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The Expanding Horizons of Right to Travel Abroad in the Light of Recent Legal Developments

SUHAIL KHAN¹

ABSTRACT

The Right to Travel Abroad is an ever-growing right in scope; the expanding contours of this fundamental right, as it is now widely recognised, which was not the case earlier, has now become a separate jurisprudential aspect in general. It is embodied in Art. 21 of the Constitution, which states that the essential principles of equality before the law, the freedom that is connected with speech and expression, religion and the freedom of culture and so on, are an inseparable part of itself. The same right also originates from Art. 19 as well as regards the Indian Constitution is concerned. Art. 21 links the same with life and personal liberty, which forms the basic crux of this right as such. A perusal of the historical background shows us that the right has originated since ancient times and has carried forward till the evolution in World War II and so on. The emerging trends have recognised the right to travel abroad very frequently, which was not the case in the pre-Maneka Gandhi times. This was followed by the Satwant Singh case, which also recognised the right to travel abroad and that of being able to come back to one's own country. More recently, the Supreme Court of India has recognised the right in the Satish Chandra Verma case. This paper deals with the introduction whereby the right to travel abroad is discussed, and various aspects relating to it are stated in the forefront and the allied topics covering history, evolution and development of the jurisprudence on the topic and how it has shaped the recent times along with the right of accused to travel abroad and the restrains in both cases, discussing upon the way forward and the shaping up of the emerging dimensions of law.

Keywords: Constitution, fundamental right, personal liberty, right to travel abroad.

I. INTRODUCTION

In the year, 2019, the Supreme Court of India had, in the case of *Satish Chandra Verma v. Union of India*,² the position relating to the right to travel abroad re-affirmed within the garb of basic human rights and it was found that it is important for the growth of the character of an

¹ Author is a LL.M. student at Jamia Millia Islamia, India.

² CIVIL APPEAL NO. 3802/2019.

individual, by the enhancement of his scope and experience. The case comprised an appeal that referred to the decision of the enquiry pending against an officer by the Central Administrative Tribunal (CAT) that did not allow him to visit abroad. The same case was upheld against the officer, and there was no presence of a criminal case on record. In strengthening the position of the law, the Supreme Court upheld the right of an officer to travel abroad and referred to *Maneka Gandhi v. Union of India*³ and the landmark judgement of *Kent v. Dulles*⁴ that affirmed the same basic fundamental right.

From that aspect, the law relating to the right to travel abroad has been expanding ever since, and the jurisprudence in that regard, in recent times, is worth studying as to the implications and ramifications it encompasses from the human rights perspective of the country. It is important to note the beginning and the need whereby the right was established and held ground in that prospect. The legal framework and judicial pronouncements have shaped the law suiting the socio-economic conditions of the country, and it is very important to study it to add to the existing branch of knowledge and enhance the jurisprudence of the right. This paper will try to trace the historical perspective, development and evolution of the right and whether the said right has been on the right path as regards what was conceived in the underpinning of the same. The interpretation of the legislative framework and the judicial pronouncements that would lead to the understanding of the nature and scope of the same and various newly emerging trends and dimensions of the law that have shaped the right in a certain way are analysed in the present study. After the analysis of the same, it has to be seen whether the right has been aptly ensured by the judiciary and the government, and it has to be traced as to what is the way forward regarding the same. The paper begins with an introduction followed by the genesis, evolution and development of law, legislative framework, judicial pronouncements and various issues and perspectives and the way forward. The right to travel abroad signifies dignity and basic human liberty, but it has to be seen that it is not used for matters which are not provided within the mandate of the Constitution or the legislature and the judiciary must be cautious in providing the same, as only in the compelling circumstances, the right can be ensured.

II. HISTORICAL PERSPECTIVE: GENESIS, ORIGIN & DEVELOPMENT OF THE RIGHT TO TRAVEL ABROAD

This head covers the historical aspect of the study whereby the foundation of the right was laid and how it transpired and changed with the change in legal and socio-economic perspectives as

³ AIR 1978 SC 597.

⁴ 357 U.S. 116,117 (1958).

such.

(A) The Beginning

Augustus established the first foundation in this right which belonged to the Roman Empire. In 27 BC, he took over as the monarch in the Roman province that was in Egypt, and he was responsible for not allowing the senators to travel without getting his permission. Though he used to impart more liberty to travel at times, mostly, that was limited to fewer occasions, during a famine in 6 A.D., he attempted to relieve strain on the food supply by granting senators the liberty to leave Rome and to travel to wherever they wished.⁵

In England, in 1215, the right to travel was enshrined in Art. 42⁶ of the Magna Carta, ensuring the persons to go out of the kingdom and return safely, and it created the aspect of allegiance to the kingdom whereby the people of the kingdom had a bounden duty to return as well when called upon in a state of war, etc. In the Holy Roman Empire, a measure instituted by Joseph II in 1781 permitted serfs freedom of movement. The serfs of the Russian Empire were not given their personal freedom until Alexander II's Edict of Emancipation in 1861. At the time, most of the inhabitants of Russia, not only the serfs but also townsmen and merchants, did not have freedom of movement and were confined to their places of residence.⁷

(B) The Phase of Evolution

After the end of hostilities in World War II, the United Nations was established on October 24, 1945. The new international organisation recognised the importance of freedom of movement through documents such as the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966). Art. 13 of the Universal Declaration of Human Rights, adopted by the U.N. General Assembly, allows the right to freedom of movement within the country, the right to leave and return to one's country etc.⁸ Article 12 of the International Covenant on Civil and Political Rights incorporates this right into treaty law which gave the right to residence within the country and leaving their country, and these rights could only be curtailed in the name of public security, public health, rights of others etc. and there could not be any deprivation of a person's right to come back in his own country.⁹

The ICCPR entered into force for the initial ratifying states on 23 March 1976 and for additional states following their ratification. In 1999, the U.N. Human Rights Committee, which is charged

⁵ 1 CASSIUS DIO, ROMAN HISTORY 26 (Book LV Publications, New York 2001).

⁶ The Magna Carta, art. 42.

⁷ *Pale of Settlement*, (Dec. 02, 2021, 10:04 PM), <https://www.jewishvirtuallibrary.org/>

⁸ The Universal Declaration of Human Rights, 1948, art. 13.

⁹ The International Covenant on Civil and Political Rights, 1966, art. 12.

with interpreting the treaty, issued its guidelines for Article 12 of the ICCPR in its "General Comment No. 27: Freedom of Movement".¹⁰ While the treaty sets out the freedom of movement in broad and absolute terms, part four of Article 12 of the ICCPR admits that these freedoms may be restricted for a variety of reasons in the public interest. This clause is often cited to justify a wide variety of movement restrictions by almost every country that is a party to it.¹¹

(C) Indian Legal Perspective: Development and Emerging Areas

In the case of *Maneka Gandhi*¹², the Supreme Court stated that the term "personal liberty" used in Art. 21¹³ has a very broad meaning and that it encompasses a wide range of rights that include man's personal liberty, some of which have even been elevated to the status of separate fundamental rights and given additional protection under Art. 19.¹⁴ There must be a balance between an individual's personal liberty and the rights that come with it, as well as the individual's duties and obligations to the state. In the case of *Satwant Singh Sawhney v. D. Ramarathnam*,¹⁵ there was an importation of the word 'personal liberty' within Art. 21 also included locomotion rights and there exists no hindrance of the rights due to the availability of the passport to the persons who want to travel abroad, and thus this right emerged to be solidified in that aspect. But still, the right was given to the citizens very sparingly, and it was only provided to them in urgent situations in cases whereby the accused in a case used to request it. The later segments of the paper deal in length regarding the same.

More recently, in *Satish Chandra Verma v. Union of India*¹⁶, observing that an accused "cannot be denied the right to travel" merely because he is accused of a criminal offence, a local Court has modified the conditions imposed in the bail order of a co-accused in the medical college bribery scandal. This has been done; the Court has observed in its order in order to "save the time of the Court in dealing with frequent applications moved by the accused to travel abroad". Though the right is not absolute and can be restricted reasonably within the legislative enactments such as the Passports Act, 1967¹⁷ and other reasonable restrictions within the mandate of the Constitution, there were various travel restrictions due to the Coronavirus Disease of 2019 in India due to the hazards of health, the travel has been largely restricted and thus the right to travel abroad was curtailed in that light as only the citizens of a particular

¹⁰ 2, D. EILEEN, FREEDOM OF MOVEMENT: DIPLOMATIC LAW 30-32 (Chicago Press, 2012).

¹¹ *Id.*

¹² *Supra* note 2.

¹³ INDIA CONST., art. 21.

¹⁴ *Id.*, art. 19.

¹⁵ AIR 1967 SC 1836.

¹⁶ *Supra* note 1.

¹⁷ The Passports Act, 1967, No. 15, Acts of Parliament, 1967 (India).

country and diplomats could travel to the particular countries though the domestic flights were going on, the international travel was not allowed in that respect. Though later, the ban was lifted, and international travel was resumed again.

III. LEGISLATIVE FRAMEWORK AND THE JUDICIAL RESPONSE TO A RIGHT TO TRAVEL ABROAD

Having originated under Art. 19, the right to travel abroad finds its ambit of ‘personal liberty’ within Art. 21 comprises the right to travel, but it comes with a limitation that it can be curtailed as per the procedure that is established by law.

(A) Constitutional Dimensions

The right to move freely throughout the territory of India has been provided under Art. 19 of the Constitution, but the right to travel abroad forms part of Art. 21 under the expression ‘personal liberty’ as implicit in the law. Except for the procedure established in law, it cannot be taken away under the mandate of the Constitution. In the scheme of the Constitution, the meanings of ‘life’ and ‘liberty’ have to be accorded meanings in relation to the existence of individuals not only in the physical form but also in a dignified manner¹⁸, which is to say that it should not solely focus upon animal existence¹⁹. Also, the scope of ‘personal liberty’ as such is ever-increasing and dynamic in nature and does not encompass the state of not being given personal liberty in a physical sense, but the spectrum of these rights is very broad in nature and includes the right to travel abroad.

(B) Recognition of the Right to Travel Abroad as a Fundamental Right

The case of *Maneka Gandhi* was a pioneer one in the move relating to the grant of the fundamental right to travel abroad, and it included the same in the realm of personal liberty as such rights also enjoy various protections under Art. 19 of the Constitution as well. The said rights can only be taken away as regards the procedure that is established by law, and it has to be kept in regard that a balance is made between the rights of a citizen and also his duties towards the state and the other citizens so as to decide.

(C) Emerging Trends and Dimensions

There are various emerging trends and dimensions in the legal parlance of the present era, and they are as follows:

¹⁸ Francis Coralie v. Union Territory of Delhi, AIR 1981 SC 746 (India).

¹⁹ Kharak Singh v. State of Uttar Pradesh, AIR 1963 SC 1295 (India).

1. Primacy to Right to Travel Abroad in the cases of a child of a Single Parent

The verdict of *Maneka Gandhi* is still given primacy in regard to travel rights, and recently in the case of *Poulami Basu v. Government of India*,²⁰ has also held that Art. 21 ensures and encompasses the right to travel abroad, and this was done in the case where the custody a child belonged to the mother, the Passport Authority was insisting upon the presence of father as well, to which the judgement was effect by the Karnataka High Court.

2. Safeguard of Rights relating to Possession of Passport

In a J&K&L High Court case, *Rajesh Gupta v. Union of India*,²¹ it was stated that the fact that the mere registration of FIR has taken place or there is a pendency of investigation underway, it cannot be made the ground for the refusal of issue or renewal of a passport which was very much in connection of that right. Also, the mere act of seeking political asylum is also not considered to be a ground for the denial of a passport as it is not prejudicial to the sovereignty and integrity of India²².

3. Can the Right to Travel Abroad be sought for Achieving Higher Education?

In the realm of the right to travel abroad to achieve higher education, a matter was brought to the Punjab and Haryana High Court wherein *Rxxxxx Dxxxxx v. State of Haryana*,²³ it was stated that the right to travel abroad to pursue higher education outside India could not be granted to the juvenile as there is no fundamental or statutory right upon the matter and hence a juvenile's right within the aegis of JJ Act²⁴, is being within the scheme of the Act. In the case of *Unni Krishnan, J.P. and Ors. v. State of Andhra Pradesh*,²⁵ it was stated by the Supreme Court that the right to travel abroad for higher education flows from Art. 21 and is also necessary for the completion of the State's objectives under the Arts. 41 and 45²⁶ as compulsory education till the age of 14 years, and the State's economic capacity and development are to be taken into account. But, higher education, as such, is not within the scope of the right to travel abroad and hence not permissible under the scheme of the Constitution as already stated in the case of *Farzana Batool*²⁷.

4. Right to Have Passport Issued

²⁰ W.P. No. 14716/2022.

²¹ 2022 LiveLaw (JKL) 224.

²² Union of India & Anr. v. Satnam Singh, LPA 13/2016 (India).

²³ 2022 LiveLaw (PH) 259.

²⁴ The Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2016 (India).

²⁵ 1993 SCR (1) 594.

²⁶ *Supra* note 12, arts. 41, 45.

²⁷ Farzana Batool v. Union of India, LQ/SC/2021/799 (India).

In the case of *Avikash v. Union of India & Anr.*²⁸ It was held that there is a fundamental right to travel abroad and had a passport issued, which also places reliance upon the *Satwant* judgement, which recognised the right to travel and that of returning back to one's own country under Art. 21. It was also held that the refusal of passport in this case, on the event of it being lost thrice could not be considered as holding a solid ground as the same would be contrary to the spirit of Rule of Law under Art. 14²⁹ of the Constitution. Even in the case of *Teesta Chatteraj v. Union of India*³⁰, the Delhi High Court had recognised the right of locomotion and travel abroad while relying upon the position of the American Constitution, which in the 5th and 14th Amendments state implicitly along with the jurisprudence that personal liberty also encompasses the right of locomotion.

5. Only the Courts authorised to revoke the Right to Travel Abroad can curb it

In a very peculiar case, it was also stated that the Debt Recovery Tribunal (DRT) could not exercise its authority to bar a citizen from travelling abroad as there are no specific provisions under the Recovery of Debts Due to the Banks and Financial Institutions Act 1993³¹. The case titled *Anurag S/O Padmesh Gupta v. Bank of India*³² stated that since the right to travel abroad is already very much implicit under Art. 21 of the Constitution, the DRT cannot be authorised to restrict a citizen from exercising this right, yet again, the traditional suit of *Maneka Gandhi* was followed in this case. The same right was also recognised in the nature of a fundamental one in the *Satwant Singh* case, whereby the rights relating to locomotion and travelling abroad are also recognised; in this case, as well, the expression of personal liberty was made to include the travelling rights too but with various reasonable restrictions within the mandate of this case.³³ Following the suit, in the *Satish Chandra* case, there was recognition of the fact that the court had already accepted the right to travel abroad within the *Maneka Gandhi* case, the right to travel throughout the Indian Territory, which is an established right under the Art. 19 of the Constitution coupled with the Art. 21 which ensures the right to life and personal liberty includes the right to travel abroad; both these articles work in close connection with each other to ensure the same.

6. Right to Travel Abroad on Bail

²⁸ W.P. (C) 5141/2013.

²⁹ *Supra* note 2, art. 14.

³⁰ W.P. (C) 2888/2011.

³¹ The Recovery of Debts Due to Banks and Financial Institutions Act, 1993, No. 51, Acts of Parliament, 1993 (India).

³² 2022 LiveLaw (Bom) 204.

³³ *Right to travel abroad*, (Dec. 05, 2021, 01:13 AM), <https://blog.ipleaders.in/>.

The right to travel abroad on bail has been recognised in the landscape of the Indian judiciary in recent times; the Supreme Court has discussed that the rights which the accused holds in his context should not be of the manner which could become illusory while the bail conditions were being considered. In the case of *Parvez Noordin Lokhandwalla v. State of Maharashtra & Anr.*,³⁴ it was observed by Chandrachud, J. that the conditions that are imposed by the court of law should be in close nexus with the upholding of public interest so as to ensure criminal justice as such and a balance should be made between public interest and the rights of the accused. A very important discussion was also made in relation to S. 437(3) of CrPC,³⁵ which states that ‘any condition’ can be imposed which has to be considered in the interests of justice and also the liberty of the accused, thereby ensuring that the overall investigation is also not harmed in the prospect. The regard for the human right of the dignity of the accused and other safeguards pertaining to ensuring a fair trial was the stark point of this case; it was also found that the risk that underlies giving the accused these rights must be carefully examined according to the circumstances of each case. In another case, it was held that the judicial order that refuses permission to travel abroad is interlocutory in nature and cannot be revised, but it can be challenged under S. 482³⁶ of the CrPC³⁷.

In *CBI v. I.M. Quddusi & Ors.*³⁸ It was reiterated by the Special Court that merely due to the reason that a person has been found accused of a criminal offence as such, his right to travel could not be taken away. The court observed that it has to be seen that the right to travel abroad has to be restricted on a reasonable basis so as to ensure that the accused does not run away from justice and cooperate in the investigation as and when required³⁹. It has been now a practice of the court to recognise the right to travel abroad as a legitimate fundamental right in the case of persons accused of criminal offences as well, and thus it can be very well stated that the right to travel abroad is pretty much in consonance with the constitutional principles. As a matter of caution, though, it had to be intimated to the appropriate authorities in this case before travelling to a foreign country. The terms of the bail usually, in such cases, determine what leads to the nature of the right accorded to the accused; these terms can grant an unrestricted type of right as regards the travel, and it can also be granted in the nature of a very restricted right with various terms and conditions that need to be looked after by the accused.

³⁴ Criminal Appeal No. 648 of 2020.

³⁵ The Code of Criminal Procedure 1973, No. 2, Acts of Parliament, 1974 (India).

³⁶ *Supra* note 32, § 482.

³⁷ *Gaurav Raheja v. State of Punjab and Anr.*, 2022 LiveLaw (PH) 228 (India).

³⁸ I.A. No. 11/2020.

³⁹ *Right to travel is a fundamental right of an accused*, (Dec. 7, 2021, 03:33 PM), <https://www.economicstimes.indiatimes.com>.

In *Barun Chandra Thakur v. Ryan Augustine Pinto & Ors.*⁴⁰ It was also observed that the terms and conditions regarding the travel could be changed in order to cater to the needs that are raised by the accused but with utmost caution. In the *Barun* case, it was a matter of S. 302 IPC⁴¹, S. 25 of the Arms Act⁴² and S. 12 of the POCSO Act,⁴³ and hence it was a very grave offence, but the court had carried out very careful considerations of the conditions and had thus given the right to travel abroad by not allowing the accused a travel of more than three weeks on very stringent conditions. Finally, in the *Satish* case, it was again provided but with caution and safeguards, ensuring and iterating again that the right to travel abroad is not absolute.

7. Can there be Proceedings in the Absence of the Accused?

It has been laid out in the Ss. 205 and 317 of the CrPC⁴⁴, by the help of a catena of case laws that, a person can be made eligible for the exemption to the personal appearance of the accused till the time they are represented aptly by their counsels⁴⁵. It is also established that if they also give their consent to evidence being taken while they are absent, their non-presence can be excused by the court⁴⁶. The gravity of the offence and the statutory requirements are the major factors on which the curtailment of this right depends⁴⁷. The basic rule on which the presence of the accused lies is the advantage of the case, which can be achieved in his presence as opposed to the one that can be achieved without making the accused suffer by compelling his attendance. The dictum in the *Bhaskar Industries*⁴⁸ case was based upon similar grounds, which also adduced that this discretion lies with the court and has to be exercised in exceptional circumstances. In the case of *Baba Dhondiba Misal v. State of Maharashtra*,⁴⁹ it was stated that the right to travel is often the one which has a restrictive nature and for it to come to the realisation, it has to be held that the court should give an approval which is explicit and is backed by a cogent reason.

8. Grounds for Allowing Travel Abroad in the case of Accused Persons

It has to be seen in accordance with the facts and circumstances of the case so as to allow the right to travel; the reasons that have been brought to the notice of the judiciary typically are as follows, availing of medical treatment and the necessities in that regard as recognised in *Ganpati*

⁴⁰ 2020 (1) RCR (Cri) 121.

⁴¹ The Indian Penal Code, 1860, § 302, No. 45, Acts of Parliament, 1860 (India).

⁴² The Arms Act, 1959, § 25, No. 54, Acts of Parliament, 1959 (India).

⁴³ The Protection of Children From Sexual Offences Act, 2012, § 12, No. 32, Acts of Parliament, 2012 (India).

⁴⁴ *Supra* note 32, § 205, 317.

⁴⁵ *Noorjahan v. T.T. Moideen and Ors*, ILR 2000 (3) Ker 433 (India).

⁴⁶ *Bhaskar Industries Ltd. v. Bhiwani Denim and Apparels Ltd.*, AIR 2001 SC 3625 (India).

⁴⁷ *A. Sundara Pandian v. State*, 2019 SCC Mad 1612 (India).

⁴⁸ *Supra* note 33.

⁴⁹ Cr. Appeal No. 396/2007.

*Ramnath v. State of Bihar*⁵⁰, denial of travel in such circumstances might be very dangerous as it can lead to the deterioration of the health of the accused, other urgencies that can warrant the grant of this right are ensuring the travel for the emergencies arising in the family⁵¹ or in order to secure or retain the employment in various cases⁵². The other circumstances that include the consideration of the court to assess this right are the frequent travel profile of the accused, previous requests of the accused and thereby the grant of liberty, and previous authorisations, which can ensure frequent and uninterrupted travel, considering the accused's tendency to travel back to India, and so on.

(D) Restrictions on the Right to Travel Abroad

The right to travel abroad can be restricted reasonably, as stated above, in accordance with the procedure that is established by the law. These restrictions, in their nature, need to be reasonable and justifiable and should have close nexus with the natural justice principles. The S. 10(3) of the Passports Act, 1967⁵³ and the instances whereby the said right can be curtailed are not provided within the scheme of the Constitution specifically. There are various circumstances whereby the Passport Authority are empowered to cancel, revoke, vary or even impound the passport and the other documents that relate to travel. If the passport is obtained for the reasons of fraud or if it is in possession by wrongful means, it is illegal. The other relevant grounds of restriction include sovereignty and integrity of India, national security, friendly relations with other states, etc., an offence of moral turpitude and imprisonment of at least 2 years, pending criminal proceedings, order of summons or arrests or the contravention of conditions for obtaining passport form the scope of restrictions.

1. On what Grounds can an Accused be allowed to Travel Abroad?

In order to ensure the completion of the trial in time, the right has to be given cautiously and especially the times whereby the trial is nearing the end, the right has to be very sparingly exercised. Thus, the court has a trend of implicating the want of an undertaking from the accused whenever this right is given to them, failing which they would be met with penalties or punishments if a default is made. The conditions also include the furnishing of bonds of security in various forms, such as money or temporary handing over of titles in this regard⁵⁴. There are other things that need to be ensured in order to keep track of the accused; for instance, their itinerary, foreign address and contact details are also taken to ensure their return. In the direct

⁵⁰ 1990(1) BLJR 462.

⁵¹ K. Mohammed v. State of Kerala, (2003) 10 SCC 220 (India).

⁵² Tarun Trikha v. State of West Bengal, 2015 (2) SCC 1879 (India).

⁵³ The Passports Act, 1967 § 10(3), No. 15, Acts of Parliament, 1967 (India).

⁵⁴ Suresh Nanda v. CBI, AIR 2008 SC 1414 (India).

circumstances, the courts also grant a security officer or personnel of police in order to keep an account of the accused and his whereabouts, and they accompany the accused on their travel. In order to guarantee the accused's cooperation, there can also be an accompaniment of an Investigating Officer (IO) who can keep a close watch on the accused and ensure the fulfilment of the conditions of the trial and ensure the attendance of the accused⁵⁵. There have been misconducts like seeking permission to travel to one country and then visiting a different country which also has to be checked,⁵⁶ and hence in the words of P&H High Court; the courts should be circumspect in allowing foreign travel during the pendency of the criminal case⁵⁷. On the flip side, in a travel that is not recurring as such, the accused wanted to submit his passport on his return, and this needs to comply with him; these directions are dependent upon the stage of the trial, the accused's conduct and compliance⁵⁸.

2. Other Considerations

The courts have to make an inquiry into the facts of the case as there might be a tendency from the accused to evade the trial and jump the gun, but that does not mean that due to the pendency of the cases, even in the most compelling matters, the accused would be denied the travel rights in order to ensure their attendance and prevent them from travelling, this, in particular, can be deleterious to the ends of the reasonableness and thus would lead to confinement of the accused for a long time and such a restriction could be unethical and illegal as iterated in the ruling of *Jitsingh Kalirai v. Kulbir Singh Ahuja*⁵⁹. Recently, even in the case of 498A, IPC, there has been a grant of the right to travel to the accused⁶⁰. Merely on the basis of the reason that the case has been pending for a long time does not hold a solid ground to deny the travel rights to an individual,⁶¹ but on the other hand, if a person exercises this right, then he cannot claim any prejudice that has occurred in their presence and cannot even challenge their status as accused in the case for that matter⁶². The onus has to be very broad, and it has to be decided in accordance with the urgency of the matter so as to grant the travel rights; the court can even compel the accused to furnish any evidence that would support their contention and compelling need for travel.

3. Grounds for the Denial of the Right to Travel to the Accused Person

⁵⁵ Pritam Pradhan v. State of A.P. and Anr., (Crl) Appeal No(s).9664/2013 (India).

⁵⁶ *LiveLaw*, (Dec. 22, 2021, 04:34 PM), <http://www.livelaw.in/>

⁵⁷ Daljit Singh Pandher v. State of Punjab & Ors., CRM-M-42836-2021. (India).

⁵⁸ *Id.*

⁵⁹ 1989 (43) ELT 3 (Bom).

⁶⁰ Deepak Sharma v. State of Haryana, 2022 *LiveLaw* (SC) 52 (India).

⁶¹ Enforcement Directorate v. Nemi Chand Jain, 2008 (101) DPJ 2055 (India).

⁶² Kanwal Nain Bahadur v. State (NCT of Delhi), 112 (2004) DLT 900 (India).

The denial usually depends upon the likelihood of the accused absconding as such, and if these grounds exist, then the right can be denied. The other considerations include the gravity of the offence as discussed above; if the accused is involved in a serious offence that has implications for society at large, then the right can be denied⁶³. The stage of the trial is also looked at as an important factor in denying this right; if the trial is at the stage of conclusion and there exists a compelling reason for the accused to be present, then he has to be present during the trial in order to ensure efficacious disposal of justice. But it has to be also seen that their right is not restricted in totality; if the court cannot make out the observations in regard to the accused's culpability, then the trial can be expedited if it is at an early stage and no unnecessary inconvenience should be caused to the accused⁶⁴. The discretion of the court exercised in this matter is very limited, though it is considered of paramount importance. But, it also has to be seen that travel rights can be met with severe conditions.

4. How can Travel be Restricted in the case of an Accused Person?

The restriction on the travel of mainly the accused has to be done in relation to the seizure of their passport, though it can be seen as contrary to the right to life and dignity under Art. 21 of the Constitution mechanically, but in line with the safeguards under the ruling of *Maneka Gandhi*. In the CrPC, too, vide S. 102(1),⁶⁵ the police officer has authorised the seizure of any document that falls within the connection of the commission of an offence that also includes, within its ambit, the seizure of the passport for travel. The police officer can only seize the passport on a temporary basis but cannot impound the same; the prime authority of seizure lies with the Passport Authority at the discretion of the Chief Passport Officer. The satisfaction of the Passport Authority in the case of prohibiting the accused's departure from the country has to be kept in consideration by the court while deciding the right of travel of an accused. The reasons can also be recorded by Passport Authority if they revoke the passport of a person as such. Though the Passport Authority can exercise its will in accordance with the powers accorded to them, it would also have civil consequences⁶⁶. In the case of *State of Orissa v. Binapani Dei*⁶⁷ that when an accused's right to travel abroad is brought to the challenge, then they have to be given a reasonable opportunity to be heard in that connection before the impoundment of their passport. The S. 10A⁶⁸ of the Act also states that the passports can also be suspended by the Central Government as such whereby the sovereignty and integrity of India,

⁶³ Shawn Anthony Mendonca v. State of Maharashtra, CR. APPLICATION NO.1378 OF 2019 (India).

⁶⁴ Assistant Director, Enforcement Directorate v. Ashok Ramchander Chugani, 2020(2) BLJ 334.

⁶⁵ *Supra* note 32, § 102(1).

⁶⁶ *Right of an Accused to Travel Abroad*, (Dec. 21, 2021, 05:55 PM), <https://www.mondaq.com/>

⁶⁷ (1967) IILLJ 266 SC.

⁶⁸ *Supra* note 48, § 10A.

security, friendly relations and the public interest would be given primacy. Then thereby, in the year 1979, there was an issue with the guidelines in respect of lookout circulars to ban or restrict the travel of persons not authorised to travel, which were amended in the cases of *Vikas Sharma v. Union of India*⁶⁹ and *Sumer Singh Salkan v. Asstt. Director & Ors.*⁷⁰ There also have been various modifications since then, with the latest one being in 2021. A LOC is initiated by the Bureau of Immigration (BoI) after receiving a request from the competent authority in case there is a cognisable offence under IPC; apart from that, the LOC can also be brought out in cases detrimental to the security, sovereignty, integrity, bilateral relations with any country, etc.

5. Look Out for Circulars (LOCs)

In the context of LOCs, as observed in the *Dhruv Tewari v. Directorate of Enforcement*⁷¹ case, it has to be seen that only the persons who are in suspicion, those under investigation or trial, or those of cognisable offence under IPC can be detained, arrested or prevented from leaving the country, the originating agency can, at the most only ask for intimation of arrival or departure. However, it was made clear in 2021 that the departure of a person can be made even in cases that fall in the exceptional category, even in the absence of an FIR. In *Noor Paul v. Union of India*,⁷² it was noted that the guidelines do not disclose that the LOC has to be supplied to a person, and that is violative of Art. 21 of the Constitution. The Karnataka High Court, on the same issue, has found that no notice ought to be issued compulsorily in the case of *Harshvardhana Rao K v. Union of India*⁷³ to the subject prior to the issuance of the LOC. But again, the case of *Vikas Chaudhary v. Union of India & Ors.*⁷⁴ Provided a very rational approach to the issuance of the LOCs, thereby providing that the LOCs restrict the right to travel and, thus, they should only be issued in the circumstances that are exceptional, and the reasons for issuance of the same should be cogent. It was also stated on the nature of LOCs that they could not be held to be treated as law; in the case of *Priya Parameswaran Pillai v. Union of India*⁷⁵ that the LOCs cannot be given the status of law, as in the light of the *Maneka Gandhi* and *AK Gopalan*⁷⁶ judgement that term 'law' mentioned can only be construed as enacted law within the scope of Art. 21.

6. The Recent Judicial Trends of LOCs

⁶⁹ W.P. (C) 10180/2009.

⁷⁰ W.P. (Crl.) No. 1315/2008.

⁷¹ 2022 LiveLaw (Del) 603.

⁷² CWP-5492-2022 (O&M)

⁷³ 2022 LiveLaw (Kar) 342.

⁷⁴ 2022 LiveLaw (Del) 21.

⁷⁵ W.P. (C) 774/2015.

⁷⁶ A.K. Gopalan v. State of Madras, AIR 1950 SC 27 (India).

The recent judicial trends also include that the directors of a company cannot deny the right to travel abroad when there is an absence of non-compoundable offence⁷⁷, and the banks cannot seek the LOC for the recovery of dues as such if there is no involvement of economic interest of the country⁷⁸. Recently, the Allahabad High Court has also deleted the bail condition of submission of a passport in a matrimonial dispute stating it to be an attack on the right to travel abroad⁷⁹. The LOCs can also stay in the matters of the Right to Travel Abroad for Livelihood Affected as affirmed in the case of *Mrityunjay Singh v. Union of India & Ors.*⁸⁰ On various grounds, the economic interest of banks is accorded with the national interest in the cases of Look Out Circulars, wherein the case of *Brij Bhushan Kathuria v. Union of India*⁸¹ & Ors. Stated that the independent director of a company could not be stopped from travelling abroad on the pretext of larger economic interest. But, in another case whereby there was a broad economic interest in the scope of the same right, in the case of *Chaitya Shah v. Union of India*,⁸² there was a close connection of larger public interest within the connection of economic interests on the actions of a single transaction. The Look Out Circulars cannot be requested for the recovery of dues that are expected by Indian banks to their foreign subsidiaries.⁸³

(E) Tryst with the International Law

Art. 13 of UDHR covers the position of the right to travel abroad in the international legal context, which is followed by Art. 12 of the ICCPR covers the position of the right to travel abroad in the international legal parlance and the right to come back to one's own country as well. This, in conjunction with the Human Rights Commission of the UN, also determines that permanent emigration can also be done with regard to the state of destination of an individual. In the *Satwant Singh* case, it was also stated that since the passport is a document of political nature, there cannot be any absolute right to be made in the regard of demand for a passport, and it lies with the state's will to either provide it or withhold the same as such. But, there is a peculiar situation at an international level as far as India is concerned; in the case of *Gramophone Company of India v. Virendra Pandey*,⁸⁴ it is stated that when there are cases of friction between the national and the international law level, the national law in that context will prevail.

⁷⁷ *Rajesh Kumar Agarwal & Ors. v. Regional Director (E), Ministry of Corporate Affairs, Kolkata & Ors.*, W.P. (C) No. 9502/2022 (India).

⁷⁸ *Mrs. Leena Rakesh v. Bureau of Immigration, Ministry of Home Affairs*, 2022 LiveLaw (Kar) 231 (India).

⁷⁹ 2022 LiveLaw (AB) 277.

⁸⁰ 2022 LiveLaw (Cal) 208.

⁸¹ 2021 SCCOnLine Del 2587.

⁸² 2021 SCCOnLine Bom 2967.

⁸³ *Vikas Aggarwal and Anr. v. Union of India & Ors.*, 2022 LiveLaw (PH) 264 (India).

⁸⁴ AIR 1984 SC 667.

IV. CONCLUSION AND THE WAY FORWARD

In recent times, the right to travel abroad has been regarded and held as a fundamental right in the Indian legal context. But the courts have to be extra cautious in the cases of the accused where the offences are grave and where the trial is at a conclusive stage. In the beginning, it was reluctance that the courts had in granting the fundamental right of right to travel abroad, but more recently, it is being provided to the accused as well if compelling reasons of urgency arise as well, there is a discussion upon how DRT cannot exercise the right to stop a citizen from travelling thus restricting the right to travel and the allowance of the right based upon certain strict condition which is the present approach of the court. It has to be seen in the light of the present judgements as to how even look-out circulars' catena of cases are emerging, which have been given utmost primacy in the cases of grave emergency and reasonable restrictions of sovereignty, integrity, maintaining friendly relations with the state and so on. The implications and ramifications of the human rights perspectives in this regard are mostly pro-citizen, and in the cases that inherently warrant the application of reasonable restriction, it is exercised accordingly, which is a positive sign as opposed to the restrictive approach of the past. There has been an immense inclusion of the subject matter of this right into the integration with an existing branch of knowledge and enhancing jurisprudence. The courts have to be very cautious and award the right to the accused and the persons who are not authorised to enjoy the right according to the letter of the law, for instance, juveniles, as discussed above in the context of higher education and for the future, it is also very important to track the growth of this right as it involves the international obligations of maintaining friendly connections with the other countries too. The emerging trends and dimensions in the context of Art. 19, 21 and other legislations, along with the case-by-case development, is also to be looked at and met with the appropriate response so as to fine-tune the existing law.
