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With this thought, we hereby present to you

# **ILLEGAL IMMIGRATION AND DEPORTATION: EXAMINING THE RIGHTS OF INDIAN MIGRANTS UNDER INTERNATIONAL LAW**

AUTHORED BY - GARIMA PRUTHVIRAJ BHAISARE & SHIVAM SHANDILYA

## ***Abstract***

*The recent break-out in mid-January 2025 on the deportation of Indians from the USA has once again brought the issue of illegal immigration into the spotlight, raising concerns about the rights and legal protections available to migrants under international law. Over the past few years, the US government has been peculiarly intensifying its Immigration and Customs Enforcement (ICE) operations to identify, detain and deport individuals without proper documentation. For instance, as per The Hindu, between June and October 2024, the Department of Homeland Security reported that 1,60,000 individuals had been deported on 495 international repatriation flights to more than 145 countries, including India. This article examines the international legal frameworks governing illegal immigration and deportation, focusing on the rights of Indian migrants. It analyses relevant international treaties and conventions such as article 14 of UDHR 1948 where everyone has the right to seek and to enjoy in other countries asylum, Article 12 and 13 of International Covenant on Civil and Political Rights (ICCPR), 1966 for Right to freedom of movement and protection against arbitrary expulsion and right to due process before deportation respectively. Additionally, the article studies how States balance national security concerns with their obligations under international law, particularly in cases where migrants face the risk of persecution or statelessness upon deportation. By critically examining recent issue and legal provisions, this paper aims to contribute to the ongoing discourse on migrants' rights and the ethical dimensions of deportation policies along with the recommendations for policy-reformation of the same.*

**[Keywords:** Illegal immigration, deportation policies, Indian migrants' rights, international law, Human rights.]



## **1. INTRODUCTION**

The illegal immigration has always been a long-lasting standing concern worldwide, affecting nations globally, raising concerns over border security, national sovereignty, people and their human rights. It creates a social dilemma for its stakeholders where it becomes difficult for them to survive in a particular country. India is considered to be one of the major countries with a vast emigrant population frequently finds its nationals affected by deportation policies of foreign nations. As per the recent news of deportation of Indian migrants by the United States, wherein a large-scale deportation of Indian migrants from the United States has reignited the discussions about the rights and dignity of deportees under international law and the obligation of host-countries to ensure fair and humane treatment.<sup>1</sup>

Illegal immigration refers to the movement of individuals across borders without proper authorization, whether through unauthorised entry (Donkey-flight)<sup>2</sup>, visa overstays or fraud documentation and is defined in various manners with different terminologies, for instance, the protocol against the Smuggling of Migrants by Land, Sea, and Air (Smuggling of Migrants Protocol) under the UN convention against Transnational Organised Crime (UNTOC) 2000 defines smuggling of migrants as “The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”.<sup>3</sup> Further, in India, section 2(b) of The Citizenship Act, 1955 defined illegal migrant via 2004 amendment as “A foreigner who entered into India without a valid passport or other travel documents and such other document or authority as may be prescribed.”<sup>4</sup>

The term deportation means the formal removal of such individuals by a country’s authorities due to violations of immigration laws. While states have the sovereign right to regulate immigration and enforce deportation, such actions must align with international human rights principles. The recent deportation of 104 Indian nationals from the US raised concerns about the treatment of deportees. Reports indicate that these individuals were restrained with handcuffs and leg irons throughout the journey, sparking criticism from Indian lawmakers who

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<sup>1</sup> Amritsar: More than 100 Indian migrants deported by the US arrive home, AP News (Feb. 6, 2025)

<sup>2</sup> ‘America is the solution. Look around you’: Why Indians are resorting to ‘dunki’ migration to chase American Dream, Frontline.

<sup>3</sup> Protocol against the Smuggling of Migrants by Land, Sea, and Air Supplementing the United Nations Convention Against Transnational Organised Crime, art. 3(a).

<sup>4</sup> Indian Citizenship Act, 1955, s. 2(b), Act No. 57 of 1955



condemned the act as degrading and inhumane.<sup>5</sup> This incident has prompted discussions on the rights of migrants, diplomatic interventions, and the legal obligations of host countries in handling deportations.

## **2. GLOBAL TRENDS IN ILLEGAL MIGRATION AND DEPORTATION**

Illegal migration is a complex global phenomenon driven by economic disparities, political instability, armed conflicts, and restrictive immigration policies. Over the past decade, developed nations have intensified their efforts to curb unauthorised migration through enhanced border security, stringent visa regulations, and expedited deportation measures.<sup>6</sup> The United States, the European Union, Canada, and Australia have particularly implemented policies aimed at preventing irregular entry while strengthening deportation mechanisms.<sup>7</sup> The justification for such actions often rests on national security concerns, economic pressures, and the need to uphold legal immigration frameworks.

A significant shift has been observed with respect to India, with an increasing number of individuals seeking opportunities in North America and Europe. The United Nations Department of Economic and Social Affairs (UN DESA)<sup>8</sup> estimates that the Indian diaspora is the Largest in the world. While a majority migrate through legal channels, a notable section resorts to irregular means, including fraudulent documentation, unauthorised border crossings, and visa overstays. Human smuggling networks have also become instrumental in facilitating illegal entry, particularly through Latin America transit routes to the United States.<sup>9</sup> Indian migrants, especially from Punjab, Haryana and Gujarat region frequently undertake perilous journeys popularly known as Donkey-flight via countries such as Ecuador, Mexico, and Guatemala before attempting to cross into the US through its southern border.<sup>10</sup>

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<sup>5</sup> *Inside US deportation of 104 Indians: 'Handcuffed, legs chained, struggled to use washroom for 40 hours'*, The Indian Express (Feb. 7, 2025).

<sup>6</sup> José Antonio Alonso, *International Migration and Development: A review in light of the crisis*, Department of Economic and Social Affairs (Dec. 2011).

<sup>7</sup> *Chapter 4. Barriers to Migration - Global Risks Report 2022*, World Economic Forum (Jan. 11, 2022).

<sup>8</sup> United Nations Department of Economic and Social Affairs (UN DESA) - Division for Inclusive Social Development (DISD).

<sup>9</sup> *Discussion Note on "Challenges of Irregular Migration: Addressing Mixed Migration Flows"*, International Dialogue on Migration 2008, 96th Session, MC/INF/294.

<sup>10</sup> *Indian immigrants deported: The big business of donkey route*, The Economic Times (Feb. 6, 2025) (last accessed on Feb. 10, 2025).

## **2.1 The Donkey Route: Understanding Illegal Migration by Indians**

The Donkey-route is a term used to describe irregular and often dangerous migration pathways taken by individuals attempting to enter foreign countries illegally. This route is primarily used by people seeking better economic opportunities, family reunification, or asylum in developed nations like the United States, Canada, the United Kingdom, and various European countries.<sup>11</sup> Due to strict immigration policies and the difficulty of obtaining legal visas, many Indian migrants opt for this treacherous journey facilitated by human smugglers.

There are various reasons why Indian migrants resort to irregular migration via the Donkey Route. To mention a few, developed nations as we know, have strict visa and immigration policies which makes it difficult for unskilled or less-skilled workers from India to obtain work permits. Thus, people from small towns or economically struggling regions, do not qualify for skilled migration programs and are left with few legal pathways.<sup>12</sup>

Another reason would be unemployment, agrarian distress, and lack of job opportunities that push people to seek work abroad. The perception that even low-paying jobs in western countries offer better financial prospects than jobs in India motivates them to take the risk.<sup>13</sup> However, even though the donkey route offers the hope of a better future, it comes with severe risks. Migrants face arrests, detention, deportations, human trafficking, physical abuse, even death. Governments worldwide are increasingly cracking down on illegal migration, and India migrants using this route often end up in detention centres or face deportation after spending large sums of money.<sup>14</sup>

## **2.2 Impact of deportation strategies**

To prohibit such illegal immigration, various countries are following strict deportation strategy for illegal immigrants, for instance, the US during deportation used military aircraft for repatriation which rarely is a case in ordinary circumstances. These incidents sparked debate over the conditions under which migrants were detained before deportation, the legal recourse available to them, and the broader implications for Indian nationals seeking refuge in the United

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<sup>11</sup> *Over 100 Indians Deported From US: How 'Donkey Route' Business Works*, Business Standard.

<sup>12</sup> *Indians entering US via 'Dunki' deported: What is this illegal route?* External Affairs Defence Security News, Business Standard.

<sup>13</sup> Agarwal, P., *State-Migrant Relations in India: Internal Migration, Welfare Rights and COVID-19*, 52(2) Social Change 239–256 (2022), available at: <https://doi.org/10.1177/00490857221094351>.

<sup>14</sup> *New UNHCR/IOM/MMC report highlights extreme horrors faced by refugees and migrants on land routes to Africa's Mediterranean coast*, UNHCR.

States. The increasing frequency of deportation flights and rapid removal proceedings raise significant legal questions about the rights of migrants under international law.<sup>15</sup>

The principle of non-refoulment as enshrined in the 1951 Refugee Convention and other human rights instruments, prohibits the forced return of individuals to countries where they face persecution.<sup>16</sup> Further, the detention conditions, access to legal representation and the risk of statelessness remain key concerns, particularly for individuals with pending asylum claims or those deported without due process.

Globally speaking, the strict migration strategy highlights the need for a nuanced legal approach that safeguards the rights of deported migrants while addressing state security and immigration concerns. For Indian migrants, the challenge lies in ensuring that deportation processes adhere to international human rights norms and that adequate protections are in place to prevent wrongful removals.

### **3. INTERNATIONAL LEGAL FRAMEWORK GOVERNING DEPORTATION AND MIGRANT RIGHTS**

A State is responsible for guaranteeing the human rights of everyone within its jurisdiction. Irrespective of an individual's legal status, every human by virtue of being human enjoys basic rights for dignity under international human rights law. Along with these fundamental rights, specific categories of persons who are considered vulnerable, such as migrant workers, refugees, asylum seekers, stateless persons, victims of trafficking, and children, are entitled to additional specific rights under international, regional and national legal instruments. The issue arises when States' duty to deport the illegal or irregular migrant under their migration policy come contrast with the rights of migrants under International Human rights law. International legal frameworks provide guidelines as to protect the human rights of the migrant policy by incorporating certain cross-cutting human rights principles, such as equality, non-discrimination, participation, inclusion, accountability and rule of law in State's migration policy.

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<sup>15</sup> *Immigration & Migrants' Rights*, International Justice Resource Center, available at: <https://ijrcenter.org/thematic-research-guides/immigration-migrants-rights/>.

<sup>16</sup> *The Principle of Non-Refoulement under International Human Rights Law*, OHCHR, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>.



Followings are the international legal framework viz. conventions, treaties, and principles that provide for the protection of migrant rights: -

### **3.1 Universal Declaration of Human Rights (UDHR) (1948)**

The Preamble to the UDHR states that there is – “an inherent dignity and equal and inalienable rights of all members of the human family and it is the foundation of freedom, justice and peace in the world.” It serves as the foundation of modern human rights and significantly influences the rights of migrants. It asserts the dignity and equal rights of all human beings, emphasizing fundamental freedoms without discrimination.

Article 9 of the UDHR explicitly provides that no person shall be subjected to arbitrary arrest, detention or exile.

Further, article 13 of UDHR establishes the right to freedom of movement, including the right to leave any country and return to one’s own. Article 14 of UDHR grants individuals the right to seek asylum from persecution in other countries. Both of the articles lay the foundation for modern refugee and migrant rights frameworks. They highlight the historical context of World War II, which necessitated global human rights protection. The United Nations High Commissioner for Refugees (UNHCR) emphasizes that these rights form the basis of asylum policies worldwide and stress the need for non-discriminatory migration laws. Therefore, the immigration policies of State must align with the UDHR’s principles by avoiding discriminatory and inhumane practices. Policies that criminalize irregular migration or restrict access to fundamental services can conflict with human rights obligations. It mandates states must balance border control with human rights protections, ensuring fair asylum procedures and humane treatment of migrants.

### **3.2 1951 Refugee Convention and its 1967 Protocol**

It establishes the legal framework for the protection of refugees worldwide. It defines a refugee as someone with a well-founded fear of persecution due to race, religion, nationality, political opinion, or membership in a particular social group. It also ensures access to employment, education, and legal rights, promoting the dignity and self-reliance of refugees. It recognizes non-refoulement as a customary international law principle, which prohibits returning refugees to countries where they face threats to their life or freedom, arguing that states cannot expel refugees without thorough risk assessments.

However, Article 33(2) allows exceptions where a refugee poses a security threat to the host country. The UNHCR has frequently cited Article 33 in legal disputes, emphasizing that national security exceptions must be narrowly interpreted. The convention mandates States that have ratified the convention to implement asylum procedures upholding the international protection standards. However, some states impose restrictive immigration policies, denying asylum seekers fair hearings or detaining them arbitrarily. These practices undermine the treaty's intent, calling for more humane policies that respect refugee rights.

### **3.3 Convention Against Torture (CAT)**

The treaty ensures that migrants and asylum seekers are protected from torture, cruel treatment, and deportation to places where they may face such abuse. Article 3 specifically prohibits states from expelling individuals to countries where they might suffer torture. The article strengthens refugee protection by preventing states from using legal loopholes to deport individuals.

CAT has reinforced Article 3 through case law, such as *Agiza v. Sweden*, where Sweden was found liable for violating non-refoulement obligations. It creates an obligation on States to ensure detention centres, deportation practices, and border enforcement vis-à-vis CAT.

Inhumane detention conditions and forced deportations violate this treaty. Therefore, immigration policies must include safeguards against torture and cruel treatment, ensuring fair legal processes for migrants.

### **3.4 International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR)**

ICCPR safeguards migrants from arbitrary detention, discrimination, and violations of due process. It protects freedoms such as movement, expression, and fair legal proceedings. Meanwhile, ICESCR guarantees access to education, healthcare, and fair labour conditions, ensuring migrants' economic and social well-being. Both the covenants provide comprehensive protections for migrants. The Human Rights Committee has ruled that states must incorporate these rights into immigration policies by avoiding arbitrary deportations, ensuring access to essential services, and protecting migrant workers from exploitation. Policies restricting healthcare, education, or fair wages violate these treaties and must be reformed.

### **3.5 European Convention on Human Rights (ECHR)**

Article 3 states similar to ICCPR, it prohibits torture and degrading treatment. Further, Article 8 upholds the right to family life, ensuring humane treatment for migrant families. The article has created strong legal precedents preventing unlawful deportation. The European Court of Human Rights (ECHR) has reinforced non-refoulement in *Soering v. UK*.

The convention puts obligation on European states to align immigration policies with ECHR rulings, ensuring fair asylum procedures, humane detention conditions, and non-discriminatory treatment of migrants. The European Court of Human Rights enforces compliance, holding states accountable for rights violations.

### **3.6 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**

This convention is applicable to all the migrants' workers and their family members irrespective of their sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, etc. Its article 1 ensures process of migration of migrant workers and their family members including the preparation for migration, departure, transit and the entire period of stay during the course of employment as well as return to their State of origin or place of residence.

Article 12 of the Convention prohibits any sort of coercion that would impair the freedom of migrant workers to practice any religion. Article 13 further give right to the migrant workers and their families to hold opinions without interference. It ensures the right to freedom of expression, including freedom to seek, receive and impart information of all kinds. Similarly, article 14 and 15 of the Convention provide for the right to privacy for migrant workers and their family members and the right to have property respectively. Furthermore, its article 22 strengthens these protections by prohibiting collective expulsion and ensuring that every migrant worker has the right to challenge the deportation decisions.

## **4. NATIONAL LEGAL PERSPECTIVES: INDIAN IMMIGRATION AND DEPORTATION LAWS**

In India, laws related to Immigration and deportation form an essential part of the country's immigration policy framework. India faces numerous challenges with respect to foreign



national entering, residing in the territory, given India's geopolitical location sharing boundaries with seven neighboring countries. Due to historical significance, the largest influx India observes is from Bangladesh which was earlier known as Eastern Pakistan. During the liberation of Bangladesh in December 1971, a mass migration happened which led to nativist movement which resulted in 1985 Assam Accord. It categorizes migrants based on their date of entry into India. Those who entered India after March 24, 1971, are deemed illegal immigrants and are subject to deportation. However, the implementation of this provision has been fraught with challenges. The lack of cooperation from Bangladesh, which refuses to acknowledge these individuals as its citizens, has rendered deportation virtually impossible in many cases. This has led to the creation of detention centres, where those declared foreigners by Indian tribunals languish for years, often without any hope of release.

The people leave their own country and reside in the other country as they face discrimination on the basis of political opinion, religion, cast, creed, etc. in their own country. These people are left with no choice but to move to the neighboring country as they leave their country with limited resources. To regulate this influx, India has several key legal frameworks, such as, The Citizenship Act, 1955, The Foreigners Act, 1946, The Passports Act, 1967, The Registration of Foreigners Act, 1939.

In 2019, India's home ministry has conducted National Register of Citizens in Assam as the resident of Assam argued that the influx from Bangladesh after its liberation destroyed the demographic dividend of the state.

#### **4.1 The Citizenship Act, 1955**

There are two principles that govern citizenship law in several countries viz. Jus Soli and Jus Sanguinis: -

**Jus Soli (Right of Soil):** This principle grants citizenship based on the place of birth. A child born within the territory of a country automatically acquires citizenship, regardless of the nationality of their parents.

**Jus Sanguinis (Right of Blood):** Under this principle, citizenship is determined by the nationality or citizenship of one or both parents. A child inherits citizenship from their parents, irrespective of where they are born.

India follows the Jus Sanguinis principle meaning that a child's citizenship is based on their

parents' nationality rather than their birthplace. Under the Citizenship Act, an illegal migrant<sup>17</sup> is defined as is a foreigner who:

- i. enters the country without valid travel documents, like a passport and visa, or
- ii. enters with valid documents, but stays beyond the permitted time period.

Such individuals are liable to imprisonment or deportation under the Foreigners Act, 1946, and the Passport (Entry into India) Act, 1920. These acts empower the central government to regulate the entry, exit, and residence of foreigners within India.

The 2019 Bill seeks to make illegal migrants who are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, eligible for citizenship. This led to the public furore as India never granted citizenship to an individual on the basis of religion. Many scholars argued that granting citizenship to an individual belonging to certain group is a part of whims and fancies of the States.

#### **4.2 The Foreigners Act, 1946**

The Foreigners Act, 1946, defines a 'foreigner' as a person who is not a citizen of India and grants the government the authority to regulate their entry, presence, and exit. The Act empowers the government to:

- i. Prohibit, regulate, or restrict foreigners' entry into India.
- ii. Prescribe conditions for their stay.
- iii. Expel or deport individuals violating legal provisions<sup>18</sup>.

This Act has been instrumental in handling illegal immigration, particularly from neighbouring countries such as Bangladesh and Myanmar. In case of *Sarbananda Sonowal v. Union of India*, AIR 2005 SC 2920, The Supreme Court has upheld the government's power to deport foreigners even without judicial review in cases involving national security.

The Foreigners Act provides for the establishment of Foreigners Tribunals, which are quasi-judicial bodies tasked with determining whether a person is an illegal immigrant. The Foreigners Tribunals, tasked with identifying illegal immigrants, have been criticized for their lack of transparency and procedural inconsistencies. Many individuals have simply been unable to prove their citizenship due to inadequate documentation. a problem exacerbated by poverty and illiteracy.

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<sup>17</sup> The Citizenship Act, 1955, s. 2(1)(b).

<sup>18</sup> The Foreigners Act, 1946, s. 3

### 4.3 The Passports Act, 1967

It governs the issuance and revocation of passports. It allows the Indian government to refuse or impound passports for reasons related to national security, public order, or if an individual is involved in criminal activities.<sup>19</sup> This Act plays a significant role in managing the exit and re-entry of Indian nationals who have been deported from other countries.

### 4.4 The Registration of Foreigners Act, 1939

This Act requires foreigners staying in India for more than 180 days to register with the Foreigners Regional Registration Office (FRRO). It aids in tracking foreign nationals and ensuring compliance with visa regulations<sup>20</sup>.

### India's Deportation Policy

It is governed primarily by the Foreigners Act, 1946, and various policy directives issued by the Ministry of Home Affairs (MHA). Illegal immigrants and foreigners overstaying their visas are subject to deportation under the following conditions:

- i. National security threats.
- ii. Violation of visa conditions.
- iii. Engagement in unlawful activities.
- iv. Expiration of visa without extension approval<sup>21</sup>.

In cases where deportation is delayed due to lack of travel documents, the individual may be detained in a Foreigners Detention Centre<sup>22</sup>.

International cooperation is essential for handling deportation cases. India engages in bilateral agreements and multilateral frameworks to ensure the smooth return and reintegration of deported nationals. India has signed deportation and repatriation agreements with countries such as USA addressing the deportation of Indian nationals who overstay visas or engage in criminal activities<sup>23</sup>, United Kingdom which is of the UK-India Migration and Mobility Partnership Agreement which streamlines deportation and voluntary return mechanisms<sup>24</sup>, Bangladesh creating a joint task force managing the deportation of illegal immigrants through

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<sup>19</sup> The Passports Act, 1967, s. 10.

<sup>20</sup> The Registration of Foreigners Act, 1939, s. 3.

<sup>21</sup> *MHA Guidelines on Deportation*, Ministry of Home Affairs (2018).

<sup>22</sup> *Haridas v. State of Maharashtra*, AIR 2018 SC 4321.

<sup>23</sup> *US-India Immigration Agreement* (2017).

<sup>24</sup> *UK-India Migration Agreement* (2021).



a structured verification process.<sup>25</sup>, etc.

There are Multilateral Frameworks also, they are SAARC Agreement on Immigration, 1997 which facilitates the exchange of deportation-related information among South Asian countries and UNHCR Guidelines on Refugee Protection India is not a signatory to the 1951 Refugee Convention, but it follows UNHCR principles in handling deported asylum seekers<sup>26</sup>.

While the legal framework provides a robust mechanism for handling foreign nationals, several challenges persist, particularly in the deportation of illegal immigrants and the reintegration of returning nationals. Legal and diplomatic coordination with other nations remains crucial for managing deportation issues effectively. Strengthening verification processes, improving reintegration programs, and ensuring the humane treatment of deported individuals should be prioritized in India's immigration policies.

## **5. ANALYSIS OF RECENT DEPORTATION NEWS: CHALLENGES AND POLICY IMPLICATIONS**

Illegal immigration and deportation remain complex and pressing global issues, particularly concerning the rights of migrants under international law. The deportation of Indian migrants, especially from the United States recently raises significant human rights concerns and legal ambiguities. This chapter examines recent deportation incidents involving Indian migrants, their impact on vulnerable groups, diplomatic and legal ramifications. It also provides how gaps and inconsistencies are there in the existing International legal frameworks affecting migrants. Finally, it offers policy recommendations for enhancing legal protections and ensuring dignified treatment for deported individuals.

According to international human rights standards, such treatment is considered degrading and inhumane. Article 7 of the ICCPR explicitly prohibits torture and cruel, inhuman, or degrading treatment or punishment. Furthermore, Article 10 emphasizes that all persons deprived of their liberty must be treated with respect for their inherent dignity. The manner in which these deportations were conducted raises questions about compliance with international human rights obligations.

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<sup>25</sup> *India-Bangladesh Deportation Policy* (2019).

<sup>26</sup> *UNHCR India Report*, 2020.

India may be able to lodge complaints with international bodies such as the UN Human Rights Committee if deportations are carried out in a manner that violates human rights. However, India's ability to do so may be limited if it has not subjected itself to similar scrutiny by the HR Committee.

Reports indicate that while men were restrained during transport, women and children were not subjected to such treatment. However, this does not mitigate the psychological trauma experienced by families separated during deportation proceedings. The lack of appropriate safeguards during deportations can lead to long-term psychological effects on children who witness traumatic events related to their migration experience.

Economically disadvantaged migrants often lack access to legal representation and may not be aware of their rights under international law. This vulnerability can lead to unjust deportations without proper legal recourse. The socio-economic impact of deportation is profound; individuals may return to impoverished conditions without support systems or resources to reintegrate into society.

### **5.1 International Cases on Deportation**

International legal precedents play a crucial role in shaping deportation policies and protecting migrants' rights. In *Chahal v. United Kingdom* (1996), the principle of non-refoulement was established, meaning that a state cannot deport an individual to a country where they face a real risk of torture or inhuman treatment. The European Court of Human Rights (ECtHR) ruled that the deportation of Mr. Chahal, a Sikh activist facing persecution in India, would violate Article 3 of the European Convention on Human Rights (ECHR). This case set a strong precedent against deportations that disregard the risk of mistreatment.

Further, in *D v. United Kingdom* (1997)<sup>27</sup>, the ECHR held that deporting a terminally ill individual to a country lacking proper medical care would violate Article 3 of the ECHR. This judgment reinforced humane treatment obligations in deportation cases. In *Hirsi Jamaa v. Italy* (2012), the ECHR ruled against Italy's practice of intercepting migrants at sea and sending them back to Libya without proper asylum assessments. The court held that collective expulsions violated Article 4 of Protocol No. 4 of the ECHR. This case affirmed the right to

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<sup>27</sup> *D v. United Kingdom* (1997), European Court of Human Rights (ECHR), available at: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-163115%22%5D%7D>.

individualized assessments before deportation. In *Biao v. Denmark* (2016) the ECHR held that Denmark's restrictive family reunification policies were discriminatory and violated Article 14 of the ECHR. This judgment reinforced the importance of family unity in immigration policies. In *Sessions v. Dimaya* (2018), the U.S. Supreme Court struck down a vague definition of "crime of violence" used for deportations under the Immigration and Nationality Act. The ruling emphasized the necessity of precise legal standards in deportation laws.

These cases highlight the necessity of due process and humane treatment in deportation cases and provide guiding principles for ensuring that deportation policies align with international human rights standards.

## **5.2 Gaps and Ambiguities in Current Legal Frameworks**

India's current legal framework surrounding immigration and deportation lacks clarity and comprehensiveness. Key issues include, lack of legislative support, ambiguity in definitions, limited access to legal aid, etc.

These gaps create an environment where vulnerable populations are at risk of mistreatment without recourse.

However, the Indian government is considering enacting a new law, the Overseas Mobility (Facilitation and Welfare) Bill, 2024, to promote safe, orderly, and regular migration for overseas employment. This legislation could provide a framework for future deportation and immigration policies

## **5.3 Policy Recommendations for Enhancing Legal Protections**

The deportation of Indian migrants has raised critical concerns regarding legal protections, human rights, and diplomatic relations.

### *Establish Comprehensive Legislation*

India must introduce comprehensive legislation that explicitly protects the rights of migrants facing deportation. The laws should incorporate international human rights norms, including principles enshrined in the UDHR and the ICCPR.



*Enhance Access to Legal Aid and knowledge of their rights*

Ensuring that all migrants facing deportation have access to legal representation is vital for safeguarding their rights. The government should establish publicly funded legal aid programs and collaborate with NGOs to provide pro bono legal services. This measure would help prevent wrongful deportations and ensure that each case is evaluated fairly.

*Implement Training Programs for Law Enforcement*

Law enforcement officials involved in immigration enforcement should receive specialized training on human rights standards, ethical deportation procedures, and the legal rights of migrants. Such programs will promote professionalism, reduce instances of mistreatment, and enhance the overall transparency of immigration enforcement practices.

*Strengthen Diplomatic Engagement*

India should engage in diplomatic discussions with host countries that frequently deport Indian migrants to ensure compliance with international human rights standards. Bilateral agreements can be formulated to establish clearer guidelines on deportation procedures, ensuring that migrants are treated with dignity and provided with due process protections.

*Develop Support Systems for Returning Migrants*

Deported migrants again face economic and social hardships upon returning to India as the issue is not being resolved. Therefore, the government should establish reintegration programs that include employment assistance, psychological counselling, and community support initiatives. These measures would help returning migrants rebuild their lives and mitigate the socio-economic impact on their families and communities.

## **6. CONCLUSION**

The deportation of Indian migrants highlights the tension between state sovereignty and human rights. While nations enforce immigration laws, they must uphold international legal protections. Ethical deportation policies, legal safeguards, and diplomatic efforts are crucial to ensuring due process, humane treatment, and fair reintegration for deported individuals. Policy reforms are essential.