

Opinion: How Does India Tackle Illegal Immigrants On Its Territory? Legal & Policy Challenges Abound

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As the US deports illegal Indian immigrants, a larger question has arisen regarding the regulation and control of illegal immigration. The practice of illegal immigration poses a complex question for India as well, with various legal and policy challenges requiring comprehensive reforms. India has long been a destination for many immigrants, primarily from neighbouring South Asian countries, with some also coming from other regions of the world. Given the volume and diversity of immigration patterns, it is imperative to reassess India's role in global migration, and adopt a more comprehensive and structured immigration policy.

Migration into India has occurred for centuries, shaped by historical, political, and economic factors. The country has received waves of immigrants, including refugees from the Partition in 1947, Tibetan exiles in 1959, Sri Lankan Tamil refugees in the 1980s, and Bangladeshis who fled the violence that accompanied the 1971 Liberation War. Today, India continues to receive immigrants due to economic disparities and political instability in the region. The presence of irregular immigrants, mainly from Bangladesh, has been a contentious political and social issue. The lack of a specific legal definition for illegal immigrants has led to ambiguity in policymaking, with immigrants broadly categorised as 'foreigners' under various legislations.

Illegal immigration in India presents challenges like strain on public services, social tensions, potential security threats, and economic disruption. There is a need to strengthen border security with technology while addressing root causes in neighbouring countries and implementing comprehensive immigration law reform to address this issue holistically.

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India’s Immigration Framework

It is worth noting that a combination of laws governs India’s immigration policy, but none provides a comprehensive framework for asylum-seekers, or the unauthorised immigration occurring in modern times. The key legislations include the Foreigners Act of 1946, which governs the entry, stay, and exit of foreigners in India; the Registration of Foreigners Act of 1939, which mandates the registration of foreign nationals staying in India; the Passport (Entry into India) Act, 1920, which regulates the entry of foreign nationals, and the Citizenship Act of 1955 that defines Indian citizenship and the process of acquiring or losing it. The 1955 Act was amended in 2019 to offer a pathway to citizenship for non-Muslim refugees from Bangladesh, Pakistan, and Afghanistan, who had entered India until December 31, 2014. These legislations lack provisions addressing the complex immigration dynamics involving economic immigrants, refugees, and victims of human trafficking, and lack adequate protection for refugees and other humanitarian frameworks.

India is neither a signatory to the 1951 Convention on the Status of Refugees nor the 1967 Protocol, which means, in practice, asylum-seekers are granted protection based on constitutional provisions, particularly Articles 14 and 21, which guarantee equality before the law and right to life and personal liberty. As a result, India’s approach to immigration issues remains inconsistent. Porous borders, inadequate coordination among agencies, and limited repatriation treaties with neighbouring nations have further exacerbated the problem of illegal immigration.

To improve this situation, a proposed Immigration and Foreigners Bill, 2025, is expected to be introduced in Parliament, which aims to overhaul the legal framework by repealing the Foreigners Act, the Passport (Entry into India) Act, and the Registration of Foreigners Act. The proposed law aims to end the multiplicity and overlapping of laws concerning the regulation of matters related to foreigners, including the requirement of visas, registration, and other travel-related documentation (passports, etc.), while streamlining the procedures for people entering and exiting India.

Key provisions of the bill include denial of entry based on national security: For the first time, the bill explicitly includes national security and sovereignty as grounds to refuse or revoke entry permission to foreign nationals. In addition, the bill may incorporate provisions barring individuals from entering India based on diplomatic relations with their home country.

Commitment To Justice, Security, International Cooperation

It is to be noted that poor tracking of illegal immigrants in India hinders evidence-based policymaking. Immigration issues are highly politicised, further complicating the possibility of bipartisan solutions. The lack of intra-agency coordination, insufficient diplomatic negotiations, and weak information dissemination about legal immigration pathways also affect immigrants adversely. These challenges underscore the need for a holistic approach combining legal reforms with diplomatic engagement and international cooperation to curb illegal immigration.

India stands at a critical juncture in formulating immigration policies that balance humanitarian concerns with national security priorities. Given its strategic location, economic aspirations, and humanitarian responsibilities, a well-structured and balanced immigration policy is essential. India can effectively manage immigration challenges by adopting a pragmatic and rights-based approach while fostering regional stability and economic growth. In this light, future policies must reflect a commitment to justice, security, and international cooperation, ensuring that India's approach to immigration is both progressive and equitable.

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