

Legal Framework for Illegal Migrants in India

August 13, 2020

According to Indian law, illegal immigrants are not refugees. Since India is not a signatory to the 1951 Refugee Convention, the United Nations principle of non-refoulement and impediment to expulsion does not apply in India. Illegal immigrants can be denied impediment to expulsion if they do not fall within the host country's legal definition of a lawful refugee.

There is no national law on refugees at present. Only Standard Operating Procedures are issued by the Ministry of Home Affairs to deal with foreign nationals in India, who claim to be refugees.

Foreigner's Act 1946

- It confers wide powers to deal with all foreigners. Apart from defining a foreigner as a person who is not a citizen of India, it empowered the government to make provisions for prohibiting, regulating or restricting the entry of foreigners into India.
- It also restricted the rights enjoyed by foreigners in terms of their stay in the country if any such orders are passed by the authority. The Act empowered the government to take such steps as are necessary, including the use of force for securing compliance with such directions.
- The most important provision of the 1946 law, which is still applicable in all States and UTs, was that the burden of proof lies with the person, and not with the authorities. This has been upheld by a Constitution Bench of the Supreme Court.

Foreigner Tribunals Order

- The tribunal has the authority to decide whether a person is a foreigner within the ambit of the Foreigners Act, 1946. The tribunal, which has powers similar to those of a civil court, gives reasonable opportunity to the person alleged to be a foreigner to produce evidence in support of his case, before passing its order.
- District magistrates in all States and UTs can set up tribunals to decide whether a person staying illegally in India is a foreigner or not