

Fundamental Rights of Foreigners

March 24, 2022

In news—Recently, the Union government has asked the Supreme Court's help in framing a law on fundamental rights of foreigners.

Key updates-

- The **Union government wants the Supreme Court's help to frame a law with "long-lasting implications" on the rights of foreigners who violate visa conditions.**
- **The government argues that issuance of visa is a "sovereign function". There cannot be any remedy in court for a foreigner who breaks visa conditions.** The Centre has indicated it wants a law which says that. Moreover, it seems to need the backing of the court too.

Previous Supreme Court judgements on the issue-

- A 67-year-old **judgment of a Constitution Bench in Hans Muller of Nuremberg VS Superintendent**, Presidency Jail, Calcutta is **a much-thumbed precedent from the Supreme Court** in matters concerning rights of foreigners in India.
- **The top court, in this judgment, held that the Centre had an "absolute and unfettered right" to expel foreigners. But it added that foreign nationals have the basic right to be not deprived of their life or liberty "except according to procedure established by law".** The judgment took into consideration the prospect of a foreign national being detained before expulsion.
- **The five-judge bench in 1955 held that article 21 guarantees the protection of personal liberty to citizen and foreigners alike.** No person can be deprived of his personal liberty 'except according to procedure established by law.

- **A seven-judge Bench of the top court in Maneka Gandhi case interpreted the word “law” in the expression “procedure established by law” in Article 21 to be a law which “must be right, just and fair and not arbitrary, fanciful or oppressive”.**
- The court held that the mere prescription of “some kind of procedure” cannot ever meet the mandate of Article 21.
- **The court had observed in its judgment in A.K. Roy’s case that “procedural safeguards are the handmaids of equal justice** and since the power of the government is colossal as compared with the power of an individual, the freedom of the individual can be safe only if he has a guarantee that he will be treated fairly”.
- **In short, any law or procedure the government proposes to frame to curtail a foreigner’s right to move a local court to protect his life and liberty should be non-arbitrary and pass the test of reasonableness. Such a law needs to be open for judicial review.**
- After all, **the top court’s nine-judge Bench in the historic privacy verdict of 2017 had found judicial review “a powerful guarantee against legislative encroachments on life and personal liberty... To cede this right would dilute the importance of the protection granted to life and personal liberty by the Constitution”.**

Rights available to citizens and foreigners in India

<p>Rights available to citizens only</p>	<p>Rights available to both citizens & Foreigners(except enemy aliens)</p>
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- **Article 15:** Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
- **Article 16:** Equality of opportunity in matters of public employment.
- **Article 19:** Freedom of Speech and Expression.
- **Article 29:** Protection of language, script and culture of minorities.
 - **Article 30:** Right of minorities to establish and administer educational institutions.

- **Article 14:** Equality before law.
- **Article 20:** Protection in respect of conviction for offences.
- **Article 21:** Protection of life and personal liberty.
 - **Article 21A:** Right to elementary education.
- **Article 22:** Protection against arrest and detention in certain cases.
- **Article 23:** Prohibition of traffic in human beings and forced labour.
- **Article 24:** Prohibition of employment of children in factories etc.
 - **Article 25:** Freedom of conscience and free profession, practice and propagation of religion.
- **Article 26:** Freedom to manage religious affairs.
 - **Article 27:** Freedom from payment of taxes for promotion of any religion.
 - **Article 28:** Freedom from attending religious instruction or worship in certain educational institutions.