# NO FOREIGNERS BACHELORS AND STUDENTS ALLOWED ON RENT PLIGHT OF FOREIGNERS IN INDIA

KINGSLEY AGYEKUM

LLM (pursuing), LLB, B.A

AJEENKYA DY PATIL UNIVERSITY

# **RESEARCH GUIDE**

DR. YUVRAJ DILIP PATIL,
PH.D (LAW), LLM, BSL., LL.B
ASSOCIATE PROFESSOR,
AJEENKYA DY PATIL UNIVERSITY

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### KINGSLEY AGYEKUM<sup>1</sup>

### **Abstract**

Statistic depicts the number of foreign tourist arrivals in India from 2000 to 2015. In 2015, the number of foreign tourist arrivals in India was 8.03 million, majority of which are students and mostly bachelors or spinsters. Among the several issues that confront foreigners in India, one of the profound but subtle plight of these category of foreigners is the challenge of housing accommodation India. Reasons behind this challenge are mostly a misconception held by the average Indian against foreigners, contingent on which part of the globe youore hailing from. Yet, another reason is the unawareness of the fundamental rights of foreigners in India and how to exercise these rights. There are no yet concreate cases in these respect involving foreigners, however there are a number of such case involving bachelors, sufficient to serve a premise for defense against this plight.

## **Introduction**

India is increasingly becoming one of the worldøs educational hub receiving close to 5000 students per year for its various fields of study, ranging from Social science, Information Technology, Medical Sciences, Engineering, Undergraduate, post graduate to PhD. Most of these students arrive at various international Airports in the cities where their Colleges are situated in pursuit of their dreams to study abroad. Arrival in India is as such a adream come throughøs for most of these foreign students, buta short-lived one. What could account for the traumatic event(s) that often displace their expectations and concomitant joy?

One can easily imagine the challenges a different cultural environment pose to foreigners, but that is almost trivial as compared to the plight of accommodation under the banner of **?'NO**FOREIGNERS, BARCHELORSAND STUDNETS ALLOWED ON RENT', commonly read

<sup>&</sup>lt;sup>1</sup> Student of LLM, ADYPU

at the entrance of most housing societies, which a larger percentage of foreign students encounter on their arrival and stay in India.

## **Objective of Research Paper**

- 1. This Article deals withthe subtle plight of accommodational challenges for foreign students in India. The norm of offering rent on the basis of social status has gradually permeated most cities of India, relegating the parties affected by this situation to undesired areas of society. Quest for a social-legal rectification drives us to a number of relevant questions. As to whether the constitution of India makes provision for the fundamental rights of foreigners in India; considering previous cases and judgments of the law courts in this regard.
- 2. Address the notion about foreigners to the average Indian
- 3. Analyze the housing-society by laws against the provisions of the constitution
- 4. Comparative study of akin situation prevailing in other parts of the world
- **5.** Recommendation on how to curb this situation.

## Foreigners Fundamental Rights In India

The framers of the constitution of India while framing the fundamental rights, took caution as to what fundamental rights have to be applied to foreigners and what rights have to be specifically reserved for the citizens of India<sup>2</sup>.

With the exception to the following fundamental rights provided in the constitution of India as outlined below;

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

<sup>&</sup>lt;sup>2</sup> http://daysprogress.blogspot.in/2013/06/fundamental-rights-foreigners-india.html (accessed on 20th September , 2016 )

Article 19 - Protection of certain rights regarding freedom of speech

Article 29 - Protection of language, script and culture of minorities

Article 30 - Right of minorities to establish and administer educational institutions,

Foreign nationals are entitled to the following fundamental rights;

- 1. Article 14 Right to equality before law and equal protection of laws
- 2. Article 20 Right to protection in respect of conviction for offences
- 3. Article 21- Right to protection of life and personal liberty
- 4. Article 21A Right to elementary education
- 5. Article 22 Right to protection against arrest and detention in certain cases
- 6. Article 23 Prohibition of traffic in human beings and forced labor
- 7. Article 24 Prohibition of employment of children in factories etc.,
- 8. Article 25 Right to freedom of conscience and free profession, practice and propagation of religion
- 9. Article 26 Right to freedom to manage religious affairs
- 10. Article 27 Right to freedom from payment of taxes for promotion of any religion
- 11. Article 28 Right to freedom from attending religious instruction or worship in certain educational institutions

However, Supreme Court has recently reaffirmed that the right to life and liberty (Article 21) is available to foreign nationals, besides the citizens of India in response to an FIR filed by police against three Uganda nationals. SC observed: "Article 21 of the Constitution [right to life and liberty] applies to all citizens, whether Indian or foreign nationals. Their right to liberty could not be restrained by the police due to a business dispute<sup>3</sup>."

From the above listed rights provided in the constitution of India, there are no explicit nor implicit laws that debar foreigners from taking flats on rent except for those areas that are prohibited and restricted by law. It is important to mention, that, any regulations that infringes upon the fundamental rights as provide in the constitution can be challenged in the court of law.

 $<sup>^{\</sup>rm 3}$  http://daysprogress.blogspot.in/2013/06/fundamental-rights-foreigners-india.html (accessed on 20th September , 2016 )

Individual housing societies are legally empowered to frame and adopt society-regulations or bye-laws for the day-to-day administration of the welfare of the members of the society, but at no point should these bye-laws contradict the provisions outlined in the constitution of the country.

## **The Golden Rule**

Every country has a peculiar lifestyle, culture, history, setbacks, record (either good or bad) they are known for, which creates a misconception about that nation and its citizens to others of different nationalities. The scope of our social relations ae generally defined by the notions and misconceptions we harbor in our minds about people hailing from different walks of life. The average Indian, likewise, holds a number of misconceptionabout foreigners which creates a negative reaction towards the foreigners they encounter; very rich, sex oriented of sparty-freaks of squade, violent, just to mention a few (as published on Quora). These misconception has gone a long way to define how most Indians relate with foreigners. And majority of housing societies have cited these reasons as the basis upon which they circumscribe foreigners from residing in their societies. Indeed, a number of foreigners have been found guilty of various crimes In India.

## Crimes by foreigners in India

Let so look at some data from the National Crime Record Bureau (NCRB).

The latest data available dates back to 2014. NCRB data shows that less than 1,500 cases of crimes were reported and 1,843 foreigners were arrested in 2014. The total number of crimes committed in India in 2014 stood at 72.3 lakh. Interestingly, foreigners arrested for crimes related to narcotic drugs and psychotropic substances stood at a mere 6.1%, murder at 0.7%, cheating at 3.2%, and rape at 0.9%. NCRB said, "New Delhi and Maharashtra have reported

<sup>&</sup>lt;sup>4</sup> Quora. Nov 1, 2015 (*What are the biggest misconceptions that Indians have about foreign people and countries?*) https://www.quora.com/What-are-the-biggest-misconceptions-that-Indians-have-about-foreign-people-and-countries (accessed on 21st September , 2016)

highest number of arrested foreigners under cheating (16 foreigners in New Delhi & 12 foreigners in Maharashtra) and forgery (53 foreigners in New Delhi & 22 foreigners in Maharashtra).<sup>5</sup>

Again, many Landlords use these known facts as basis for refusing foreigners on rent. Have foreigners been victims of any such crimes in India?

## Crime against foreigners in India

The NCRB data revealed that out of nearly 77 lakh tourists that arrived on the Indian shores in 2014, a total of 486 cases of crimes against foreigners were reported in the country, of which 384 cases were under crime against foreign tourists during 2014, constituting 79.0% of total crime against foreigners.

It said, "New Delhi has reported highest incidents of crime against foreign tourists accounting for 35.2% (135 out of 384 cases), followed by Goa (66 cases), Uttar Pradesh (64 cases), Rajasthan (31 cases), Maharashtra (25 cases), Bihar (13 cases), and Karnataka (11 cases). These states accounted for 17.2%, 16.7%, 8.1%, 6.5%, 3.4%, and 2.8% of such crimes, respectively, during 2014.ö

Drawing from the work of two Swedish researchers in 2013 revealed what many in India already know but never acknowledge openly

ô ÷racism and a dislike for the dark skin even for our countrymen. Couple this with the attitude towards foreigners coming in, and what you get is a cocktail of bigotry unparalleled to anywhere else in the world. The death of Masonda Ketanda Olivier, 23, teaching French in New Delhi has once again opened the Pandora's Box of our deep-seated racism and 'Afro-phobia'. This isn't the first time Africans have been harassed, killed or maimed in India. Dave Adali, a widely traveled African American didn't think twice before stating that India was indeed the most racist country in the world, on a Quora post. Adali wrote, "If you are of obvious African ancestry,

Shubhashish. May 30, 2016 (Foreigners committed fewer than 1,500 crimes in India in 2014)
 12:25 pm. http://www.zeebiz.com/india/news-foreigners-committed-fewer-than-1500-crimes-in-india-in-2014-1731 (accessed on 21st September , 2016)

including African-American, you can find life really, really tough in India, if you are going to be in India for a while. Indians can be such unabashed, in-your-face racists.ö

The **Golden Rule** or **law of reciprocity** is the principle of treating others as one would wish to be treated oneself. It is a maxim of altruism seen in many human religions and human cultures<sup>6</sup>.

In March, 2015, a professor at Leipzig University, Annette Beck-Sickinger, denies an Indian, internship, citing rape problem. Me In her letter to the Indian student she wrote "I have many female friends in my group, so I think this attitude is something I cannot support," In an attempt to counter the conception of the professor the student replied "Your oversimplifying and discriminating generalization is an offense... to millions of law-abiding, tolerant, openminded and hard-working Indians," he wrote in a letter uploaded on the German embassy website. The undisputable fact is, India is one of the world countries with high record of rape cases. Was the professor wrong to have refused The Indian student by her misconception of India? Are housing societies right to refuse foreigners on rent by their misconception of such foreigners?-*The Golden Law* 

## **HOUSING SOCIETY BYE-LAWS**

Under the Consumer Protection Act 1986, (*drawing from a publication on The Logical Buyer*) Housing-Societies are deemed to be õService Providerö, having been attested by several Judgments of the Consumer Court. The onus of a Society, is basically to provide õCommon Services & Amenitiesö, to its members, which also lawfully means õCommon Services & Amenitiesö to the Tenants of its members. The housing societies can indeed frame their own laws. There are broad guidelines, or bye-laws, that every housing society adopts when it is registered. Though it is the legal right of the owner to lease his property, the housing society in which the flat is situated, too, has a say in it. õIndividual societies are legally empowered to deny

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<sup>&</sup>lt;sup>6</sup> https://en.wikipedia.org/wiki/Golden\_Rule (accessed on 21<sup>st</sup> September, 2016)

<sup>&</sup>lt;sup>7</sup> TNN | Mar 9, 2015 (*German university denies Indian an internship citing 'rape problem'*) http://timesofindia.indiatimes.com/india/German-univ-denies-Indian-an-internship-citing-rape-problem/articleshow/46505524.cms (accessed on 22nd September 2016)

tenancy based on their bye-laws. In many cases, such bye-laws are interpreted in a certain manner in order to achieve this. However, they have no constitutional right to do so.  $\tilde{o}$ The housing society regulations dongt have the same stature as that of a law.

## Case Study

Case 1: This was probably the first time that flat owners have revolted against the bias, calling it a violation of their fundamental rights. A Mumbai Base Co-op Housing Society had passed a resolution that owners can rent out flats only to families. All members who had let out flats to bachelors and spinsters were asked to get them vacated in a month time. The agenda circulated at the society special general body meeting said bachelors, spinsters and foreigners residing in the society were causing a nuisance. There has been a case of suicide, a few foreigners were involved in a sex racket, inadequately dressed females and males gather in the open area of the society at odd hours, it said. The resolution was approved by a majority vote. Aggrieved by the society decision, a resident, who had let out two flats to bachelors, challenged the resolution in the district consumer forum Mumbai. District Consumer Forum later declared the resolution illegal and lifted all such bans. Same was upheld by State Consumer Forum.

Case 2: In case of Sanwarmal Kejriwal vs. Vishwa Cooperative Housing Society, Honøble Supreme Court upheld the ownerøs right to keep tenant of his choice.

Case 3: In Case of St. Anthony (Sco-Operative, Bombay High Court came out with strong observation and rejected the amended bylaws by which the Society wanted to restrict membership to a particular religion. 8

# **Comparative Analysis**

speaking)http://www.thelogicalbuyer.com/blog/bachelor-and-student-tenants-are-not-allowed-legal-opinion/ (accessed on 21st September, 2016)

<sup>\*</sup> The Logical Buyer. October 28, 2015. (Bachelors and Student tenants are not allowed – legally

**Japan:** In Japan the situation is akin to what has been discussed above. The process is long and torturous, and no matter how much you prepare, it wongt be easy to make it to the end. As to the color of your socks, scroll to the section on discrimination, otherwise known as the elephant in the room (that you may or may not be able to rent due to your race or nationality). To secure an apartment in Japan there are a number of steps to fulfil, these includes

#### A). Language

You need good Japanese skills to rent an apartment in Japan. Few agents will even deal with clients who canot speak Japanese. Renting an apartment directly through the owner is very rare. As a rule, leasing is handled by a local agent, and the large majority of people in general, and real estate agents, in particular, do not speak English.

#### B). High Move-In Costs

Be prepared to have a sizeable sum of cash ready to pay your move-in costs.

#### C). Guarantor

A guarantor is a person who is responsible for your rent in case you default on payment. As a foreigner, you may be asked by the landlord to provide the name and contact info of your company, manager or school as your guarantor.

#### D). Bank Account

You do not need to have a Japanese bank account to apply for an apartment, but you will need one to pay your rent, which will be automatically deducted from your account on the day rent is due.

#### E). **Documentation**

Be prepared to provide a lot of documentation to support your application.

#### F). Discrimination

Now for a discussion of the elephant in that room that you may or may not be able to rent, regardless of how qualified you are as a tenant in every other respect. Discrimination based on race and nationality is prevalent in Japan among both property owners and agents. If you accept this upfront, you can avoid a lot of stress over why it happens. It just does.

**Germany:** Affordable apartments are rare in German cities these days. Demand far surpasses supply. The situation is even tougher for migrants, who are often confronted with racial prejudice

#### **Muslims and black Africans:**

In Germany, more than 50 percent of the population live in a rented home, according to official statistics. In large cities like Berlin and Hamburg, it's 80 percent. Housing is in short supply and much sought after, especially in the conurbations. Landlords can choose from a large number of applicants and pick out the most "suitable" tenant. Those who are less affluent, like single parents, the jobless or students, are often left empty-handed. But racism can also be a reason for rejection.

Muslim women with head scarves and black Africans are the people who are most likely to be confronted with discrimination, Birte Weiss of the Basis &Woge advice center says. "When people from one of those groups show up for a viewing, landlords often say 'sorry, the apartment is already gone." Basis &Woge in Hamburg is a contact point for victims of discrimination. About one out of five people who turn to them were discriminated against when apartment-hunting; in that case, the center offers help with legal matters, since those affected clearly have the law on their side in Germany.

"In Germany, no one may be disadvantaged because of their origins, sex or race; that's regulated by the General Equal Treatment Act, and that also applies to house-hunting," says Christine Lüders, head of the federal government's Anti-Discrimination Office<sup>10</sup>.

Simon Scott. The Japan Times. APRIL 23, 2013. (*Student seeking Kyoto flat told: No foreigners allowed*) http://www.japantimes.co.jp/community/2013/04/23/issues/student-seeking-kyoto-flat-told-no-foreigners-allowed/#.V-NdhM3RXAE (accessed on 21st September, 2016)

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<sup>&</sup>lt;sup>10</sup> Daniel Heinrich. Nov. 13.2013 (*Foreigners not welcome: racism in Germany's housing market*) http://www.dw.com/en/foreigners-not-welcome-racism-in-germanys-housing-market/a-17223748 (accessed on 21nd September , 2016)

Ghana: Unlike the nature of accommodation in the countries mentioned above, In Ghana the issue has to do with the cost involved in securing an accommodation and not a matter of social discrimination. As cited by one foreign student, Abigail Samuel Okon, a level 200 Journalism and Mass Communication student of Sikkim Manipal University(Ghana): It is not easy getting accommodation in Ghana. A lot of agents use so many of us for serious business. They keep showing you places you cannot fit into and before you can get a nice place, you might end up <sup>11</sup>spending the money budgeted for rent because for you to be shown even a single place, you have to pay. And this is besides the mandatory non-refundable agent fee.' This is as a result of limited accommodation for the numerous foreign students, creating an avenue for some unscrupulous fellows to take advantage of such ignoramus

## Recommendations

- A). The subject of accommodation for foreign nationals must be brought onto the international domain and made a part and parcel of the prerequisite for bilateral and multilateral relationship between and among nations.
- B). Foreign Embassies must design a free and easy access mechanism to address the accommodation situations its citizens face in their country of operations.
- c). Inter-cultural programs and sports should be promoted in various educational institutions and communities across India to foster a healthy relationship between Indians and foreigners with the prime motive to curb the misconception that exist in the social setting, understand that õa book cannot be judged by it coverö
- D). Every foreigner should prior to seeking accommodation first submit their residence registration to the local police for verification and as a check against illegal migrants and deviants creating difficulties for honest and decent foreigners in India.

<sup>&</sup>lt;sup>11</sup> Daily Guide. 2 November 2013 13:16 CET. (Plight of Foreign Students in Ghana). https://www.modernghana.com/news/500636/1/plight-of-foreign-students-in-ghana.html (accessed on 22nd September , 2016)

# **Conclusion**

õIndividual societies are legally empowered to deny tenancy based on their bye-laws. In many cases, such bye-laws are interpreted in a certain manner in order to achieve this. However, the premise for such interpretations are simply unconstitutional