ensuring the above the government can use the help of the various established authorities to organize seminars.
3. The domestic government must strive towards an open and organized linkage with the host countries. For ensuring the above the government can look towards the direction of enabling a Institutional Intelligence with the host country directly.
4. It is the ethical responsibility of the government to maintain the records of migrant workers to ensure their well-being. Further the above also assists the government in spotting the migrants who may overstay.
5. The Indian government should initiate the concept of the sentenced Indian migrant workers in host countries being brought back in India to complete their sentence in Indian jails.
6. The Indian authorities are yet to address the situation with illegal immigration from the neighboring country, like in the case of Bangladesh as expanded upon earlier. This has been the present situation despite India being a top destination for the economic migrants.
7. The scope of the Foreigners Act of 1946 has been widened to a fault. Whereby, the refugees and the seekers of asylum are governed by this act. There shall be a different law to deal with the cases of the above mentioned. The recognized refugees in majority of the situations have no entitled work nor allowed free movement within the nation.
8. Government can introduce some stringent measures and policies to reduce the possibility or chance of a mishap and also to avoid the abuse of such policies and also not to overburden the Indian economy.

REFERENCES

[1] https://vakilsearch.com/advice/immigration-laws-policies-india/
[2] http://www.legalserviceindia.com/immigration/Immigration_Law.htm

[3] http://www.legalservicesindia.com/article/259/Immigration-Laws-in-India.html
[4] https://indiankanoon.org/doc/27376/
[5] http://www.legalserviceindia.com/article/l238-Future-of-Indian-Immigration.html
[6] https://www.iilsindia.com/blogs/2015/01/27/immigration-laws-in-india/
[7] https://www.loc.gov/law/help/citizenship-pathways/india.php
[8] https://www.weforum.org/agenda/2017/10/india-has-139-million-internal-migrants-we-must-not-forget-them/
[9] https://www.migrationpolicy.org/article/emigration-immigration-and-diaspora-relations-india
[10] https://economictimes.indiatimes.com/nri/visa-and-immigration/india-to-be-worst-hit-by-us-immigration-law/articleshow/21992227.cms
[11] https://www.indiatoday.in/diu/story/maximum-immigrants-pakistan-bangladesh-entered-india-more-30-years-ago-1628313-2019-12-14
[12] https://carnegieindia.org/2016/06/29/illegal-immigration-from-bangladesh-to-india-toward-comprehensive-solution-pub-63931
[13] https://www.livemint.com/news/india/india-is-not-being-overrun-by-immigrants-1564334407925.html
[14] https://www.pewresearch.org/fact-tank/2017/03/03/india-is-a-top-source-and-destination-for-worlds-migrants/
[15] http://www.mondaq.com/india/x/437456/work+visas/Changes+in+Indias+Immigration+Laws+and+Policies
[16] https://blogs.worldbank.org/peoplemove/indian-migrants-problems-few-suggestions
[17] https://economictimes.indiatimes.com/nri/visa-and-immigration/view-changes-in-us-immigration-laws-its-impact-on-india/articleshow/56140469.cms
[18] https://www.indiastat.com/demographics-data/7/migration/586971/stats.aspx
[19] https://www.indiastat.com/rural-and-urban-areas-data/31/migration/16181/stats.aspx
[20] https://www.macrotrends.net/countries/IND/india/immigration-statistics
[21] https://www.pewresearch.org/fact-tank/2019/05/17/key-facts-about-u-s-immigration-policies-and-proposed-changes/

★★★