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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

THE IMMIGRATION AND FOREIGNERS ACT, 2025: A COMPREHENSIVE LEGAL ANALYSIS OF INDIA'S NEW IMMIGRATION FRAMEWORK

AUTHORED BY - DR. DEBJANI OJHA

1. Introduction

India, as one of the world's most populous nations with extensive land and maritime borders, has historically grappled with complex challenges related to immigration¹. As a destination for economic migrants, refugees, and asylum seekers, as well as a transit point for irregular migration, India's demographic diversity has been both an asset and a challenge. The growing concerns over illegal immigration, transnational crimes such as human trafficking, terrorism, and the increasing need to secure national borders have made the regulation of immigration a critical aspect of national policy².

India's legal regime for controlling the entry, stay, and exit of foreigners has its roots in colonial legislation. The Passport (Entry into India) Act, 1920³, The Registration of Foreigners Act, 1939⁴, and The Foreigners Act, 1946⁵ were primarily enacted in response to the exigencies of the First and Second World Wars. These laws granted sweeping powers to the colonial government to regulate and monitor the movement of foreigners, often motivated by concerns related to espionage, wartime security, and colonial control. Despite India's independence and the adoption of the Constitution in 1950, these colonial laws have remained the cornerstone of the country's immigration and foreigners' regulatory framework. Over time, the Immigration (Carriers' Liability) Act, 2000⁶ was also introduced to impose liability on transport carriers for bringing unauthorized entrants into India.

The persistence of colonial-era statutes, their inconsistent application, and the emergence of new challenges have underscored the need for a modern, unified legal framework. Issues such

¹ C. Tumbe, *India Moving: A History of Migration* (Penguin Random House India Private Limited, 2018).

² Jennifer M Chacón, "Unsecured borders: Immigration restrictions, crime control and national security," 39 *Conn. L. rev.* 1827 (2006).

³ *THE PASSPORT (ENTRY INTO INDIA) ACT, 1920, ACT NO. 34 OF 1920, 1920.*

⁴ *THE REGISTRATION OF FOREIGNERS ACT, 1939, ACT NO. 16 OF 1939, 1939.*

⁵ *THE FOREIGNERS ACT, 1946, ACT No. 31 OF 1946, 1946.*

⁶ *THE IMMIGRATION (CARRIERS' LIABILITY) ACT, 2000, ACT NO. 52 OF 2000, 2000.*

as illegal immigration, national security threats, and cross-border crimes demand a robust and coherent legal structure. The advancement in technology for immigration control, such as biometric data collection and integrated databases, also calls for legislative backing to ensure legality and accountability. Against this backdrop, the need for consolidation, modernization, and simplification of India's immigration laws became evident, culminating in the drafting of THE IMMIGRATION AND FOREIGNERS ACT, 2025⁷.

THE IMMIGRATION AND FOREIGNERS ACT, 2025, seeks to repeal and replace the Passport (Entry into India) Act, 1920⁸; the Registration of Foreigners Act, 1939⁹; the Foreigners Act, 1946¹⁰; and the Immigration (Carriers' Liability) Act, 2000¹¹. The Act aims to consolidate these laws into a comprehensive legislative framework that addresses modern-day concerns related to immigration, registration, surveillance, detention, and deportation of foreigners.

2. Evolution of Immigration Laws in India (Pre-2025)

India's immigration regime before the introduction of THE IMMIGRATION AND FOREIGNERS ACT, 2025 was governed by a combination of colonial-era laws and post-independence legislation. These laws, formulated in vastly different socio-political contexts, aimed to control the movement of foreigners into and within India.

A. The Passport (Entry into India) Act, 1920

The Passport (Entry into India) Act, 1920 was enacted by the British colonial government during the immediate aftermath of the First World War¹². The primary objective of the Act was to impose stringent controls on the movement of people across international borders.

Under the Act, the government was authorized to make rules regarding:

- The documentation required for entry into India,
- Procedures to be followed by foreigners at the time of entry,
- The penalties to be imposed for contravention of the provisions of the Act.

⁷ THE IMMIGRATION AND FOREIGNERS ACT, 2025, No. 13 OF 2025, 2025.

⁸ THE PASSPORT (ENTRY INTO INDIA) ACT, 1920, ACT NO. 34 OF 1920, 1920.

⁹ THE REGISTRATION OF FOREIGNERS ACT, 1939, ACT NO. 16 OF 1939, 1939.

¹⁰ THE FOREIGNERS ACT, 1946, ACT No. 31 OF 1946, 1946.

¹¹ THE IMMIGRATION (CARRIERS' LIABILITY) ACT, 2000, ACT NO. 52 OF 2000, 2000.

¹² Radhika Singha, "The Great War and a 'proper' passport for the colony: Border-crossing in British India, c. 1882–1922," 50 *The Indian Economic & Social History Review* 289–315 (2013).

B. The Registration of Foreigners Act, 1939

Enacted in the context of escalating global tensions before the Second World War, the Registration of Foreigners Act, 1939 aimed to create a mechanism to monitor and register foreigners residing in India¹³. The Act mandated:

- The registration of foreigners within a specified time period upon arrival in India,
- The obligation of foreigners to report their movements to the authorities,
- Record maintenance by designated Registration Officers.

C. The Foreigners Act, 1946

The Foreigners Act, 1946, perhaps the most comprehensive of the pre-constitutional immigration laws, was enacted in India during the twilight years of British rule. It was intended to supplement earlier legislation by granting broader powers to the executive to control, regulate, and expel foreigners. Key provisions of the Act included¹⁴:

- The power to order a foreigner's detention or deportation,
- The requirement for foreigners to comply with prescribed conditions regarding their stay,
- The authority to restrict the movements and activities of foreigners in India.

Section 9 of the Act reversed the burden of proof, placing the onus on individuals to establish that they were not foreigners. This provision, controversial in its impact, has remained largely unaltered and has had significant implications for due process and the rights of individuals accused of being illegal immigrants.

D. The Immigration (Carriers' Liability) Act, 2000

The Immigration (Carriers' Liability) Act, 2000 represented a shift toward involving transport carriers in immigration control¹⁵. The Act imposed strict penalties on carriers (airlines, shipping companies, etc.) that brought in passengers without proper documentation.

Key features of the Act included:

- The liability of carriers to verify passenger documentation before boarding,
- Imposition of penalties and fines on carriers found to be in violation,

¹³ Devki Sejpal, "Refugee Crisis in India and the Violation of Human Rights," *4 Issue 3 Int'l JL Mgmt. & Human.* 1268 (2021).

¹⁴ Abhay Singh, "A Critique of the Foreigners Act, 1946: A Legislation de Jure or de Facto?" *Available at SSRN 1989060* (2012).

¹⁵ Tendayi Bloom, "The business of migration control: Delegating migration control functions to private actors," *6 Global Policy* 151–7 (2015).

- Provisions for appeal against penalties imposed by authorities.

E. Key Challenges in the Legacy Laws

Despite serving their purposes during different historical periods, the pre-2025 immigration laws faced several inherent challenges:

- i. The four laws operated in isolation, often resulting in duplication and confusion over jurisdictional responsibilities.
- ii. Many provisions were drafted to address colonial-era concerns, such as wartime espionage and imperial security, and did not align with the realities of contemporary migration and global mobility.
- iii. The laws conferred sweeping powers on the executive, with minimal safeguards to prevent abuse or ensure procedural fairness.
- iv. None of the legislations addressed the status of refugees or asylum seekers, leading to ad hoc decision-making and inconsistent practices.
- v. The legacy laws did not adequately contemplate the use of modern technologies such as biometric databases, electronic visas, or integrated border management systems.
- vi. The enforcement machinery was often understaffed and lacked the requisite training and technological support to handle the complexities of modern immigration control.

F. Judicial Interpretations and Gaps in the Pre-Existing Framework

The judiciary has played a critical role in interpreting India's immigration laws, often stepping in to fill legislative gaps and protect fundamental rights. Notable judicial interventions include:

- i. **Sarbananda Sonowal v. Union of India (2005)**¹⁶: The Supreme Court upheld stringent immigration controls in Assam, highlighting the demographic threats posed by illegal migration.
- ii. **Hans Muller of Nuremberg v. Superintendent, Presidency Jail (1955)**¹⁷: The Court underscored the absolute discretion of the government in deporting foreigners, reaffirming the plenary nature of state sovereignty over immigration.
- iii. **Louis De Raedt v. Union of India (1991)**¹⁸: The Court ruled that the right to reside and settle in India is not available to foreigners under Article 19 of the Constitution.

¹⁶ *Sarbananda Sonowal vs Union Of India & Anr, Writ Petition (civil) 131 of 2000, 2005.*

¹⁷ *Hans Muller Of Nuremberg vs Superintendent, Presidency Jail, Calcutta and Others, 1955 AIR 367; 1955 SCR (1)1284, 1955.*

¹⁸ *Mr. Louis De Raedt & Ors vs Union Of India And Ors, 1991 AIR 1886; 1991 SCR (3) 149, 1991.*

Despite these rulings, the judiciary often deferred to the executive on matters of immigration, contributing to a lack of substantive rights protections for foreigners. Furthermore, the absence of codified procedures for refugee protection and asylum determination left many vulnerable groups without legal recourse.

THE IMMIGRATION AND FOREIGNERS ACT, 2025, represents an effort to modernize and consolidate India's immigration regime, addressing the limitations and gaps that have long plagued the pre-existing legal framework.

3. Objectives and Rationale Behind THE IMMIGRATION AND FOREIGNERS ACT, 2025

The Act seeks to overhaul the archaic and fragmented legislative framework that governed immigration and the regulation of foreigners in India for over a century. By repealing and consolidating four existing laws—namely, the Passport (Entry into India) Act, 1920; the Registration of Foreigners Act, 1939; the Foreigners Act, 1946; and the Immigration (Carriers' Liability) Act, 2000—The Act endeavours to establish a unified, modern, and efficient legal framework¹⁹.

A. Policy Intent and Legislative Necessity

The primary intent behind THE IMMIGRATION AND FOREIGNERS ACT, 2025²⁰ is to address the inadequacies and redundancies inherent in the earlier legislative framework.

The legislative necessity for a new law is twofold:

- i. To provide clarity and consistency in the legal framework, eliminating overlaps and contradictions among various statutes.
- ii. To establish a robust and comprehensive system that not only facilitates legitimate travel and migration but also equips the government to deal with illegal immigration, security threats, and violations of immigration laws.

In the Statement of Objects and Reasons accompanying The Act, the Government of India emphasized the need to repeal outdated statutes that no longer meet the country's contemporary socio-political and economic needs.

¹⁹ Archana Rao, "India's Immigration and Foreigners Bill, 2025: What Businesses Need to Know" *India Briefing*, 2025 available at: <https://www.india-briefing.com/news/indias-immigration-and-foreigners-bill-2025-what-businesses-need-to-know-36567.html/> (last visited May 9, 2025).

²⁰ THE IMMIGRATION AND FOREIGNERS ACT, 2025, No. 13 OF 2025, 2025.

B. Simplification and Consolidation of Laws

One of the fundamental objectives of The Act is the simplification and consolidation of India's immigration laws into a single, comprehensive framework²¹.

THE IMMIGRATION AND FOREIGNERS ACT, 2025 unifies the old laws into a single statute, streamlining processes for entry, registration, surveillance, deportation, and removal of foreigners. It introduces clear procedures and responsibilities for authorities such as the Bureau of Immigration, Immigration Officers, and Registration Officers, thus reducing confusion and improving administrative efficiency.

Further, The Act codifies obligations on carriers, accommodation providers, educational institutions, and medical facilities, ensuring a standardized approach to data collection and monitoring of foreigners. By consolidating the legislative framework, The Act aims to foster legal certainty, transparency, and ease of compliance for both enforcement agencies and foreign nationals.

C. National Security Concerns

National security is a central theme underpinning THE IMMIGRATION AND FOREIGNERS ACT, 2025. In the post-9/11 world and particularly in the context of India's security challenges—ranging from cross-border terrorism to illegal immigration—there has been an increasing emphasis on strengthening border controls and internal security mechanisms²².

The Act empowers the Central Government and its agencies to:

- i. Regulate the entry and exit of foreigners, based on considerations of national security, public order, and public health.
- ii. Restrict or prohibit the presence and movements of foreigners in protected, restricted, and prohibited areas.
- iii. Expel or deport foreigners deemed to pose a threat to national security or public interest²³.

Section 3 of The Act specifically prohibits any person from entering or departing India without

²¹ Archana Rao, "India's Immigration and Foreigners Bill, 2025: What Businesses Need to Know" *India Briefing*, 2025 available at: <https://www.india-briefing.com/news/indias-immigration-and-foreigners-bill-2025-what-businesses-need-to-know-36567.html/> (last visited May 9, 2025).

²² "Union Home Minister and Minister of Cooperation, Shri Amit Shah, replies to the discussion on the Immigration and Foreigners Bill, 2025 in the Lok Sabha, After the discussion, the lower house passed the Bill," *Ministry of Home Affairs*, 2025 available at: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2115972> (last visited May 9, 2025).

²³ "Immigration and Foreigners Bill 2025: A Comprehensive Overview," *Lingaya's VidyaPeeth*, 2025 available at: <https://www.lingayasvidyapeeth.edu.in/immigration-and-foreigners-bill-2025-a-comprehensive-overview/> (last visited May 9, 2025).

valid documentation and grants Immigration Officers wide discretion to deny entry or exit based on grounds such as national security or public health.

Additionally, The Act imposes stringent penalties on carriers found transporting foreigners without valid travel documents, enhancing accountability at points of origin and ensuring that India is not made vulnerable by lax pre-departure screening abroad.

The provision in Section 16, placing the burden of proof on individuals to establish that they are not foreigners, further demonstrates the state's emphasis on maintaining security.

D. Technological Advancements and Data Management

In an era of digitization and advanced data analytics, THE IMMIGRATION AND FOREIGNERS ACT, 2025 acknowledges the role of technology in enhancing immigration control. The Act provides for:

- Collection and management of biometric data such as fingerprints, iris scans, and facial recognition.
- Use of integrated databases for tracking foreigners' entry, stay, and exit from India.
- Real-time data sharing between immigration authorities, security agencies, and other stakeholders.

The creation of a centralized data repository managed by the Bureau of Immigration allows for better surveillance and monitoring. Obligations imposed on accommodation providers, universities, and hospitals to report details of foreigners staying with them aim to create a comprehensive record-keeping system.

Technological integration ensures:

- i. Faster processing of visas and registrations, thereby facilitating legitimate travellers.
- ii. Enhanced capability to detect and prevent illegal immigration, overstaying, and violations of visa conditions.
- iii. Efficient deportation and detention processes, supported by accurate and up-to-date information.

By embedding technology into the immigration regime, The Act seeks to modernize India's border management system and align it with global best practices.

E. India's International Obligations and Foreign Relations

India is a party to numerous international agreements and conventions that influence its immigration policies and practices. While India has not signed the 1951 UN Refugee

Convention, it has committed to various human rights treaties, including:

- i. The International Covenant on Civil and Political Rights (ICCPR)²⁴.
- ii. The Convention against Torture (not ratified but signed).
- iii. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)²⁵.

THE IMMIGRATION AND FOREIGNERS ACT, 2025 aims to balance India's sovereign right to regulate the entry and stay of foreigners with its international legal obligations. Key aspects include:

- i. Provisions for non-refoulement in practice, though not codified, through discretion exercised by authorities in deportation cases.
- ii. Compliance with obligations relating to public health and safety, in line with the International Health Regulations (IHR).
- iii. Facilitation of legitimate travel and migration to foster bilateral and multilateral cooperation, enhancing India's global standing²⁶.

THE IMMIGRATION AND FOREIGNERS ACT, 2025 represents a comprehensive and timely response to India's evolving immigration challenges. As The Act navigates the legislative process, its implementation will require balancing the imperatives of security and state control with the principles of human rights and due process.

4. Structural Overview of The Act (Detailed Chapterization of the Law)²⁷

The Act is divided into six distinct chapters, each addressing different aspects of immigration management, from entry and registration to penalties and enforcement mechanisms.

A. Chapter-wise Analysis

i. Preliminary Provisions²⁸

The first chapter, comprising Sections 1 and 2, lays down the short title, commencement, and definitions applicable to The Act.

- i. Section 1 gives The Act its name and provides for its enforcement upon notification by the Central Government.

²⁴ "International Covenant on Civil and Political Rights,,"

²⁵ "Convention on the Elimination of All Forms of Discrimination against Women,,"

²⁶ "Immigration and Foreigners Bill, 2025: A Summary of Key Changes," *Lexology*, 2025 available at: <https://www.lexology.com/library/detail.aspx?g=1debbb9c-a423-4073-b2a6-a111953959e7> (last visited May 9, 2025).

²⁷ *THE IMMIGRATION AND FOREIGNERS ACT, 2025, No. 13 OF 2025, 2025.*

²⁸ "The_Immigration_and_Foreigners_Act,_2025," (prsindia.org, 2025).

- ii. Section 2 defines key terms such as “foreigner,” “passport,” “visa,” “Immigration Officer,” “Registration Officer,” and others. These definitions provide the legal foundation for the interpretation and application of the provisions under The Act.

B. Immigration Regulations

This segment, covered under Chapter II (Sections 3 to 5), deals with matters directly related to immigration²⁹.

- i. Section 3 mandates that all persons entering or exiting India possess valid passports or travel documents, along with visas in the case of foreigners. Immigration Officers are empowered to inspect documents, deny entry or exit, and seize documents deemed fraudulent or forged.
- ii. Section 4 designates specific immigration posts for entry into or exit from India, where immigration checks are to be conducted.
- iii. Section 5 provides for the establishment and administration of the Bureau of Immigration, detailing its structure, functions, and supervision by the Central Government.

C. Regulation of Foreigners in India

Chapter III (Sections 6 to 16) governs the conditions applicable to foreigners residing in India³⁰.

- i. Section 6 introduces mandatory registration requirements for foreigners upon their arrival in India.
- ii. Sections 7 to 16 empower the government to:
 - Issue orders regulating foreigners’ presence and activities.
 - Impose obligations on keepers of accommodation, universities, hospitals, and medical institutions to report details of foreign nationals in their premises.
 - Restrict access to Protected or Restricted Areas and control foreigner visits to Prohibited Places.
 - Govern changes in the name of foreigners, monitor foreigners with restricted movements, and establish protocols for foreign nationals with multiple citizenships.

²⁹ *Ibid.*

³⁰ *Ibid.*

D. Liability of Carriers

Chapter IV (Sections 17 to 19) addresses the responsibilities of carriers, such as airlines, shipping companies, and transport operators³¹.

- i. Section 17 makes it mandatory for carriers to provide comprehensive passenger and crew information, including Advance Passenger Information (API) and Passenger Name Record (PNR) data.
- ii. Section 18 stipulates penalties for failure to comply with these reporting requirements.
- iii. Section 19 imposes strict liability on carriers who bring foreigners into India in contravention of the law. This includes financial penalties and the obligation to remove such foreigners from Indian territory.

E. Offences, Penalties, and Appeal Mechanism

Chapter V (Sections 20 to 26) specifies the offences and penalties applicable under The Act and lays out the appeal mechanism³².

- i. Section 20 penalizes contraventions of the provisions of The Act, including attempts and abetment.
- ii. Section 21 provides punishment for foreigners entering India without valid documentation.
- iii. Sections 22 to 24 introduce penalties for forged documents, overstay, and abetment of offences. These penalties include imprisonment and hefty fines.
- iv. Section 25 allows for the compounding of certain offences, offering an alternative to prosecution in some cases.
- v. Section 26 empowers police officers to arrest without warrant persons suspected of violating immigration laws.

F. Miscellaneous Provisions

Chapter VI (Sections 27 to 36) deals with miscellaneous matters, including executive powers and transitional provisions³³.

- i. Section 27 empowers authorities to enforce directions and use necessary force.
- ii. Sections 28 to 29 confer the power to delegate functions and order deportation.

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

- iii. Sections 30 to 31 allow the Central Government to make rules and require such rules to be laid before Parliament.
- iv. Section 32 grants protection for acts done in good faith under The Act.
- v. Section 33 allows for exemptions in special cases, including for citizens of certain countries.
- vi. Sections 34 to 36 deal with the application of other laws, removal of difficulties, and repeal of existing legislation such as the Passport (Entry into India) Act, 1920, and others.

G. Role of the Bureau of Immigration

The Bureau of Immigration (BoI) plays a pivotal role under the new law. As per Section 5 of The Act³⁴:

- i. The Bureau is responsible for implementing immigration laws, including issuing visas, managing immigration posts, and maintaining foreigner registration.
- ii. It functions under the supervision and control of the Central Government and is led by the Commissioner of the Bureau of Immigration.
- iii. The Bureau works closely with Foreigners Regional Registration Officers (FRROs), Immigration Officers, and other designated authorities.

H. Registration Obligations for Foreigners and Institutions

The Act introduces strict registration obligations to maintain accurate records of foreigners³⁵:

- i. Foreigners must register with Registration Officers upon arrival in India (Section 6).
- ii. Accommodation providers must report the presence of foreigners on their premises (Section 8).
- iii. Universities and Educational Institutions must report the enrollment and status of foreign students (Section 9).
- iv. Hospitals and Medical Institutions must report the admission of foreigners for treatment (Section 10).

These provisions are designed to create a comprehensive and real-time database of foreigners, facilitating better regulation, security, and service delivery.

³⁴ *Ibid.*

³⁵ *Ibid.*

5. Key Legal Innovations and Reforms Introduced

THE IMMIGRATION AND FOREIGNERS ACT, 2025 is a landmark reform in India's immigration law framework. It brings a unified and contemporary legal structure to regulate the entry, stay, and exit of foreigners in India while replacing outdated and fragmented colonial-era laws. The Act introduces several key legal innovations and reforms, which are necessary for addressing modern challenges such as national security, cross-border crimes, illegal immigration, and technological advancements in border management³⁶.

A. Integration and Consolidation of Legacy Laws

One of the most significant achievements of THE IMMIGRATION AND FOREIGNERS ACT, 2025 is the integration and consolidation of four legacy laws³⁷:

- i. The Passport (Entry into India) Act, 1920
- ii. The Registration of Foreigners Act, 1939
- iii. The Foreigners Act, 1946
- iv. The Immigration (Carriers' Liability) Act, 2000

The new framework provides a unified and cohesive approach to immigration regulation, simplifying the law for enforcement agencies, foreign nationals, and other stakeholders. By bringing all substantive and procedural aspects of immigration and foreigner regulation under one legislative roof, The Act ensures consistency, clarity, and ease of application.

B. Enhanced Powers for Immigration Officers and Civil Authorities

The Act significantly enhances the powers and responsibilities of Immigration Officers and Civil Authorities to manage immigration and foreigner-related matters. Some of the key enhancements include:

- i. Control over Entry and Exit: Immigration Officers are empowered to examine and verify the documents of individuals seeking entry or exit. They can refuse entry to a foreigner on grounds such as national security, public health, or public order (Section 3).

³⁶ "Redefining India's Immigration Landscape: The new Immigration Foreigners Act 2025," *Lexology*, 2025 available at: <https://www.lexology.com/library/detail.aspx?g=c0007b0c-0c30-4712-a580-c1f7a912c1c1> (last visited May 10, 2025).

³⁷ *Ibid.*

- ii. Authority to Seize Documents: Officers have the power to seize passports or travel documents suspected to be forged, fraudulently obtained, or otherwise invalid (Section 3(4)).
- iii. Orders and Directions: Civil authorities can issue orders restricting foreigners' movements, activities, and associations in India (Section 7).
- iv. Regulation of Premises: Authorities can close or regulate access to places frequented by foreigners (Section 14).

The enhanced powers are designed to improve the state's capacity to monitor and regulate foreigners while addressing contemporary security and administrative challenges.

C. Obligations on Educational and Medical Institutions

Recognizing the role of educational and medical institutions in the stay of foreigners in India, The Act imposes specific obligations on these entities to enhance transparency and accountability³⁸.

D. Educational Institutions

- i. Mandatory Reporting: Universities and other educational institutions are required to report the admission and presence of foreign students to the designated Registration Officer (Section 9).
- ii. Monitoring Foreign Students: Institutions must maintain accurate records of foreign nationals enrolled in their courses and update authorities regarding their enrollment status.

E. Medical Institutions

- i. Information Disclosure: Hospitals, nursing homes, and other medical establishments must report the admission and treatment of foreigners to the authorities (Section 10).
- ii. Patient and Attendant Details: Reporting is not limited to the patients but extends to their attendants who are provided accommodation or medical services.

It closes gaps where foreigners might exploit institutional settings to overstay or engage in prohibited activities without detection.

³⁸ "Immigration and Foreigners Act, 2025," *Legality Simplified*, 2025 available at: <https://www.legalitysimplified.com/immigration-and-foreigners-act-2025/#:~:text=Foreigner%20Registration&text=Keepers%20of%20accommodations%20must%20report,on%20foreign%20students%20and%20patients>. (last visited May 10, 2025).

F. Data Sharing and Privacy Considerations

One of the central pillars of THE IMMIGRATION AND FOREIGNERS ACT, 2025 is its focus on real-time data sharing and technological integration to ensure effective immigration control and internal security management. The Act mandates:

- i. **Collection and Maintenance of Biometric Data:** Immigration authorities are empowered to collect fingerprints, iris scans, and other biometric identifiers (Section 7(2)(f)(v)).
- ii. **Real-time Reporting and Integration:** Data collected by immigration officers, accommodation providers, educational institutions, and medical facilities is shared with the Bureau of Immigration and other security agencies.
- iii. While these reforms enhance the capacity for surveillance and enforcement, they also raise concerns about privacy and data protection. The Act does not explicitly address:
- iv. **Data Security Protocols:** There are no clear guidelines on how biometric and personal data should be stored, processed, and protected.
- v. **Purpose Limitation and Access Control:** It remains unclear whether the data collected can be used for purposes beyond immigration enforcement and what safeguards are in place to prevent misuse.

Given the sensitive nature of the data involved, these areas require robust subordinate legislation and administrative guidelines to ensure compliance with principles of privacy, as recognized by the Supreme Court's judgment in **K.S. Puttaswamy v. Union of India (2017)**³⁹.

G. Carrier Liabilities and Penalties

The Act places substantial responsibility on carriers (airlines, shipping companies, and other transportation entities) to prevent the unauthorized entry of foreigners into India. Key provisions include⁴⁰:

- i. **Advance Passenger Information (API) and Passenger Name Record (PNR) Data:** Carriers must submit detailed information regarding passengers and crew before their arrival in India (Section 17).

³⁹ *Justice K.S. Puttaswamy (Retd) vs Union Of India, AIR 2018 SC (SUPP) 1841, 2018.*

⁴⁰ "Immigration and Foreigners Bill 2025: A Comprehensive Overview," *Lingaya's VidyaPeeth, 2025* available at: <https://www.lingayasvidyapeeth.edu.in/immigration-and-foreigners-bill-2025-a-comprehensive-overview/> (last visited May 9, 2025).

- ii. Penalties for Non-Compliance: Failure to provide accurate data or bringing unauthorized persons into India can result in penalties ranging from ₹50,000 to ₹5,00,000 per passenger (Sections 18 and 19).
- iii. Obligation to Remove Inadmissible Passengers: If a foreigner is refused entry, the carrier is responsible for ensuring their immediate removal from Indian territory (Section 19(9)).

This approach mirrors international best practices but also requires clarity regarding the rights of carriers to challenge penalties and decisions.

H. Provisions Related to Surveillance, Detention, and Deportation

The Act includes comprehensive provisions related to the surveillance, detention, and deportation of foreigners⁴¹:

- i. Surveillance of Movements: The Act empowers authorities to restrict a foreigner's movement, require them to reside at specific locations, and impose reporting obligations (Sections 7 and 13).
- ii. Detention Centers: Foreigners under deportation orders or with restricted movements can be housed in designated facilities, subject to specified conditions regarding discipline and maintenance (Section 13).
- iii. Deportation Orders: The Central Government may order the deportation of a foreigner on grounds such as national security, adverse intelligence reports, or violations of immigration conditions (Section 29).

However, the lack of clear procedural safeguards, including access to legal counsel and judicial review, raises concerns regarding compliance with due process and human rights obligations.

I. Special Provisions for Protected, Restricted, and Prohibited Areas

The Act codifies and strengthens the legal regime concerning Protected, Restricted, and Prohibited Areas⁴²:

- i. Protected and Restricted Areas: These are sensitive regions, typically near India's international borders or areas of strategic importance, where foreigners' access is restricted. Entry or stay in such areas requires special permits issued by the Central Government or designated authorities (Section 11).

⁴¹ *THE IMMIGRATION AND FOREIGNERS ACT, 2025, No. 13 OF 2025, 2025.*

⁴² *Ibid.*

- ii. **Prohibited Places:** Areas notified as Prohibited Places, often related to defines and security installations, are entirely off-limits to foreigners without explicit authorization (Section 11).

The rationale for these provisions lies in safeguarding national security and sovereignty, especially in sensitive regions such as border areas in Arunachal Pradesh, Jammu & Kashmir, and the Andaman & Nicobar Islands. The law ensures a clear legal basis for monitoring and restricting the movement of foreigners in these areas, thereby mitigating potential security risks.

However, the expanded surveillance powers and data collection mechanisms necessitate robust privacy protections and procedural safeguards to balance national security with individual rights. As The Act moves toward implementation, its success will depend on the development of detailed rules, transparent procedures, and effective oversight mechanisms.

6. Critical Appraisal and Legal Challenges

THE IMMIGRATION AND FOREIGNERS ACT, 2025, marks a comprehensive legal overhaul of India's immigration regime.

A. Analysis of Constitutionality (Article 14 and Article 21 Concerns)

At the heart of any legislative reform lies the touchstone of constitutional validity. THE IMMIGRATION AND FOREIGNERS ACT, 2025, must be evaluated against Articles 14 (equality before law) and 21 (protection of life and personal liberty) of the Constitution of India⁴³.

B. Article 14 – Equality Before Law⁴⁴

The Act provides immigration officers and civil authorities with wide discretionary powers to regulate the entry, registration, movement, and deportation of foreigners. The lack of clear and objective standards guiding the exercise of these powers could invite arbitrary classifications and discriminatory practices. This raises serious concerns under Article 14, which prohibits arbitrary and unequal treatment without reasonable classification and nexus.

⁴³ Sanjay Hegde, "Immigration and Foreigners Bill, 2025 is not just an administrative update. It redefines who belongs and on what basis" *The Indian Express*, 8 April 2025, Express opinion edition, section Immigration and Foreigners Bill, 2025 is not just an administrative update. It redefines who belongs and on what basis.

⁴⁴ *The Constitution of India*,.

C. Article 21 – Life and Personal Liberty⁴⁵

Several provisions concerning detention, surveillance, and deportation of foreigners can impact the right to life and liberty. The Supreme Court in *Maneka Gandhi v. Union of India* (1978) emphasized that any procedure curtailing personal liberty must be “just, fair and reasonable.” Detention without clear due process safeguards or timely judicial review could be constitutionally vulnerable. The Act lacks a transparent mechanism to challenge detention orders, which may lead to prolonged custody without legal remedy—contravening Article 21.

D. Potential Conflicts with International Human Rights Obligations

India is a signatory to multiple international covenants and conventions, including:

- The Universal Declaration of Human Rights (UDHR)⁴⁶
- The International Covenant on Civil and Political Rights (ICCPR)⁴⁷
- The Convention on the Rights of the Child (CRC)⁴⁸
- The 1951 Refugee Convention (though India is not a signatory, it adheres to several customary norms)

The Act does not explicitly recognize the principle of non-refoulement, which prohibits the return of a person to a country where they face threats to life or freedom. The lack of asylum provisions or a refugee protection mechanism may be perceived as non-compliance with international humanitarian standards. Moreover, there are no procedural guarantees or individualized assessments before deportation, making the process potentially violative of customary international law principles.

E. Issues of Discretionary Powers and Risk of Arbitrariness

THE IMMIGRATION AND FOREIGNERS ACT, 2025, provides vast discretionary powers to both central and state authorities. For instance:

- i. Section 7 empowers civil authorities to restrict a foreigner’s movement, communication, and association.
- ii. Section 13 allows detention without judicial oversight for extended periods.
- iii. Section 29 gives the Central Government unrestricted authority to deport any foreigner.

⁴⁵ *The Constitution of India*,.

⁴⁶ United Nations, “Universal Declaration of Human Rights” *un.org* available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited May 10, 2025).

⁴⁷ “International Covenant on Civil and Political Rights,.”

⁴⁸ General Assembly resolution 44/25, “Convention on the Rights of the Child” (United Nations Human Rights Office of the High Commissioner, 1989).

Such unstructured discretion is susceptible to arbitrary use and political abuse. There are limited checks and balances or mechanisms for accountability. The absence of defined procedural safeguards, such as rights to legal representation, review by an independent body, or periodic assessments, can lead to violations of natural justice.

F. Data Protection and Privacy Concerns

The Act introduces extensive provisions for biometric data collection, surveillance, and information sharing with multiple agencies. However, it lacks any explicit reference to data protection laws, security protocols, or user rights.

Given the Supreme Court's landmark ruling in **K.S. Puttaswamy v. Union of India (2017)**⁴⁹ that recognized the right to privacy as a fundamental right under Article 21, any collection and use of personal data must meet the tests of:

Legality, Necessity, Proportionality, Procedural safeguards

The Act's silence on:

Data retention policies, Third-party data access, Right to rectification or erasure, Independent oversight mechanisms

...indicates a **serious legal gap** that undermines individual privacy rights and exposes sensitive data to potential abuse or breach.

G. Impact on Refugees and Asylum Seekers

One of the most significant gaps in The Act is its failure to distinguish between economic migrants, illegal immigrants, refugees, and asylum seekers. All categories are treated under the same legal framework without regard to their vulnerability or international protection status.

India, though not a party to the 1951 Refugee Convention, has traditionally adopted a non-refoulement approach and hosted various refugee populations from Tibet, Sri Lanka, Afghanistan, and Myanmar. The absence of:

- i. A refugee status determination mechanism
- ii. Humanitarian exceptions in deportation orders
- iii. Appeal or review procedures in cases involving refugees...can lead to arbitrary and inhumane outcomes, particularly in cases involving children, women, and persecuted minorities.

This also contradicts the spirit of Article 51(c) of the Constitution, which enjoins the State to

⁴⁹ *Justice K.S. Puttaswamy (Retd) vs Union Of India*, AIR 2018 SC (SUPP) 1841, 2018.

foster respect for international law and treaty obligations.

H. Balance Between National Security and Individual Liberties

While national security is a legitimate state interest, it cannot be pursued at the cost of fundamental rights. The Act gives primacy to security, order, and control, often without corresponding checks to ensure that individual rights are not sacrificed in the process.

The inclusion of:

- i. Unspecified grounds for surveillance
- ii. Broad deportation powers
- iii. Vague criteria for prohibiting entry
- iv. Restrictions on foreigners' movements without judicial approval

...shifts the burden of compliance entirely onto individuals, including legitimate travellers and long-term residents. A balanced approach, as suggested in landmark cases like *A.K. Gopalan v. State of Madras*⁵⁰ and *ADM Jabalpur v. Shivkant Shukla*⁵¹, must be reemphasized to prevent state overreach.

I. Judicial Review and Burden of Proof on Foreigners (Section 16)

Section 16 of The Act places the burden of proof on the individual to prove their nationality, immigration status, and legality of stay. This deviates from standard criminal and civil jurisprudence where the burden typically lies on the State.

The Supreme Court has repeatedly held that access to judicial review is part of the basic structure doctrine (*L. Chandra Kumar v. Union of India*⁵²). The absence of:

- i. Specific timelines for hearings
- ii. Access to legal aid
- iii. Independent appellate mechanisms

...restricts the scope of effective judicial redress. Moreover, the reverse burden can disproportionately affect poor and undocumented individuals, especially those fleeing persecution or lacking documentary evidence.

To ensure constitutional sustainability and human rights compliance, the following reforms are imperative:

- i. Introduction of detailed procedural safeguards

⁵⁰ Harilal J. Kania, *A.K. Gopalan vs The State Of Madras*. *Union Of India* 1950 AIR 27, 1950.

⁵¹ A. N. Ray, *Additional District Magistrate, Jabalpur vs S. S. Shukla Etc. Etc* 1976 SCR 172, 1976.

⁵² A. M. Ahmadi, *L. Chandra Kumar vs Union Of India And Others Appeal (civil)* 481 of 1980, 1997.

- ii. Separate provisions for refugees and asylum seekers
- iii. Privacy-preserving protocols for data management
- iv. Independent appellate authorities for reviewing administrative decisions

Only through judicial clarity, legislative precision, and executive restraint can this legislation serve both national security objectives and democratic constitutional ideals.

7. Comparative Analysis with Global Immigration Frameworks (Optional but Recommended)

To evaluate its comprehensiveness and contemporary relevance, it is imperative to assess how it compares with immigration frameworks of other jurisdictions such as the United States, United Kingdom, Australia, and the European Union. A comparative legal study allows for identifying best practices, potential gaps, and opportunities to improve India's immigration governance.

A. Comparison with Immigration Laws of the USA, UK, Australia, and EU

i. United States

The U.S. immigration framework is governed primarily by the Immigration and Nationality Act (INA)⁵³. The U.S. system emphasizes:

- Categorization of entrants (immigrants, non-immigrants, refugees, asylum seekers, etc.)
- Due process rights for detainees and deportees
- Clear appellate procedures through Immigration Courts and the Board of Immigration Appeals
- Robust mechanisms for refugee protection and asylum adjudication

While the U.S. framework has been criticized for complexity and politicization, it maintains a clear distinction between lawful immigration enforcement and humanitarian obligations, offering legal recourse and judicial review⁵⁴.

ii. United Kingdom

The UK's immigration law, primarily governed by the Immigration Act 1971⁵⁵ and its subsequent amendments (notably the Nationality and Borders Act, 2022⁵⁶), emphasizes:

⁵³ *Immigration and Nationality Act (INA)*, 1952.

⁵⁴ Wikipedia contributors, "Immigration policy of the United States — Wikipedia, The Free Encyclopedia," 2025.

⁵⁵ *Immigration Act 1971*, 1971.

⁵⁶ *Nationality and Borders Act 2022*, 2022.

- Stricter border control and comprehensive registration systems⁵⁷
- Data sharing across agencies through integrated platforms
- Specific rules for asylum seekers and stateless persons
- A tiered visa structure and carrier liability regime

Notably, the UK provides for human rights-based appeals, allowing migrants and refugees to challenge deportation orders based on the European Convention on Human Rights (ECHR).

iii. Australia

Australia operates a points-based immigration system and is governed by the Migration Act, 1958⁵⁸. It includes:

- Clear procedural safeguards
- Mandatory detention of unauthorized arrivals, though controversial
- Appeal tribunals for immigration decisions
- Special provisions for refugees under the Migration Regulations

Australia's framework is known for its strong border control, but it has faced international criticism for the offshore processing of asylum seekers and prolonged detention without adequate review mechanisms.

iv. European Union

The EU immigration framework, although implemented individually by Member States, is largely guided by:

- The Charter of Fundamental Rights of the EU
- The Schengen Borders Code
- The Common European Asylum System (CEAS)

The EU approach emphasizes:

- Free movement within the bloc
- Rights-based immigration governance
- Harmonized asylum procedures
- Non-discrimination and proportionality

The EU places strong emphasis on privacy protections, data sharing with consent, and judicial redress, anchored in fundamental rights.

⁵⁷ Wikipedia contributors, "Immigration policy of the United Kingdom — Wikipedia, The Free Encyclopedia," 2025.

⁵⁸ *MIGRATION ACT 1958*, 1958.

B. Best Practices and Their Reflection (or Absence) in the Indian Act

While THE IMMIGRATION AND FOREIGNERS ACT, 2025 is commendable for its consolidation of legacy laws, the following best practices from global frameworks are either absent or underdeveloped⁵⁹:

Best Practice	Reflection in Indian Bill	Observations
Refugee and asylum provisions	Not included	Lacks differentiation or procedural protection
Independent appellate mechanisms	Minimal provisions	No separate immigration tribunal; appeals limited
Data protection and privacy	No clear policy	No reference to safeguards as seen in EU/UK
Non-refoulement principle	Absent	Contradicts international customary law
Rights-based detention safeguards	Not clearly outlined	Risk of prolonged and arbitrary detention
Transparency in discretionary powers	Ambiguous	No objective criteria or oversight mechanisms

8. Way Forward and Recommendations

THE IMMIGRATION AND FOREIGNERS ACT, 2025 represents a significant step towards establishing a unified, transparent, and modern immigration regime in India⁶⁰.

A. Need for Comprehensive Rules and Subordinate Legislation

The framework nature of The Act necessitates the development of detailed rules, regulations, and guidelines to govern its practical implementation. While The Act outlines core principles and institutional responsibilities, critical operational details—such as procedures for detention, deportation, registration, data-sharing protocols, and institutional responsibilities—must be clearly specified through subordinate legislation under delegated powers.

- i. The timely framing of rules under The Act is essential to avoid administrative ambiguity and ensure uniform enforcement across states and regions.

⁵⁹ Archana Rao, “India’s Immigration and Foreigners Bill, 2025: What Businesses Need to Know” *India Briefing*, 2025 available at: <https://www.india-briefing.com/news/indias-immigration-and-foreigners-bill-2025-what-businesses-need-to-know-36567.html/> (last visited May 9, 2025).

⁶⁰ Hanjabam Anamika Devi and Aparna Srivastava, “Cross-Border Migration and Its Impact in Manipur 2012-2024.”

- ii. Provisions dealing with technological surveillance, data storage, and deportation protocols must especially be laid down with precision to prevent abuse or misuse.

B. Recommendations for Clarity and Transparency in Implementation

To ensure public trust and legal certainty, the implementation of The Act must be accompanied by measures that promote clarity, accessibility, and procedural fairness.

- i. All rules and procedures should be publicly notified and accessible in multiple languages to ensure wide dissemination and understanding.
- ii. Institutions and stakeholders (educational institutions, hospitals, carriers) that have compliance obligations must be provided with adequate training and guidance.
- iii. Foreign nationals must have access to standardized information on registration obligations, rights during detention, and legal recourse mechanisms.

Additionally, the creation of helpdesks and multilingual portals could greatly assist in easing the compliance burden on foreigners and host institutions alike.

C. Suggestions for Checks and Balances

Given the broad discretionary powers vested in immigration and civil authorities under The Act, it is imperative to institute institutional checks and balances to prevent arbitrariness.

- i. The establishment of independent grievance redressal bodies at the central and state levels could provide accessible avenues for addressing grievances related to wrongful detention, misclassification, or procedural irregularities.
- ii. The use of technology-driven audit trails for all immigration decisions (especially surveillance, detention, or deportation) can promote accountability.
- iii. Periodic parliamentary and judicial review of the functioning of authorities under The Act should be institutionalized to assess misuse and ensure compliance with constitutional norms.

D. Role of Judiciary and Oversight Mechanisms

The judiciary must play a central role in safeguarding constitutional rights and overseeing the legality of executive actions under the new regime.

- i. Given the potential for fundamental rights infringement (Articles 14, 19, 21), the courts must be empowered to review administrative actions for procedural and substantive fairness.

- ii. An expedited mechanism for judicial review of detention and deportation orders could be established to prevent prolonged and arbitrary detention.
- iii. High Courts and the Supreme Court may also evolve guidelines to ensure the uniform application of The Act and prevent misuse of discretionary powers.

A statutorily recognized oversight mechanism, such as an Immigration Review Board, may be considered to scrutinize sensitive decisions, particularly those affecting vulnerable populations.

E. Need for Harmonization with India's Refugee Policy

The Act is silent on the distinction between illegal immigrants, refugees, and asylum seekers. This lacuna could create legal ambiguities and humanitarian concerns, particularly in light of India's non-signatory status to the 1951 Refugee Convention.

- i. India needs to develop a clear refugee and asylum policy, either as part of this Bill or through complementary legislation, to ensure that genuine asylum seekers are not treated at par with illegal entrants.
- ii. Non-refoulement principles, which prohibit the return of persons to countries where they face persecution, should be expressly included in the law in accordance with India's international customary obligations.

F. Addressing Concerns Related to Vulnerable Communities

The enforcement of THE IMMIGRATION AND FOREIGNERS ACT must remain sensitive to the special vulnerabilities of certain communities, including:

- i. Stateless persons and persecuted minorities
- ii. Children and victims of trafficking
- iii. Persons fleeing conflict zones
- iv. To protect such groups:
- v. Special procedures, legal aid support, and non-custodial alternatives to detention must be developed.
- vi. Women and children, in particular, must be afforded protections under existing child welfare and human rights laws.
- vii. Collaboration with UNHCR and other humanitarian agencies can help in verifying refugee claims and preventing wrongful deportations.

The way forward demands careful calibration of security interests and civil liberties—true to the spirit of the Indian Constitution.

9. Conclusion

THE IMMIGRATION AND FOREIGNERS ACT, 2025, marks a paradigm shift in India's immigration governance. The Act not only modernizes the legal regime but also consolidates disparate laws into a single, unified legislative framework. This transformation holds immense significance for a country as geopolitically, economically, and demographically dynamic as India. The Act addresses the long-standing need for clarity, procedural uniformity, and digital integration in immigration management, aligning with global practices while contextualizing India's unique socio-political environment.

At its core, The Act attempts a delicate balancing act between safeguarding national security and upholding constitutional liberties. In an age of increasing transnational movement, porous borders, and heightened security threats, India needs robust tools to regulate entry, monitor presence, and enable deportation when warranted. Simultaneously, it must not lose sight of the rights of individuals, particularly refugees, asylum seekers, and other vulnerable groups who may lack proper documentation but deserve legal protection and humanitarian consideration. The challenges of discretionary powers, judicial oversight, and data privacy therefore need to be consistently monitored and addressed through principled governance.

Importantly, The Act creates an institutional structure that can be expanded and refined through rules and subordinate legislation, thereby offering scope for policy evolution as situations change. Provisions related to surveillance, digital registration, data sharing, and the role of institutional actors such as educational and healthcare providers reflect an attempt to build an ecosystem of compliance, though care must be taken to ensure that these do not become mechanisms of harassment or overreach.