



Legal Framework for Illegal Migrants in India

Why in News

Recently, the Home Minister informed in the Rajya Sabha that the [National Register of Citizens \(NRC\)](#) will be implemented across India, and repeated [again in Assam.](#)

- According to the Ministry of Home Affairs, the implementation of NRC is expected to keep a check on illegal migrants.
- However, India already has a number of rules and regulations in place to control illegal migration in the country.

Existing Legal Framework

▪ The clause for the expulsion of foreigners:

◦ **Foreigners Act, 1864**

- It was the **first** enactment made for dealing with foreigners that provided for the **expulsion of foreigners.**
- It also allowed arrest, detention, and for a ban on foreigners entry into India after detention.

▪ **Introduction of Passport:**

◦ **The Passport (Entry into India) Act, 1920**

- The act empowered the government to make rules requiring persons entering India to be in possession of passports.
- It also granted the government the power to remove from India any person who entered without a passport.

▪ **Concept of 'burden of proof' lies with the person, and not with the authorities:**

◦ **Foreigners Act, 1940**

- It was enacted during the Second World War, under which the concept of "**burden of proof**" was introduced.
- This meant that whenever a question arose with regard to the nationality of a person, the onus of proving that he was not a foreigner lay upon the person.

◦ **Foreigners Act, 1946**

- It **replaced** the Foreigners Act, 1940 conferring wide powers to deal with all foreigners.
- The act empowered the government to take such steps as are necessary to prevent illegal migrants including the **use of force.**
- The concept of '**burden of proof**' lies with the person, and not with the **authorities** given by this act is **still applicable in all States and Union Territories.** This concept has been **upheld** by a Constitution Bench of the Supreme Court.

- The act empowered the government to establish **tribunals which would have powers similar** to those of a **civil court**.
- Recent **amendments (2019)** to the Foreigners (Tribunals) Order, 1964 empowered even district magistrates in all States and Union Territories to set up tribunals to decide whether a person staying illegally in India is a foreigner or not.
- **Increased burden of migrants because of absence of the “burden of a proof” clause:**
 - **Illegal Migrants (Determination by Tribunals) Act, 1983**
 - The **absence** of any provision related to the **‘burden of proof’** in the **Illegal Migrants (Determination by Tribunals) Act, 1983** put a very **heavy burden upon the authorities** to establish whether a person is an illegal migrant.
 - Moreover, **a number of non-Indians** who may have entered Assam after March 25, 1971, without possession of valid documents, continued to reside in Assam.
 - The **act was struck down** by the **Supreme Court** in **Sarbananda Sonowal v. Union of India** (2005). The Supreme Court also closed all tribunals in Assam functioning under the Act.
 - The Supreme Court, then, **transferred all pending cases** at the IMDT tribunals to the **Foreigners Tribunals** constituted under the Foreigners (Tribunals) Order, 1964.
- **Existing Procedure for Appeal:**
 - **Assam:**
 - Currently, any person excluded from the National Register of Citizens (NRC) can approach the Foreigners Tribunals, established only in Assam, within 120 days of receiving a certified copy of rejection.
 - **Other states and Union Territories:**
 - In other States, a person suspected to be a foreigner is produced before a local court under the Passport Act, 1920, or the Foreigners Act, 1946.

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