

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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STEERING REFUGEE STATUS AND ILLEGAL IMMIGRATION IN INDIA WITH AN EYE ON THE FOREIGNERS ACT 2025: RELEVANCE IN THE CONTEMPORARY WORLD

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Abstract

Citizens to illegal migration is the parameter scale that is often used while ascertaining the legality of people wherein the former stands high on rights and later the least. The conferment of rights and duties and privileges are also based on the determination of the following standards.

Usually, the later i.e. illegal migrant gets the least benefit, but the stand or the usual practice in other countries sees to vary in India as recently with the CAA amendment conferment the much-valued democratic citizenship is conferred to illegal migrant. The problem is not the generosity served on those or the procedure followed for illegal migrant but the fact that order of sequence of the group on which the rights are conferred. India's reluctance in order to confer rights to refugee is very big question on India's humanitarian stand.

India's approach to refugee has lot of issues such as lack of uniform standard for various refugee, ambiguity as to application of citizenship law to refugee despite of eligibility and consent, court precedents as to refugee and application of special law or clash of interest or act which extend certain their benefits to refugee. Population has been a major defence in India's argument for being non-signatory to the Convention on the Status of Refugee 1951.

This is openly put to criticism when India opened large quantity of migration group eligible for citizenship despite of this huge population and despite of them being illegal. This constant and unchanged attitude and approach of India to refugee population makes the makes the Indian refugee standards inquisitive and worth analysis. This analysis examines India's evolving legal framework governing refugee protection and immigration control, with particular emphasis on the recently enacted Foreigners Act 2025.

KEYWORDS- Refugee, Illegal Migrant, Citizen, Legality

Introduction:

India's approach to refugee protection presents a unique paradigm in international law—a state that has factually provided *de facto* protection to displaced populations while maintaining a deliberate refraining from formal treaty obligations under international refugee law. This legal framework operates within what may be characterized as a "constitutional humanitarianism" model, where protection derives from fundamental rights jurisprudence rather than specialized refugee legislation.

The recently enacted Foreigners Act 2025 represents a significant legislative consolidation that necessitates critical examination of its compatibility with India's constitutional obligations and customary international law principles, particularly the doctrine of *non-refoulement*.

Refugee versus Illegal Immigrant

The legal distinction between a refugee and an illegal immigrant carries profound implications for the application of constitutional protections and statutory remedies. Under international law, specifically the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, a refugee is defined as:

"A person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country."

Conversely, an illegal immigrant constitutes a foreign national whose presence within the territorial jurisdiction lacks valid legal authorization—

1. Through Unauthorized Entry Or
2. Overstaying Permitted Duration.

India's non-signatory status to the 1951 Convention creates a legal lacuna wherein individuals meeting the international definition of "refugee" are nonetheless subject to domestic immigration law designed for regulating "foreigners" generally.

Refugee Populations in India-Current estimates indicate significant refugee populations requiring legal protection. UNHCR-registered refugees and asylum seekers: Over 46,000 (as of January 2022). There are around approximately 72,312 (January 2021) Tibetan Refugee in

India and over 92000 (March 2023) Sri Lankan Tamil refugees. The crisis of Rohingya refugees they are estimated to be around 75,000 (largely unrecognized)

The challenge of undocumented migration, particularly from Bangladesh, presents complex legal and administrative challenges. Government estimates have varied significantly, with figures ranging from hundreds of thousands to over 20 million, highlighting the need for improved data collection mechanisms

Pre- 2025 Indian Law-

The antecedent legal architecture comprised:

1. The Foreigners Act, 1946: Conferring entire powers upon the Central Government for regulating foreign nationals' entry, residence, and departure
2. The Passport (Entry into India) Act, 1920: Establishing documentary requirements for entry
3. The Registration of Foreigners Act, 1939: Mandating registration and movement regulation
4. The Citizenship Act, 1955: As amended by the Citizenship (Amendment) Act, 2019

The CAA 2019 represents a significant departure from religion-neutral immigration policy, creating a pathway to citizenship for specified religious minorities from Pakistan, Bangladesh, and Afghanistan, while explicitly excluding Muslims—a provision that has attracted constitutional scrutiny on grounds of violating Articles 14 and 15.

Judicial Approach on Non-Citizens and Refugees Over the Years

The Indian judiciary has navigated the complex landscape of non-citizen and refugee rights with a developing, though at times inconsistent, approach. Historically, foundational precedents laid the groundwork for protecting foreign nationals. In *Louis De Raedt v. Union of India* (1991), Article 21's protection of life and liberty was extended to refugees, safeguarding them from arbitrary detention and deportation. However, *State of Arunachal Pradesh v. Khudiram Chakma* (1993) clarified that while Article 21 applies, it doesn't grant a right to permanent residence, differentiating between protection from harm and entitlement to settlement. The principle of non-refoulement, preventing return to persecution, received explicit recognition by the Gujarat High Court in *Ktaer Abbas Habib Al Qutaifi v. Union of India* (1998).

Contemporary developments reveal a shifting stance. The Supreme Court's dismissal of Rohingya deportation challenges in *Mohammad Salimullah v. Union of India* (2021), prioritizing sovereign discretion, marked a potential departure from earlier humanitarian leanings. Conversely, the Manipur High Court in *Nandita Haksar v. State of Manipur* (2021) demonstrated continued commitment to humanitarian protection by allowing Myanmar nationals to approach UNHCR. Most recently, *Bhaskaran Kumarasamy v. Union of India* (2025) saw the Supreme Court intervene to stay the deportation of an LTTE member, underscoring ongoing judicial vigilance concerning individual protection needs, even in the absence of comprehensive refugee legislation.

The Doctrine of Non-Refoulement in Indian Law-While India has not formally adopted the 1951 Convention, judicial precedent has established *non-refoulement* as a constitutional principle derived from Article 21. This customary international law principle prohibits return of individuals to territories where they face persecution, torture, or threats to life.

The Foreigners Act 2025 – Legislative Architecture and Consolidation

The Act repeals the Passport (Entry into India) Act, 1920, the Registration of Foreigners Act, 1939, the Foreigners Act, 1946, and the Immigration (Carriers' Liability) Act, 2000, creating a unified immigration governance structure. This consolidation addresses the previous fragmentation but raises questions about how refugee protection principles will be integrated into this security-focused framework.

The establishment of the Bureau of Immigration for performing immigration functions including visa issuance and regulation of entry, transit, stay and movement within and exit from India centralizes decision-making authority, potentially improving consistency but also concentrating discretionary power that directly impacts asylum seekers' fate.

Enhanced Documentation Requirements and Refugee Access

The Law provides that persons entering or departing from India must have a valid visa (for foreigners) along with valid passports or other valid travel documents. This provision creates significant barriers for genuine refugees who, by definition, often lack proper documentation due to their flight from persecution. This requirement goes against the international principle, outlined in Article 31 of the 1951 Refugee Convention, that refugees should not be penalized

for illegal entry when they are seeking protection. The mandatory registration requirement upon arrival poses particular challenges for asylum seekers who may fear approaching authorities due to trauma or distrust of governmental institutions—a common characteristic among those fleeing state persecution.

Penalties and Proportionality Concerns

The Act significantly increases penalties for immigration violations. Foreigners entering India without valid travel documents may be imprisoned for up to five years and/or fined up to ₹5,00,000, while using or supplying forged passports or visas may lead to prison sentence of up to seven years, and a fine of up to ₹10,00,000.

These enhanced penalties, while designed to deter illegal immigration, risk criminalizing refugee flight—a fundamental concern under international refugee law. The principle of non-penalization, recognized in customary international law, prohibits states from imposing penalties on refugees for illegal entry or presence when they come directly from territories where their life or freedom was threatened.

Educational institutions must provide prescribed information to the Registration Officer on admitting foreigners, and medical institutions must provide information regarding foreign patients availing indoor treatment. This comprehensive tracking system, while serving legitimate security purposes, creates a surveillance network that may deter refugees from accessing essential services like education and healthcare.

International protection principles emphasize that refugees should have access to basic services without fear of detention or deportation. The mandatory reporting requirements by service providers could create a "chilling effect," preventing vulnerable populations from seeking necessary assistance.

The expanded carrier liability provisions, making transportation companies responsible for passenger documentation, align with international practices but raise concerns about refugee access to territory. Airlines and other carriers, fearing penalties, may adopt risk-averse policies that prevent legitimate asylum seekers from reaching India's borders—effectively creating barriers to accessing international protection.

The Act also prohibits aircrafts/vessels/any other mode of transport departing from India until clearance has been obtained from the Immigration Officer, strengthening exit controls that could impact refugees' freedom of movement.

The Act empowers police officers not below the rank of a Head Constable to arrest without warrant, expanding arrest powers to lower-ranking officials. While this may improve enforcement efficiency, it raises due process concerns, particularly for vulnerable populations who may not understand their rights or have access to legal representation.

The absence of specific provisions for asylum procedures within the Act means that individuals seeking protection remain subject to general immigration enforcement measures, potentially leading to refoulement—the forced return to territories where they face persecution, torture, or other serious harm.

Foreigner Act Through International Law Lens

The Immigration and Foreigners Act, 2025, represents India's most comprehensive immigration reform, consolidating four separate laws into a unified framework. From a refugee protection and immigration control perspective, this legislation presents both opportunities and challenges when assessed against international principles and humanitarian duties. This consolidation addresses the previous fragmentation in immigration jurisprudence while establishing a unified regulatory framework. The Act's security-focused approach must be balanced against India's constitutional obligations under Article 21 and customary international law principles, particularly non-refoulement. While India is not a signatory to the 1951 Refugee Convention, it remains bound by customary international law prohibiting return to persecution. India being signatory of other important Human rights documents wherein first generation right is ensured is mandated.

The act fails to define refugee and ensure mechanism to differentiate the refugee from illegal migrants even after registration done as per section 6 of the Foreigners Act. The legislation lacks specific safeguards for identifying and protecting asylum seekers within the immigration enforcement framework. Without clear procedures for screening potential refugees before deportation, the Act risks violating the principle of non-refoulement.

Recommendations for Protection-Sensitive Implementation

To align with international protection principles while maintaining immigration control objectives, implementation should include: establishing clear screening procedures for identifying asylum seekers; creating exceptions to penalties for those seeking protection; ensuring access to legal representation and appeal mechanisms; and developing training programs for immigration officers on refugee identification and protection principles.

The Act represents a significant shift toward stricter immigration control, reflecting global trends in migration management. However, its ultimate success will depend on implementation that balances security concerns with humanitarian obligations, ensuring that India's tradition of providing refuge is preserved within the new legal framework. The challenge lies in transforming a security-focused statute into a protection-sensitive system that upholds both national interests and international humanitarian principles.

Crucial Legal Provisions and Their Implications-

1. **Enhanced Enforcement Mechanisms:** The Act introduces stringent penalties for unauthorized presence, including enhanced imprisonment terms and financial penalties, reflecting a shift toward deterrent-based immigration control.
2. **National Security Provisions:** Expanded grounds for denial of entry or stay, including threats to "national security, sovereignty, or integrity of India"—terminology that requires careful judicial interpretation to prevent overbroad application.
3. **Carrier Liability Framework:** Imposition of strict liability on transportation carriers, aligning with international practices while raising questions about due process in determination of "valid documentation."
4. **Burden of Proof:** Retention of the reverse burden of proof principle, placing the onus on individuals to establish non-foreigner status—a provision that has attracted constitutional challenge in various contexts.
5. **Supervised Residence Provisions:** Introduction of alternatives to detention through "supervised residence" mechanisms, potentially addressing humanitarian concerns while maintaining immigration control objectives.

Constitutional Compliance and Human Rights Implications

The Act's enhanced enforcement provisions must be evaluated against the constitutional mandate of Article 21, which guarantees life and personal liberty to "persons" rather than merely "citizens." The Supreme Court's jurisprudence consistently affirms that fundamental rights under Articles 14 and 21 extend to non-citizens, creating constitutional limitations on immigration enforcement.

Judicial Standards and the Foreigners Act 2025: A Constitutional Compliance Analysis Jurisprudential Framework for Foreign Nationals' Rights

The Indian judiciary has progressively evolved constitutional protections for foreign nationals through landmark precedents that establish fundamental safeguards transcending citizenship boundaries. This jurisprudential architecture provides the constitutional benchmark against which the Foreigners Act 2025 must be evaluated for compliance with established legal principles.

Foundational Constitutional Safeguards

Louis De Raedt v. Union of India (1991) fundamentally established that Article 21's life and liberty protections extend beyond citizens to encompass all persons within India's territorial jurisdiction, including refugees. This precedent created inviolable constitutional safeguards against arbitrary detention and deportation, establishing that fundamental rights are not contingent upon citizenship status but derive from personhood itself.

The Foreigners Act 2025's enhanced detention and deportation provisions must therefore satisfy strict constitutional scrutiny. The Act's provision for "supervised residence" instead of traditional detention demonstrates legislative awareness of constitutional constraints, yet its implementation requires robust procedural safeguards to prevent arbitrary deprivation of liberty prohibited under *Louis De Raedt*.

State of Arunachal Pradesh v. Khudiram Chakma (1993) established the crucial distinction between protection from harm and entitlement to permanent settlement. While affirming Article 21's applicability to foreign nationals, the Court clarified that constitutional protection does not automatically confer residence rights, distinguishing between negative rights (freedom from persecution) and positive rights (settlement entitlements).

This precedent provides constitutional legitimacy for the Foreigners Act 2025's immigration control mechanisms while requiring that enforcement respects the life and liberty guarantees. The Act's strengthened regulatory framework aligns with *Khudiram Chakma's* recognition of sovereign authority over settlement rights, provided that enforcement does not violate fundamental constitutional protections.

International Law Integration through Domestic Jurisprudence

Ktaer Abbas Habib Al Qutaifi v. Union of India (1998) marked the Gujarat High Court's explicit incorporation of the *non-refoulement* principle into Indian constitutional jurisprudence, establishing that individuals cannot be returned to territories where they face persecution. This precedent transformed customary international law into a constitutional obligation enforceable through domestic courts.

The Foreigners Act 2025's deportation provisions face significant constitutional challenges under this standard. The Act's emphasis on swift removal of unauthorized foreign nationals must incorporate screening mechanisms to identify potential asylum seekers and ensure compliance with *non-refoulement* obligations. The absence of explicit refugee identification procedures in the Act creates constitutional vulnerability, as automatic deportation without persecution assessment would violate the *Al Qutaifi* standard.

Contemporary Jurisprudential Tensions

Recent Supreme Court decisions reveal evolving judicial attitudes toward the balance between humanitarian protection and sovereign discretion. **Mohammad Salimullah v. Union of India (2021)** demonstrated judicial deference to executive authority in immigration matters, dismissing challenges to Rohingya deportations and emphasizing state sovereignty over international protection principles.

This precedent provides legislative space for the Foreigners Act 2025's restrictive approach, suggesting judicial acceptance of enhanced immigration control measures. However, the decision's emphasis on case-by-case assessment rather than blanket deportation orders indicates that the Act's implementation must retain individualized evaluation mechanisms.

Conversely, **Nandita Haksar v. State of Manipur (2021)** demonstrated continued judicial

commitment to humanitarian protection, directing authorities to allow Myanmar nationals access to UNHCR procedures. This precedent requires the Foreigners Act 2025's implementation to accommodate international protection mechanisms, ensuring that enhanced control measures do not preclude access to asylum procedures.

Bhaskaran Kumarasamy v. Union of India (2025) illustrates ongoing judicial vigilance regarding individual protection needs, with the Supreme Court staying deportation based on specific persecution threats. This recent precedent reinforces that the Foreigners Act 2025's enforcement must incorporate case-specific assessment mechanisms to prevent refoulement violations.

Constitutional Compliance Assessment

The Foreigners Act 2025 operates within constitutional parameters established by these precedents but faces implementation challenges. The Act's consolidation of immigration laws enhances administrative efficiency while potentially strengthening enforcement capabilities. However, constitutional compliance requires:

Procedural safeguards ensuring that enhanced penalties and detention provisions satisfy due process requirements under Article 21, incorporating legal representation and judicial review mechanisms consistent with *Louis De Raedt*.

Screening mechanisms preventing automatic deportation without persecution assessment, ensuring compliance with *non-refoulement* obligations established in *Al Qutaiifi* and reinforced in *Bhaskaran Kumarasamy*.

Access to protection procedures maintaining pathways for asylum seekers to approach UNHCR or domestic authorities, consistent with the humanitarian approach endorsed in *Nandita Haksar*.

The Act's ultimate constitutional validity depends upon implementation that respects these judicially established standards while achieving legitimate immigration control objectives.

The challenge lies in reconciling this judicially-recognized principle with the Foreigners Act 2025's enhanced deportation provisions, requiring careful statutory interpretation to ensure

constitutional compliance.

Recommendations-

The Foreigners Act 2025 must be implemented with careful attention to constitutional limitations and customary international law obligations. Key concerns include:

1. Legislative Gaps in India must be filled up . India should consider enacting dedicated refugee legislation that provides a rights-based framework while maintaining national security considerations even if it does not ratify the Refugee Convention as it would help nurture a uniform refugee policy and neutral policy.
2. Accession to the 1951 Refugee Convention would provide clarity and international cooperation benefits, though requiring careful domestic preparation.
3. Enhanced judicial oversight of immigration decisions to ensure constitutional compliance and prevent arbitrary action.
4. Proportionality in Enforcement: Enhanced penalties must be proportionate to the violation and not constitute cruel, inhuman, or degrading treatment.
5. Due Process Safeguards: Deportation proceedings must incorporate adequate procedural safeguards, including legal representation and appeal mechanisms.
6. Non-Refoulement Compliance: Implementation must ensure that no individual is returned to face persecution, torture, or threats to life.
7. Specific definition of refugee is mandatory
8. Registration under section 6 shall ensure provision to identify and protect refugee as per Indias commitment.
9. Several discretionary powers must be supplemental with proper guideline and limit.

Conclusion

The Foreigners Act 2025 represents a significant evolution in India's immigration law, emphasizing control and security while attempting to maintain humanitarian considerations through provisions like supervised residence. However, its ultimate constitutional validity and practical effectiveness will depend upon implementation that respects fundamental rights and international legal principles.

India's unique position as a major refugee-hosting state outside the international refugee protection framework creates both opportunities and challenges. The Act's success will be measured not merely by its enforcement effectiveness, but by its ability to maintain India's

humanitarian tradition while addressing legitimate security and administrative concerns.

The legal framework must evolve to provide clarity for both protection seekers and administrative authorities while ensuring that constitutional protections remain robust. As global displacement continues to increase, India's approach will significantly influence regional protection standards and could serve as a model for other non-signatory states grappling with similar challenges.

The intersection of national sovereignty, constitutional obligation, and humanitarian necessity requires careful legal navigation. The Foreigners Act 2025 provides the framework; judicial interpretation and administrative implementation will determine whether it achieves the delicate balance between protection and control that India's complex migration reality demands

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