

# Draft Emigrants Welfare Bill, 2010

**Building a rights based perspective  
on migration**



**Centre for Education and Communication**



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**December 2010**

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*In preparing this version of the Bill, Advocate C K Karunakaran took the lead from among the drafting committee members. It was coordinated by Pallavi Mansingh, CEC. TIFT produced the report.*

*In collaboration with Migrant Forum in Asia (MFA) India partners, supported by DanChurch Aid (DCA).*

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## **Need for the Emigrants Welfare Bill 2010**

Migration is of immense importance to India. According to the data of the Ministry of Overseas Indian Affairs (MOIA), at present there are about fifty lakh overseas Indian workers all over the world. More than 90% of these workers are in the Gulf countries and Southeast Asia. Most of these workers are unskilled workers and semi skilled and are temporary migrants who return to India after expiry of their contractual employment. There had been a consistent increase in the number of persons emigrating for employment and the numbers almost doubled from 2004 (4.75 lakh) to 2008 (8.49 lakh). In 2009 the number of emigration clearances granted by the eight offices of the Protector of Immigrants was 6.10 lakhs. Out of this, about 1.30 lakh workers went to UAE, about 2.81 lakh to Saudi Arabia, about 46,000 to Qatar and about 11,000 to Malaysia.

So far India has no formal policy on international migration. There are only limited schemes and programmes to safeguard the interests of migrant workers. The issue of migrant workers was earlier dealt in the Ministry of Labour and Employment (MOLE). In 2001 the department of Protector of Emigrants was transferred to the Ministry of External Affairs (MEA) and after a short time it was shifted to the Ministry of Overseas Indian Affairs (MOIA). The only law, which is applicable, is the Indian Emigration Act of 1983.

The Emigration Act regulates migration and contains in principle certain provisions that ensure rights of workers. Section 22 of the Act states that "No citizen of India shall emigrate unless he obtains under this chapter from the protector of emigrants authorization in the prescribed manner". The act provides for setting up of the protector general of immigrants for the protection and safety of the migrants from India. The Act also provides for the registration of recruitment agents. Recruiting agents need to obtain license from the protector general of immigrants for recruiting persons for overseas employment.

The MOIA, however argues, that the Emigration Act 1983 has severe shortcomings and has to be revamped. The idea is to making emigration an 'orderly economic process', facilitating temporary overseas employment. It also argues that countries of origin and destination must together strive to achieve a 'minimum policy harmonisation' on migration that will 'result in well calibrated migratory flows.' This position is much in line with the changing international discourse on migration from regulating migration and protecting rights of immigrants to one of 'managing' migration as articulated in the positions of the

Mode 4 of WTO and the IOM.

These developments are being carefully monitored by CSOs and migrants rights organization. CSOs have critiqued the Act in the past and have pointed out that there are problems in implementation. Gross violations of rights of migrant workers and mal-practices by the recruiting agencies have been reported. However, the the present strategy of the government of India has been calibrated to deal with twin realities of labour availability in India and the specific labour shortages of the receiving countries; but does not look at it from the perspective of rights of migrants. In this context, CEC, with the collaboration of Migrant Forum in Asia (MFA) members in India, has taken initiatives to bring together trade unions, migrant rights organisations and other civil society organisations on a common platform with the objective of deliberating and formulating an alternative bill with focus on the rights of migrants.

Drafting of the Emigrants Welfare Bill, 2010

Consequently, in a series of sittings, civil society organisations, trade unions and migrants rights organisations drafted “Emigrants Welfare Bill 2011”. In 2009, a report, “Towards a Holistic Policy on International Migration” was submitted to the MOIA. In June 2010, a national consultation on understanding the usefulness of the Emigration Act 1983 was held in Hyderabad. The meeting also brainstormed on possible non-negotiable in any emigration law from human rights and labour rights perspectives. A drafting committee comprising of J John, executive Director, CEC; Ashok Ghosh, National Secretary, UTUC; Paramjit Singh Judge, Head of the Department of Sociology, GND University; C Karunakaran, Advocate, high Court, Kerala and Babu P Remesh, Reader, IGNOU was constituted to work on an alternative act. This was followed by regional meetings in Lucknow, Chandigarh and Kolkata, of the drafting committee and a national meeting of migrants rights organisations, CSOs and Trade unions in Delhi. This draft bill “Emigrants Welfare Bill 2011” from a rights based perspective covering all the stages of migration - pre departure, transit, destination and return has been the result.

The bill strives to ensure security and protection of all migrants skilled or unskilled, male or female, documented or undocumented and welfare of families of migrants. It addresses discrimination and stipulates that migrant workers get living wage, written work contract/agreements; identity proof and social security number. International labour standards are integrated. It stresses that labour ministry should have a stake inn protecting the rights of migrants, fixes accountability of authorities and suggests strengthening of counsellor

services. It also suggests mechanisms for documentation of migrants and stringent regulation of recruitment agencies.

The Emigrants Welfare Bill 2010, though has been prepared through a consultative process is not a final document. The drafting committee has decided to place it in the public domain to receive and consolidate myriad views and opinions of the key constituencies that will be impacted by it. We feel that there are, still, some crucial issues to be addressed:

1. The alternative bill addresses the concerns of 'emigrants' and not that of the 'immigrants' and those who use India as a 'transit' point. It was felt that all the three groups cannot be brought within the ambit of one law without losing focus.
2. Similarly, the Bill also does not address the concerns of 'refugees' and those who are 'trafficked' into India from India;
3. The Bill does not pertain to the concerns of internal migrants. Again, it was felt that both internal and external migration cannot be brought within the ambit of one law.
4. There has been an argument that 'rights' of emigrants need not be defined in the Act because the rights of Indian citizens are already defined and the emigrants do not have additional rights;
5. Another area of concern is whether the State should maintain the dual passport system of Emigration Clearance Required (ECR) and Emigration Clearance Not Required (ECNR) passports;
6. A related issue has been on how to extend the benefits of the Act to all those who wish to seek its benefits and, in particular, to the 'undocumented' migrants, whose rights must be protected through the provisions of the Bill;
7. Another concern has been on how to safeguard against the State using the Bill as a route to impose restrictions on mobility of women.

The drafting committee engaged in serious debates on these issues; but needs inputs from a cross section of people to be able to finalise the Emigrants' Welfare Bill 2011. We request you to kindly send your comments on this draft bill. You can access the digital version of bill at [www.cec-india.org](http://www.cec-india.org)

In preparing this version of the Bill, Advocate C K Karunakaran took the lead from among the drafting committee members.

The version includes comments from two experts as an invitation for others to come forward with comments. The footnoted comments are from 1. Yamini

Atmavilas, Associate Professor, Administrative Staff College, Hyderabad (Referred to as comment YA in the draft bill); and 2. R S Tiwari, former Labour Commissioner, Government of India (Referred to as Comment RST in the draft bill).

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December 2010

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## CONTENTS

|   |    |
|---|----|
| CHAPTER 1   | 01 |
| PRELIMINARY   | 01 |
| 1. Short title, extent, application and commencement  | 01 |
| 2. Definitions  | 01 |
| CHAPTER 2   | 04 |
| EMIGRATION AUTHORITIES  | 04 |
| 3. Director General of Emigrants Welfare and Emigrants Welfare Officers                               | 04 |
| CHAPTER 3   | 05 |
| EMIGRANTS WELFARE FUND  | 05 |
| 4. Constitution of the Emigrants Welfare Fund   | 05 |
| CHAPTER 4   | 07 |
| AGENTS AND THEIR REGISTRATION   | 07 |
| 5. Qualification of Agents  | 07 |
| 6. Licensing of Agents  | 07 |
| CHAPTER 5   | 08 |
| EMIGRANTS WELFARE STATIONS  | 08 |
| 7. Emigrants Welfare Stations   | 08 |
| CHAPTER 6   | 09 |
| GENERAL DUTIES OF EMIGRANTS WELFARE OFFICERS  | 09 |
| 8. General Duties of Emigrants Welfare Officers   | 09 |
| 8A. Consular Support, Services and Protection abroad  | 09 |
| CHAPTER 7   | 11 |
| LICENSE FOR EMIGRATION  | 11 |
| 9. Licensing Authority  | 11 |
| 10. No Person to Function as Recruiting Agent Without a Valid Registration                            | 11 |
| 11. Cancellation, Suspension, etc., of License  | 11 |
| 12. Recruitment by Employers to be Through Recruiting Agent or<br>Under License Issued Under This Act | 12 |
| 13. Procedure for Obtaining License by Employers  | 12 |
| 14. Power to Exempt   | 14 |

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|   |    |
|---|----|
| 15. Requirement, etc., as to Emigration Clearance   | 14 |
| CHAPTER 8   | 17 |
| APPEALS AND TRIBUNALS   | 17 |
| 16. Appeals   | 17 |
| 17. Emigration Tribunal   | 18 |
| CHAPTER 9   | 20 |
| OFFENCES AND PENALTIES  | 20 |
| 18. Offences and Penalties  | 20 |
| 19. Offences BY Companies   | 21 |
| 20. Offences To Be Cognizable   | 21 |
| 21. A Constitution of Special Courts  | 22 |
| 22. Previous Sanction of Central Government Necessary   | 22 |
| 23. Punishment to be Without Prejudice to Any Other Action  | 23 |
| 24. Determination of Question as to Whether a Person is an Emigrant                                   | 23 |
| Chapter 10  | 24 |
| Miscellaneous   | 24 |
| 25. Power To Prohibit Emigration to Any Country in the Interests of the General Public, Etc           | 24 |
| 26. Power to Prohibit Emigration Due to Outbreak of Epidemics, Civil Disturbances, etc., in a Country | 24 |
| 27. Power to Prohibit Emigration of Any Class or Category of Persons                                  | 25 |
| 28. Power To Search, Seize and Detain Persons, Conveyance, etc  | 25 |
| 29. Returns and Registers   | 26 |
| 30. Authorities and Officers to Have Certain Powers of Civil Court                                    | 26 |
| 31. Power to Give Directions  | 27 |
| 32. Effect of Other Laws  | 27 |
| 33. Delegation  | 27 |
| 34. Power to Exempt   | 28 |
| 35. Act not to Apply to Certain Emigrants   | 29 |
| 36. Power to Make Rules   | 29 |
| 37. Notifications and Rules to be Laid before Parliament  | 31 |
| 38. Repeal of Act   | 31 |

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## **DRAFT EMIGRANTS WELFARE BILL, 20110**

An act to institute the policies of overseas employment and establish mechanisms to regulate the recruitment of workers for employment abroad and for other purposes, and for the welfare and protection of Emigrant workers, their families and overseas Indians in distress.

Be it enacted by the Parliament in the ----- of the Republic of India as follows:

### **CHAPTER 1**

#### **PRELIMINARY**

##### 1. Short title, extent, application and commencement

(1) This Act may be called the Emigrants Welfare Act -----.

(2) The Act extends to the whole of India and applies also to citizens of India outside India.

(3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provisions to the commencement of this Act shall be construed as a reference to the commencement of that provision.

##### 2. Definitions

(1) In this Act, unless the context otherwise requires,-

a. "Agent/Agency" means any person or body licensed by the Central Government under this Act to undertake any act in relation to emigration;

b. "certificate" means a certificate of license issued to an agent or agency under this Act ;

c. "conveyance" includes a vessel, vehicle, country-craft and an aircraft;

d. "Emigrant"<sup>2</sup> means any citizen of India who intends to emigrate for the purpose of being engaged, is currently engaged or has ever been engaged in any means for livelihood in any country or place of which such person is not a citizen

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1. YA: Suggest Emigrants (Regulation and Provision of Protection and Welfare) Bill

and includes the family of the Emigrant if residing in the receiving country, but does not include any Indian citizen who, subsequent to emigration, has adopted the citizenship of any other country.<sup>3</sup>

e. "Emigrant conveyance" means any conveyance specially chartered for conveyance of emigrants or for conveying emigrants exceeding such number as may be prescribed by the Central Government by notification.

f. "Emigrate" and "Emigration" mean the departure out of India of any person with a view to taking up any vocations or employment (whether or not under an agreement or other arrangements to take up such employment and whether with or without the assistance of a recruiting agent or employer) in any country or place outside India;

g. "Employer" means any person providing or offering to provide any employment to any Emigrant in any country or place outside India, and shall include any agent of such person in India;

h. "Employment" means any service, occupation or engagement (not being service, occupation or engagement under the Central Government or a State Government), in any kind of work for wages or for reward, and all its grammatical variations and cognate expressions;

i. "Family" means the wife, children, parents of the migrant, minor dependent siblings of the emigrant<sup>4</sup>;

j. "Illegal recruitment" means and includes any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, procuring emigrant workers and includes referring, contact services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a licensee or non-licensee

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2. RST: The definition of 'emigrant' should contain explanation, exclusion etc to make it inclusive. Whether students going for studies and working part-time with or without permission of competent authority in receiving countries are covered; whether undocumented and self-employed workers are included.

3. RST: The law does not cover all grievances of workers like detention, non-payment of wages, workers who are engaged or employed directly (not through agents), remittance, wage protection, other labour rights etc. What about Indian employers working in other countries in various projects like construction, manufacturing and recruiting Indian workers or transferring their workers from their establishments in India. Concerns and interests of such workers could be protected through Indian labour laws, iff a clause be added in this proposed law. Migrant workers who are directly recruited, who change jobs (ending contract with agents) and who are trafficked might not get protections intended under this law. The protections intended from bilateral agreements between India and other country could be ensured legally if certain clauses are appropriately added. The Second NCL recommended for appointment of Labour Attaches in countries where large number of Indian workers are employed. The labour ministry should be the nodal ministry for cross-border migrant workers.

4. YA: What about the spouse / family of the "livelihood seeker" who joins him/her?

and shall include charging or accepting directly or indirectly any amount or amount greater than as may be notified by the Central Government from time to time, furnishing or publishing any false notice or information or document in relation to recruitment or employment, to give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license, or for recruiting emigrant workers, to influence or attempt to influence any persons or entity not to employ any worker who has not applied for employment through any particular agent or agency; to engage in the recruitment of placement of workers in jobs harmful to public health, or morality or dignity of the Republic of the India, to withhold passport or any travel documents of an Emigrant worker or to make any demand, monetary or otherwise than at the rates as may be notified by the Central Government from time to time;

k. "notification" means a notification published in the Official Gazette;

l. "prescribed" means as prescribed by rules made under this Act;

m. "receiving country" means a place or country where the Emigrant lives or works;

n. "recruiting agent" means a person licensed<sup>5</sup> in India by the licensing authority to conduct the business of recruitment for an employer and representing such employer with respect to any matter in relation to such recruitment including dealings with persons so recruited or desiring to be so recruited;

o. "recruitment" includes the issuing of any advertisement for the purpose of recruitment, the offering by advertisement to secure or assist in securing any employment in any country or place outside India and the entering into any correspondence, negotiation agreement or arrangement with any individual for or in relation to the employment of such individual in any country or place outside India;

p. "licensing authority" means the authority appointed under this Act to be the registering authority for the purposes of this Act;

q. "work" means any activity for which an emigrant is engaged by an employer, or any work of professional or other nature of earning livelihood or any other activity conducted in a public or private premises clearly specified by the Central Government by notification.

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5. YA: Suggest replacing with "holding a valid license"

## **CHAPTER 2**

### **EMIGRATION AUTHORITIES**

#### **3. Director General of Emigrants Welfare and Emigrants Welfare Officers**

- (1) The Central Government may, by notification, appoint a Director General of Emigrants Welfare and as many Emigrants Welfare Officers, as it deems fit, for the purpose of this Act.
- (2) Central Government may, by general or special order, define the area to which the authority of a Emigrants Welfare Officer so appointed shall extend and, where two or more Welfare officers are appointed for the same area, also provide such order, for the distribution and allocation of the work to be performed under this Act, in relation to such areas.
- (3) The Director General of Emigrants Welfare, in addition to the special functions assigned to him by or under this Act, perform all or any of the functions assigned to any Emigrants Welfare Officer.
- (4) The Central Government shall appoint one official in each of its missions/consulates abroad to perform, either exclusively or in combination with other functions as the Emigrants Welfare Officer.
- (5) Notwithstanding anything contained in the preceding provisions, the Central Government may, if satisfied that it is necessary so to do in the interest of emigrants or intending emigrants, authorise any person to perform all or any of the functions of a Emigrants Welfare Officer under this Act.

## CHAPTER 3

### EMIGRANTS WELFARE FUND

#### 4. Constitution of the Emigrants Welfare Fund

(1) The Central Government shall constitute an Emigrants Welfare Fund intended to be used for the welfare of all Emigrants regardless of gender, age, length of employment, and nature of work.<sup>6</sup>

(2) The fund shall be utilized for pre-departure, protection, and returnee welfare activities including pre-departure orientation and training; social security<sup>7</sup>, emergency medical care and repatriation of emigrants and their families in case of emergencies including expenses upon death and transport of bodies; and activities that support re-integration upon return to India and for such other purposes as the Central Government may notify from time to time.

(3) The fund shall have two component parts as detailed below:

a. A mandatory part that shall be open to all non-resident Indians.

b. The mandatory fund shall be used to meet expenses in connection with repatriation in emergencies of the emigrants, in case of death of emigrant, payment for expenses and transportation of bodies or burial/cremation in the foreign country and for providing emergency medical facilities.

c. The mandatory part shall be funded from out of the payments made by recruiting agents as provided for herein below. In case of persons who are not required to obtain Emigration clearance under this Act<sup>8</sup>, the contribution to the mandatory fund shall be made by the worker concerned at such rates and periodicity as fixed by the Central Government through notification.

d. A second contributory part that shall be open to all non-resident Indians including emigrants and regardless of whether they require emigration clearance or not.

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6. How to ensure the protection of undocumented workers? How do we ensure the registration of migrant workers - here can we make a distinction between the unskilled and the skilled? What could be the benefits - of protection and welfare - that should go to the workers? Here again, can and should we make a distinction between unskilled/skilled and documented/undocumented?

7. RST: The term 'Social Security' needs to be defined or elaborated.

8. YA: We should decide whether to retain or do away with the ECR/ECNR system

e. The contributory fund shall be used for training and pre-departure orientation, for providing emergency medical facilities to the families of emigrants and social security measures to the emigrants and their family members resident in India or in the receiving country, repatriation of emigrants and their families in the event of emergencies, and for payment for expenses and transportation of bodies, or for cremation/burial in the foreign country in case of death of the emigrant or a member of their family, for re-integration on return to India, and other purposes as may be determined by the Central government from time to time. For female emigrants this will include coverage of maternity benefits if they are not provided by the employer.

f. The contributory part shall be funded by contribution by emigrants and other eligible persons.<sup>9</sup> Entry into the fund would be voluntary and the rate of contribution, its periodicity and such other matters would be, as determined by the Central Government by notification from time to time.

(4) Every recruiting agent and employer recruiting emigrants from India shall pay into the Fund such amount as may be prescribed by the Central Government from time to time prior to the departure from India of the emigrant for employment.

(5) The Welfare Fund shall be administered by a Trustee Board constituted by the Central Government consisting of at least five members, with representation from trade unions, non-government organizations working for the welfare of emigrant workers and for women's welfare.

(6) The Welfare Fund shall contain a budget for meeting its administrative costs up to a maximum amount of 3 % (three percent) of the annual receipts into the fund. Any additional costs shall be met by the Central Government.

(7) Every emigrant leaving India for the first time after the date of this Act shall join the fund upon obtaining emigration clearance and prior to departure.<sup>10</sup> The Fund shall be open to every non-resident Indian outside India as on the date of this Act. The emigrant shall be registered at the Indian Embassy/consulate/high commission in the country of his employment.<sup>11</sup>

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9. YA: Like who??

10. YA: Perhaps we should say, it is the responsibility of the recruiting agent to enroll emigrants they facilitate into the Welfare Fund.

11. YA: Is he/she required to pay into the fund at the time of registration?

## **CHAPTER 4**

### **AGENTS AND THEIR REGISTRATION**

#### 5. Qualification of Agents

(1) The Central Government shall prescribe by notification the qualifications for the Agents, which shall include passing of an examination to be so prescribed, in the areas of labour welfare and law.

(2) Agency licenses shall be issued only to persons having the requisite qualifications and who have passed the prescribed examinations, or to entities promoted by such qualified persons.

(3) An agent/agency's license is revoked if/when such a qualified person leaves the its management

(4) From the date of notification of this Act, no person without requisite qualification and a valid license shall undertake or perform any of the activities herein detailed in relation to emigration. Any such activity undertaken by an unlicensed agent/ shall be deemed an offence under this Act.

(5) It shall be legal for existing overseas recruitment agents operating with a valid license to operate for a period of 24 months from the date of notification of this Act without obtaining a fresh license. Continued operation of such Agent/Agency for any period beyond the above specified period of 24 months shall only be upon obtaining a license under the provisions of this Act. Failing to do so shall constitute an offence under this Act.

#### 6. Licensing of Agents

(1) The Central Government shall issue licenses to such number qualified Agents / Agencies as may be deemed necessary in relation to the geographical area, the number of existing emigrants and any other relevant considerations.

(2) The Central Government shall prescribe the terms and conditions of issuance of licenses and their period of validity, the terms for renewal, and the fees payable for such licenses.

(3) The Central Government shall by rules made under this Act prescribe

## **CHAPTER 5**

### **EMIGRANTS WELFARE STATIONS**

#### 7. Emigrants Welfare Stations

(1) Where the Central Government considers that, with a view to preventing or checking the contravention of the provisions of this Act, it is necessary so to do, it may, by notification, set up such number of emigrants welfare stations at such places as may be specified.

(2) The Central Government may by general or special order made in this behalf, appoint an officer of the Central Government or of a State Government to be an officer in charge of an emigrants welfare station set up under sub-section (1).

(3) An officer in charge of an emigrants welfare station shall be subject to the general control and supervision of the Emigrants Welfare Officer within the local limits of whose jurisdiction that emigrants station is situated.

## CHAPTER 6

### GENERAL DUTIES OF EMIGRANTS WELFARE OFFICERS

#### 8. General Duties of Emigrants Welfare Officers

- (1) Subject to the other provisions of this Act, every Emigrants Welfare Officer shall, in addition to the special duties assigned to him by or under this Act -
- (a) protect and aid with his advice all current and intending emigrants;
  - (b) cause all the provisions of this Act and of the rules made there under to be complied with;
  - (c) inspect at such periodicity that the Central Government may prescribe and at such times and periods that the Emigrants Welfare Officer may deem necessary, any establishment of an Agent or any other premises where any activity not permitted under this Act in relation to emigration is reasonably suspected to be carried on contrary to the provisions of this Act.
  - (d) stop and inspect any emigrant conveyance, or
  - (e) stop and inspect any other conveyance if he has reason to believe that any intending emigrants are proceeding from, or returning to India to or from a place outside India by such other conveyance;
  - (f) inquire into the treatment received by emigrants during their voyage or journey to, and during the period of their residence in receiving or any transit country and also during the return voyage or journey to India and report thereon to the Director General of Emigrants Welfare or such other authority as may be prescribed by the Central Government;
  - (g) aid and advise emigrants who have returned to India for resettlement.
  - (h) conduct pre-departure training and orientation courses for emigrants and on their return to India taking steps for their re-integration as may be prescribed under the rules by the Central Government.
  - (i) prosecute Agents or any other persons for offences under this Act.

#### 8A. Consular Support, Services and Protection abroad

- a. All emigrants shall be entitled to consular support, services and

protection at all Indian missions/consulates abroad.

b. Consular Support and Protection shall for the purposes of this Act mean the protection of all the legitimate rights and interests of an Indian citizen from being violated in the receiving state, and in cases of such violation, Indian diplomatic or consular mission in the receiving country will reflect the citizen's grievance<sup>12</sup> or request and urge the related authorities of the receiving state to handle the grievance in a fair, lawful and proper way, through diplomatic channels in accordance with international conventions, bilateral treaties or agreements and the related Indian laws and those of the receiving state.

c. All emigrants shall receive through Indian missions and consulates abroad, services related to international travel documents, notarization, authentication, registration in Immigrants Welfare Fund, and such other facilities as may be notified by the Central Government from time to time.

d. All emigrants shall receive preliminary legal counsel and general guidelines on how to proceed with legal proceedings in the receiving country.

e. All emigrants shall have the right to visit consular officers and to have consular officers visit them if the emigrants are detained, arrested or serving a prison sentence.

f. All emigrants shall have the right to voluntarily register themselves as emigrant worker with the consular officers at Indian missions/consulates abroad.

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12. YA: Not sure what this means

## **CHAPTER 7**

### **LICENSE FOR EMIGRATION**

#### 9. Licensing Authority

(1) The Central Government may, by notification, appoint the Director General of Emigrants Welfare or any other officer of that Government of a rank higher than that of Emigrants Welfare Officer to be the Licensing authority for the purposes of this Act.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may, by notification, authorise any person who is employed under that Government in any country or place outside India to exercise the powers of the Licensing authority, and issue License under this Act to employers who are not citizens of India for the purpose of recruiting any citizen of India for employment in any receiving country or place and a person so authorised shall endorse a duly certified copy of every License issued by him under this Act to the Director General of Emigrants Welfare.

#### 10. No Person to Function as Recruiting Agent Without a Valid Registration

Save as otherwise provided in this Act, no recruiting agent shall, after the commencement of this Act, commence or carry on the business of recruitment except under and in accordance with a License issued in that behalf by the Licensing authority. Provided that a person carrying on the business of recruiting agent under the repealed Act, immediately before the commencement of this Act may continue to carry on such business without License for a period of 24 months from such commencement.

#### 11. Cancellation, Suspension, etc., of License

(1) The Licensing authority may suspend for any period or cancel any License for contravention of any of the provisions of this Act by the Licensee or his employee, provided however that a reasonable opportunity shall be given to the Licensee to show cause and to present his case in defense of the alleged grounds for suspension or cancellation. No Agent whose License has been cancelled shall be eligible to be granted a further License under this Act. Suspension of a License shall however not be a bar for renewal of License. However the conduct and performance of a Licensee shall be a criterion to be

considered while Licenses are renewed. In case the Licensing authority proposes not to renew any License, the Licensee shall be given notice of the proposal and reasonable opportunity shall be given to the Licensee to present his case in defense.

(2) Should the holder of a License be, subsequent to the issue of the License, convicted by a court in India for any offence under this Act, the Emigration Act, 1983, or any other law relating to passports, foreign exchange, drugs narcotics or smuggling or convicted for any offence involving moral turpitude, the License shall be cancelled. However before such cancellation, the Licensee shall be given a reasonable opportunity to show cause against such cancellation.

(3) Before passing an order cancelling or suspending a License the Licensing authority shall consider the question as to the provisions and arrangements which should be made for safeguarding the interests of emigrants and other persons with whom the License holder had any transactions in the course of his business as recruiting agent and may make such orders (including orders permitting the holder of the License to continue to carry on his business for a specified period, not exceeding a period of six months with respect to all or any of such emigrants, and other persons) as it may consider necessary in this behalf.

## 12. Recruitment by Employers to be Through Recruiting Agent or Under License Issued Under This Act

Save as otherwise provided by or under this Act, no employer shall recruit any citizen of India for employment in any country or place outside India except-

(a) through a recruiting agent licensed under this Act to make such recruitment, or

(b) in accordance with a valid license issued to the employer in this behalf under this Act.

## 13. Procedure for Obtaining License by Employers

(1) An employer desiring to obtain a license under this Act may make an application in that behalf in the prescribed form to the licensing authority having jurisdiction at the place where the Employer is situated.

(2) On receipt of such application, the jurisdictional licensing authority shall, subject to any rules made in this behalf, make such inquiry as he may deem necessary and grant the license applied for or reject the application. Provided that before granting a license the jurisdictional licensing authority may require the applicant to comply with such conditions as may be prescribed, including conditions as to furnishing of security and such other conditions as that authority may, for reasons to be recorded in writing, deem necessary in the interests of the citizens of India likely to be recruited by the applicant.

(3) Subject to the other provisions of this Act, the jurisdictional licensing authority may reject an application under sub-section (1) on any valid ground including one or more of the following grounds namely,-

(a) that the application is not complete in all respects or that any of the material particulars furnished in the application are not true;

(b) that the terms and conditions of employment which the applicant proposes to offer to persons recruited or proposed to be recruited by him are discriminatory or exploitative;

(c) that the employment which the applicant proposes to offer involves work of a nature which is unlawful according to the laws of India or offends against the public policy of India or is in violation of norms of human dignity and decency;

(d) that having regard to the antecedents of the applicant, his financial standing, the facilities at his disposal, the working and living conditions of persons employed by him in the past, it would not be in the public interest or in the interests of the persons who may be recruited by him, to issue a license to him;

(e) that having regard to the prevailing circumstances in the country or in the place where the applicant proposes to employ the persons recruited by him, it would not be in the interests of any citizen of India to emigrate for taking up such employment.

(4) Where the jurisdictional licensing authority makes an order under sub-section (2) rejecting an application, he shall record in writing a brief statement of his reasons for making such order and furnish the applicant, on demand, a copy of the same : Provided that if the jurisdictional licensing authority is of the opinion that it is necessary or expedient in the interests of friendly relations with a foreign country or in the interests of the general public so to do, he may refuse to provide such copy or, as the case may be,

furnish a copy of only such parts of the statement as he may deem fit

(5) A license issued to an Employer shall be valid till the expiry of such period, not exceeding one year, as may be prescribed, from the date of issue thereof, or till the recruitment of the persons for whose recruitment such license is issued is completed, whichever is earlier:

Provided that where the holder of the license has been unable for sufficient cause, to complete such recruitment before the expiry of the prescribed period, the jurisdictional licensing authority may, subject to rules made in this behalf, extend the period of validity of the license by such further period or periods, not exceeding three months at a time.<sup>13</sup>

#### 14. Power to Exempt

The Central Government may, if satisfied that it is necessary or expedient so to do in the public interest, by notification and subject to such conditions, if any, as may be specified in the notification, exempt any class or classes of employers from the requirement of obtaining a License under this Chapter

#### 15. Requirement, etc., as to Emigration Clearance<sup>14</sup>

No citizen of India shall emigrate unless he obtains under this Chapter from the Emigrants Welfare Officer authorisation in the prescribed manner and form (such authorisation being hereinafter referred to as emigration clearance) for emigration, provided however that the emigration clearance shall not be withheld or denied to any person solely on the grounds of caste, sex, religion, geographical location, educational qualification. However the Central Government, can by notification reasonably restrict the issue of Emigration clearance to any class of persons on the grounds of public interest, safety and security of its citizens and other similar ground. Notwithstanding anything contained hereinabove, the Central Government can<sup>15</sup>, by notification exempt any class of persons from the requirement of obtaining

13. YA: What about regulating the agents in case of fraud, the amount they should charge, etc. In the Philippines, agents are not allowed to charge more than one month's salary from emigrants as fees for facilitating recruitment.

14. YA: Problematic Area... By using this mechanism, we put the onus of seeking protection on the unskilled, vulnerable etc.

15. YA: This is problematic and tricky. It leaves room for arbitrariness to set in for categorization of ECR/ECNR again in ways that are not very helpful. If the intent is to protect, then such a system might not be the most useful one.

## Emigration Clearance.

(1) An application for registration shall be in the prescribed form, shall contain the prescribed particulars and shall be made by the emigrant concerned to the Emigrants Welfare Officer: Provided that such application may be made through the recruiting agent, if any, through whom the emigrant has been recruited or through the employer concerned.

(2) Every application under sub-section (2) shall be accompanied by-

(a) a true copy (verified and authenticated in the prescribed manner) of the agreement with respect to the employment for the taking up of which the applicant proposes to emigrate and where such agreement does not provide for all or any of the prescribed matters, also a statement (verified and authenticated, in the prescribed manner) setting out the particulars with respect to such matters;

(b) a statement (verified and authenticated in the prescribed manner) as to the provision by way of security for meeting the expenses which may be incurred in case it becomes necessary to arrange for the repatriation to India of the applicant;

(c) a receipt evidencing the payment of the prescribed fee;

(d) such other relevant documents or copies of relevant documents as may be prescribed.

(4) The Emigrants Welfare Officer shall, after satisfying himself about the accuracy of the particulars mentioned in the application and in the other documents submitted along with the application, authorise in the prescribed manner and form, the emigration of the applicant or intimate by order in writing the applicant or, as the case may be, the recruiting agent or employer through whom the applications have been made about the deficiencies and require him to make good such deficiencies within such time as may be specified in the order or reject the application.

(5) Subject to the other provisions of this Act, the Emigrants Welfare Officer may reject an application for emigration clearance<sup>16</sup> under this section on any one or more of the following grounds and on no other ground, namely:-

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16. YA: I understand the spirit behind this, but could we rethink? Put the onus of verification on the agent? Employers and agents should register; agents should update and ensure that the employers they represent meet common minimum standards. Here we could insert an additional clause for domestic employers. They should register with the embassy, and provide conditions of work per guidelines issued by the Indian government where laws governing domestic work do.

- (a) that the terms and conditions of employment which the applicant proposes to take up are discriminatory or exploitative;
- (b) that the employment which the applicant proposes to take up involves work of a nature which is unlawful according to the laws of India or offends against the public policy of India or is violation of norms of human dignity and decency;
- (c) that the applicant will have to work or live in sub-standard working or living conditions;
- (d) that having regard to the prevailing circumstances in the country or place where the applicant proposes to take up employment or the antecedents of the employer under whom the applicant proposes to take up employment or any other relevant circumstances, it would not be in the interests of the applicant or in public interest to emigrate;
- (e) that no provision or arrangement has been made for meeting the expenses which may be incurred in case it becomes necessary to arrange for the repatriation to India of the applicant, or that the provisions or arrangements made for medical facilities, treatments, welfare measures for the emigrant worker are inadequate.
- (6) Every order rejecting an application for emigration clearance shall set out clearly the grounds or ground on which the order has been made and the facts or circumstances on which such ground or grounds are based.

## CHAPTER 8

### APPEALS AND TRIBUNALS

#### 16. Appeals

- (1) An Agent aggrieved by-
  - (a) an order of the Licensing authority rejecting his application for License or requiring him to furnish any security or to comply with any term or condition (not being a prescribed term or condition) specified in the rules or suspending or cancelling or refusing to renew a License issued to him; or
  - (b) an order of the Registering authority rejecting his application for a License or requiring him to comply with any terms or conditions (not being a prescribed term or condition) specified in the License issued to him, or suspending or cancelling or refusing to extend the period of the validity of the License issued to him; or
  - (c) an order of the Emigrants Welfare Officer rejecting his application for emigration clearance applied on behalf of an employer or an emigrant.
  - (d) any other order of the Emigrants Welfare Officer prejudicial or adversely affecting the operation of the Agent under this Act.

may prefer an appeal against such order to the Director General of Emigrants Welfare within such period as may be prescribed.

- (e) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefore:

Provided that an appeal may be admitted after expiry of the period prescribed therefore if the appellant satisfies the Director General of Emigrants Welfare that he had sufficient cause for not preferring the appeal within that period.

- (3) The period prescribed for an appeal shall be computed in accordance with the provisions of the Limitation Act, 1963-, with respect to the computation of periods there under.
- (4) Every appeal under this section shall be made in such form as may be prescribed and shall be accompanied by a copy of the order appealed against and by such fee as may be prescribed.
- (5) The procedure for disposing of an appeal (including remand of the matter for further consideration to the authority whose order has been

appealed against) shall be such as may be prescribed: Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of representing his case.

(6) Every order made on an appeal under this section confirming, modifying or reversing the order appealed against shall be final.

#### 17. Emigration Tribunal<sup>17</sup>

1. Any emigrant or his authorised representative, aggrieved by any act done by the Agent in relation to the emigrant or emigration, or by any act of any of the authorities under this Act may submit their grievance to a Tribunal to be established under this Act within one year of the occurrence of the grievance.

2. The Central Government shall by notification constitute one or more Emigration Tribunals in each state, as may be deemed necessary to consider the grievances of emigrants.

3. The Emigration Tribunal on receipt of any grievance shall issue notice to the opposite party and shall hear and adjudicate the grievance.

4. The Tribunal shall consist of a Chairperson and two members. The Chairperson shall be a judicial officer of the rank of a District Judge, or a person who has been or is qualified to be a District Judge. The members of the Tribunal shall be persons with deep knowledge and understanding of labour laws, social welfare, women's rights<sup>18</sup> and welfare issues. The Tribunal shall consist of at least one woman, who could be either the Chairperson or any one of the members.

5. The Tribunal shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure 1908 (5 of 1908) in respect of the following matters, namely:-

a. Summoning and enforcing the attendance of any person and examining him on oath;

b. Discovering and production of any document or other material object producible as evidence;

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17. RST: How will the Emigration Tribunal be constituted, functions and powers?

18. YA: should there be additional provision for ensuring the free mobility of women workers, yet providing protection.

- c. Receiving evidence on affidavits;
  - d. Requisitioning of any public record;
  - e. Issuing commission for the examination of witnesses;
  - f. Reviewing its decisions, directions and orders;
  - g. Any other matter which may be prescribed.
6. The Tribunal shall have the powers to pass interim order in any proceeding, hearing or matter before the Tribunal, as the Tribunal may consider appropriate.
7. The Tribunal may, on application or suo moto, authorise any person or body, as it deems fit, to represent before it the interest of any one or a group of immigrants in any proceedings.
8. All proceedings before the Tribunal shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1890) and the Tribunal shall be deemed to be a Civil Court for the purposes of Sections 345 and 346 of the Code of Criminal procedure 1973.
9. The Tribunal or any officer, not below the rank of a Gazetted Officer under the Central Government, specially authorised in this behalf by the Tribunal, may enter any building or place where the Tribunal has reasons to believe that any document relating to the subject matter of inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of Section 100 of the Code of Criminal Procedure, 1973 (2 of 1974), in so far as it may be applicable.
10. The Central Government shall make rules for the functioning of the Tribunal and the form the manner of submitting Grievances before the Tribunal etc.
11. The Tribunal is vested with the powers to impose fine and penalty on the persons found guilty and to suspend or cancel the License of an Agent, as provided for under the rules.
12. In case the Tribunal finds any of the authorities under the Act guilty, the Tribunal may impose personal fines and penalties on such authorities and/or recommend departmental action against such authorities.
13. In case the Tribunal is of the opinion that the offences complained of requires prosecution under this Act or any other law for the time being in force, shall direct the Director General of Emigrants Welfare to file complaint before the Special Court for prosecuting offences under this Act.

## CHAPTER 9

### OFFENCES AND PENALTIES

#### 18. Offences and Penalties

- (1) Whoever,
  - (a) except in conformity with the provisions of this Act emigrates; or
  - (b) contravenes the any of the provisions of this Act,
  - (c) by intentionally furnishing any false information or suppressing any material information obtains a License or an emigration clearance under this Act; or
  - (d) without lawful authority makes or causes to be made any alteration in any License or in any document or endorsement by way of emigration clearance issued or made under this Act; or
  - (e) disobeys or neglects to comply with any order of the Emigrants Welfare Officer ; or
  - (f) collects from an emigrant any charges in excess of the limits prescribed under this Act; or
  - (g) cheats any emigrant; shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to ` 10 lakhs or with both:

Provided that in the absence of any special and adequate reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall not be less than one year and such fine shall not be less than one lakh rupees.

Provided that in the case of a repeat conviction of a person, the Court shall impose the maximum penalty by way of imprisonment and fine.

- (2) Whoever attempts to commit any offence under sub-section (1) shall be punishable with the punishment provided for such offence under that sub-section,
- (3) Whoever contravenes any term or condition subject to which any emigration clearance has been given under this Act shall, if no other punishment is provided elsewhere in this Act for such contravention, be punishable with imprisonment for a term which may extend to one year or

with fine which may extend to one lakh rupees or with both.

(4) Whoever abets any offence punishable under this Act shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided for that offence.

(5) Whoever, having been convicted of an offence under any provision of this Act is again convicted of an offence under the same provision shall be punishable, for the second and for each subsequent offence, with the maximum penalty provided for that offence.

#### 19. Offences By Companies

(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

Explanation - For the purposes of this section,-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

#### 20. Offences To Be Cognizable

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act shall be cognizable.

## 21. A Constitution of Special Courts

(1) The Central Government may, for the purposes of providing speedy trial of any offences under this Act , by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas, as may be specified in the notification.

(2) A Special Court shall consist of a single Judge who shall be so notified by the Central Government with the concurrence of the High Court.

(3) A person shall not be qualified for appointment as a Judge of a Special Court unless he was, immediately before such appointment, an Additional District and Sessions Judge.

(4) Where the office of the Judge of a Special Court is vacant, or such Judge is absent from the ordinary place of sitting of such Special Court, or he is incapacitated by illness or otherwise for the performance of his duties, any urgent business in the Special Court shall be disposed of-

(a) by a Judge, if any, exercising jurisdiction in the Special Court;

(b) where there is no such other Judge available, in accordance with the direction of District and Sessions Judge having jurisdiction over the ordinary place of sitting of Special Court, as notified under sub- section (1).

## 22. Previous Sanction of Central Government Necessary

No prosecution shall be instituted against any public servant or authority under this Act in respect of any offence under this Act without the previous sanction of the Central Government or such officer or authority as may be authorised by that Government by order in writing in this behalf:

Provided that no sanction shall be required when an offence has been committed in respect of an emigrant or an intending emigrant and the complaint is filed by such emigrant or intending emigrant, or on behalf of such emigrant or intending emigrant, by the father, mother, husband, wife, son, daughter, brother, sister or guardian of such emigrant or intending emigrant, or if such emigrant or intending emigrant is a member of a joint Hindu family, by the manager of that family.

### 23. Punishment to be Without Prejudice to Any Other Action

The award of punishment for an offence under this Act shall be without prejudice to any other action which has been or which may be taken under this Act with respect to such contravention.

### 24. Determination of Question as to Whether a Person is an Emigrant

Where a question arises before a Emigrants Welfare Officer as to whether a person intending to depart from India is or is not an emigrant, the Emigrants Welfare Officer or the Emigrant or his authorised representative, shall refer the question to the Tribunal constituted under this Act which shall after holding an inquiry in such manner and upon considering such evidence as may be prescribed and such other evidence as may be relevant, and communicate the decision to such person in the prescribed manner.

## CHAPTER 10

### MISCELLANEOUS

25. Power To Prohibit Emigration to Any Country in the Interests of the General Public, Etc<sup>19</sup>

(1) Where the Central Government has reason to believe that sufficient grounds exist for prohibiting emigration to any country, having regard to the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or the interests of the general public, it may by notification, prohibit emigration to that country.

(2) A notification issued under sub-section (1) shall have effect for such period not exceeding six months as may be specified in the notification: Provided that if the Central Government has reason to believe that the grounds mentioned in sub-section (1) continues to exist, it may, from time to time by notification, prohibit emigration to that country for such further period, not exceeding six months on each occasion, as may be specified in the notification.

26. Power to Prohibit Emigration Due to Outbreak of Epidemics, Civil Disturbances, etc., in a Country

(1) Where the Central Government has reason to believe

(a) that intending emigrants if allowed to emigrate to any country would be exposed to serious risk to life on arrival there by reason of-

(i) outbreak of any disease or grave pollution of environment in such country or in India, or

(ii) outbreak of hostilities or civil war or civil commotion or political disturbances;

(b) that by reason of India not being in diplomatic relations with that country it is not possible to protect the emigrants from discrimination, maltreatment and exploitation, it may, by notification, prohibit emigration to that country.

(2) A notification issued under sub-section (1) shall have effect for

19. YA: We should check if there is precedent for this and to what uses this kind of power is put to.

such period not exceeding six months as may be specified in the notification:

Provided that if the Central Government has reason to believe that any ground mentioned in sub-section (1) continues to exist, it may, from time to time, by notification, prohibit emigration to that country for such further period not exceeding six months on each occasion, as may be specified in the notification.

## 27. Power to Prohibit Emigration of Any Class or Category of Persons <sup>20</sup>

Notwithstanding anything to the contrary contained in any other Act, but subject to the provisions of this Act,

(1) Where the Central Government considers that in the interests of the general public, emigration of any class or category of persons, to any country should be restricted or prohibited, it may, by notification, restrict or prohibit the emigration to such country of such class or category of persons as may be specified in the notification

(2) A notification issued under sub-section (1) shall have effect for such period not exceeding six months as may be specified in the notification: Provided that if the Central Government has reason to believe that any of the ground mentioned in sub-section (1) continues to exist, it may, from time to time, by notification, prohibit emigration of such class or category of persons to that country for such further period, not exceeding six months on each occasion, as may be specified in the notification.

## 28. Power To Search, Seize and Detain Persons, Conveyance, etc

All the powers for the time being conferred by the Customs Act, 1962-, on officers of customs with regard to the searching and detention of persons, vessels or aircraft or any other conveyance, or seizure of any document or thing or arrest of any person or otherwise for the purpose of prevention or detection of any offence under that Act or for apprehending a person suspected to have committed any offence under that Act may be exercised, for the purpose of prevention or detection of any offence under this Act or for apprehending a person suspected to have committed any offence under this Act, by-

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20. YA: Why? This can be seriously misused.

- (a) any such officer of customs, or
- (b) the Director General of Emigrants Welfare or a Emigrants Welfare Officer, or
- (c) an officer in charge of an emigration station.

#### 29. Returns and Registers

(1) Every recruiting agent shall maintain such registers and other records and shall submit to the prescribed authorities such periodical or other returns as may be prescribed.

(2) The Director General of Emigrants Welfare, the Licensing authority, the competent authority or a Emigrants Welfare Officer may, by order, call for any other return or an information from recruiting agent.

(3) The Director General of Emigrants Welfare, the Licensing authority, the competent authority or a Emigrants Welfare Officer or an officer in charge of an emigration station may inspect any office or register or other record maintained by a recruiting agent under sub-section (1) and for the purpose of such inspection enter, at any reasonable time, the business premises of a recruiting agent, inspect documents and where offences under this Act are reasonably suspected of having been committed, seize registers, documents, articles etc under proper acknowledgement.

#### 30. Authorities and Officers to Have Certain Powers of Civil Court

(1) The Director General of Emigrants Welfare, the Licensing authority, the competent authority and every Emigrants Welfare Officers shall, for the purpose of discharging their functions under this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 ( 5 Of 1908) while trying a suit, in respect of the following matters, namely :-

- (a) summoning and enforcing the attendance of witnesses;
- (b) requiring the discovery and production of any document;
- (c) requisitioning any public record or a copy thereof from any court or office;
- (d) receiving evidence on affidavits; and
- (e) issuing commissions for the examination of witnesses or documents

(2) Every proceeding before the Director General of Emigrants Welfare, or the Licensing authority or the competent authority or a Emigrants Welfare Officers shall be a judicial proceeding within the meaning of sections 193- and 228 of the Indian Penal Code- and the Director General of Emigrants Welfare, the Licensing authority, the competent authority, and every Emigrants Welfare Officer shall be deemed to be a civil court for the purposes of section 195- and Chapter XXVI of the Code of Criminal Procedure, 1973-.

### 31. Power to Give Directions

The Central Government may give directions to the Director General of Emigrants Welfare, the Licensing authority, the competent authority or any Emigrants Welfare Officers as to the carrying into execution of any provision of this Act.

### 32. Effect of Other Laws

(1) The provisions of this Act or any rule made there under shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or if any agreement or other instrument having effect by virtue of any enactment other than this Act.

(2) Save as provided in sub-section (1), the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

### 33. Delegation

The Central Government may, by notification, direct that any power or function-

- (a) which may be exercised or performed by it under this Act, or
- (b) which may be exercised or performed by a Licensing authority, a competent authority or a Emigrants Welfare Officer under this Act, may, in relation to such matters, and subject to such conditions, if any, as it may specify in the notification, be also exercised or performed-
  - (i) by such officer or authority subordinate to the Central Government, any missions or consulates of India abroad or
  - (ii) by any State Government or by any officer or authority subordinate to such State Government, or

(iii) in any foreign country in which there is no diplomatic mission of India, by such foreign consular office, as may be specified in the notification.

#### 34. Power to Exempt

(1) Where the Central Government, on a reference made to it or otherwise, is satisfied that having regard to-

- (a) the friendly relations with any foreign country; or
- (b) the known reputation of any foreign employer or class of foreign employers, for providing to emigrants standard conditions of living and working, and their methods of recruitment and conditions of employment; or
- (c) the methods of recruitment followed and the conditions of employment provided by a public undertaking of an approved concern for the execution of its projects abroad; or
- (d) the facilities and conditions of service provided by Government officers posted abroad to their domestic servants accompanying such Government officers, where the expenditure in respect of the passage of such domestic servants is borne by the Government; and
- (e) all other relevant considerations, it is necessary or expedient in the public interest 'so to do, the Central Government may, by notification, and subject to such conditions, if any, as may be specified in the notification, exempt from the operation of all or any of the provisions of this Act, such foreign dignitary or class of foreign employers, public undertaking, approved concern or Government officers. Explanation.-

For the purposes of this sub-section-

- (a) "public undertaking" means-
  - (i) an undertaking owned and controlled by Government; or
  - (ii) a Government company as defined in section 617 of the Companies Act, 1956; or
  - (iii) a body corporate established by or under any Central, Provincial or State Act;
- (b) "approved concern" means such company incorporated under the Companies Act, 1956-or partnership firm registered under the Indian Partnership Act, 1932-, or society registered under the Societies Registration

Act, 1860-or any other law relating to societies for the time being in force in any State, or co-operative society registered under any Central, Provincial or State law, as the Central Government may, by notification, approve for the purposes of this section.

(2) If the Central Government is satisfied that it is necessary for implementing any treaty, agreement or convention between India and a foreign country or foreign countries so to do, it may, by notification, and subject to such conditions, if any, as may be specified in the notification, exempt from the operation of all or any of the provisions of this Act, recruitment by such authorities, agencies or persons as may be specified in the notification either generally or for such purposes as may be specified in the notification

### 35. Act not to Apply to Certain Emigrants

Save as other wise provided in this Act, nothing contained in this Act shall be deemed to apply to-

- (a) the recruitment or emigration of any person who is not a citizen of India;
- (b) the control of recruiting in India for the service of foreign State to which the Foreign Recruiting Act, 1874-applies.

### 36. Power to Make Rules

- (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
  - (a) the powers and duties of officers and employees appointed for the purposes of this Act and the terms and conditions of their service;
  - (b) the form of-
    - (i) a License to carry on the business of recruitment and of an application for the issue or renewal thereof;
    - (ii) a License for the recruitment of persons for employment outside India, and of an application for the issue thereof;

- (iii) an application for emigration clearance;
  - (iv) an appeal to be preferred to the Director General of Emigrants Welfare;
  - (c) the manner and form in which an authorisation by way of emigration clearance may be given;
  - (d) particulars to be contained in an application for a certificate, or a permit or for an emigration clearance;
  - (e) the manner in which different inquiries required to be held under this Act may be held;
  - (f) the manner in which the amount of security for securing the due performance of the terms and conditions of the License or for compliance with the provisions of this Act shall be furnished;
  - (g) the manner of verifying or authenticating documents and copies of documents for the purposes of this Act;
  - (h) the procedure to be followed in hearing an appeal preferred to the Central Government;
  - (i) the fees to be paid in respect of applications and other matters under this Act;
  - (j) the charges which a recruiting agent may recover from an emigrant in respect of services rendered and the scales and limits of such charges;
  - (k) the terms and conditions subject to which a License or an emigration clearance may be issued under this Act;
  - (l) the period of the validity of a License is issued under this Act;
  - (m) the authority competent to extend the period of validity of a License or to forfeit security or to require any additional security or fresh security under this Act;
- Power to make rules (n) the accommodation, the provisions, the medical stores and staff, the life saving and sanitary arrangements and other provisions and arrangement for the well being, security and protection of emigrants which shall be provided and the records which shall be maintained in any emigrant conveyance;
- (o) any other matter which is required to be, or may be, prescribed.

### 37. Notifications and Rules to be Laid Before Parliament

Every notification issued under this Act and every rule made under this Act shall be laid, as soon as may be after it is issued or made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or the rule or both Houses agree that the notification or the rule should not be issued or made, the notification or the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule.

### 38. Repeal of Act

The Emigration Act, 1983 is hereby repealed.







**Centre for Education and Communication**