

Right to return to the country of origin

By Barrister Harun ur Rashid

Former Bangladesh Ambassador to the UN, Geneva.

The denial of the right to return to a person's country of birth/origin is against three well-established norms namely,

- (a) notion of justice
- (b) breach of domestic law
- (c) breach of international law

Let us discuss the above issues in somewhat detail in the following paragraphs.

What is justice?

It is an instinct for an individual to know what constitutes justice or injustice. If some one says that charity is not good and murder is good, would any individual accept it? No, because it is against innate and established moral values. There exists a relationship between morality and justice, justice and righteousness.

According to Plato and Aristotle, justice is the mother virtue and justice is whatever is due to an individual, not less and not more. Plato used the Greek word "Dikaisyne" for justice which comes very near to the notion of 'morality' or 'righteousness'.

The concept of justice may be synonymous with what is known in Bangla as *bibek*, (*good conscience*), *Jathartha* (*just*), and *nyabichar* (*righteous treatment*). That means whatever goes against such concepts is perceived as injustice.

In the light of the above, if a citizen is barred from entry into the state of origin, it arguably constitutes injustice toward that citizen.

Breach of domestic law:

States are free to enact laws to determine their citizens. Citizenship is conferred on an individual by operation of domestic laws. There are two methods of acquisition of citizenship. An individual gets his/her citizenship (a) by birth or (b) by blood.

First one is that a child acquires the citizenship of that country where he/she is born. If a child is born in the USA, that child will acquire US citizenship, even the child's parents are not US citizens.

The second system is that a child gets his/her citizenship from parents irrespective of place where the child is born. For example, if a child is born in Argentina, that child acquires German citizenship because the child's parents are German citizens

Once citizenship is conferred on a person, the citizen is thus endowed with certain political and civil rights and obligations.

Citizenship constitutes a legal attachment characterized by a genuine connection of interests and sentiments with a state. There is a legal nexus between a state and a citizen, wherever that individual may live.

Both the state and the citizen have acquired certain rights and obligations toward each other. A citizen pays taxes, may join armed forces, may vote in the election and demonstrate commitment and loyalty to the state, while the state protects the citizen within the state and abroad.

A state protects its citizens abroad and the passport given to the citizens requests foreign governments to treat the citizens to pass freely without let or hindrance and to afford the citizens every assistance and protection they may stand in need while they are in a foreign country. If a citizen is in trouble overseas, the embassy looks after the welfare of the citizen and this constitutes as one of the consular functions of an embassy/high commission.

If a citizen is wronged /injured by an action of another state, the state is eligible to sue the other state on behalf of the wronged/ injured citizen. This right of a state is based on personal jurisdiction of states over their citizens. A State has both territorial and personal jurisdictions on an individual.

If a citizen commits a crime overseas, a citizen may be put on trial in his/her country because the state extends its personal jurisdiction over its citizen even while the citizen is abroad. For example, citizens of Bangladesh may be put on trial under Section 3 of the Bangladesh Penal Code within country if they commit crime overseas.

The close connection is emphasized in the Bangladesh Constitution that stipulates that a person is disqualified for being a member of parliament who acquires the citizenship of or affirms or acknowledges allegiance to, a foreign state (Article 66.2).

The connection can be severed if that citizen becomes a citizen of another state. Even then, some states have retained provisions of double nationality. For example, a Bangladeshi can be both Bangladeshi and Australian citizen, by holding the passports of both states.

When a citizen having double passports travels abroad, the important thing is to note which passport that individual uses for his/her travel. This will demonstrate that the citizen has preferred himself/herself to being closer to one state than the other by using one of the travel documents (i.e. Bangladesh or Australian).

From the above discussion, it is noted that it is the citizenship which legally binds both the state and the citizen and other states recognize this umbilical connection.

Some writers have compared the relationship between a citizen and the state of origin to that of between a parent and a child. It means that the parent extends its long hand (jurisdiction) on the child on the basis of close connection.

That is why it is argued that if a citizen is barred an entry to his/her state of origin, it would be construed as a breach of domestic citizenship law.

Breach of International law:

By barring a citizen to enter into a country of origin may tantamount to ceasing connection with that citizen by the state of origin. As a result, that citizen may be perceived by other states as stateless because there is no certainty of protection emanating from that state while that person is in overseas.

The issue of statelessness has been a major concern in international law. International law, therefore, does not approve statelessness of a person because of vulnerability and insecurity of that person. A stateless person is often compared with a vessel without any flag in the open sea.

The Hague Convention of 1930 adopted a Special Protocol Concerning Statelessness. It states: "If a person after entering a foreign country loses the nationality without acquiring another nationality, the state whose nationality the person last possessed is bound to admit that person at the request of the state in whose territory the person is."

The UN took further initiative to reduce statelessness of a person by adopting two Conventions:

- (a) The 1954 Convention Relating to the Status of Stateless Persons
- (b) The 1961 Convention on the Reduction of Statelessness.

The main features of the Conventions are to reduce statelessness of a person, whatever the circumstances.

Article 1 of the 1954 Convention defines the term "stateless person" as: "A person who is not considered as a national by any state under the operation of its laws".

Article I of the 1961 Convention states "A contracting party shall grant its nationality to a person born in its territory who would otherwise be stateless". Article 8 of the Convention further states: "A contracting state shall not deprive a person of its nationality if such deprivation would render him stateless."

{In the Conventions the term "nationality" is preferred to "citizenship". Both terms are loosely interchangeable.}

Conclusion:

Citizenship binds a legal relationship between a citizen and a state of origin. The state of origin and a citizen has an umbilical relationship under both domestic and international laws. The rights and obligations of each party are reciprocal.

Furthermore, the 1954 and the 1961 Conventions demonstrate that statelessness of a person is a matter of international concern and a citizen should not be placed in a situation that is deemed as statelessness. Such issues may come within the jurisdiction of the UN Human Rights Council for purported breach of human rights, to which Bangladesh is a responsible member.

In the light of the foregoing paragraphs, it is strongly argued the act of barring a citizen to entry into the state of origin is not only against the notion of justice but is construed to be against both domestic and international laws.