



INTERNATIONAL LAW  
JOURNAL

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**WHITE BLACK  
LEGAL LAW  
JOURNAL  
ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

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# **STATELESS AT THE BORDER: A SOCIO-LEGAL ANALYSIS OF ILLEGAL IMMIGRATION IN INDIA: LEGAL FRAMEWORKS, HUMAN RIGHTS, AND THE IMPERATIVE FOR REFORM**

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## **ABSTRACT**

*"India's central location in South Asia necessitates the management of vast, porous frontiers shared with six neighbouring nations which are Bangladesh, Myanmar, Nepal, Pakistan, Bhutan, and China, rendering it simultaneously a country of origin, a corridor of transit, and a destination for irregular migration. Having a geographical location and huge international borders are a repeated problem about managing migration in India. The causes of population movement into India are Economic, political, humanitarian and security. Against this backdrop, this paper undertakes a critical socio-legal examination of undocumented migration into India, tracing its colonial antecedents, mapping its contemporary legislative and judicial landscape, and interrogating the socio-economic consequences of large-scale population influx. This crisis of governance is reflected in the large scale of changing demographic patterns, of which almost 20 million Bangladeshi nationals are living in India outside the law and national-recognized boundaries – and almost 80,000 Rohingya are internally displaced persons. This phenomenon has placed the sovereignty, defense and judicious stability of the state in sharp contrast with global humanitarian norms. Notably, India remains among Asia's principal host nations for refugees and irregular migrants notwithstanding its non-accession to the 1951 Refugee Convention and the 1967 Protocol.<sup>1</sup> This article examines the legal framework for illegal migration in India such as the Foreigners Act, 1946,<sup>2</sup> and the now defunct Illegal Migrants (Determination by Tribunals) Act, 1983,<sup>3</sup> to the Citizenship (Amendment) Act,*

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<sup>1</sup> Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137; Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267.

<sup>2</sup> The Foreigners Act, 1946, No. 31, Acts of Parliament, 1946 (India).

<sup>3</sup> The Illegal Migrants (Determination by Tribunals) Act, 1983, No. 39, Acts of Parliament, 1983 (India).

2019,<sup>4</sup> the Assam NRC exercise, and the Immigration and Foreigners Act, 2025.<sup>5</sup> Landmark judgements like *Sarbananda Sonowal v. Union of India*<sup>6</sup> and *Mohammad Salimullah v. Union of India*<sup>7</sup> are subjected to doctrinal scrutiny, alongside an analysis of the socio-demographic ramifications of mass irregular migration in India's frontier states. The paper calls for a balance between the security of the state and protection for vulnerable people who are displaced, using a socio-legal approach to an effective migration management.

**Keywords:** *Illegal Immigration, Rohingya Refugees, Non-Refoulement, Statelessness, Citizenship (Amendment) Act 2019, Immigration and Foreigners Act 2025*

## I. INTRODUCTION

The issue of illegal immigration in India goes beyond the area of borders. The citizenship determination, demographic policy, labour markets, internal security, refugee protection and constitutional governance are all affected. Discussions on migration of non-citizens often include various claims to national interest, public good, and rights. India confronts border management challenges of extraordinary scale: its land perimeter of approximately 15,106.7 km, shared across six sovereign neighbours Bangladesh, China, Pakistan, Nepal, Bhutan, and Myanmar together with a maritime coastline of approximately 7,516.6 km together creating conditions in which population movement across borders both voluntary and involuntary constitutes a structural and enduring feature of Indian public administration rather than an episodic crisis.<sup>8</sup> The dominant source countries for unauthorised entry into India are Bangladesh and Myanmar, though the drivers are complex and overlapping: wage differentials and extreme poverty, regime instability and political persecution, the targeting of religious minorities, and the displacement effects of recurring natural disasters and armed conflict. The phenomenon is not internally uniform it comprises economic migrants in search of livelihood, persons fleeing documented persecution, stateless individuals without any national legal protection, and human trafficking victims who enter India without agency. Each of these categories requires a distinct and context-sensitive legal and policy response.<sup>9</sup>

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<sup>4</sup> The Citizenship (Amendment) Act, 2019, No. 47, Acts of Parliament, 2019 (India).

<sup>5</sup> The Immigration and Foreigners Act, 2025 (India) [hereinafter 2025 Act].

<sup>6</sup> *Sarbananda Sonowal v. Union of India*, (2005) 5 SCC 665.

<sup>7</sup> *Mohammad Salimullah v. Union of India*, (2021) 15 SCC 157.

<sup>8</sup> Ministry of Home Affairs, Government of India, 'Annual Report 2023-24: Border Management' (MHA, 2024).

<sup>9</sup> Sanjoy Hazarika, *Rites of Passage: Border Crossings, Imagined Homelands, India's East and Bangladesh* (Penguin Books India, 2000).

The distinct situation of India not being a party to the “1951 Refugee Convention and its Protocol of 1967” has led to a model of refugee governance that has shaped by domestic laws, actions of the executive, judicial interpretations and bilateral agreements.<sup>10</sup> Such a non-accession has created a "structural policy vacuum," which the state has partly filled with colonial era laws, executive directives, occasional bilateral arrangements, and judicial rulings. Since there is no separate refugee law, the overall system of regulation is complex, and frequently refugees and migrants are dealt with under the same regulatory framework. Structurally, there is a need for laws that go beyond institutional modernity and provide for procedural steps, empirical data infrastructure, and international legal convergence to meet the need, yet the Immigration and Foreigners Act, 2025, which came into effect on 1 September 2025, is the most ambitious institutional response in India.<sup>11</sup>

The socio-economic aspects of migration by non-citizens are also important. These are important features of the informal sector economy and the strain they impose on public services, as well as a change in demographic trends and potential communal tensions that periodically spill over into organised political activity, mainly in Assam, West Bengal, Rajasthan and Delhi. The decade-long Assam agitation of the 1980s, culminating in the Assam Accord of 1985, stands as the defining historical illustration of the political convulsions that sustained undocumented immigration can produce. Anchored at the intersection of law and society, this paper synthesises Parliamentary debates, Census materials, judicial doctrine, and civil society reporting to assess whether India’s legal order is calibrated to address this phenomenon in its full complexity.<sup>12</sup>

This paper sets out to: (i) critically appraise the current legal framework governing State action in the context of illegal immigration; (ii) analyse the socio-economic impacts of illegal migration; (iii) interrogate the Rohingya refugee crisis as a case study of the conflict between the sovereignty and the humanitarian interest; (iv) examine India's human rights obligations under the customary international law; and (v) to outline a framework within which India could develop a national refugee policy which is both sovereign and humanitarian in nature. The approach is mostly doctrinal and socio-legal, relying on case law, law acts, the reports of national and international human rights institutions and scholarly writing.

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<sup>10</sup> Convention Relating to the Status of Refugees, *supra note 1*.

<sup>11</sup> 2025 Act, *supra note 5*.

<sup>12</sup> Citizens for Justice and Peace (CJP), 'India's Stealthy Pushback: Thousands of Alleged Bangladeshi Immigrants Deported Without Due Process Across States' (July 2025).

## **II. HISTORICAL CONTEXT AND DIMENSIONS OF ILLEGAL IMMIGRATION IN INDIA**

Migration in India has been strongly linked to the large-scale political changes in South Asia in the recent past. Large-scale population movements as a result of various events like Partition in 1947, Liberation Struggle of Bangladesh in 1971 and ongoing ethnic persecution in Myanmar's Rakhine State have left lasting legal impacts. These events spurred a number of internal migrations to the eastern borders of India, leaving the issues of nationality, residence and legal status unresolved and affecting Indian immigration policy. The Liberation War of 1971, which resulted in Bangladeshi independence, produced a secondary wave of population movement directed principally toward Assam, West Bengal, and Tripura, with substantial numbers eventually settling permanently within border communities. In 2016 parliamentary testimony, Minister of State (Home Affairs) Kiren Rijiju placed India's undocumented Bangladeshi migrant population at approximately 20 million.<sup>13</sup> Census figures from 2011 recorded a 5-7 per cent rise in undocumented Bangladeshi migration across relevant border districts over the preceding ten years.<sup>14</sup>

The situation with Rohingya migrants in India is a peculiar one in the context of immigration in the country. There has been a large exodus from Myanmar's Rakhine State during 2017 drove over 742,000 Rohingya from their homes, producing what international bodies have characterised as the world's single largest stateless population. Most of them entered the territory of Bangladesh, but about 79,000 by 2024 were estimated to have come to India, most of them to the mountainous region of Jammu, Delhi, Hyderabad and the North East States. Of these, approximately 22,000 have UNHCR refugee registration certificates. Despite having refugee certificates issued by the international organizations, they are, in general, treated as foreign nationals illegally in India under the Indian law.<sup>15</sup>

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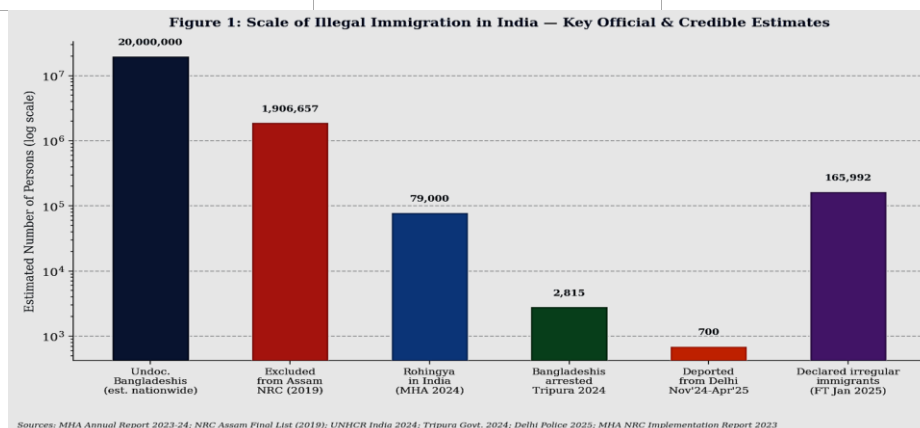
<sup>13</sup> Kiren Rijiju (Minister of State, Home Affairs), Starred Question No. 1449, Lok Sabha, March 2016, cited in India Foundation, 'Illegal Immigration to India: Implications and the Way Forward' (May 2025).

<sup>14</sup> Office of the Registrar General & Census Commissioner, 'Census of India 2011 Population Data: Assam and West Bengal Border Districts', compiled by Dr. C. Chandramouli; see also Gulf News, 'Illegal Immigration from Bangladesh Surges in Assam and West Bengal' (2014).

<sup>15</sup> Ministry of Home Affairs, Government of India, 'Annual Report 2023-24: Border Management' (MHA, 2024); UNHCR India, Rohingya Refugee Statistics (2024).

**Table 1: Key Statistics on Illegal Immigration in India<sup>16</sup>**

Category	Estimated Figure	Source
Undocumented Bangladeshis (nationwide)	~20 million	MoS Home, Parliament, 2016
Persons excluded from Assam NRC (2019)	19,06,657	NRC Assam, August 2019
Rohingya migrants in India	~79,000 (22,000 UNHCR-registered)	MHA, 2024
Bangladeshis arrested, Tripura (Jan-Oct 2024)	2,815	Tripura Govt. Data, 2024
Undocumented migrants deported from Delhi (Nov 2024–Apr 2025)	~700	Delhi Police, May 2025
Foreigners in Jammu & Samba districts (2016)	13,700+	Govt. Data, 2016
Muslim population growth in Assam (1951-2011)	24.68% to 34.22%	Census of India, 2011
Bangladeshis identified in Delhi for deportation (2025)	~900	Delhi Crime Branch, 2025



In addition to Bangladeshi and Rohingya migrants, India also has documented and

<sup>16</sup> See Ministry of Home Affairs; Tripura State Government; Delhi Police; Census of India, 2011; UNHCR, 2024; Delhi Crime Branch, 2025.

undocumented Sri Lankan Tamils, Tibetan refugees, Afghan refugees and a few irregular migrants from countries in Africa. Contrary to the image of a single-functioning entity, illegal immigration is multi-origin, and requires a legal and policy response that is both disaggregated and differentiated, and contextually calibrated.

### **III. LEGAL FRAMEWORK GOVERNING ILLEGAL IMMIGRATION** **IN INDIA**

#### ***3.1 The Colonial-Era Framework and the Foreigners Act, 1946***

Prior to the enactment of the 2025 legislation, India's immigration enforcement rested principally on the Foreigners Act, 1946 a statute enacted by the Imperial Legislative Council that defined 'foreigner' under Section 2(a) and vested the Central Government with broad regulatory authority over the entry, presence, and removal of foreign nationals. This provision,<sup>17</sup> continues to be the most litigated as Section 9 mandates that any person accused of being a foreigner must establish "that he is not a foreigner".<sup>18</sup> It was recently affirmed by the Supreme Court in *Hans Muller of Nuremberg v. Superintendent, Presidency Jail*,<sup>19</sup> Calcutta and subsequently confirmed in *Louis De Raedt v. Union of India*,<sup>20</sup> which held that the right remains in India is available "only to citizens." This was to be the premise for all Foreigners Tribunal adjudications across the country.<sup>21</sup>

The powers of Executive were very wide, comprehensive, and not subject to judicial control, including the power of admission and exclusion, the power to assign a place of rest and residence and power to deport, with the possibility of pre-removal detention. Legal scholars and civil society organisations have comprehensively documented how this unchecked detention power subjected stateless persons who cannot be deported to any state willing to receive them to prolonged and indefinite administrative confinement, a phenomenon that has persisted into the twenty-first century. Rooted in the administrative and security imperatives of British colonial governance rather than in the protection of individual liberty, the Act was constitutionally and normatively ill-equipped to respond to the contemporary realities of forced

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<sup>17</sup> The Foreigners Act, No. 31 of 1946, § 2(a).

<sup>18</sup> *Id.* at § 9.

<sup>19</sup> *Hans Muller of Nuremberg v. Superintendent Presidency Jail, Calcutta*, AIR 1955 SC 367.

<sup>20</sup> *Louis De Raedt v. Union of India*, (1991) 3 SCC 554.

<sup>21</sup> Section 9, Foreigners Act, 1946; upheld by the Constitution Bench of the Supreme Court of India; see also Drishti IAS, 'Legal Framework for Illegal Migrants in India' (2024).

migration.<sup>22</sup>

### **3.2 The Passport (Entry into India) Act, 1920**

Operating alongside the Foreigners Act, the Passport (Entry into India) Act, 1920 with its implied provisions, sanctioned the issuance of passports and accompanied it with criminal penalties for those without valid travel papers seeking entry to the body of the Indian state.<sup>23</sup> Read in conjunction with the Registration of Foreigners Act, 1939<sup>24</sup> and the Immigration (Carriers' Liability) Act, 2000,<sup>25</sup> these acts jointly made up a pre-2025 immigration system that was fractured, under-institutionalised, normatively problematic and inter-jurisdictional enforcement imperfect. Notably in the humanitarian field, Article 31(1) of the Refugee Convention 1951, to which India is not Party, explicitly prohibits imposing penal sanctions on people seeking refugee status while entering illegally. While India has not ratified, it has contributed to serious humanitarian issues, acknowledged at the international level, due to the practice of criminalising non-regular entry.<sup>26</sup>

### **3.3 The IMDT Act, 1983 and *Sarbananda Sonowal v. Union of India* (2005)**

Confined in its territorial application to Assam, the Illegal Migrants (Determination by Tribunals) Act, 1983,<sup>27</sup> represented a deliberate legislative inversion of the evidential framework established by the Foreigners Act: rather than placing the burden of proving foreign nationality on the state or the accused individual, the IMDT Act placed the onus squarely on the complainant to establish that a named person was in fact a foreign national. It has been pointed out time and time again that this burden distribution made it virtually impossible for anything to be meaningful deportation. In the case of *Sarbananda Sonowal v. Union of India*<sup>28</sup> invalidated the IMDT Act, reasoning that undocumented inflows from Bangladesh were equivalent to an 'external threat' that invoked the Union's protective duties under the Constitution's 355th Article,<sup>29</sup> thereby obliges the Union to "protect Assam's indigenous population". All pending cases under the IMDT Act were transferred to "Foreigners Tribunals

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<sup>22</sup> Amnesty International India, 'Designed to Exclude: How India's Courts Have Failed Residents of Assam' (2019); Human Rights Watch, 'India: Authorities Deport Rohingya to Myanmar' (January 2022); Citizens for Justice and Peace (CJP), 'India's Stealthy Pushback' (July 2025) [cjp.org.in](http://cjp.org.in).

<sup>23</sup> The Passport (Entry into India) Act, 1920, No. 34, Acts of Parliament, 1920 (India).

<sup>24</sup> The Registration of Foreigners Act, 1939, No. 16, Acts of Parliament, 1939 (India).

<sup>25</sup> The Immigration (Carriers' Liability) Act, 2000, No. 52, Acts of Parliament, 2000 (India).

<sup>26</sup> Convention Relating to the Status of Refugees, *supra* note 1, art. 31(1).

<sup>27</sup> The Illegal Migrants (Determination by Tribunals) Act, No. 39 of 1983.

<sup>28</sup> *Sarbananda Sonowal*, *supra* note 6.

<sup>29</sup> India Const. art. 355.

— quasi-judicial bodies created by executive order in 1964 — were empowered under the Foreigners (Tribunals) Order, 1964. " <sup>30</sup>

### ***3.4 Citizenship (Amendment) Act, 2019 and the National Register of Citizens***

The Citizenship Act, 1955 constitutes the principal legislative instrument regulating the modes by which Indian nationality may be acquired, surrendered, or forfeited.<sup>31</sup> The Citizenship (Amendment) Act, 2019<sup>32</sup> effected a politically contentious amendment to this foundational statute: it created an accelerated pathway to naturalisation for members of six non-Muslim religious minorities Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians who had fled persecution in Afghanistan, Bangladesh, or Pakistan and had arrived in India on or before 31 December 2014. The intentional omission of Muslims from this dispensation has attracted enduring constitutional challenge under Article 14, on the basis that the religion-based classification fails to satisfy the requirement of a rational and legitimate legislative nexus a connection that critics contend the legislation demonstrably fails to establish.<sup>33</sup>

Separately from the Article 14 challenge,<sup>34</sup> the Foreigners (Tribunals) Order, 1964<sup>35</sup> created quasi-judicial adjudicatory bodies with the power to determine whether a particular individual falls within the definition of a 'foreigner' under the Foreigners Act. The Assam NRC, conducted under the direct supervisory jurisdiction of the Supreme Court and published in its final form on 31 August 2019, resulted in the exclusion of 19,06,657 individuals from the official register of Indian citizens. In *Assam Sanmilita Mahasangha v. Union of India*, the Supreme Court confirmed the constitutional legitimacy of the Foreigners Tribunals framework but expressly acknowledged the existence of material procedural deficiencies.<sup>36</sup> The National Human Rights Commission has found three structural weaknesses in the Tribunals: firstly, the lack of transparency in Tribunals' adjudicatory processes, secondly, the longstanding poor quality of legal representation for the Tribunals' respondents, and thirdly, the impenetrable language barrier that rural claimants face.<sup>37</sup>

A significant number of around seven lakhs were Muslim, and majority were non-Muslim, in the list of 19,06,657 people who were excluded from NRC. This demographic structure gives

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<sup>30</sup> The Foreigners (Tribunals) Order, 1964, G.S.R. 93, dated Sept. 23, 1964.

<sup>31</sup> Citizenship Act, 1955, No. 57, Acts of Parliament, 1955 (India).

<sup>32</sup> The Citizenship (Amendment) Act, *supra* note 4.

<sup>33</sup> The Citizenship (Amendment) Act, *supra* note 4.

<sup>34</sup> India Const. art. 14.

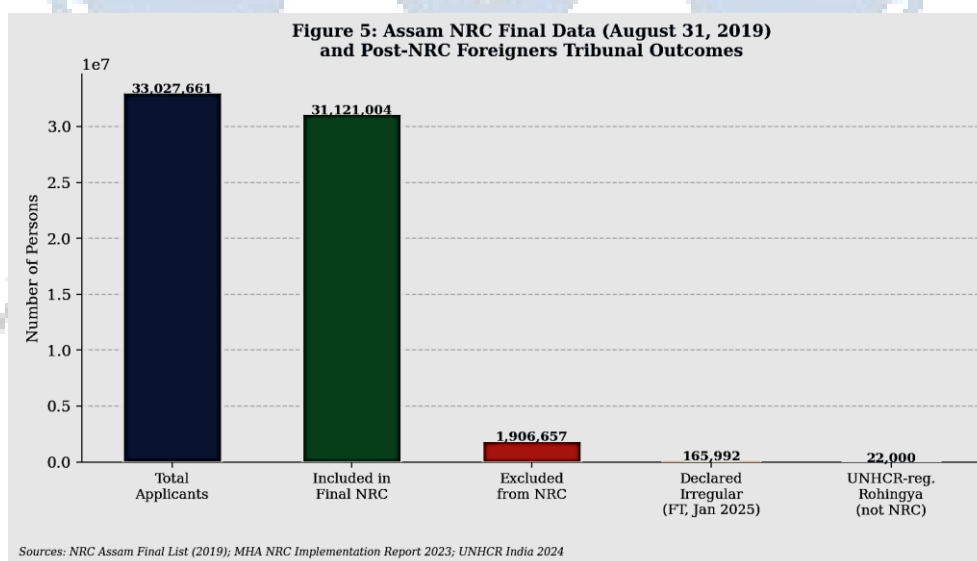
<sup>35</sup> The Foreigners (Tribunals) Order, *supra* note 21.

<sup>36</sup> *Assam Sanmilita Mahasangha v. Union of India*, (2015) 3 SCC 1.

<sup>37</sup> National Register of Citizens (NRC) Assam, Final NRC published August 31, 2019; Ministry of Home Affairs, 'NRC Implementation Report' (2023).

rise to structural injustice: the CAA creates a pathway to citizenship for many of those who are not Muslim, but none for those who are, who thus risk being considered effectively stateless.<sup>38</sup> In *Assam Sanmilita Mahasangha v. Union of India*<sup>39</sup>, while upholding the Foreigners Tribunals framework, the court simultaneously acknowledged procedural lacunae. The NHRC has separately noted that the combination of opaque proceedings, inadequate legal representation, and linguistic obstacles for rural respondents creates a substantial risk of genuine Indian citizens being wrongly classified as foreigners.<sup>40</sup>

In October 2024, a Constitution Bench of the Supreme Court upheld, by a four-to-one majority, the constitutional validity of Section 6A of the Citizenship Act, 1955<sup>41</sup> the provision regulating citizenship entitlements of persons who entered Assam during the period between 1 January 1966 and 24 March 1971, was upheld by a Constitution Bench of the Supreme Court by a majority of four to one in October 2024. In the same judgment, the Bench mandated the establishment of a dedicated permanent judicial body to ensure time-bound disposal of outstanding claims, expressly recognising that the prevailing institutional infrastructure had proven wholly incapable of meeting the demands of its legal mandate.<sup>42</sup>



### 3.5 The Immigration and Foreigners Act, 2025: A Paradigm Shift

The Immigration and Foreigners Act, 2025 in force since 1 September 2025 is the most

<sup>38</sup> India Foundation; Amnesty International India, 'Designed to Exclude: How India's Courts Have Failed Residents of Assam' (2019).

<sup>39</sup> *Assam Sanmilita Mahasangha v. Union of India*, (2015) 3 SCC 1.

<sup>40</sup> National Human Rights Commission, Annual Report 2019-20; NHRC, Recommendations on Detention of Foreigners in Immigration Detention Centres (2019).

<sup>41</sup> The Citizenship Act, *supra note* 22, § 6A.

<sup>42</sup> In re: Section 6A of the Citizenship Act, 1955, Writ Petition (Civil) No. 274 of 2009.

comprehensive overhaul of Indian immigration law in the nation's post-independence history. The 2025 legislation formally empowers the Bureau of Immigration to probe identity fraud independently while requiring provincial administrations to establish specialized holding centers for those awaiting removal; a mandate on State governments to construct dedicated detention facilities for undocumented entrants awaiting removal; real-time digital reporting obligations binding hospitals, educational institutions, and accommodation providers; graduated penal sanctions for document fraud, including imprisonment for up to seven years; and the conferral of first-class Magistrate powers on Foreigners Tribunals, enabling them to issue arrest warrants for absconding respondents.<sup>43</sup>

### **3.6 Scale and Demographic Profile**

Quantifying India's undocumented migrant population with precision is inherently difficult. Academic researchers have contested the widely cited 10–20 million figure, warning against conflation of distinct categories: long-settled communities with multi-generational ties to India, asylum-seekers with pending international protection claims, and recent economic arrivals whose undocumented status may be temporary. The Ministry of Home Affairs has consistently identified Bangladeshi nationals as the primary source, followed by migrants from Myanmar, Pakistan, and Sri Lanka. Undocumented populations are disproportionately concentrated in the border states of Assam, West Bengal, Meghalaya, and Mizoram, and in the major metropolitan economies of Delhi, Mumbai, and Hyderabad with both geographic proximity and economic opportunity operating as parallel pull factors.<sup>44 45</sup>

UNHCR's Global Trends data consistently places India among the world's top ten countries by asylum-seeker numbers, reflecting both the scale of regional displacement and India's relative accessibility.<sup>46</sup> In the absence of any unified national registration or asylum adjudication system, most irregular migrants inhabit a legal grey zone neither formally protected nor immediately removable, trapped in a condition of structural legal insecurity that renders them acutely vulnerable to exploitation, trafficking, and arbitrary state action. "Retention of the reversed evidential burden marks one of the 2025 Act's most criticised continuities with its

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<sup>43</sup> 2025 Act, *supra* note 5.

<sup>44</sup> Ranabir Samaddar, 'The Marginal Nation: Transborder Migration from Bangladesh and Offering of Identity in West Bengal' (Sage Publications, 1999); Amarjit Singh Narang, 'Illegal Migration: Problems and Policy Response' (ICSSR, 2012); Human Rights Law Network, 'Foreigners Tribunals in Assam: A Report' (2018).

<sup>45</sup> Ministry of Home Affairs, Government of India, 'Annual Report 2022-23' (MHA, 2023) [mha.gov.in](http://mha.gov.in), Chapter on Border Management; India Foundation, 'Illegal Immigration to India: Implications and the Way Forward' (May 2025).

<sup>46</sup> UNHCR, Global Trends: Forced Displacement in 2022 (UNHCR, 2023) <https://www.unhcr.org/globaltrends> accessed 20 May 2026.

colonial predecessor" that any person suspected of being a foreigner bears the obligation of establishing Indian citizenship, not the state.<sup>47</sup> This long-standing aspect of Indian law on immigration subjects some of the country's long-established communities of migrants and stateless people to particularly lengthy and arbitrary detention without effective redress.<sup>48</sup>

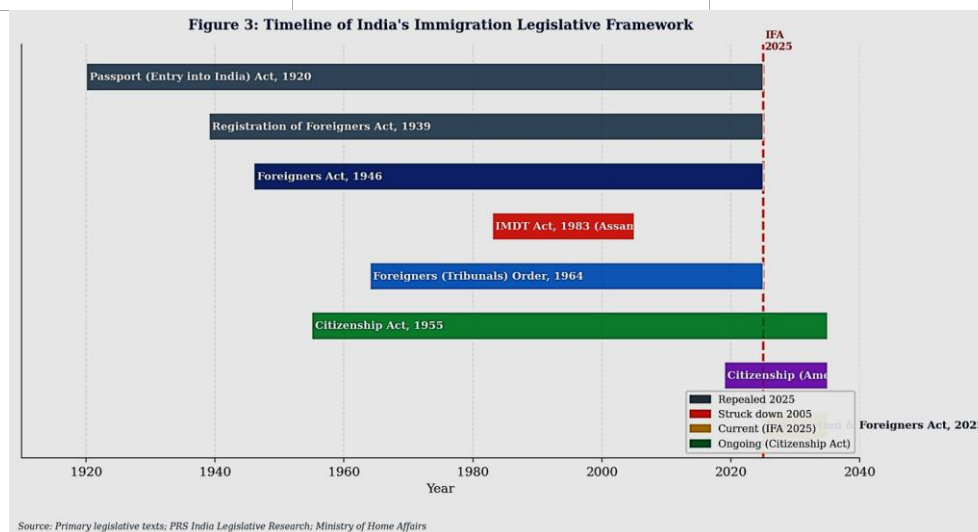
**Table 2: Legislative Framework on Illegal Immigration in India A Comparative Overview**

Legislation	Key Provision	Relevance to Illegal Immigration
Foreigners Act, 1946 (repealed 2025)	"Coined the statutory definition of foreign nationals; inverted the evidentiary presumption against the individual"	Primary enforcement statute for detecting & deporting illegal migrants
Passport (Entry into India) Act, 1920 (repealed 2025)	Valid passport required for entry into India	Criminalises undocumented entry
IMDT Act, 1983 (struck down 2005)	Burden of proof placed on accuser/police	Diluted enforcement in Assam; invalidated <i>Sarbananda Sonowal v. UoI</i> (2005)
Citizenship (Amendment) Act, 2019	Expedited citizenship to 6 non-Muslim minorities from BD, Pak, Afghanistan (entered before Dec 31, 2014)	Religion-based differential in protection from deportation
Immigration & Foreigners Act, 2025 (in force Sep 1,	Consolidates 4 colonial laws; statutory Bureau of	Landmark unified modern framework for immigration

<sup>47</sup> Immigration and Foreigners Act, 2025, No. 16 of 2025 (India), s 14 (reversed burden of proof the accused must prove they are not a foreigner); Apoorva Mandhani, 'New Immigration Law Retains Controversial Burden-of-Proof Clause', *The Print* (September 2025).

<sup>48</sup> India ratified the International Covenant on Civil and Political Rights on April 10, 1979: United Nations Treaty Collection, India signed the Convention Against Torture on October 14, 1997 but has not ratified it: OHCHR, Status of Ratification Interactive Dashboard (as of May 2026). India's non-ratification of CAT limits the formal treaty-law obligation, though customary international law prohibition on torture and refoulement remains applicable.

Legislation	Key Provision	Relevance to Illegal Immigration
2025)	Immigration; mandatory holding centres; graded penalties	regulation
Foreigners (Tribunals) Order, 1964	Quasi-judicial tribunals to determine foreigner status; currently only in Assam	Empowered with magistrate powers under 2025 Act



## IV. SOCIO-LEGAL DIMENSIONS: RIGHTS, SECURITY, AND THE CONSTITUTIONAL DILEMMA

### *4.1 Fundamental Rights and the Status of Undocumented Migrants*

One of the most consequential jurisprudential questions in Indian immigration law concerns the extent to which the fundamental rights entrenched in Part III of the Constitution extend to non-citizens, including those in undocumented status? Supreme Court jurisprudence has resolved this question definitively in favour of universality: Articles 14 and 21, unlike several other constitutional provisions, employ the phrase ‘any person’ rather than ‘citizen’, thereby conferring their protections irrespective of national origin, domicile, or immigration status to every person physically present within Indian territory.<sup>49</sup> This constitutional status was clearly expressed by the court in *National Human Rights Commission v. State of Arunachal Pradesh*, and they were entitled to the guarantees provided by Article 21 but could not lawfully be

<sup>49</sup> India Const. art. 14, 21.

subjected to arbitrary interference by the state with their person or liberty.<sup>50</sup>

These constitutional guarantees are, however, routinely honoured more in form than in substance. Documented enforcement operations have involved detention without prior nationality verification, summary removal proceedings conducted absent procedural safeguards, and systematic denial of access to legal counsel. The fatal April 2025 attack on tourists in Pahalgam was a watershed moment in domestic migration enforcement, followed by a “summary deportation” of approximately 700 illegally staying migrants from Bangladesh by the Delhi police who rounded them up using the chartered flights from Hindon Air Base and Agartala and by rail through West Bengal with credible concerns raised that long-term residents and potentially stateless persons were removed without adequate individual assessment.<sup>51</sup>

#### ***4.2 The Rohingya Crisis: A Case Study in Statelessness and Judicial Restraint***

The situation of the Rohingya people within India’s legal system provides the starkest available illustration of the tension between sovereign immigration management and humanitarian obligation. Rendered stateless by Myanmar’s Citizenship Law of 1982,<sup>52</sup> Rohingya who reached India via Bangladesh arrived without documentation of citizenship at a time when their communities had been subjected to internationally documented atrocities including mass killings, sexual violence on a systematic scale, and the wholesale destruction of villages in Myanmar’s Arakan (Rakhine) State. The UN Independent International Fact-Finding Mission on Myanmar formally concluded that the 2016–17 military operations bore a “genocidal character”.<sup>53 54</sup>

By 2024, India’s Rohingya population stood at approximately 79,000 persons, dispersed across Jammu, Hyderabad, Jaipur, Delhi, and Mewat. Of these, approximately 22,000 hold UNHCR refugee registration certificates. Domestically, UNHCR-issued credentials are viewed by the Indian state merely as external administrative data, lacking any binding statutory power within the local legal system irrespective of their international protection status.<sup>55</sup>

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<sup>50</sup> *National Human Rights Commission v. State of Arunachal Pradesh*, (1996) 1 SCC 742.

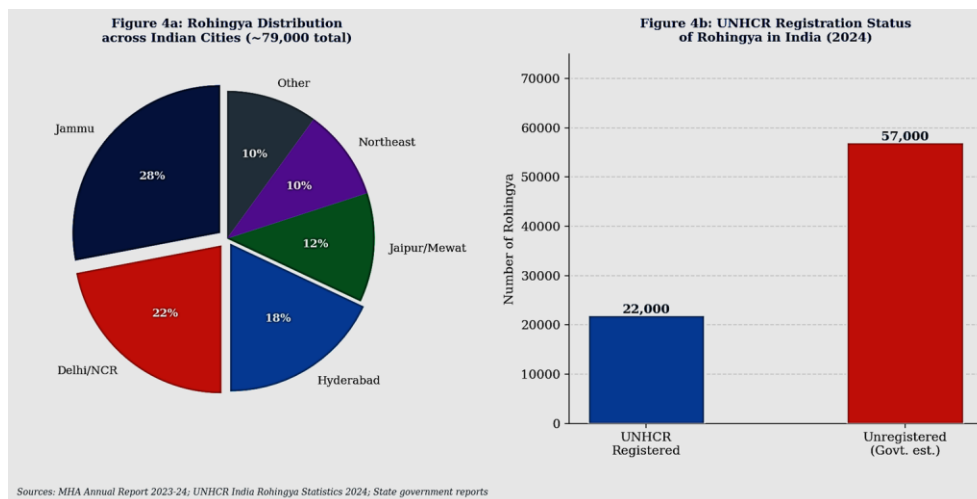
<sup>51</sup> Citizens for Justice and Peace (CJP); News on AIR, ‘900 Illegal Bangladeshis Residing in Delhi Will Be Deported: Delhi Crime Branch’ (May 30, 2025).

<sup>52</sup> Pyithu Hluttaw Law No. 4 of 1982 (Myanmar).

<sup>53</sup> United Nations High Commissioner for Refugees, ‘Rohingya Refugee Crisis Explained’ (USA for UNHCR, 2024); 7,42,000+ Rohingya were displaced from Myanmar in 2017 alone.

<sup>54</sup> UN Independent International Fact-Finding Mission on Myanmar, Report of the Detailed Findings, UN Doc A/HRC/39/CRP.2 (17 September 2018).

<sup>55</sup> UNHCR India, Rohingya Refugee Statistics (2023) <https://www.unhcr.org/in/who-we-help/refugees/rohingya-refugees> accessed 22 May 2026.



In *Mohammad Salimullah & Anr. v. Union of India & Ors.*,<sup>56</sup> the Supreme Court declined to restrain the Government from deporting Rohingya migrants, holding that "the sovereign prerogative to expel foreign nationals — treated as categorically beyond humanitarian challenge — was held not susceptible to judicial override". This ruling has attracted sustained scholarly criticism for its incompatibility with "the customary prohibition against return to persecution" which leading international law authorities, including the UNHCR in its 2007 Advisory Opinion, characterise as a peremptory norm binding on all states erga omnes irrespective of treaty ratification.<sup>57</sup>

The Indian government has consistently invoked its non-accession to the 1951 Refugee Convention as the juridical justification for classifying the Rohingya as illegal migrants rather than persons entitled to international protection. This posture has failed to engage with the substantial body of international legal authority holding that the prohibition of refoulement has attained the status of customary international law, binding on all states as a matter independent of treaty ratification a conclusion that India's courts have yet to confront directly, let alone rebut.

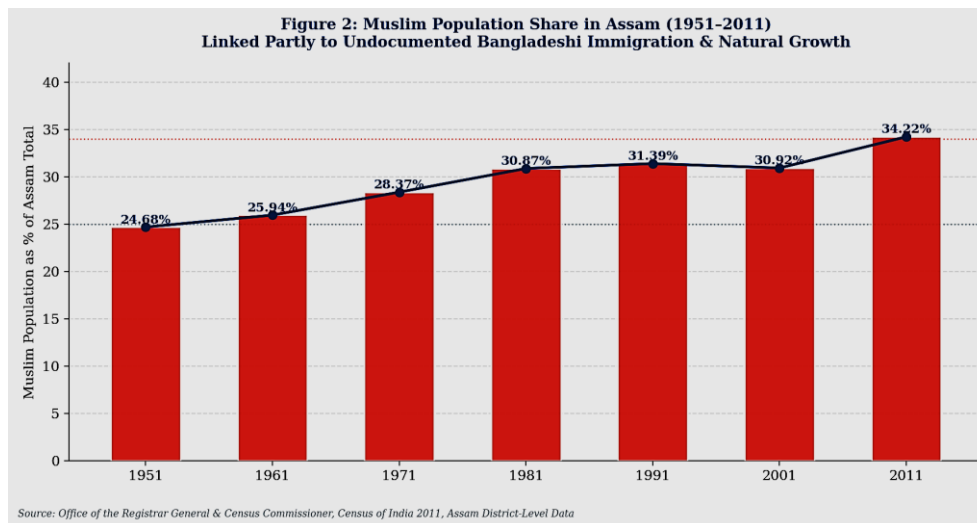
#### ***4.3 Demographic and Social Consequences in Border States***

The demographic impact of undocumented immigration is most empirically documented in Assam. Census data record a rise in the Muslim proportion of Assam's total population from 24.68 per cent in 1951 to 34.22 per cent in 2011 a transformation that scholars attribute in meaningful part to undocumented Bangladeshi immigration, while recognising that differential

<sup>56</sup> Mohammad Salimullah, *supra note 7*.

<sup>57</sup> Non-refoulement principle, Article 33, 1951 Refugee Convention; UNHCR, 'Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Refugee Convention' (January 26, 2007).

natural growth rates are a concurrent and significant causal factor.<sup>58</sup>



These demographic shifts have been accompanied by intensifying communal friction, disputes over agricultural land and forest resources, and the sharpening of ethnic and religious identity politics. Assembly constituencies in Dhubri, Barpeta, Karimganj, and Goalpara are reported to contain migrant-majority populations, generating legitimate anxieties among indigenous Assamese communities concerning their political representation and cultural continuity. Undocumented immigration has thereby become a socio-political force generating consequences that outlast any individual enforcement measure rendering it as much a political and constitutional challenge as an administrative one.<sup>59</sup>

#### **4.4 Deportation Without Due Process: The Post-Pahalgam Crackdown (2025)**

Following the April 2025 Pahalgam terror attack, the Government of India significantly escalated enforcement operations against undocumented persons across Delhi, Haryana, Rajasthan, Gujarat, Maharashtra, Uttar Pradesh, and Goa. Delhi Police identified approximately 900 Bangladeshi nationals; approximately 700 were removed via special charter flights from Hindon Air Base to Agartala and by overland and rail transport through West Bengal.<sup>60</sup>

Civil society organisations documented serious concerns arising from these operations,

<sup>58</sup> Census of India, 2011, Office of the Registrar General, Assam Muslim population data 1951-2011; cited in ResearchGate, 'Illegal Immigration from Bangladesh to India: A Comprehensive Analysis' (2024).

<sup>59</sup> Monirul Hussain, 'Immigration and Ethnic Conflict' (Macmillan Press, 1993) 45-78; Sanjoy Hazarika 112-136; Assam State Election Commission data on assembly constituency demographics; see also Udayon Misra, 'The Periphery Strikes Back: Challenges to the Nation-State in Assam and Nagaland' (IIAS, 2000) (noting demographic transformation in lower-Assam River districts creating political pressure on indigenous Assamese communities).

<sup>60</sup> News on AIR (All India Radio / Government of India), '900 Illegal Bangladeshis Residing in Delhi Will Be Deported: Delhi Crime Branch' (May 30, 2025).

including the removal of individuals without individual nationality determination, without legal representation, and without any formal opportunity to contest the deportation order. Reported cases included families with minor children, persons in valid marriages with Indian citizens, and long-term residents with deep community ties each facing real exposure to statelessness in the event of wrongful removal.<sup>61</sup>

## **V. INDIA'S INTERNATIONAL OBLIGATIONS AND COMPARATIVE PERSPECTIVES**

Any rigorous assessment of India's immigration enforcement must be anchored in its binding international obligations. While India has declined to ratify either the 1951 Refugee Convention or the 1967 Protocol, it acceded to the ICCPR in 1979<sup>62</sup> and signed the Convention Against Torture in 1997.<sup>63</sup> Under Article 13 of the ICCPR, a state party is required, before expelling any alien lawfully present in its territory, to afford that person a meaningful opportunity to contest removal before a competent authority a procedural standard that India's documented enforcement operations have regularly failed to satisfy.<sup>64</sup>

At the multilateral level, India endorsed the Global Compact for Safe, Orderly and Regular Migration (GCM) in December 2018,<sup>65</sup> through which it assumed commitments to guarantee the human rights of all migrants regardless of their immigration status, provide access to essential services, and prohibit arbitrary detention. The widening disparity between these multilateral pledges and India's documented deportation conduct represents a deepening tension within India's international credibility on migration governance.<sup>66</sup>

Comparative analysis yields instructive insights. The European Union has created a multi-level system of border governance, which layers the Frontex agency, the Common European Asylum System (CEAS), which includes the Common Procedures Directive and the Reception Conditions Directive, and bilateral readmission agreements, containing procedural safeguards at every stage of removal, in a vastly different political, legal and fiscal climate.<sup>67</sup> Closer to

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<sup>61</sup> CJP; Human Rights Watch, 'India: Stop Deporting Rohingya Refugees' (January 2022).

<sup>62</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>63</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

<sup>64</sup> *Id.* at art. 13.

<sup>65</sup> UN General Assembly, Global Compact for Safe, Orderly and Regular Migration, 19 December 2018, A/RES/73/195.

<sup>66</sup> United Nations, 'Global Compact for Safe, Orderly and Regular Migration' (GCM), UN General Assembly Resolution A/RES/73/195, December 19, 2018; endorsed by India.

<sup>67</sup> European Asylum Support Office (EASO) / EU Agency for Asylum, 'Annual Report on the Situation of Asylum in the European Union' (2023); Frontex, 'Risk Analysis for 2023' (Frontex, Warsaw, 2023); see also Directive

home, Bangladesh's biometric national identity system, covering over 100 million citizens and operational since 2006, represents a bilateral verification resource that India has yet to leverage systematically for deportation procedures, despite its obvious utility for individual nationality confirmation.<sup>68</sup>

## **VI. CRITICAL ANALYSIS AND POLICY RECOMMENDATIONS**

### ***6.1 Lacunae in the Existing Framework***

While the 2025 Act merits recognition as a long-overdue modernisation of India's immigration architecture, it leaves the deeper normative and institutional deficiencies of the existing framework largely unaddressed. In the continued absence of any national refugee or asylum legislation, undocumented migrants who cannot be deported whether because of statelessness or protection risks remain trapped in a state of permanent legal indeterminacy, their rights contingent entirely on executive discretion and the uncertain outcomes of reactive litigation. Foreigners Tribunals remain geographically confined to Assam, where legal representation for respondents is structurally inadequate, *ex parte* proceedings are routine, and procedural consistency is absent. Outside Assam, the full scale of undocumented migration is both unmeasured and legally invisible a data vacuum that renders coherent, evidence-driven policy formulation structurally impossible.

### ***6.2 Recommendations***

First, India should enact a standalone National Refugee and Asylum Statute that draws a principled legal distinction between economic migrants on the one hand and refugees or stateless persons fleeing persecution on the other, anchors protection standards in customary international law, and aligns domestic obligations with India's treaty commitments under the ICCPR and the Convention Against Torture.

Second, Foreigners Tribunals should be expanded to all states with significant undocumented migrant populations including West Bengal, Tripura, Delhi, Maharashtra, Karnataka, and Telangana and furnished with trained judicial officers, certified interpreters, and publicly funded legal representatives.

Third, deportation procedures should meet the irreducible minimum standards of procedural

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2013/32/EU (Common Procedures Directive) and Directive 2013/33/EU (Reception Conditions Directive), which together constitute the Common European Asylum System (CEAS).

<sup>68</sup> Bangladesh Election Commission / National Identity Registration Wing, 'Smart National Identity Card Programme' (Dhaka, 2016); International Foundation for Electoral Systems (IFES), 'Bangladesh Voter Registration Assessment' (2016); the Bangladesh biometric NID programme.

safeguards, including individual nationality verification, the right to challenge the deportation order, access to legal counsel and special care for stateless persons, women and children.

Fourth, India must negotiate a bilateral identification and verification protocol with Bangladesh, leveraging Bangladesh's advanced biometric identity programme, to ensure that only Bangladeshi nationals are deported and that no Indian citizens or stateless persons are wrongfully repatriated.

Fifth, the 2025 Act's institutional architecture should be directed to establish a national immigration data registry providing accurate, disaggregated, real-time data on undocumented migrants to enable evidence-based policymaking at both the Union and State levels.

## **VII. CONCLUSION**

Illegal immigration remains one of the most complex governance issues confronting contemporary India. The challenge involves balancing legitimate security concerns with constitutional commitments to fairness, equality, and human dignity. Although recent legislative reforms have strengthened the institutional framework for immigration control, significant gaps remain in refugee protection, procedural safeguards, and data-driven policymaking.<sup>69</sup> The Supreme Court's interpretations of Articles 14 and 21 provide a constitutional compass: the state's legitimate authority to exercise sovereign power over immigration does not authorise the abrogation of fundamental rights to dignity and fair process. That constitutional commitment binding, non-negotiable, and judicially enforced must remain the organising principle of all future legislative, adjudicatory, and diplomatic action in this domain.

Positioned at a geopolitically consequential crossroads, bound to its neighbours by centuries of shared history, and constitutionally anchored to the rule of law, India possesses both the obligation and the institutional capacity to construct an immigration regime that is simultaneously exacting in its regulatory standards and principled in its treatment of human beings. A nation that has afforded refuge to Tibetan exiles and Sri Lankan Tamils driven from their homes by political violence carries both the moral standing and the institutional responsibility to move decisively beyond reactive enforcement toward a coherent, rights-anchored framework capable of addressing one of the most consequential governance challenges of our century. This demands more than legislative compliance. It demands a

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<sup>69</sup> IAS Point, 'Immigration and Foreigners Act 2025: Key Provisions Explained' (September 2025) [iaspoint.com](http://iaspoint.com); PRS India, 'The Immigration and Foreigners Bill, 2025: Legislative Brief' (2025) [prsindia.org](http://prsindia.org).

civilisational commitment.



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