



# **MIGRATION OF WOMEN DOMESTIC WORKERS FROM KERALA TO THE GULF**

**Challenges and Policy Options**

**2022**



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## **Migration of Women Domestic Workers from Kerala to the Gulf: Challenges and Policy Options**

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## ABBREVIATIONS & ACRONYMS

ECR	Emigration Check Required
GCC	Gulf Cooperation Council
GoI	Government of India
ICWF	Indian Community Welfare Fund
ILO	International Labour Organization
ITUC	International Trade Union Confederation
MEA	Ministry of External Affairs
MOIA	Ministry of Overseas Indian Affairs
MRC	Migrant Resource Centre
MRW	Minimum Referral Wages
MSDE	Ministry of Skill Development and Entrepreneurship
NBFC	Business Facilitation Centre
NDPREM	Rehabilitation of Return Emigrants
NORKA	Department of Non-Resident Keralites' Affairs
NPRI	Pravasi Raksha Insurance Policy
ODEPC	Overseas Development and Employment Promotion Consultants
OMCAP	Overseas Manpower Company Andhra Pradesh Limited
PBBY	Pravasi Bharatiya Bima Yojana
PGE	Protector General of Emigrants
PKVY	Pravasi Kaushal Vikas Yojana
POE	Protector of Emigrants
PRA	Private Recruitment Agency
UAE	United Arab Emirates
UN DESA	United Nations Department of Economic and Social Affairs

## Section 1

# INTRODUCTION

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The feminisation of international migration, particularly during the last two decades, has brought gender concerns in governing labour outflows into the limelight. As per the latest data available, women migrants account for 135 million or 48.1 per cent, of the global international migrant stock (United Nations Department of Economic and Social Affairs [UN DESA], 2020). As per a recent estimate, the share of women migrant workers was estimated to be 41.6 per cent in 2017 (International Labour Organization [ILO], 2018). Understanding migration from a gender perspective is critical. Most women migrant workers are engaged in occupations traditionally associated with specific gender roles, as domestic workers or as care workers to take care of the elderly and children. It is essential to recognise that most of these occupations are undervalued, under-compensated, and performed in household settings, creating additional vulnerabilities for migrant women (ILO, 2015). The growing demand for domestic workers is one of the main factors pushing the feminisation of labour

migration in past decades (Moreno-Fontes Chammartin, 2006). There is a surge in demand for domestic workers in developed countries due to increased educational attainment and higher labour force participation in the native population.

While in the case of the Gulf countries, despite lower female labour force participation, the rentier economy and a culture that discourages placing ageing relatives in elderly care institutions drive the demand for domestic workers (Marie-José Tayah, 2016). This creates increased demand for domestic workers to take care of domestic duties and caring responsibilities.

Despite the increasing presence of women in international migration flows from India, the State response, in general, tends to be gender stereotypical. Migrant women are often assumed to be a category that requires constant monitoring and protection from the State. While some changes are visible in the case of skilled women migrants, when it comes to medium and low skilled, the State tend to regulate women's migration by imposing restrictions.



Among women migrants from India, domestic workers are disproportionately exposed to abuse. It is essential to recognise that, unlike common perception, vulnerabilities in the migration cycle are not limited to the destination countries but start right from the time they decide to migrate. Existing studies have identified factors like lack of reliable information on migration processes, stringent control imposed by the State on women's mobility and continuing dependence on recruitment agencies, increasing vulnerabilities women encounter in the migration cycle (Kodoth, 2021; Timothy and Sasikumar, 2012). At the destination, limited freedom to change employers, lack of access to social networks, violation of fundamental rights like confiscation of travel documents, and lack of access to redressal mechanisms increase the vulnerabilities of migrant women workers (ILO, 2015, Hennebry, Keegan Williams and Walton-Roberts 2016 and Marie-José Tayah, 2016). The vulnerability of domestic workers is further exacerbated when they are in an irregular migration situation—without obtaining legal formalities associated with migration by origin or destination countries. For instance, this would include migrating without securing a work visa or staying beyond the sanctioned time at the destination.

Here discussion is focused on the case of women domestic workers migrating from India, more specifically, those migrating from Kerala to the Gulf Cooperation Council (GCC) countries, currently known as the Cooperation Council for the Arab States of the Gulf. The research raises critical issues like to what extent legal and policy frameworks on labour migration in India and the Gulf is conducive to the migration of women domestic workers, the migrant services offered by India, and the extent to which they are attuned to address gender concerns.

While there is a plethora of literature on international labour flows from Kerala, a region with a long history of labour outflows, those addressing women workers are somewhat limited. Given major changes in the migration landscape over the last decade—an increasing number of women migrating for work, often without family—it would be of policy relevance to understand the international migration of women from Kerala for work. This study intends to explore the gendered aspect of migration by taking up the case of women domestic workers from Kerala. This study is qualitative in nature and essentially rely on secondary literature review, substantiated by limited interviews with migrant women. For this purpose, the legal framework on migration, policy



documents, reports by international organisations and scholarly articles were consulted. In addition, a limited number of depth interviews were conducted with migrant women from Kerala who, at some point in time, worked in the GCC as domestic workers. Interviews captured women's migration trajectory at different stages of the migration cycle—from the initial decision to migrate, living and working in the destination and return and reintegration.

The rest of the report is divided as follows: Section II examines the legal and policy framework governing women's migration from India to the Gulf. Migration services provided by the State and the extent to which they are attuned to gender concerns are examined in Section III. Finally, Section IV concludes by presenting policy contours to improve migration outcomes of low skilled women from Kerala and elsewhere.

## Section 2

# LEGAL FRAMEWORK THAT GOVERNS LABOUR MIGRATION

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This section examines the legal framework and policies that govern international labour outflows from India. It is important to note that despite being one of the major labour sending countries in the world, India has limited information on population outflows, creating a disconnect on evidence-based policy making. The only information on labour migration from India is the data on the number of migrants in the emigration check required (ECR) category—those migrants who require clearance from the Protector of Emigrants (POE) to migrate for employment as per the provisions<sup>1</sup> of the Emigration Act, 1983 (see Appendix for relevant Sections of the Act). As this data pertains to low-skilled workers, it only provides partial information on labour outflows. According to the latest data, such ECR labour outflows from India increased from 6.41 lakhs in 2010 to 8.05 lakhs in 2014, which declined to 3.68 lakh in 2019 (Government of India (GoI), 2013 *eMigrate*<sup>2</sup>

website). The explanation provided by the Ministry of External Affairs (MEA) for the decline in labour outflows includes a drop in crude oil prices and the economic slowdown in the Gulf countries. Among countries in the ECR category, Saudi Arabia and the United Arab Emirates (UAE) figure as the top destinations, accounting for roughly 60 per cent of such labour outflows. Women constitute only 3-4 per cent of labour outflows (Pootnuru, 2016). In 2010 majority of women moved to the Gulf, with Kuwait topping the list (60.5 per cent), followed by Oman (29.9 per cent) and UAE (6.8 per cent). Interestingly, 92 per cent of these women migrated as housemaids (ibid).

During the 1970s, the initial phase of migration from India to the Gulf, labour outflows primarily consisted of low skilled males employed in construction and oil mining. The migration of women workers was a later phenomenon following the structural transformation in the Gulf

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1. POE clearance is required for workers who have not completed matriculation and are migrating to the 17 countries included on the ECR list (mainly those in West Asia).
  2. Created under the Ministry of External Affairs, *eMigrate* provides web-based solutions to meet requirements of migrants, employers, recruiting agents, providing them better access to information, services, thereby avoiding unnecessary middlemen.

(Martin Baldwin-Edwards, 2011) to meet labour demand in health, education, and domestic services. Currently, labour flows from India to the Gulf include low, medium, and high-skilled men and women workers. India's demographic dividend, without appropriate labour market outcomes, boosts out-migration (Sasikumar and Timothy, 2015).

## **2.1 Governing Migration of Workers from India**

The Emigration Act 1983 specifies the legal framework of migration from India, which was amended several times, last in 2009. While the Act encourages the migration of skilled workers, emigration clearance is mandatory for low skilled (without matriculation) migrating to 17 countries specified in the Act.<sup>3</sup> The POE grants the EC after scrutinising the employment contract. EC is only given to women domestic workers above 30 years. Without adequate institutional mechanisms to regulate recruitment or ensure fair working conditions, the EC introduced to protect vulnerable categories of migrants has become a major avenue for rent-seeking and harassment both by the State officials and recruiting agents (UN Women, 2013).

As noted by Kabeer (2007), in India, the paternalistic attitude of the State towards women migration is visible in the restrictions imposed on the age of migrants and destinations they can migrate to work. More control is set if women migrate to work as nurses or domestic workers.

India has a track record of banning the recruitment of domestic workers to certain countries. For instance, in 2009, a ban was imposed on domestic workers migrating to Kuwait (Kodoth and Varghese, 2012). In 2011, India further tightened its control on the migration of women domestic workers. The sponsors must pay a refundable security deposit of US\$ 2,500 to be used if the worker needs to be repatriated. However, facing opposition from several quarters, India could start enforcing the condition only in 2014. In 2016, the Indian government banned the recruitment of migrant domestic workers by private agencies. It was made mandatory that women domestic workers from India could be recruited only through six stipulated public sector agencies or directly by an overseas employer by placing a request through the *eMigrate* website. The Non-Resident Keralites' Affairs<sup>4</sup> (NORKA) -ROOTS was one of the agencies

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3. The Emigration Act 1983 Section 22.

4. The Department to take care of migrants was established by Kerala in 1996, first of its kind in India. NORKA-Roots, the field agency of the Department of NORKA, was set up in 2002 to act as an interface between non-resident Keralites and the Government of Kerala.

authorised to recruit domestic workers from Kerala. However, in 2018, when NORKA began recruiting domestic workers from Kerala to Kuwait, they could not find an adequate number of candidates. It is pointed out that even after the new regulation, the migration of domestic workers outside legal channels continued (Kodath, 2021).

Part of the reason could be due to government agencies' unable to build enough confidence among potential migrants to rely on them, the stipulation of sponsors making a refundable deposit to hire domestic workers and going through official formalities of hiring workers. This merely indicates how legal measures to control labour flows push migrants into a more vulnerable situation. Restrictions on the movement of migrant women are not restricted to domestic workers; in March 2015, nurses migrating from India were brought under the EC required category (GoI, 2015).

The State constantly intervenes to protect and control women, thereby curtailing women's right to make their own decision and earn a decent living. Women are conceived as victims of all sorts of violations and incapable of deciding on cross border migration. Kapur (2005) narrates how categorising migrant women by the State into groups as potential

victims and those outside the scope of victimisation (women travelling alone and those travelling with family) often leads to half-baked solutions. Taking the point further, Bindhulakshmi (2010) questions (il)legality and (il)licitness in the migration of female domestic workers and the role played by the State in the process. Situating the debate on the migration of domestic workers from Kerala, India, to the UAE, the author cites instances of women relying on channels that are often very risky because of delays in the official procedures related to migration. Discriminatory legal requirements toward women migrants (Kodath and Varghese, 2012) significantly push women migrants, to opt for risky migration routes. What is contradictory is that India is slowly moving from migration regulation to deregulation, as evident from the various amendments made to the 1983 Act, like reducing the number of EC required countries from 154 to 17 or abolishing the mandatory provision to obtain EC if travelling not for employment. However, no such moves from 'protection' are visible for women migrants, particularly those in the low and medium skilled categories.

The Emigration Bill 2021, the draft of which is currently available for review, being prepared to repeal the Emigration Act 1983, was expected to address at least

some of this criticism against State policing of women migrant workers. However, the Bill is criticised as it does not adequately reflect the gender dimensions of labour migration, where women have limited agency in recruitment compared to their counterparts. For instance, while the inclusion of gender sensitive planning among the Bureau of Emigration Policy and Planning duties is appreciated, the Bill does not provide further details on the scope of such programs nor how exploitative labour practices encountered by women migrants will be circumvented.

Despite being a major country of origin for migrant workers, India does not have a migration policy that provides a roadmap to international labour mobility. The existing legislative framework and various amendments to it and government notifications are treated as the policy contours on labour migration. However, some of the recent policy documents have addressed issues faced by migrant workers. The need to provide workers with competitive skills in demand in the international market is firmly affirmed in the National Policy for Skill Development and Entrepreneurship 2015. The Policy acknowledges that considering the demographic transformation taking place in many parts of the world and the consequent skill shortage that will confront

several countries, there is an opportunity to reap the demographic advantage enjoyed by India and export skilled labour (GoI, 2015). Towards this purpose, it is proposed to identify countries and specific trades which experience skill shortages. The policy acknowledges that 70 per cent of Indian emigrants are unskilled or semiskilled labourers, and possession of low skills pushes them into a vicious cycle of vulnerabilities during the migration process. It is suggested to institutionalise skill development for migrant workers and brief knowledge of destination countries, like basic communication in the local language, culturally appropriate behaviour and rights and duties prescribed by laws concerning migration at the destination. However, no concrete suggestions are visible in the Policy to approach the issue of skilling migrants from a gender perspective. This is critical considering the increasing presence of women in labour flows from India. One exception could be the pre-departure training for migrant workers under Pravasi Kaushal Vikas Yojana (PKVY) provided by the Ministry of Skill Development and Entrepreneurship in cooperation with the Ministry of External Affairs. Currently, pre-departure training programmes are delivered in 9 centres across India. It would be beneficial to formulate appropriate skill development



programmes for nurses and domestic workers, two occupations where women migrate from India for work. Training in occupations in demand at the destination could provide women workers with better wages and working conditions. Definitely, skill training is a more practical option to empower workers rather than imposing curbs or restricting migration.

Efforts made in Kerala to promote migration deserve special mention. Kerala was the first state in India to set up a separate department for migrants, the Non-Resident Keralites' Affairs (NORKA) Department, in 1996. NORKA-Roots, the field agency of the Department of NORKA, was set up in 2002 to act as an interface between non-resident Keralites and the Government of Kerala. The primary activities carried out by NORKA-Roots include conducting pre-departure orientation programmes, recruiting workers, facilitating skill upgrading, attesting the educational certificates of migrant workers, and resettling and reintegrating return migrants. In addition, the Overseas Development and Employment Promotion Consultants (ODEPC) Ltd. is a recruitment agency managed by the government of Kerala, registered under the Ministry of External Affairs. It was established in 1977 under

the Department of Labour of the Government of Kerala. ODEPC functions as an intermediary between employers and prospective candidates, facilitating travel formalities and also offers add-on skill training to prospective job seekers.

## **2.2 Status of Migrant Women Workers in the Gulf**

The GCC countries follow a sponsorship system called *kafala* to manage the flow of workers by restricting them to temporary resident status. Under the *kafala* system, *kafeels* or sponsors recruit labour either directly or through intermediaries, such as recruitment agencies, according to permits granted by the concerned ministries in the Gulf countries. It is not uncommon for the nationals of GCC countries, who obtain business licences and permission to bring in a given number of workers, to vend those visas to other employers who need workforce, instead of starting a business or using all the visas for the approved business. *Kafala* has degenerated into one in which the national *kafeels* recruit labourers for other employers and thereby engage in activities like visa trading, which pushes the migrant workers into difficulties (Shaham, 2009). Under *kafala*, it is not uncommon to find migrant workers working for other employers rather than their legal sponsors. The system

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5. Issues related to international migrant workers was dealt by MOIA earlier.

undermines the rights of migrant workers and forces them to remain in exploitative situations with little choice (Kapiszewski, 2006) in different ways. For instance, under *kafala*, the worker's legal residency is tied to the contractual relationship with the employer.

If the employment relationship ends, even in cases of abuse, the worker loses migration status. Further, the worker cannot change their employer without the latter's permission and need consent from the employer to leave the country. As the employer is bestowed with immense power under *kafala*, they could easily force workers to accept exploitative working conditions.

All GCC countries exclude migrant domestic workers from the scope of their labour laws, increasing their vulnerability. An argument for excluding domestic workers from the labour laws is that domestic work cannot be regulated in the same manner as other work without violating the privacy of the employer's household and the honour of their family (Marie-José Tayah, 2016). However, there have been some recent efforts in most GCC countries to introduce legislation regulating domestic work, though the scope and extent to which such legislation is effective varies. Bahrain is currently the only GCC country to have extended the

scope of its labour laws to include domestic workers; though, these workers continue to be excluded from the bulk of labour law protections, including those related to minimum wages, work time and days of rest. Model contracts are also commonly used to regulate the basic work conditions in the GCC.

For example, Bahrain implemented a model contract to recruit foreign domestic workers. Oman's 2011 standard domestic workers' contract included a weekly rest day and annual leave. Kuwait implemented a compulsory standard employment contract for migrant domestic workers and established a department dedicated to domestic workers within the Ministry of Interior (International Trade Union Confederation [ITUC], 2017). The UAE revised its standard domestic workers' contract in 2014 to include one day off a week. In 2015, the Parliament of Kuwait approved the 'Law No.68 of 2015 regarding domestic workers, which stipulates a daily work limit of 12 hours for domestic workers.

GCC countries have passed several new laws and decrees affecting migrant workers in the last few years. For example, in the UAE, decrees were enacted in 2016 prohibiting contract substitution and allowing workers to end a contractual relationship upon payment of an



indemnity to the employer within three months of employment. However, these decrees do not apply to migrant domestic workers. The same holds in the case of Qatar. Additionally, all GCC countries have a weak inspection and dispute resolution mechanisms that render the basic entitlements of migrant domestic workers poor. Therefore, it becomes extremely difficult for migrant domestic workers who work and reside in the employer's household to assert their rights.

There also exist bilateral agreements or Memorandum of Understanding between origin and destination countries. The Ministry of Overseas Indian Affairs (MOIA) had proposed a model contract to be adopted in all ECR countries, although there is no evidence of such adoption (Wickramasekara, 2012 and 2015). In 2014, the government of India and Saudi Arabia signed a bilateral labour mobility agreement for domestic workers, which had the provision of a "bank guarantee" which requires employers to deposit 2500 USD with the Indian embassy. The deposit is returned to the employer after contractual obligations are met or used in the case of abuse or non payment of salary. The agreement also stipulated a minimum wage of 400 USD, which employers must deposit in workers' bank account each month. Domestic worker agreements with Saudi Arabia contain a model employment

contract with several good provisions. The contract provides one day of rest per week for the domestic worker, requires employers to provide decent accommodation and pay for their travel from India, and entitlements like paid leave after completing one year of employment. However, there are several issues. The agreement does not guarantee workers' freedom of mobility during off-time or private access to communication, which is essential for workers to access complaint redressal mechanisms. It is also unclear how the monitoring and enforcement mechanisms suggested for providing better working conditions for migrant domestic workers will be implemented and monitored.

There is greater recognition among policymakers that agreements specifically targeting different vulnerable categories of workers should be promoted, as in the case of domestic workers, given that the working and living conditions of vulnerable workers cannot be addressed in a general agreement. In this spirit, the migration policy of India should move away from protection to facilitation and management. As rightly noted by Krishna Kumar (2017), protection for migrants should be defined to provide services to migrants to reduce the risk of migration, say insurance, and facilitate migrants to make informed decisions on migration.

## Section 3

# SERVICES TO MIGRANTS

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This Section will trace various services offered to migrants by the Union and Kerala governments to facilitate their migration. An attempt is also made to incorporate the experience of migrant women domestic workers while availing various migrant services at different stages of their migration cycle: services during pre departure phase, working in the Gulf and return and reintegration phase. Towards the purpose, in-depth interviews were held with migrant women domestic workers who worked in the Gulf at some point in time.

### 3.1 Services During Pre-departure

In India, various mediums (print/electronic) and methods (campaigns, pamphlets, workshops, seminars) are relied on to disseminate information on migration. There also exist 24-hour helpline and walk-in counselling facilities provided by Migrant Resource Centres (MRCs). However, despite such efforts, there exist a significant gap in reaching potential migrants, particularly women and those with low skills. In India, it is documented that 70 per cent of migrants rely on friends and relatives for

migration-related information. In comparison, those relying on the government were less than one per cent (Gurucharan, 2013). While there exists mounting evidence that insufficient information increases the vulnerability of migrants, particularly women (Thimothy and Sasikumar, 2012), the format in which the State offers information makes it out of reach of the majority. Even today, migration awareness is provided mainly through newspaper advertisements or national television channels. In India, the content of the migration awareness advertisements is marred by a warning tone on the dangers of migration rather than facilitating individuals to make an informed decision. It would be beneficial to review the content of migration awareness campaigns in newspapers and television channels. Further, campaigns should also focus on migration streams in new and emerging destinations and occupations. It would also be appropriate to depend on social media platforms frequented by youngsters to increase the reach of awareness on migration.

As part of our research, several women we

met noted that they did not know about their destination country when they first migrated to work as domestic workers.

*"they (the agent) said we will take you to Gulf. I thought Gulf was a country. It took years for me to realise I was working in Kuwait".* responded Lata, a resident of Ernakulam who migrated to the Gulf to work as a domestic worker in the late 1980s. The situation is slightly better now, as women have a better idea of the country they are travelling.

However, still, they are reluctant to discuss other details of their employment like the nature of work, wages, leave etc. Given the situation in India where social networks, friends, relatives, and religious networks play a significant role in facilitating migration, it becomes difficult for migrants to negotiate or even to enquire their wages at the destination.

*"I have known the family for years, and I thank God that they agreed to take me with them to Dubai to take care of their kids. I do not know how much I will be paid by them (employer), it is difficult for me to ask about remuneration, But I am sure they will pay me well".*

This was the response of Ammini, who was preparing to migrate for work in December 2021, on her wage expectations. It is essential to recognise that in most cases, it is the poor economic situation

that pushes women to work overseas as domestic workers. And there are cases where migrant women earned almost equal wages they could have earned in Kerala while working in the Gulf (ILO, 2015).

A study conducted by ILO (2015) among domestic workers migrating from Kerala to Gulf indicated that even when women followed official migration channels, they did not know what to expect at the destination. Interviews held with the migrant women domestic workers indicate that conditions prescribed in the Emigration Act are rarely followed. For instance, even though there is a restriction on the age of women who could migrate to work as domestic workers in the Gulf, several women said they were below 30 when they first migrated to the Gulf. In addition to the prescribed age, it is mandatory to obtain EC before migrating to work as a domestic worker. Many women we met during the fieldwork have not followed the legal route. These women were 'pushed' through at immigration without following the official channels for overseas employment and thus became undocumented migrants. In some cases, either the employer or agent forges documents to facilitate migration, increasing the vulnerability of migrant women.

Women migrating for the first time by taking EC or accompanying families tend to have a low level of information on the rules and regulations of migration, working and living arrangements, and wages (ILO, 2015). Therefore, the Government of India has introduced Minimum Referral Wages (MRW) for workers in different occupations migrating to ECR countries. The objective of introducing MRW is to protect Indian workers abroad by avoiding fixing wages unilaterally by employers or agents.

As per a release by the Press Information Bureau in 2014, MRW was fixed considering working conditions, cost of living, inflation conditions, local employment market conditions, etc., in the host countries. Employment contracts are to be based on MRWs or higher wages. However, it is pointed out that MRW fixed by the Indian government was higher (in comparison with prevailing wage rates in destination countries and those demanded by other major labour sending countries in those destinations) (Sasikumar and Sharma, 2016). This has led to contract substitution – the practice of duplicate contracts issued at the destination, which reflect lower wages

than the MRW agreed during emigration clearance. As per the data available on the *eMigrate* website, MRW fixed for domestic workers in the GCC countries are Bahrain-256 USD; Kuwait -231 USD; Oman-194 USD; Qatar-494 USD; Saudi Arabia-400 USD and UAE 300 USD. In September 2020, the Ministry of External Affairs' overseas employment division reduced MRW to ensure that Indian workers do not lose out on foreign employment opportunities.

For instance, the revised wages were fixed as 196 USD for domestic workers migrating to Kuwait. Migrant associations and other non-governmental associations critiqued the government for reducing MRW without consultations. However, in July 2021, changes made to MRWs were rolled back to 2019-2020 figures.<sup>6</sup>

The lack of information on regulations concerning migrating as a domestic worker in the Gulf countries was shared by migrant domestic workers from Kerala, with whom we had in-depth interviews as part of the research. Currently, women migrate as domestic workers in three ways: (a) by securing EC from POE, (b) by going on a visit visa arranged mainly by families who are hiring them and (c) by

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6. For details see Lok Sabha, Government of India, Registered Migrant Workers, Starred Question No.3581, answered on March 17, 2021 (New Delhi) and 'How India's move to reduce minimum referral wages could hurt its workers in the Gulf' by Nidhi Menon and Rohini Mitra published in Scroll.in Jun 23, 2021. Retrieved from <<https://scroll.in/article/997850/how-indias-move-to-reduce-minimum-referral-wages-could-hurt-its-workers-in-the-gulf>> on 16 February 2022.

going on a free visa. Also known as *Azad* and private visas, free visas are obtained by migrant workers directly from sponsors or intermediaries after paying a hefty price. Under this visa, the migrant worker is not tied with their sponsor; they make their own arrangements to stay and find employment.

From the perspective of a migrant, it is attractive to have the freedom to change employers and not to be tied up in an exploitative work environment. Those women domestic workers travelling with EC or accompanying families in the Gulf on visit visas live with the employer. Women domestic workers on visit visas mostly travel to take care of sick people, pregnant ladies/new-borns or children during school vacations. Once they are in the Gulf, they may work in multiple houses and earn extra money depending on their relationship with their employer. In the case of those who go on a free visa, they stay independently, as the visa is arranged directly by the worker. These women work in multiple households and earn more money. Most of the domestic workers who had migrated on free visas had prior experience working in the Gulf. Once they gain confidence, those willing to take risks migrate on free visas and make their stay arrangements. Laila, who hails from Kochi, is on a free visa and

prefers to work for non-Malayali clients. She has spent ten years in the Gulf working as a domestic worker. Initially, she migrated after obtaining EC. But later, she learned other options to migrate and work as a domestic worker in the Gulf. She comes across as independent, who knows what she is doing and can make the best of her stay in Dubai. It is also important to note that she can communicate in English, Arabic, Hindi and Tamil and is well versed in household work and cooking.

*"Staying on the free visa have its own risk and cost. We need to pay for the visa and its renewal. We do not get any free tickets from our sponsors. And we need to find jobs. But the positive side is that we are free, not bound to work for an employer in an exploitative situation"* says Laila. However, travelling on a free visa and working as a domestic worker is illegal and could invite punitive action if caught by authorities. If identified, the migrant domestic worker working on visit and free visas in the Gulf could be jailed or deported.

In India, there are no compulsory pre-departure orientations for migrant workers, unlike other major migrant sending countries like the Philippines and Sri Lanka. Providing pre-departure orientation could be a sure bet to improve information and prepare migrants for



working and living in a foreign country. However, there are some efforts to provide pre-departure orientation programmes, though attending such programmes is optional for potential migrants. For instance, the Department of Non-Resident Keralite's Affairs (NORKA) offers such training in Kerala.

Training for domestic workers is also conducted in Andhra Pradesh, which records significant migration of women, by the Overseas Manpower Company Andhra Pradesh Limited (OMCAP). There too, attending pre-departure training is optional for migrant women domestic workers. Apart from pre departure orientation, it is also important to provide skill development to enable migrant workers to move up the value chain. For sure this is receiving attention in policymaking related to international migration. In 2017, the MEA, in collaboration with the Ministry of Skill Development and Entrepreneurship (MSDE), introduced Pravasi Kaushal Vikas Yojana (PKVY) to skill migrants.<sup>7</sup> The PKVY will train, assess and certify migrant's skills, including their prior learning. However, the skill training requirements of women do not find any reference in these programmes as India seems to focus on skilled migration,

particularly to European countries, which is slightly disconnected from reality (Sasikumar and Timothy, 2015). Considering the increasing share of women in migration outflows from India, it is critical to formulate appropriate skill development programmes to equip women in low skilled jobs with relevant skills in demand at the destination. For instance, care providers' training for domestic workers could help them negotiate higher wages.

Private training institutions could also play a crucial role in imparting skills to potential overseas workers. Interviews with migrant women clearly indicated their difficulties while working in the Gulf as domestic workers. In most cases, issues arise as these women cannot operate household electronic equipment or deliver services to their employer's satisfaction. The case is different in Sri Lanka and the Philippines, where women, particularly domestic workers, form a significant share in labour outflows. These countries have detailed pre-employment courses customised to the level and country requirements. Obviously, migrant domestic workers from these countries could get higher wages in the Gulf. Manjula, who migrated as a domestic worker from Thrissur during the early nineties, said that her madam in Dubai

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7. MEA, <http://www.mea.gov.in> (accessed on 1 May 2017).

was initially upset. Manjula did not know to iron clothes properly. This led to unpleasant situations, wage cuts, and long working hours. It took months for Manjula to gain the confidence of her employer.

### **3.2 Services during Departure and Migration Phase**

In India, operations of private recruitment agencies are regulated and monitored by the State. Licence to recruit workers has to be renewed annually and are provided to those who prove their capacity to ensure fair living and working conditions overseas. The agencies are also required to adhere to the stipulations made by the government.

The Indian government have specified model employment contracts or other formalities to protect vulnerable categories of workers. For example, an advisory has been issued to the Protector of Emigrants (POEs) to grant EC to Kuwait bound domestic workers only after ensuring that the migrant has fully understood the provisions of the employment contract (Thimothy et al., 2016). In addition, several

efforts are underway to improve the efficiency of the recruitment process. For instance, India has undertaken *eMigrate* project to bring emigration clearance, contract attestation, provision of welfare services, and complaint management under the electronic platform.<sup>8</sup>

Despite such provisions to regulate the recruitment, migrant workers face a range of vulnerabilities during departure and at the destination. In India, the PGE is authorised to deal with the complaints of migrant workers. However, in several cases, employers are blacklisted, or the licence of private recruitment agencies (PRAs) is suspended. In 2019 alone, 342 complaints were registered against private recruitment agencies.<sup>9</sup> In 2020, labour complaints registered in the Indian embassies in the Gulf were as follows: Qatar- 1924; Kuwait- 3772; Saudi Arabia-1945; UAE- 1008; Oman- 1150 and Bahrain- 674.<sup>10</sup> In addition, the Indian Community Welfare Fund (ICWF) provides boarding and lodging to distressed workers at the destination; extends emergency medical care; provides

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8. MOEA, <https://emigrate.gov.in/ext/home.action> (accessed May 1, 2017).

9. Rajya Sabha, Government of India, Fraudulent Recruitment Agencies in the Country, Unstarred Question No.534, answered on 21 November 2019 (New Delhi).

10. Lok Sabha, Government of India, Registered Migrant Workers, Starred Question No.3581, answered on March 17, 2021 (New Delhi).

11. Retrieved from the Ministry of External Affairs <<https://meadashboard.gov.in/indicators/84>> on 17 February 2022.



airfare for stranded workers, and offers legal assistance. In 2018, the ICWF assisted 18,125 overseas Indians.<sup>11</sup>

During the field visit, women respondents recalled horror stories of exploitation like not honouring terms of employment conveyed orally at the time of recruitment, concerning the place of work, nature of work and remuneration.

As pointed out by Prema, who worked in Bahrain as a domestic worker on an ECR visa in 2018, "*...we wanted to run away while working in the Gulf. But was not sure where to contact and how, so we continued with our life.*"

This is not surprising given that these women did not have the embassy's contact number or any other local contact number to voice their concerns. Moreover, they have financial commitments back home, which are difficult to overlook. The government of India offers insurance cover to protect workers from risk while working abroad. Pravasi Bharatiya Bima Yojana (PBBY) is mandatory for migrant workers (aged 18–60 years) in the ECR category. The scheme, initially launched in 2003, has been amended several times. PBBY provides an insurance cover of Rupees 10 Lakhs in case of accidental death or permanent disability. In addition, it provides medical insurance against accident or sickness, one-way airfare if

prematurely terminated during the contract period for no fault of the worker and the cost of transporting the worker's remains in the event of death overseas.

For women migrants, the scheme also covers maternity benefits (up to Rs.50,000). As per the available data, from 1 April 2014 till 31 January 2020, Rupees 6,920.34 lakhs have been spent to settle 877 claims by migrant workers. PBBY is now open for all emigrants going to any foreign country for employment.

While PBBY is a welcome step, it would be appropriate to develop insurance schemes suitable for different categories of migrant workers, like those migrating to non-ECR countries or who do not require clearance to move to ECR countries. For instance, those qualified above higher secondary. India could also learn from insurance scheme provisions offered to migrant workers in countries like the Philippines, which have features like payment of the insurance premium by the employer and providing subsistence cost of a worker at the destination in case of litigation etc. (Agunias and Ruiz, 2007). In 2021, Pravasi Raksha Insurance Policy (NPRI) was launched by the NORKA in Kerala for migrant workers.

The insurance scheme provides Rupees one lakh for critical illness and an add on

the benefit of accident insurance coverage of Rs.2 Lakhs for life and up to Rs.1 Lakh for permanent/partial disability.

### 3.3 Return and Re-Integration Phase

Services to migrants to support them during their return and reintegration phase are limited in India. Investment needs of returning migrants are facilitated by the Department of Industrial Policy and Promotion (DIPP) (GoI, 2017). Clearly, reintegration services in India are handicapped due to insufficient data on migrants, lack of funds and a clear vision.

In Kerala, NORKA has several schemes for the reintegration of migrant workers, which are as follows:

- Santhwana, a distress relief scheme intended to provide time bound financial support to returned emigrants. The scheme can be availed for medical treatment, assistance to family members in the case of death of the migrant, marriage assistance, purchase of physical aids to combat disability etc. During the financial year 2020-21, Rs.100 Crores was utilised (GoK, 2021).
- Rehabilitation of Return Emigrants (NDPREM) is a rehabilitation package that promotes entrepreneurship and helps them live a dignified life. Providing a seed capital of up to Rs 30

lakhs is a crucial feature of NDPREM. For prompt repayment, a 15% subsidy on capital and a 3% rebate on the interest of the loan is offered for the first four years. During the financial year 2020-21, Rs.16.29 Crores was utilised (GoK, 2021).

- Swapna Saphalyam scheme is intended to provide financial assistance for procuring Air tickets for Non-Resident Keralites who have been jailed abroad for no wilful default on their part and who, on release, do not have the money to buy Air Ticket for the journey back to Kerala.
- NORKA Business Facilitation Centre (NBFC) supports small, medium, and large businesses of non-resident Keralites to invest in the State. The Centre will act as a single-window facility for NRK investors, leveraging their experience in making the State an investment destination. NBFC offers the necessary information, guidance, and handhold to start a project. During the financial year 2020-21, Rs.60 lakhs were utilised by NBFC.

During COVID-19, the NORKA has initiated Co-ordinated Re-integration Programme for NRKs to provide financial support for developing income generation opportunities for the returnees. Three

schemes under this rehabilitation programme are as follows:

*Pravasi Bhadratha* – PEARL is envisaged to address returnees with fewer savings and income. Implementing the scheme through Kudumbashree Mission has been proposed to provide the targeted group with a sustainable livelihood. The scheme offers revolving funds for individual/group livelihood activities; assistance to micro-enterprises/livelihood activity groups through community lend soft loans; interest-free loans up to Rs. Two lakhs.

*Pravasi Bhadratha* – MICRO is envisaged for assisting returnees in setting up micro and small-scale industries. The scheme will provide loans up to Rs five lakhs and be implemented through Kerala State Financial Enterprises branches.

*Pravasi Bhadratha* - MEGA will provide loans to returnees from Rs. 25 lakhs to Rs. 2 crores. The scheme will be implemented through Kerala State Industrial Development Cooperation. The scheme is open to non-resident Kerala returnees in Kerala and non-resident Kerala returnees residing in other states of India.

While there are several schemes for return migrants, most returnees are interested in starting enterprises. However, this may not be the choice for several return

migrants, particularly women in low skilled categories like domestic workers. Therefore, the central and state government may also have to formulate schemes to help migrants enter jobs to provide them with information skills to enter the labour market. It may also be good to get their skills acquired during their stay abroad assessed and certified to increase their competitiveness in the job market.

Yet another aspect that deserves special attention is preparing migrants to save for their safe future. In several significant labour sending countries like the Philippines and Sri Lanka, migrants and their families are briefed on the return phase during pre-departure. They are provided information to spend and save judiciously while earning abroad (Thimothy et al., 2016). Such preparation for the return phase becomes extremely important for women domestic workers.

## Section 4

# POLICY CONTOURS

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The paper argues that restrictions on migration of women domestic workers on the pretext of 'protection', by imposing age criteria, destinations they can migrate etc., tend to be counterproductive. On the contrary, efforts should ensure better working and living conditions and social security for migrant women. This would require deconstructing the image of women as mere spectators of the process; migrants should be placed at the focal point of the migration policymaking. Instead of restricting the migration of women by making the process cumbersome, which promotes irregular migration, the State should ensure the creation of a structure, both in the sending and receiving countries, which facilitates their safe migration. Some specific suggestions to improve the plight of low skilled migrant women workers are as follows:

### **(a) Provide pre-departure orientation and skill up-gradation to women**

Pre-departure orientation programmes to prepare migrants tend to be patchy in India. For low skilled workers, like domestic workers, such orientation is critical to prepare them for employment at

the destination. The cases of Sri Lanka and the Philippines, major countries of origin of women domestic workers, could be an example.

These countries conduct destination-specific and occupation-specific (housekeeping, care providers etc.) orientation for potential migrants. There is also immense scope to organise short term skill development programmes for women wanting to migrate to foreign countries as domestic workers. Evidence suggests that there are several instances migrant women domestic workers are unable to perform their job up to the satisfaction of their employer, creating unpleasant employer-employee relations. In the context of Kerala, NORKA could provide an essential role in equipping migrant workers with the necessary skill sets to perform their job at the destination. While pre-departure programmes for migrants are currently undertaken in a piecemeal approach, there should be a comprehensive approach to equip workers, at least those in low-skilled occupations like domestic workers.

### **(b) Improve migration governance**

The migration of women domestic workers has always remained a topic of contention. The State has always tried to control the movement of women domestic workers, either banning their migration or imposing restrictions on their movements.

It is a proven point that such a paternalistic and protective attitude does not help women but increases their vulnerabilities at different stages of the migration cycle. Anecdotal evidence indicates that the migration of domestic workers from Kerala is rising; women often depend on private agents and spend vast amounts of money. There needs to be greater emphasis on making migration governance more gender-friendly.

### **(c) Negotiate to build an enabling environment for migrant women at the destination**

As significant labour sending region, the government of India should explore possibilities to build an enabling environment by liaising with different stakeholders at the destination like governments of labour receiving countries, recruiting agencies, employers, and civil society organisations. One of the major impediments in ensuring the rights of women domestic workers at the destination is the discriminatory employment rules. Therefore, efforts

should be made to explore other mechanisms to improve migrant workers' rights, like signing the memorandum of understanding between India and labour receiving countries and lobbying to make labour laws in the destination countries more inclusive for the migrant workers.

In addition, sources like community outreach activities by migrant networks and associations could play an important role to create awareness among women migrants on their rights and complaint redressal mechanism at the destination. Of course, Indian Embassy in foreign countries also has a significant role in extending support to migrants at the destination.

### **(d) Design a programme for their return and reintegration**

One major lacune of the migration governance in India is the lack of emphasis placed on the return and reintegration of migrant workers. India should consider the case of Sri Lanka and the Philippines, where migrant workers and their families are given orientation as part of the migrant preparation course. Before migrants start their journey, they are encouraged to plan their savings and investment for their return phase. Moreover, while there are a couple of programmes for return migrant workers, most of them are suitable for a migrant



willing to make a considerable investment. For migrants with minimum savings and women, income generating options provided by the State tend to be limited. In fact, the State should consider skill development programmes suitable for low skilled migrants to facilitate their re-entry into the labour market upon their return.

**(e) Explore the role of local self-government in improving migration outcomes**

In states like Kerala, which has well-functioning local self-government, it would be helpful to chart a definite role for the local self-government to improve migration outcomes. This has become important in localities registering an increased outflow of migrants. The local self-government can organise awareness programmes for potential migrants. For instance, the Kudumbashree network could be an essential platform for information dissemination on international migration. Similarly, local self-government could also facilitate return migrants to reintegrate into society by providing them support in setting up income-generating activities. For example, some of the recent reintegration plans introduced by the Kerala government seeks to use Kudumbashree networks to set up livelihood initiatives.

**(f) Gender disaggregated data on labour migration**

There is an urgent need to improve data on labour migration, including both inflows and outflows. Currently, international migration policymaking is flawed because we do not have enough gender-disaggregated data on labour migration. Gender-disaggregated data are needed to protect rights and prevent exploitation, estimate the contributions of migrant women to the economies of countries of origin and destination, and facilitate their return and reintegration. Moreover, disaggregated data on

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# APPENDIX

## THE EMIGRATION ACT, 1983

[Act 31 of 1983, dt. 10-9-1983]

An Act to consolidate and amend the law relating to emigration of citizens of India.  
Be it enacted by Parliament in the Thirty-fourth Year of the Republic of India as follows:—

### CHAPTER I PRELIMINARY

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

(1) This Act may be called the Emigration Act, 1983.

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

(3) It shall come into force on such date<sup>1</sup> 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 provision 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) "certificate" means a certificate of registration issued under section 11;

(b) "conveyance" includes a vessel, vehicle, country-craft and an aircraft;

(c) "dependent" means any person who is related to an emigrant and is dependent on that emigrant;

(d) "emigrant" means any citizen of India who intends to emigrate, or emigrates, or has emigrated but does not include—

(i) a dependent of an emigrant, whether such dependent accompanies that emigrant, or departs subsequently for the purpose of joining that emigrant in the country to which that emigrant has lawfully emigrated;

(ii) any person who has resided outside India at any time after attaining the age of eighteen years, for not less than three years or the spouse or child of such person;

(e) "emigrant conveyance" means any conveyance specially chartered for conveyance of emigrants or for conveying emigrants exceeding such number as may be prescribed:

PROVIDED that the Central Government may, by notification, declare that any conveyance conveying emigrants to such place as may be specified in the notification shall not be deemed to be an emigrant conveyance;

(f) "emigrate" and "emigration" mean the departure out of India of any person with a view to taking up any employment (whether or not under an agreement or other arrangements to take up such employment and whether

<sup>1</sup> Enforceable w.e.f. 30-12-1983 vide SO 940(E), dt. 30-12-1983.



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, employment in any country or place outside 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 within the meaning of clause (o), for wages or for reward, and all its grammatical variations and cognate expressions shall be construed accordingly;
- (i) "notification" means a notification published in the Official Gazette;
- (f) "prescribed" means prescribed by rules made under this Act;
- (k) "Protector of Emigrants" means a Protector of Emigrants appointed under section 3 and includes a person authorised under section 5;
- (l) "recruiting agent" means a person engaged in India in 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;
- (m) "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;
- (n) "registering authority" means the officer appointed under section 9 to be the registering authority for the purposes of this Act;
- (o) "work" means—
  - (i) any unskilled work, including any form of industrial or agricultural labour;
  - (ii) any domestic service;
  - (iii) any service, not being a service in a managerial capacity, in any hotel, restaurant, tea-house or other place of public resort;
  - (iv) work as a driver of a truck or other vehicle, mechanic, technician or skilled labourer or artisan;
  - (v) work as an office assistant or accountant or typist or stenographer or salesman, or nurse or operator of any machine;
  - (vi) work in connection with, or for the purposes of, any cinema, exhibition or entertainment;
  - (vii) any such work of a professional or of any other nature as the Central Government may, having regard to the need for the protection of citizens of India who may be employed in such work outside India and other relevant circumstances, specify by notification:

PROVIDED that the Central Government may, if satisfied that it is necessary so to do having regard to the conditions of service applicable with respect to employment in any of the aforementioned categories of work or any sub-category thereof, whether generally or in relation to any particular country or place and other relevant circumstances, declare by notification that such category of work or sub-category of work shall not be deemed to be work within the meaning of this definition.

(2) Any reference in this Act to any law which is not in force in any area shall, in relation to that area, be construed as a reference to the corresponding law, if any, in force in that area.

## CHAPTER II EMIGRATION AUTHORITIES

### 3. Protectors of Emigrants

(1) The Central Government may, by notification, appoint a Protector General of Emigrants and as many Protectors of Emigrants, as it deems fit, for the purposes of this Act.

(2) The Central Government may, by general or special order, define the area to which the authority of a Protector of Emigrants so appointed shall extend and, where two or more Protectors of Emigrants are appointed for the same area, also provide, by such order, for the distribution and allocation of the work to be performed under this Act, in relation to such area.

(3) The Protectors of Emigrants shall perform the functions assigned to them by or under this Act under the general superintendence and control of the Protector General of Emigrants.

(4) The Protector General of Emigrants may, in addition to the special functions assigned to him by or under this Act, perform all or any of the functions assigned to any Protector of emigrants.

### COMMENTS

Under this section, the Central Government is empowered to appoint a Protector General of Emigrants and such number of Protectors of Emigrants as it thinks fit. The Central Government may fix the territorial jurisdiction of Protector of Emigrants. The Protectors of Emigrants so appointed will perform the functions under the general superintendence and control of the Protector General of Emigrants.

### 4. General duties of Protectors of Emigrants

Subject to the other provisions of this Act, every Protector of Emigrants shall, in addition to the special duties assigned to him by or under this Act—

- (a) protect and aid with his advice all intending emigrants and emigrants;
- (b) cause, so far as he can, all the provisions of this Act and of the rules made thereunder to be complied with;
- (c) inspect, to such extent and in such manner as may be prescribed—
  - (i) any emigrant conveyance, or
  - (ii) any other conveyance if he has reason to believe that any intending emigrant or emigrants are proceeding from, or returning to, India to or from a place outside India by such other conveyance;
- (d) inquire into the treatment received by emigrants during their voyage or journey to, and during the period of their residence in the country to which they emigrated and also during the return voyage or journey to India and report thereon to the Protector General of Emigrants or such other authority as may be prescribed;
- (e) aid and advise, so far as he reasonably can, emigrants who have returned to India.

### 5. Power to authorise persons to exercise functions of a protector

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 Protector of Emigrants under this Act.



COMMENTS

In the interest of the emigrants, the Central Government may authorise any person to exercise the functions of a Protector of Emigrants under this Act.

**6. Emigration check-posts**

(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 emigration check-posts 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 incharge of an emigration check-post set-up under sub-section (1).

(3) An officer incharge of an emigration check-post shall be subject to the general control and supervision of the Protector of Emigrants within the local limits of whose jurisdiction that emigration check-post is situated.

COMMENTS

Under this section, the Central Government may set-up such number of emigration check-posts at such places for the purpose of preventing or checking the contravention of the provisions of the Act. Simultaneously, the Central Government may appoint an officer of the Central Government or of a State Government to be an officer-in-charge of an emigration check-post. Such officer-in-charge will function subject to control and supervision of Protector of Emigrants of whose jurisdiction that emigration check-post is situated.

**7. Other emigration officers and staff**

The Central Government may appoint such other officers and employees (hereinafter referred to as the emigration officers and emigration employees, as it may think fit, to assist the Protector General of Emigrants and the Protector of Emigrants in the performance of their duties under this Act.

**8. Emigration officers to be public servants**

The Protector General of Emigrants, Protectors of Emigrants, the officers-in-charge of emigration check-posts, emigration officers and emigration employees appointed under this Act shall be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

COMMENTS

The Protector General of Emigrants, Protector of Emigrants, the officer-in-charge of check-posts, emigration officers and emigration employees appointed under this Act are public servants within the meaning of section 21 of the Indian Penal Code.

**CHAPTER III****REGISTRATION OF RECRUITING AGENTS****9. Registering authority**

The Central Government may, by notification, appoint the Protector General of Emigrants or any other officer of that government of a rank higher than that of a Protector of Emigrants to be the registering authority for the purposes of this Act.

**10. No person to function as recruiting agent without a valid certificate**

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 certificate issued in that behalf by the registering authority:

PROVIDED that a person carrying on the business of recruiting agent immediately before the commencement of this Act may continue to carry on such business without such a certificate for a period of one month from such commencement, and if he has made an application for such certificate under this Act within the said period of one month and such application is in the prescribed form and contains the prescribed particulars, till the disposal of such application by the registering authority.

#### COMMENTS

No recruiting agent shall commence or carry on the business of recruitment without a valid certificate issued by the registering authority.

#### **11. Application for registration**

An application for registration shall be made to the registering authority in such form and shall contain such particulars as to the applicant's financial soundness, trustworthiness, premises at which he intends to carry on his business, facilities at his disposal for recruitment, his antecedents (including information as to whether any certificate had been issued to him under this Chapter earlier and if so, whether such certificate had been cancelled) and previous experience, if any, of recruitment and other relevant matters as may be prescribed and shall be accompanied by a receipt evidencing the payment of the prescribed fee and an affidavit giving his current financial standing and an undertaking in the form prescribed to the effect that in the event of any information furnished in or along with the application for registration being found to be false or incorrect in any respect, the certificate shall be liable to be cancelled at any time in accordance with the procedure prescribed:

PROVIDED that no application shall be entertained under this sub-section from a person disqualified under sub-section (6) of section 14 till the expiry of the period of such disqualification.

(2) On receipt of such application, the registering authority shall,—

- (a) if the application is not in the prescribed form or does not contain any of the prescribed particulars, return the application to the applicant;
- (b) if the application is in the prescribed form and contains the prescribed particulars, inform the applicant that he is eligible for the grant of the certificate applied for and, after giving the applicant an opportunity to be heard, determine, under sub-section (3), the amount of the security which the applicant shall furnish.

(3) The registering authority shall, for securing the due performance of the terms and conditions of certificate proposed to be issued by it under sub-section (2) to an applicant and for securing compliance with the provisions of this Act and the rules made thereunder and for meeting expenses which may have to be incurred in the event of the repatriation to India of any of the emigrants who may be recruited by the applicant, determine, in accordance with the rules made in this behalf, the amount of security (not being in any case less than one lakh of rupees) which shall be furnished by the applicant.

(4) If an applicant furnishes in the prescribed manner the amount of security determined under sub-section (3) within a period of one month from the date on which the registering authority requires him to furnish such security, he shall be issued the certificate applied for by him together with an endorsement thereon to the effect that the security required has been furnished by him.



(5) If an applicant fails to furnish the security required to be furnished by him within the period specified in sub-section (4), his application shall be deemed to have been rejected by the registering authority on the date of expiry of that period.

## 12. Terms and conditions of registration

A certificate issued under section 11 shall be—

- (a) in such form as may be prescribed;
- (b) valid for such period not exceeding five years as may be prescribed:  
PROVIDED that a certificate may be issued for a period shorter than the prescribed period—
  - (i) if the person to whom it is issued so desires; or
  - (ii) if the registering authority, for reasons to be communicated in writing to the applicant for the certificate, considers in any case that the certificate should be issued for a shorter period;
- (c) subject to such other terms and conditions, including in particular, the maintenance by the holder of the certificate of the prescribed records containing details of his financial transactions in regard to recruitment, persons recruited or assisted to emigrate by him, employers concerned, contracts and other arrangements entered into in connection with recruitment, as may be prescribed:

PROVIDED that a certificate may contain, in addition to the prescribed terms and conditions such other terms and conditions as the registering authority may, for securing the purposes of this Act, impose in any particular case.

### COMMENTS

The certificate issued under section 11 shall be valid for a period of five years.

## 13. Renewal of registration

A certificate may be renewed from time to time and the provisions of this Act and the rules made thereunder (including provisions as to fees) shall apply to the renewal of a certificate as they apply to the issue thereof:

PROVIDED that no certificate shall be renewed unless, the application for its renewal is made not less than three months prior to the date on which the certificate, would, but for such renewal, cease to be valid:

PROVIDED FURTHER that registering authority may entertain an application for the renewal of a certificate which has been made at any time during the period of three months prior to the date on which the certificate would, but for such renewal, cease to be valid if the applicant satisfies the registering authority that he had sufficient cause for not making such application before the said period.

## 14. Cancellation, suspension, etc., of a certificate

(1) The registering authority may cancel any certificate on any one or more of the following grounds and on no other ground, namely:—

- (a) that having regard to the manner in which the holder of the certificate has carried on his business or any deterioration in his financial position, the facilities at his disposal for recruitment, the holder of the certificate is not a fit person to continue to hold the certificate;
- (b) that the holder of the certificate has recruited emigrants for purposes prejudicial to the interests of India or for purposes contrary to public policy;



- (c) that the holder of the certificate has, subsequent to the issue of the certificate, been convicted in India for any offence involving moral turpitude;
- (d) that the holder of the certificate has, subsequent to the issue of the certificate, been convicted by a court in India for any offence under this Act, the Emigration Act, 1922 (7 of 1922), or any other law relating to passports, foreign exchange, drugs, narcotics or smuggling and sentenced in respect thereof to imprisonment for not less than six months;
- (e) that the certificate has been issued or renewed on misrepresentation or suppression of any material fact;
- (f) that the holder of the certificate has violated any of the terms and conditions of the certificate;
- (g) that in the opinion of the Central Government, it is necessary in the interest of friendly relations of India with any foreign country or in the interests of the general public to cancel the certificate.

(2) Where the registering authority, for reasons to be recorded in writing, is satisfied that pending the consideration of the question of cancelling any certificate of any of the grounds mentioned in sub-section (1), it is necessary so to do, the registering authority may, by order in writing, suspend the operation of the certificate for such period not exceeding thirty days as may be specified in the order and require the holder of the certificate to show cause, within fifteen days from the date of receipt of such order, as to why the suspension of the certificate should not be extended till the determination of the question as to whether the registration should be cancelled.

(3) A court convicting a holder of a certificate for an offence under this Act may also cancel the certificate:

PROVIDED that if the conviction is set aside in appeal or otherwise, the cancellation under sub-section (3) shall become void.

(4) An order of cancellation of a certificate may be made under sub-section (3) by an appellate court or by a court exercising its powers of revision.

(5) Before passing an order cancelling or suspending a certificate the registering authority or the court, as the case may be, 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 holder of the certificate had any transactions in the course of his business as recruiting agent and may make such orders (including orders permitting the holder of the certificate to continue to carry on his business with respect to all or any of such emigrants and other persons) as it may consider necessary in this behalf.

(6) Where a certificate issued to any person has been cancelled under this section, such person shall not be eligible to make any application for another certificate under this Chapter until the expiry of a period of two years from the date of such cancellation.

#### CHAPTER IV

#### PERMITS FOR RECRUITMENT BY EMPLOYERS

##### 15. Competent authority

(1) The Central Government may, by notification, appoint the Protector General of Emigrants or any other officer of that government of a rank higher than that of a Protector of Emigrants to be the authority (hereinafter referred to as the "Competent Authority") for issuing permits under this Chapter.

(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 Competent Authority, and issue permits under this Chapter to employers who are not citizens of India for the purpose of recruiting any citizen of India for employment in such country or place and a person so authorised shall endorse a duly certified copy of every permit issued by him under this Chapter to the Protector General of Emigrants.

#### COMMENTS

The Central Government may appoint the Protector General of Emigrants or any other officer of that government of a rank higher than that of a Protector of Emigrants as Competent Authority for issuing permit. The Central Government may also authorise any person who is employed under that Government in any country or place outside India to exercise the powers of the Competent Authority and issue permits under this Chapter to employees who are not citizens of India for the purpose of recruiting any citizen of India for employment in such country or place.

#### **16. Recruitment by employers to be through recruiting agent or under permit**

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 competent under this Act to make such recruitment, or
- (b) in accordance with a valid permit issued in this behalf under this Chapter.

#### **17. Procedure for obtaining permits**

(1) An employer desiring to obtain a permit under this Chapter may make an application in that behalf in the prescribed form to the Competent Authority.

(2) On receipt of such application, the Competent Authority shall, subject to any rules made in this behalf, make such inquiry as he may deem necessary and grant the permit applied for or reject the application:

PROVIDED that before granting a permit, the Competent 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 Competent Authority may reject an application under sub-section (1) on any one or more of the following grounds and on no other ground, 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 violative 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 interest of the persons who may be recruited by him, to issue a permit 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 Competent 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 Competent 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 it.

#### **18. Period of validity of permit**

A permit issued under section 17 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 permit is issued is completed, whichever is earlier:

PROVIDED that where the holder of the permit has been unable for sufficient cause, to complete such recruitment before the expiry of the prescribed period, the prescribed authority may, subject to rules made in this behalf, extend the period of validity of the permit by such further period or periods, not exceeding three months at a time.

#### **19. Registration of certain permits**

Any permit obtained from a person authorised under sub-section (2) of section 15 shall not be valid unless a certified copy thereof is filed in the prescribed manner with the Protector General of Emigrants.

#### **20. Cancellation or suspension of a permit**

The provisions of section 14 relating to cancellation and suspension of a certificate referred to therein shall, subject to such modifications as may be necessary (including modification for construing the references in that section to registering authority as references to Competent Authority under this Chapter), apply for the cancellation or suspension of a permit.

#### **21. 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 permit under this Chapter.

### **CHAPTER V**

### **EMIGRATION CLEARANCE**

#### **22. Requirement, etc., as to emigration clearance**

(1) No citizen of India shall emigrate unless he obtains under this Chapter from the Protector of Emigrants authorisation in the prescribed manner and form (such authorisation being hereinafter referred to as emigration clearance) for emigration.

(2) An application for emigration clearance shall be in the prescribed form, shall contain the prescribed particulars and shall be made by the emigrant concerned to the Protector of Emigrants:

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.



(3) 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 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 Protector of Emigrants 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 Protector of Emigrants may reject an application for emigration clearance under this section on any one or more of the following grounds and on no other ground, namely:—

- (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 violative 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 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 in this behalf are not adequate for the purpose.

(6) Every order rejecting an application for emigration clearance shall set out clearly the ground or grounds on which the order has been made and the facts or circumstances on which such ground or grounds are based.



## CHAPTER VI APPEALS

### 23. Appeals

(1) Any person aggrieved by—

- (a) an order of the registering authority rejecting his application for registration 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 certificate issued to him or suspending or cancelling or refusing to renew the certificate issued to him; or
- (b) an order of the Competent Authority rejecting his application for a permit or requiring him to comply with any terms or conditions (not being a prescribed term or condition) specified in the permit issued to him, or suspending or cancelling or refusing to extend the period of the validity of the permit issued to him; or
- (c) an order of the Protector of Emigrants rejecting his application for emigration clearance; or
- (d) an order of the registering authority or the Competent Authority or the Protector of Emigrants or the prescribed authority requiring him to furnish any security, additional security or fresh security under this Act, or forfeiting or rejecting his claim for refund (whether wholly or partly in either case) of the security, the additional security or the fresh security furnished by him,

may prefer an appeal against such order to the Central Government within such period as may be prescribed.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor:

PROVIDED that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the Central Government 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 (36 of 1963), with respect to the computation of periods thereunder.

(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.

### COMMENTS

Any person aggrieved by an order of the registering authority rejecting his application for registration or an order of the Competent Authority rejecting his application for permit or an order of the Protector of Emigrants rejecting his application for emigration clearance or an order of the



registering authority or the Competent Authority or the Protector of Emigrants or the prescribed authority requiring him to furnish any security, additional security or fresh security under this Act or forfeiting or rejecting his claim for refund may prefer an appeal against such order to the Central Government.

## CHAPTER VII OFFENCES AND PENALTIES

### 24. Offences and penalties

#### (1) Whoever—

- (a) except in conformity with the provisions of this Act emigrates; or
- (b) contravenes the provisions of section 10 or section 16; or
- (c) by intentionally furnishing any false information or suppressing any material information obtains a certificate or a permit or an emigration clearance under this Act; or
- (d) without lawful authority makes or causes to be made any alteration in any certificate or permit 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 Protector of Emigrants under this Act; or
- (f) collects from an emigrant any charge 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 two years and with fine which may extend to two thousand rupees:

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 six months and such fine shall not be less than one thousand rupees.

(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 two thousand 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 double the penalty provided for that offence.

### 25. 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 the 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.

#### COMMENTS

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.

However, any such person liable to punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence then the aforesaid provision will not be applicable to that person.

#### **26. Offences to be cognizable**

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Act shall be cognizable.

#### COMMENTS

Sections 2(a) and 2(b) of the Code of Criminal Procedure, 1973 define "bailable offence" and "cognizable offence" respectively. "Bailable offence" is an offence which is shown as bailable in Schedule I to the Code or which is made bailable by any other law for the time being in force. "Cognizable offence" means an offence for which a police officer may, in accordance with the Schedule I or under any other law for the time being in force, arrest without warrant.

#### **27. Previous sanction of Central Government necessary**

No prosecution shall be instituted against any person 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.

#### COMMENTS

Prosecution shall not be instituted against any person in respect of any offence under this Act without the previous sanction of the Central Government.



**28. 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.

### CHAPTER VIII MISCELLANEOUS

**29. Determination of question as to whether a person is an emigrant**

Where a question arises before a Protector of Emigrants as to whether a person intending to depart from India is or is not an emigrant, the Protector of Emigrants shall decide the question 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.

**30. Power to prohibit emigration to any country in the interests of the general public, etc.**

(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) continue 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.

### COMMENTS

The Central Government may, by notification, prohibit emigration to any country where it has reason to believe that sufficient grounds exist having regard to the sovereignty and integrity of India, the security of India and friendly relations of India with any foreign country and such notification is effective for a period of six months.

**31. 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;

(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 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.

**32. Power to prohibit emigration of any class or category of persons**

(1) Where the Central Government considers that in the interests of the general public, emigration of any class or category of persons, having regard to their age, sex or other relevant factors, to any country should be prohibited, it may, by notification, 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 grounds 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.

**33. Provisions as to security**

(1) Any security or other financial provision which may be required to be made under this Act shall be reasonable having regard to the purpose for which such security or other financial provision is required to be made.

(2) The prescribed authority may, after giving notice in the prescribed manner to a person who has furnished any security for any purpose and after giving to such person an opportunity to represent his case, by order in writing, direct that the whole or any part of such security may be forfeited for being utilised for such purpose and in such manner as may be specified in the order.

(3) Where it appears to the prescribed authority that the security furnished by any person under this Act for any purpose has, for any reason, become inadequate, or has ceased to be available for any reason whatsoever, the prescribed authority may, after giving him an opportunity to represent his case, by order in writing, require such person to furnish such additional security or, as the case may be, such fresh security as may be specified in the order.

**34. Refund of security**

Any security furnished under this Act shall be refunded or, as the case may be, released, when no longer required for the purpose for which it has been furnished and the other circumstances in which and the manner in which any security furnished under this Act may be released or refunded shall be such as may be prescribed.

**35. Power to search, seize and detain persons, conveyance, etc.**

All the powers for the time being conferred by the Customs Act, 1962 (52 of 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—

- (a) any such officer of customs, or
- (b) the Protector General of Emigrants or a Protector of Emigrants, or
- (c) an officer incharge of an emigration check-post.



COMMENTS

The powers with regard to searches, seizures and arrests are contained in Chapter XIII of the Customs Act, 1962 (vide sections 100 to 110). All such powers are exercisable under this section for the purpose of searching and detention persons, vessels or aircraft or any other conveyance, or seizure of any document or things or arrest of any person or otherwise or for apprehending a person suspected to have committed any offence or 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 any officer of customs or the Protector General of Emigrants or a Protector of Emigrants or an officer incharge of an Emigration check-post.

**36. 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 Protector General of Emigrants, the registering authority, the Competent Authority or a Protector of Emigrants may, by order, call for any other return or information from a recruiting agent.

(3) The Protector General of Emigrants, the registering authority, the Competent Authority or a Protector of Emigrants or an officer incharge of an emigration check-post may inspect any 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.

**37. Authorities and officers to have certain powers of civil court**

(1) The Protector General of Emigrants, the registering authority, the Competent Authority and every Protector of Emigrants 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 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 Protector General of Emigrants, or the registering authority or the Competent Authority of a Protector of Emigrants shall be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Protector General of Emigrants, the registering authority, the Competent Authority, and every Protector of Emigrants shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

**38. Power to give directions**

The Central Government may give directions to the Protector General of Emigrants, the registering authority, the Competent Authority or any Protector of Emigrants as to the carrying into execution of any provision of this Act.

**39. Effect of other laws**

(1) The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than



this Act or in 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.

#### 40. 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 registering authority, a Competent Authority or a Protector of Emigrants 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, 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.

#### 41. 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 or 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 (1 of 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 (1 of 1956) or partnership firm registered under the

Indian Partnership Act, 1932 (9 of 1932) or society registered under the Societies Registration Act, 1860 (21 of 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.

#### **42. Act not to apply to certain emigrants**

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 States to which the Foreign Recruiting Act, 1874 (4 of 1874) applies.

#### COMMENTS

The provisions of the Act shall not apply to the recruitment or emigration of any person who is not a citizen of India and the control of recruiting in India for the service of foreign States to which the Foreign Recruiting Act, 1874 applies.

#### **43. 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 certificate to commence or carry on the business of recruitment, and of an application for the issue or renewal thereof;
  - (ii) a permit 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 Central Government;
- (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 certificate or permit 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 certificate or a permit or an emigration clearance may be issued under this Act;
- (l) the period of the validity of a certificate or a permit issued under this Act;
- (m) the authority competent to extend the period of validity of a permit or to forfeit security or to require any additional security or fresh security under this Act;
- (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.

**44. Notification and rules to be laid before Parliament**

Every notification issued under clause (o) of sub-section (1) of section 2, section 30, section 31 or section 32 and every rule made under section 43 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.

**45. Repeal of Act**

The Emigration Act, 1922 (7 of 1922) is hereby repealed.



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