

# Crimes relating to Indian passport act, 1967

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## Introduction

Passport is a license, which is issued for a citizen of a country to travel abroad. In India the law on the passport is first passed in the year 1967 and this is titled as “The Indian Passport Act, 1967 which is an ordinance converted Act. In the changing scenario, crime is organized in a modern way and criminals are more updated than the investigators, forensic scientist and public at large as they are using all modern techniques and tools in order to execute their plans to destruct the society. Due to rapid changes in technology and availability of high-tech instrument the criminals are more active in unlawful activities to produce counterfeit travel documents. Passport is an important travel document issued by the Government of India. Passport forgery is directly related with the diplomatic as well as internal security of the country. Indian passport is undoubtedly the most valuable travel and identity document in the world issued by Passport authority of India, Ministry of External Affairs and Government of India to a citizen of India for travel abroad.

Indian passport can be classified in to various categories such as Red Passport called Diplomatic passport, issued to Government diplomats and staff of High Commission posted abroad or to the Government officers posted abroad, White passport, issued to Government officers on temporary duty/ deputation to foreign country and Blue passport, issued to common Indian citizen. In addition to these three types of passport, there is a Jumbo passport containing 60 pages for the frequent travelers and another type known as Hajj Passport are also being issued by the Government of India. Hajj passport is a special passport used only for a Hajj pilgrimage to visit the holy place Mecca. Unlike a regular passport, a Hajj passport is valid for one year and can be used only to participate in the pilgrimage. Passport forgery has increased in the last two-three decades due to various reasons which is also a threat to internal security of our country.

In the above view, the increasing crimes relating to the passport are discussed in detail which include the non- renewal of the passport, refugees not getting the passports back, Forgery and fake passport, racketing of false travel documents and impounding of passport.

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## **Passport Issuance and Renewal not done and Refugees trying to obtain Passports**

In this chapter of we will be interpreting section 6 of Indian Passport Act,1967 by dividing chapter into 2 major parts which are as following-

1. Passport issuance and renewal not done
2. Refugees trying to obtain passport

### **Passport issuance and renewal not done**

In India as we have seen that it is one of the major problems we can observe that passport is no issued so easily as because of many problems like corruptions and not so transparent process for issuing of passport and renewal of it. With reference to problem of refusal of Passport and Refugees trying to get passport we will refer to section 6 of passports act 1967.

In below mentioned case we will observe that for fulfilment of your duty you cannot violate right of other person.

In *Hajra Iqbal Memon v. Union of India And Others* on 13 May, 1999<sup>2</sup> the petition has been filed for issuance of a writ in the nature of certiorari for setting aside the restriction placed on travel on passport of the petitioner, such as, restricting her travel from India to United Arab Emirates only as well as a writ of mandamus seeking direction or commanding the respondents to issue passport valid for 20 years for all the countries of the world as passport authority is not issuing her passport because she is a wife of criminal and they have a suspicion that by getting passport she will come to Mumbai and will get all her husband's property disposed silently so court in this case has held to consider the matter justly and fairly after providing an opportunity to the petitioner as no sufficient grounds have been made out in the impugned order to curtail or restrict the right of the petitioner to travel. The Order dated January 23, 1998 is, accordingly, set aside. The respondents shall examine the matter afresh and decide and dispose of the same within a period of one month.

Now from below mentioned case we will observe that sometimes there are also instances where refusal is because of lack of knowledge about proper procedure for applying of the application for passport.

In *Teesta Chatteraj v. Union of India*<sup>3</sup> the present writ petition under Article 226 of the Constitution of India has been preferred by Ms. Teesta Chatteraj, a minor through her mother and natural guardian Smt. Rajeshwari Chatteraj.

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<sup>2</sup>1999 IIIAD Delhi 801, AIR 1999 Delhi 271, 80 (1999) DLT 185, 1999 (50) DRJ 17, ILR 1999 Delhi 430.

<sup>3</sup>W.P.(C) 2888 of 2011.

The petitioner seeks issuance of a writ of certiorari quashing the letter dated 04.04.2011 issued by the respondent, i.e. the Regional Passport Officer (RPO), New Delhi, whereby the petitioners request for issuance of a passport has been declined. The petitioner also seeks a writ of mandamus directing the respondent RPO to issue a passport in favour of the petitioner on the basis of the information supplied by the petitioner in her passport application form. On 26.07.2010, the petitioner applied for a passport, through her mother, to the respondent authority. The petitioner was required to provide, inter alia, the registered adoption deed, which was also provided.

After much waiting, the petitioner was informed by the impugned communication that her application could not be accepted, as it had been found on scrutiny that the petitioners biological father's name, as per her birth certificate, had not been mentioned in the passport application form, and the adoption deed was not in accordance with the Hindu Adoption and Maintenance Act, 1956 .Consequently, the petitioner has preferred this petition, accusing the respondent authority of acting arbitrarily, illegally and malafidely.

After referring to section 6 of Passport act for refusal of passport the court found that there is some problem with the documents submitted by petitioner so court decided that refusal was not done arbitrarily and directed petitioner to submit documents again for issuance of passport.

In the below mentioned case we will observe that how judge used his common sense to impart justice as for the offence and that too civil in nature for which a person has already been punished and he has completed his punishment for those kind of things we cannot violate his other rights.

In *J.R. Parikh v. The Director Chief Passport*<sup>4</sup>, the writ petition has been filed by Sri J. R. Parikh praying.

1. For the issuance of a writ of Certiorari quashing an order, dated 21st February, 1969, passed by the Director (PV) and Chief Passport Officer, Ministry of External Affairs, Government of India, New Delhi, confirming an order, dated 5th November, 1968, passed by the, Regional Passport Officer, Madras, rejecting an application, dated 14th August, 1968, filed by the petitioner for a passport;
2. For a direction or a writ of Mandamus directing the aforesaid officers to grant the passport applied for by the petitioners. The petitioner was charged with several offences, and the Special Judge, Madras, by his judgment, dated 24th March, 1964,

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<sup>4</sup>ILR 1970 Delhi 378.

convicted and sentenced the petitioner to varying terms of imprisonment which were to run concurrently. The petitioner filed an appeal, Criminal Appeal No. 206 of 1964, in the High Court of Madras, and the High Court, by its judgment, dated 22nd December, 1967, upheld the conviction of the petitioner only in respect of some of the offences. But, on appeal, the High Court reduced the sentence of imprisonment to a period of 6 months for each of the charges.

In other part of this chapter for interpretation of section 6 of Indian Passport Act we are going to see the problem of refugees trying to obtain passport.

### **Refugees trying to obtain passports**

One of the major problems which have aroused in front of passports authority is that many refugees who came to India from various countries like Tibet,India, and Bangladeshetc are trying to get passport.

By applying for it so that they can have identity in India or you can say this is another way to mark themselves as Indian Nationalist but not all of them are on same platform of this common motive.

Some of them are really in need of passport as even though it has been more than 2 to 3 decades when their ancestors came here still some of them don't have any rights and they claim it as matter of right but even after this many of them are rejected in their passport applications.

*TamingDorjee v. Govt. of India, Ministry Of External affairs*,<sup>5</sup>the petitioner has filed the present petition, inter alia, challenging the objection report dated 13.02.2017. The petitioner had applied for a passport, however, the said facilities had been denied to the petitioner pursuant to the notification dated 30.05.2017, which requires that certain conditions be fulfilled before a passport can be issued to persons born of parents of Tibetan origin.

As observed in the order dated 04.09.2017, this Court finds no infirmity with the condition that the registration / refugee certificate and Identity card be cancelled. The petitioner is claiming to be the Citizen of this Country and, therefore, would not be entitled to retain the Identity Certificate (IC) which, this Court is informed, is issued as a travel document for Tibetan refugees. The conditions are that the applicant must furnish an undertaking/declaration on a plain paper to the effect that he no longer enjoys CTA benefits or privileges and subsidies by virtue of being an RC holder are also not objected to by the learned counsel for the petitioner. And, therefore, this Court is not called upon to examine the

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<sup>5</sup> W.P.(C) 7577/2017.

same. The only question that remains is whether the passport facilities can be denied to the Indian citizens who are staying in designated Tibetan refugee settlements.

The learned counsel appearing for the respondent has been unable to point out any provision in law, which entitles the passport authorities to deny passport to an Indian citizen on the basis of where he resides in this country.

It must be clarified that this Court is not called upon to examine whether the petitioner is entitled to reside in designated Tibetan refugee settlements or not; the limited scope of examination in this petition is whether the respondent can deny passport facilities to an Indian citizen on the basis that he resides in such settlements.

The respondents were directed to process the petitioner's application for a passport as expeditiously as possible and in any case within a period of four weeks from today. The petitioner shall also surrender his RC/IC Card within the period to the concerned authority.

From the following case we will come to know that the government indirectly is providing citizenship to Tibetans refugees if they hold a valid refugee certificate and have lived in country.

In *Miss Tsepal Dickey v. The Immigration Officer*,<sup>6</sup> the petitioner being a refugee of Tibetan origin, fully knowing that she is not a citizen of India, with an intention to cheat the Government of India, during 2008, filed an application for passport. Suppressing the fact, in the year 2010, she obtained Indian Refugee Certificate bearing No.Y0080772 and was caught while attempting to travel to Zurich, from the BIAL police. Petitioner herein is charge sheeted for the offence punishable under Section 420 of IPC read section 6 of the Passport Act.

Now by the virtue of govt. policy for the refugee and allowing them to have passport basically the identity in country the contention of charge sheeting her under various charges is of no use and her petition was held valid and charge sheet against her was quashed.

### **Forgery and Fake Passport**

In the changing scenario, crime is organized in a modern way and criminals are more updated than the investigators, forensic scientist and public at large as they are using all modern techniques and tools in order to execute their plans to destruct the society. Passport forgery has increased in the last two-three decades due to various reasons which is also a threat to internal security of our country. Fake/counterfeit passports are prepared by criminals

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<sup>6</sup>Criminal Petition No.4239/2015.

/antisocial elements by making addition, alteration or modification in particulars on genuine passport.

### **What is the need to forgery a passport?**

The crime is committed by the offenders who conceal their identity for fulfillment of their own desire in order to execute financial crime, bank fraud and other criminal activities. Fugitives and terrorists also involve in illegal activities such as drug trafficking or alien smuggling through passport forgery. Without a valid passport, legal international travel is impossible, however using fraudulent travel document/fake passport the terrorist and antisocial element continues to cross the international borders and there by threatening the country's internal security

### **Offences which are relating to passport**

A fake passport is a counterfeit of a passport (or other travel document) issued by a nation or authorised agency. Such counterfeits are copies of genuine passports, or illicitly modified genuine passports made by unauthorized persons, sometimes called cobblers. Its purpose is to be used deceptively as if it were a legitimate travel or identity document. A passport obtained from an authorized issuer by providing false information may also be considered fake.

Such falsified passports can be used to leave a country from which exit is barred, for identity theft, age fabrication, illegal immigration, and organized crime. So section 12 and 13 of The Passport Act, 1967 specifies whoever made allegation under this section will be liable for a punishment upto 3 years and fine of 10000 to 50000.

### **How forged documents helps in migration**

The use of false documents and destruction of documents usually serves to conceal the identity and/or nationality of the smuggled migrant. If forged documents are used, the smuggled migrant may be able to deceive immigration officers upon arrival and enter the destination country. If documents are destroyed en route, smuggled migrants usually report to officials on arrival in order to seek asylum and gain refugee protection. The smuggling of migrants by air may also be differentiated between accompanied and unaccompanied smuggling. In some cases, smuggled migrants, especially if they are furnished with false documents and cash to make them appear as tourists, are accompanied by members of migrant smuggling network to ensure they precede through check-in and immigration controls, and to retrieve the documents and cash from them after arrival at the destination

point. In *Mahendra Singh v. State Of Rajasthan*<sup>7</sup> since the conviction of the appellant is principally based on the finding that the disputed endorsements were in his handwriting.

Document fraud is a central feature of migrant smuggling by air, as the vast majority of countries and airlines require passports, visas, or other identity papers to be presented at check-in and again at emigration and immigration control points. Even in those jurisdictions that permit visa-free entry for certain nationalities or allow entry without a passport, other identification cards or official documents need to be produced to clear relevant border controls. Document fraud thus becomes a necessity if and when a would-be migrant does not possess authentic papers or if such papers would not permit the person to check-in, depart, or to enter another country. Forged documents may be provided by migrant smugglers – or may be obtained by smuggled migrants – in one of two ways. The first avenue is to obtain otherwise genuine documents from official sources by supplying false information and/or by way of corruption. In some instances, immigration officers and consular staff may be bribed to provide genuine passports and visas, or to provide the documentation necessary for the migrant to attain genuine documents, such as birth certificates. Equally, police and airline staff may accept payments for turning a blind eye to fraudulent documents. In a similar fashion, misrepresentations may be made or false documents presented to relevant officers and agents in order to gain genuine documents.

The second form of document fraud involves the fraudulent production of documents or forgery of genuine documents, usually in return for the payment of substantial fees. For example, genuine passports may be obtained from persons of similar appearance, sold to the smugglers or directly to the smuggled migrants, and then reported lost or stolen by the seller. Alternatively, passports may be forged by way of photo-substitution or by altering other information or biometric data contained in a passport that was once genuine. Forged passports are usually supplied and sold by specialists. The quality of these forged documents varies, with some being of a very high quality, and others being of a lower quality and easily detectable. If a smuggled migrant merely wants to reach the country and then claim asylum, the forgery does not need to be particularly convincing as there is no attempt to deceive immigration officials at the point of entry.<sup>8</sup>

Visas may be forged or fraudulently obtained. They can be arranged in advance, sometimes with the help of corrupt or sham educational or business institutions. Visa applications

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<sup>7</sup>AIR 1971 SC 2593.

<sup>8</sup>ANDREAS SCHLOENHARDT, *MIGRANT SMUGGLING: ILLEGAL MIGRATION AND ORGANISED CRIME IN AUSTRALIA AND THE ASIA PACIFIC REGION* 138 (1<sup>st</sup> ed. 2003).

may be supported by additional fraudulent documents intended to prove the false identity of the smuggled migrant or to misrepresent the true purpose of their intended travel.

### **Document Fraud and Forgery Offences under the Indian penal code (IPC)**

A person who forges a passport and uses it as genuine to get entry into India is guilty under this section and s. 467, where in *Daniel Hailey Walcott and Anr. v. State*<sup>9</sup> unauthorized endorsements were made in a passport with a view to helping the person having his photograph on the passport to travel to countries to which he was not entitled to go, such endorsements were made dishonestly and fraudulently and, therefore, the use of such a passport constituted an offence under section 471 of IPC, *Md. Jamiludin Nasir v. State Of West Bengal*<sup>10</sup> carrying out various assignments such as securing a fake passport for his friend is also amounting him liability.

### **Advanced security features of Indian passport act**

Tiny fluorescent paper fibers, Micro printing, Invisible visa page numbers, Heat Activated Ultra-Violet Film (HAUV), etc. The base printing of the passport is done with water soluble fugitive ink of light blue color and on application of a few drops of water or alcohol, the ink of base printing will get smeared. This security feature provides excellent security against chemical erasures in our Indian passport. Recently Government of India had taken excellent step for incorporation of advanced security features in our Indian Passport in year 2013 in the form of Ghost Image and double lamination sheet in new passport in order to make our Indian passport more secure. Personal data such as name, address, date of birth and passport registration number has been embedded in tiny fonts on the ghost image to prevent counterfeit. None of the data will be visible to the naked eye, but can be seen with a magnifying glass. This new passport series, having ghost prints of the photograph, is an attempt to strengthen the passport delivery mechanism leaving no scope of duplication.

### **Racketeering of false travel documents**

Racket means an organized illegal activity such as extortion or bootlegging with a view to making disproportionately high profits. 'Racketeer' (noun) is a person engaged in illegal enterprises for profit. 'To racketeer' (verb) means to operate a racket. Racketeering means running a racket. Essentially it involves illegally obtaining or extorting money e.g. protection racket, or, carrying on illegal business activities e.g. gambling racket, prostitution racket etc.

The nature and scale of such operation require sizeable organization which is usually available only to the underworld. Thus it indicates a business venture managed by those

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<sup>9</sup> AIR 1968 Mad 349.

<sup>10</sup>1947 Cr WB 1240.

indulging in a pattern of illegal activity which forms an integral component of such a venture. The latter definition derives from the Federal Racketeer Influenced and Corruption Organizations Act (RICO), a set of laws specifically designed to punish racketeering by business enterprises. The overall perception is that racketeering and business invariably go together and that organized crime is inseparably linked with racketeering.

#### Definitions and classification of documents

This sub chapter is intended to define racketeering; travel documents and their classification. Definition of travel document and classification are aimed at making the learner understand the meaning and types of travel documents which can be falsified.

#### Definition of Racketeering

Racketeering is defined as ‘a pattern of illegal activity carried out as a part of an enterprise that is owned or controlled by those who are engaged in the illegal activity’.

#### Definition of Travel documents

A travel document is an identity document issued by a government or international treaty organization to facilitate the movement of individuals or small groups of persons across international boundaries.

A passport being the proof of nationality and citizenship, serves as a travel document; however, the term sometimes alludes to an identity proving document which does not serve as proof of citizenship. Re-entry permit, refugee travel document come under this category. A passport not only is of great value-indeed necessary-abroad; it is also an aid in establishing citizenship for purposes of re-entry into the United States.<sup>11</sup>

#### Racketing offences relating to Indian penal code

Chapter XVIII of the Indian Penal Code 1860 deals with offences relating to documents and to property marks. Section 463 defines term forgery, section 464 deals with making false document, section 465 provides punishment for forgery, section 468 relates to forgery for purpose of cheating, section 470 deals with forged document, section 471, using as genuine a forged document, section 470 forged document or electronic record, section 471, using as genuine a forged document or electronic record, section 472, making or possessing counterfeit seal, etc. with intent to commit forgery punishable under section 467, section 473, making or possessing counterfeit seal, etc., with intent to commit forgery, section 474, having possession of document described in Section 466 or 467, knowing it to be forged and intending to use it as genuine, section 475 counterfeiting device or mark used for

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<sup>11</sup>Satwant Singh Sawhney v D. Ramarathnam, 1967 SCR (2) 525.

authenticating documents described in section 467, or possessing counterfeit marked material, section 476, counterfeiting device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material.

#### Foreign (USA) Legislation on false travel documents

Congress passed RICO as part of the Organized Crime Control Act of 1970. The specific goal of RICO is to punish the use of an enterprise to engage in certain criminal activities. A person who uses an enterprise to engage in a pattern of racketeering may be convicted under the RICO criminal statute. An enterprise is defined as “any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity”. A pattern is defined as “at least two acts of racketeering activity, one of which occurred after the effective date of RICO's passage and the last of which occurred within 10 years after commission of a prior act of racketeering activity.” RICO outlaws every manner in which an enterprise can be used for long-term racketeering activity. Criminal offences included under Racketeering activity include fraud relating to identification documents; fraud relating to access devices; transmission of gambling information; mail fraud; wire fraud; financial institution fraud; citizenship or naturalization fraud.

#### Punishment under this Act

The punishment for violating the criminal provisions of RICO is exceptionally severe. If convicted, a defendant is fined and sentenced to not more than 20 years in prison for each RICO violation. Furthermore, the defendant must forfeit any interest, claim against, or property or contractual right over the criminal enterprise, as well as any property that constitutes the racketeering activity or that was derived from the racketeering activity.

#### Identity Theft and Resulting Criminal Activity

When crimes are carried out using a false or stolen identity, investigation of the offences becomes much more complicated. The use of a false or stolen identity enhances the chances of success in the commission of almost all financial crimes. The identity provides a cloak of anonymity for the subject while the groundwork is laid to carry out the crime. This includes the rental of mail drops, post office boxes, apartments, office space, vehicles, and storage lockers, as well as the activation of pagers, cellular telephones, and various utility services. Identity theft, and the use of false identities, is not new to law enforcement. For decades fugitives have changed identities to avoid capture and cheque forgers have assumed the identity of others to negotiate stolen or counterfeit cheque. What is new today is the pervasiveness of the problem.

### Link with Terrorism and its Funding

Today, the threat is made graver by the fact that terrorists can utilize identity theft as well as Social Security Number fraud to enable them to obtain such things as cover employment and access to secure locations. These and similar means can be utilized by terrorists to obtain Driver's Licenses, and bank and credit card accounts through which terrorism financing is facilitated. Terrorists and terrorist groups require funding to perpetrate their terrorist agendas. The methods used to finance terrorism range from the highly sophisticated to the most basic. There is virtually no financing method that has not at some level been exploited by these groups. Identity theft is a key catalyst fuelling many of these methods.

### FBI initiatives to Tackle fraud Schemes

The FBI has implemented a number of initiatives to address the various fraud schemes being utilized by terrorists to fund their terrorist activities. One involves targeting fraud schemes being committed by loosely organized groups to conduct criminal activity with a nexus to terrorist financing. It is believed that targeting this type of activity and pursuing the links to terrorist financing will likely result in the identification and dismantlement of previously unknown terrorist cells. Another initiative has been the development of a multi-phase project that seeks to identify potential terrorist related individuals through Social Security Number misuse analysis

False passports are a small part of a bigger machination that also includes a lot of illegal activity, human trafficking, drug trafficking, migrant smuggling, money laundering, and terrorism. In order to assume a false identity to engage in a criminal act across a national border, a false document is needed.

In Ahmed Rassam's case, when he was caught at the Canadian-U.S. border, he was using a false Canadian passport with the alias BenniNoris. He was carrying fake identification with another alias, and investigators soon discovered he had entered Canada using yet another fake passport, from France. He had also manipulated Canada's asylum system by applying for political asylum at the border, knowing that the Canadian authorities would refer his case to another agency and let him stay in Canada while he waited for his asylum hearing. At his trial, he testified, inter alia, as to his use of fake passports and how his terrorist network relied on them. He stated that he had entered Canada using a fake French passport and landed at Montreal airport where he was stopped by the immigration officials. He made up a story to request political asylum. After being kept at their centre he was allowed to go. He lived in Montreal for four years living off State welfare and stealing the tourists' bags. He sold the stolen passports. He further stated that Abu Zubeida, a lieutenant of Osama Bin Laden had

asked him to provide original Canadian passports for some people for carrying out operations in US.

### **Impounding of passport**

The word Impounding can be defined as “to take possession of a document or a thing or being held in the custody in accordance with law”, which means the retention of a ‘good’ or a document that has been seized. Therefore Impounding of the Passport means retention of the passport which has been seized. Sec. 10 of the Passport Act deals with the “Variation, Impounding and revocation of the passport and travel Documents”.

### **Who can impound a Passport**

Neither Police, nor a Court can impound a passport. The authority is vested exclusively with the regional passport officer who is confirmed with his powers under Sec. 10(3) of the Passport Act, 1967. A police can seize a passport under sec. 102(1) of the Cr. P. C but after seizing, it should be informed to the Regional Passport Officer. They should get permission from the passport officer on a beforehand even to do the same. This was decided in the case of *State of Orissa v. Binapani Die*.<sup>12</sup> The police officer or the court has the power to only seize the passport but does not have the right to impound the passport. It is stated that no person can be deprived of his right to travel abroad except in accordance with the procedure established by the law and it is considered to be a fundamental right under article 21 of the constitution and this is decided in the case of *Satwanth Singh Sawhaney v. D. Ramanatham*.<sup>13</sup>

### **Difference between Seizing and Impounding of the Passport**

A seizure is made at a particular moment when the person or the authority takes into his possession the passport, which was earlier not his possession. If, after seizing of the passport or the document is retained for some period of time, then such retention amounts to impounding of the passport. Hence, the police officer may have the power to seize a passport under Sec. 102 of the Cr. P. C if it is permissible within the authority given under the same section but does not have a power to retain or impound the same, because that can only be done by the Passport authority under Sec. 10(3) of the Passport Act and it is also clear that special law always prevails over the general law and this is best explained in the case of *Suresh Nanda vs. C.B.I*<sup>14</sup>. An order impounding a passport can be made by the passport authority only if it is actually in the interests of the general public to do so and it is not

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<sup>12</sup>AIR 1967 SC 1269.

<sup>13</sup>1967 AIR 1836, 1967 SCR (2) 525.

<sup>14</sup>Suresh Nanda v.C.B.I., (cr.l.) 179 of 2008.

enough that the interest of general public may be likely to be served in the future by the making of the order.<sup>15</sup>

### **When can a passport be impounded?**

Passport can be impounded from a person if the person is in the wrongful possession of the passport, or obtained the passport through illegal means, i.e. by forgery, obtaining fake passport, convicted by court in India for any offence, used for illegal means such as, human trafficking, smuggling of gold, for transport of drugs etc. impounding can also be done when there is a necessity to protect the sovereignty and integrity of India, when there is breach of peace, when there is any trial or case is pending against the person as provided by the Sec. 6 and 12 of the Indian Passport Act, 1967.

Now -a- days smuggling of gold, transport of drugs and the human trafficking are increasing on a daily basis. One of the main reasons to this is the issuance of e-passport. Hence, the Passport Act is combined with the other laws like Customs Law, Criminal Law and the Narcotic Drugs and Psychotropic Substances Act etc and thereby punished accordingly.

### **General Principles of Customary International Law pertaining to Passport**

In itself, a passport confers no rights recognized under international law. It is not a document that enables a citizen of the issuing State to enter that State<sup>16</sup>. However, under the doctrine of restricted returnability, a State can return an individual who is refused entry into its borders to the State that issued the individual's passport because "international comity recognizes that the bearer of a legal passport will be readmitted to the issuing State if the passport is valid. A passport is "only a matter of international law when issued by arrangement between one or more states." Apart from express treaty or generally recognized usage, it is a matter of discretion for a state to decide what documents it requires aliens within its territory to carry. Over time, the widespread consistent State practice arising from a sense of legal obligation would support a view that a particular practice has become a rule of customary international law.

### **Following the Law of the Land than Law in General when Passport is impounded**

Domestic Courts avoid the Customary International Implications of Passport Seizures by applying municipal Constitutional Law rather than customary International Law.<sup>17</sup> *Onwubiko v. United States*<sup>18</sup> not only demonstrates how domestic courts will apply municipal constitutional law rather than customary international law to passport seizures, but also

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<sup>15</sup>Menaka Gandhi vs. Union of India, 1978 SCR (2) 621.

<sup>16</sup> V.G. Row v. The State of Madras, 154 Mad 242.

<sup>17</sup>Mehtab v. Canada, Employment and Immigration Commission, ( R.C.M.P(1986) 3F.C.101Fed. ct).

<sup>18</sup>969 F.2d 1392 (2d Cir. 1992).

represents the United States Federal Courts' current view on the Department of Homeland Security's confiscation of a foreign national's passport as in the Passport Seizure Case, where the Superior Administrative Court of Munster addressed head on the international implications of passport seizures and found one State impounding a foreign passport a direct interference with another State's jurisdiction under general principles of customary international law the case of Onwubiko alludes to the international implications of one State's impounding of a foreign passport by implying that the DHS had a valid interest in ensuring restricted returnability.

In many U.S. states, if there is formal custody order and the parents are not living together, the abduction of the child from one parent to the other is illegal and if one of the parent does want his/ her child to go to the other member, the parent in-charge of the child can impound the passport of the child by putting an application before the passport authority and thus, there can be no parental abduction and the child can be prevented from abducting.<sup>19</sup>

#### **Passport impounded due to commission of offences under IPC**

A passport can be impounded when a person has committed an offence under the Indian penal Code. Most of the passport impounding cases related IPC are under Sec. 498-A and then it also includes crimes like conspiracy, murder, rape, common Intention in the commission of the offence, kidnapping, fraud, murder, etc. Sec.10 (3) (h) of the passport act clarifies that the passport can be impounded when there is commission of the offence under the Indian Penal Code and if the warrant of the arrest is issued. A passport can be impounded even if a person is causing public nuisance and it is against the public order, decency and morality. Hence, impounding of passport can also be linked with the Constitution of India.<sup>20</sup>

A passport of the person and a proclaimed offender can be impounded when an offence has been committed under Sec. 406/ 498-A of the Indian Penal Code and the charge sheet is pending as there is a chance of absconding from the country.<sup>21</sup> The impounding of the passport cannot be done if the investigation is in the initial stage even though if the offence had been committed under criminal, which includes Conspiracy etc. and also committed an offence under Preventive Detention Laws<sup>22</sup>. A passport impounded can be gotten back if requested and permission is granted by the Criminal Court even though the offences committed is of grave nature and the court has every authority to give permission, if at all it thinks that is justified.

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<sup>19</sup>Army Lawyer, *International Child Abduction*, 7 Stranko W. A. 28, 28-64 (July 1993).

<sup>20</sup>A. K. Gopalan v. Union of India, 1950 AIR 27.

<sup>21</sup>Rajiv Tayal v. Union of India, AIR 2006 Delhi 8.

<sup>22</sup>C.B.I. v. By Advs. Raman Pillai, CRMP.231/2011.

Passport is a license to a person to travel abroad and the possession of the passport and right to travel are considered to be the fundamental rights <sup>23</sup> and the same cannot be violated. Impounding of the Passport, even though against Article 21, is done if there arises any legal obligations in circumstances such as commission of offences under Indian Penal Code, offences which are against the law of the land, when there is an violation of Constitution of India and this impounding of Passport is done under Sec.10 of the Indian passport Act, 1967 where the Regional Passport Officer is the Sole Authority and neither the Court nor the Police has the power to impound the passport but has the authority to seize the passport.

### **Conclusion**

The offences of the passport are explained in detail in the project, The Government of India has introduced multiple numbers of security features in Indian passport which are updated from time to time. In spite of these security features, causes related to Passport forgery has not stopped. Introduction of new advanced security features in Indian passport by using highest level of security printing technologies which provides more security against counterfeiting. Excellent advanced security feature in the form of Ghost Image and double lamination sheet introduced in year 2013. It will definitely protect the passport from fraudulent reproduction. Besides these, the proposed introduction of e-passport is also a good step to ensure foolproof security feature in our Indian passport. These new advanced security features are definitely a better deterrent to stop the unlawful activity of counterfeiting important travel documents. In spite of these security features, attempts are being made by the criminals to overcome the safeguards and to misuse the travel document to achieve their end purpose. In order to further strengthen of security features of our Indian Passport, it is advisable to have interaction among passport issuing authority, with forensic document experts and immigration officers for the purpose of regular review of safety of this important travel document which will definitely provide protection against counterfeiting. Knowledge and awareness regarding the security features is very necessary for all of us to protect our self from any criminal activity. This will also help t protect our society as well as internal security of country. We should always have to look forward to make advance change in security feature of passport.

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<sup>23</sup>INDIA CONST. art. 21.