



Issue of Illegal Migrants

Why in News

Recently, the **Ministry of Home Affairs** has informed in the **Lok Sabha** that according to some reports some **Rohingya migrants** are indulging in **illegal activities**.

- The **response came** on the **queries about the current situation of Rohingya** living illegally in various parts of the country.

Rohingya

- The Rohingya people are a **stateless, Indo-Aryan ethnic group** who reside in **Rakhine State, Myanmar**.
- They are described by **the United Nations (UN)** as one of the **most persecuted minorities in the world**.
- The Rohingya refugee crisis is **caused by the Rohingya people** having **long faced violence and discrimination in Myanmar**.
- To escape discrimination and violence in Myanmar, minority **Rohingya Muslims have for decades fled from the Buddhist-majority country to neighboring Bangladesh** and other countries, **including India**.

Key Points

- **Issues & Concerns:**
 - **Threat to National Security:**
 - The **continuance of the illegal immigration of Rohingyas** into India and their continued stay in India is found to be having **serious national security ramifications** and **poses serious security threats**.
 - **Clash of Interests:**
 - It impacts the **interests of local populations** in the areas seeing large-scale influxes of illegal immigrants.
 - **Political Instability:**
 - It also increases the political instability when **leaders start mobilising the perception of the citizens of the country against the migrants** by the elites to grab political power.
 - **Rise of Militancy:**
 - The **persistent attacks against the Muslims** perceived as illegal migrants has given way to radicalisation.
 - **Human trafficking:**
 - In the recent decades, **trafficking of women and human smuggling** have become quite rampant across the borders.
 - **Disturbance in Law and Order:**
 - The rule of law and integrity of the country are undermined by the illegal migrants

who are engaged in **illegal** and **anti-national activities**.

▪ **Steps Taken by Government:**

- Centre had **issued instructions** to the State governments and Union Territory administrations, advising them to **sensitise the law enforcement and intelligence agencies** to take appropriate steps for prompt identification of illegal migrants.
- **Consolidated instructions** to tackle the **issue of overstay and illegal migration** of foreign nationals have also been issued.

▪ **Existing Legal Framework:**

- **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**.
- **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.
- **The Registration of Foreigners Act, 1939:**
 - Registration under **Foreigners Regional Registration Officer (FRRO)** is a **mandatory requirement under which all foreign nationals (excluding overseas citizens of India)** visiting India on a **long term visa (more than 180 days)** are required to register **themselves with a Registration Officer within 14 days of arriving in India**.
 - **Pakistani nationals visiting India** are required to register **within 24 hours** of arrival **regardless of the duration of their stay**.
- **The Citizenship Act, 1955:**
 - It provides for the **acquisition and determination of Indian citizenship**.
 - Moreover, the **Constitution has also provided citizenship rights for Overseas Citizens of India, Non-Resident Indians, and Persons of Indian Origin**.

Illegal Migrants Vs Refugee

▪ **Illegal Migrants:**

- The **foreign nationals** who enter the country **without valid travel documents** are treated as **illegal migrants**.

▪ **Refugee:**

- Under the **1951 UN Convention on the Status of Refugees** and the subsequent 1967 Protocol, the **word refugee pertains to** any person who is outside their country of origin and unable or unwilling to return owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.
 - **India is not a signatory to the 1951 UN Convention** relating to the Status of Refugees and the 1967 Protocol thereon.
- **Stateless persons may also be refugees in this sense**, where country of origin (citizenship) is understood as '**country of former habitual residence**'.

Way Forward

- In spite of **not being a party to the 1951 Refugee Convention** and its **1967 Protocol**, India has been one of the largest recipients of refugees in the world.
- However, if **India had domestic legislation regarding refugees**, it could have deterred any oppressive government in the neighborhood to persecute their population and make them flee to India.
- Further, the **absence of national refugee laws** has **blurred the distinction between refugees and economic migrants**, leading to the denial of any assistance to even genuine asylum seekers.
- After **India enacts its domestic refugee laws**, it should also **consider signing the 1951 Refugee Convention** and the **1967 Protocol** after recording its reservations.
- It would be still better if India took the **initiative to encourage other countries** in the [South Asia Association for Regional Cooperation \(SAARC\)](#) to develop a **SAARC convention or declaration on refugees** in which member states would agree to ratify the 1951 Refugee Convention and the 1967 Protocol and record their reservations to various clauses.

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