

DRAFT EMIGRATION BILL, 2019

A BILL TO PROVIDE FOR COMPREHENSIVE EMIGRATION MANAGEMENT, TO
INSTITUTE REGULATORY MECHANISMS GOVERNING OVERSEAS EMPLOYMENT OF
INDIAN NATIONALS, TO ESTABLISH A FRAMEWORK FOR PROTECTION AND
PROMOTION OF WELFARE OF EMIGRANTS AND FOR MATTERS CONNECTED
THEREWITH OR INCIDENTAL THERETO

BE IT ENACTED BY PARLIAMENT IN THE SEVENTIETH YEAR OF THE REPUBLIC OF
INDIA AS FOLLOWS:

<p style="text-align: center;">CHAPTER I PRELIMINARY</p>	
<p>1. (1) This Act may be called the Emigration Act, 2018.</p> <p>(2) It extends to the whole of India and applies also to citizens of India outside India.</p> <p>(3) It shall come into force on such date as the Central Government may, by notification appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as reference to the commencement of that provision.</p>	<p>Short title, extent, application and commencement</p>
<p>2. (1) In this Act, unless the context otherwise requires: -</p> <p>(a) “appropriate government” shall mean government of the State or the administration of the Union Territory as the case may be;</p> <p>(b) “certificate” means a certificate of registration issued under section 18 of the Act;</p>	<p>Definitions</p>

(c) “chairperson” means the chairperson of the Emigration Management Authority appointed under section 3(2) and section 9(2) of the Act;

(d) “competent authority” means the Emigration Management Authority constituted under section 3 of the Act, Bureau of Emigration Policy and Planning established under section 4 of the Act , Bureau of Emigration Administration established under section 5 of the Act, State Nodal Authorities established under section 9 of the Act and any other person or entity appointed or authorized by the Central Government to exercise the powers of a competent authority as is constituted under the provisions of this Act;

(e) “emigrate and emigration” means the departure out of India by any person with a view to taking up any employment (whether or not under an agreement to take up such employment and whether with or without the assistance of a recruitment agency or employer), or otherwise, including herein students in pursuit of academic interest in any country outside India:

Academic interest for the purposes of Act would mean affiliation from academic/professional institutions in the form of a Bachelor, Masters or a Doctorate degree and shall include herein research projects, assignments, certificate courses or any other nature of accreditation.

(f) “emigrant” means any citizen of India, not below eighteen years of age, who intends to emigrate or has emigrated for, or with regard to employment as has been defined in the Act but does not include ;

(i) a dependent of an emigrant, whether such dependent accompanies such 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 resides 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;

(g) “emigrant conveyance” means any conveyance used for conveyance of emigrants and includes a vessel, vehicle, country-craft and aircraft:

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;

(h) “employer” means a person providing, or offering to provide, an employment in a country or place outside India;

(i) “employment” means any service, occupation or engagement (not being service, occupation or engagement under the Central Government or a State Government), or any other activity defined as work within the meaning of this Act outside India for wages, salary, remuneration, stipend or for any reward (monetary or otherwise), and includes in all its grammatical variations and cognate expressions every receipt of such a nature;

(j) “exploitation” shall include all forms of physical / sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, removal of organs and any sub-human treatment for the purposes of the Act;

(k) “human smuggling” means assisting, facilitating, or making arrangements for a person to enter illegally into another country of which such person is not a citizen or permanent resident, with the full knowledge that such entry is illegal, in order to gain financial or any other material benefit;

(l) “notification” means a notification published in the official gazette;

(m) “recruitment agency” means a person or body of persons or an entity 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 and registered under section 17 of the Act;

(n) “recruitment” includes the issuing of any advertisement or otherwise, for the purpose of recruitment, the offering by

advertising or otherwise to secure or assist in securing any employment in any country or place outside India and 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;

(o) “sub-agent” in relation to a recruitment agency, means any person/ body of persons or an entity other than an employee engaged for the purpose of assisting the recruitment agency in the recruitment of emigrants;

(p) “trafficking of person” shall have the meaning assigned to it in sub- section (1) of section 370 of the Indian Penal Code, 1860;

(q) “work” includes all categories of work – skilled ; semi skilled or unskilled , that may be of a temporal or a permanent nature, undertaken whether partly or on a full time duration;

Provided that the Central Government may, if satisfied

<p>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 with respect to a particular country or countries or place shall not be deemed to be work within the meaning of this definition.</p> <p>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.</p>	
<p style="text-align: center;">CHAPTER II</p> <p style="text-align: center;">Defined Authorities</p>	
<p>3(1) The Central Government shall, by notification, constitute an Emigration Management Authority to provide directions for comprehensive emigration management and to ensure the overall welfare and protection of emigrants for the purposes of</p>	<p>Emigration Management Authority (EMA)</p>

this Act.

(2) The composition of the Emigration Management Authority shall be as follows, namely: -

(I) Secretary or equivalent, Ministry of External Affairs-
Chairperson ;

(ii) Representative, no less than the rank of a Joint Secretary or
equivalent, Ministry of Home Affairs- Member;

(iii) Representative, no less than the rank of a Joint Secretary or
equivalent, Ministry of Human Resource Development-
Member;

(iv) Chief of Emigration Policy and Planning, – Ex-Officio
Member;

(v) Chief Emigration Officer – Ex- Officio Member;

(vi) One Representative from major labour sending States to be
nominated on a rotational basis for a period of two years;

(vii) One Representative from amongst persons of integrity and
outstanding ability, having special knowledge of, and experience
in international migration, recruitment and allied matters to be
nominated for a period of two years.

(3) The Chairperson shall have powers of general
superintendence and direction in respect of all administrative

Administrative powers of
the Chairperson

matters and may, in consultation with the Central Government, distribute work amongst the members, in accordance with the provisions of this Act.

(4) The Emigration Management Authority shall meet at such time and place, and shall observe such rules of procedure with regard to transaction of business at its meetings as may be specified by regulations.

(5) The Authority may constitute such committees as may be necessary for the efficient discharge of its duties and performance of its functions.

(6) The Authority shall have the power to co-opt, such number of persons for its meetings (not being the members of the Authority), as it may deem fit.

4(1) The Central Government may, by notification, establish a Bureau of Emigration Policy and Planning (BEPP) to formulate effective policies through periodic assessment, undertake consultation with relevant stakeholders and carry out analysis with regard to emigration and allied matters for the purposes of

Meeting of the
Emigration Management
Authority

Committees of the
Emigration Management
Authority

Bureau of Emigration
Policy and Planning
(BEPP)

this Act.

(2) The BEPP shall consist of a Chief of Emigration Policy and Planning, who shall be an officer no less than the rank of a Joint Secretary or equivalent, and other officers of such appropriate ranks as may be necessary for the discharge of functions for the purposes of this Act.

5(1) The Central Government may, by notification, establish a Bureau of Emigration Administration (BEA) for implementation of the provisions of this Act and to ensure the welfare and protection of the emigrants for the purposes of this Act.

(2) The BEA shall have as many offices in different parts of the country as may be required.

(3) The BEA shall consist of the Chief Emigration Officer, no less than an officer of the rank of a Joint Secretary or equivalent, and other officers of such appropriate ranks as may be necessary for exercising the powers and discharging its functions under this Act.

Bureau of Emigration
Administration (BEA)

(4) The other offices shall consist of Emigration Officers, and other officers of such appropriate ranks as may be necessary for the discharge of the functions for the purposes of this Act.

(5) The Central Government may, by notification, define the area to which the authority of an Emigration Officer so appointed shall extend and, where two or more Emigration Officers 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

(6) The Emigration Officers shall perform the functions assigned to them under this Act under the general superintendence and control of the Chief Emigration Officer.

(7) The Chief Emigration Officer may, in addition to the special function assigned to him by or under this Act, perform all or any of the functions assigned to any Emigration Officer.

6(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 in charge of an emigration check- post set up under sub-section (1).

(3) An officer in charge of an emigration check-post shall be subject to the general control and supervision of the Chief Emigration Officer or any other authority as specified within the local limits of whose jurisdiction that emigration check-post is situated.

7. 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 assigned to them by the competent authority.

8. The officers of such competent authorities, as employed with the Central and State Governments as is mentioned in the Act, the officers in charge of emigration check-posts, emigration

Emigration Check Posts

Power to authorize persons to exercise functions of competent authority

Emigration Officers to be public servants

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).

9(1) The appropriate Government shall by notification establish a Nodal Authority in the States and Union Territories as may be required to facilitate the implementation of this Act and work in coordination with other competent authorities as has been specified for the purposes of the Act

(2) The Nodal Authority shall consist of a chairperson from the home department, no less than the rank of a Principal Secretary or equivalent in State or Union Territory, as the case may be, and representatives drawn from departments of Labour, NRI and Skill, and as many other officers as may deem fit for the purposes of the Act.

Nodal Authorities in states and union territories

10. Subject to the other provisions of this Act, the Emigration Management Authority, in addition to the special duties assigned

General functions of

to them under this Act shall:

- (i) Coordinate and supervise the management of emigration in India;
- (ii) Advise the Central Government on emigration policy matters;
- (iii) Direct authorities and functionaries, as defined within the purposes of this Act, as and when required;
- (iv) Recommend appropriate measures for enforcing provisions of this Act and the rules and regulations made hereunder;
- (v) Obtain such reports, as it may deem necessary, from the Diplomatic Missions of India and other authorities for effective discharge of its functions;
- (vi) Meet periodically, at least once in six months, to assess the overall functioning of the Act and to direct upon appropriate policies, thereby ensuring a comprehensive and coordinated approach towards emigration.

11. Subject to the other provisions of this Act, the Bureau of Emigration Policy and Planning, in coordination with relevant stakeholders as required and in addition to the special duties assigned to it under this Act shall:

- (i) Prepare comprehensive policies on matters concerning welfare of emigrants including insurance, skill up gradation training, pre departure orientation programme etc. to ensure

EMA

General functions of
BEPP

safe, orderly and regular migration from India;

(ii) Negotiate labour and manpower cooperation agreements and memorandum of understandings, social security agreements, issues of migrant and mobility partnership and related framework with destination countries;

(iii) Undertake study and research towards mapping of global skills as required, labour market analysis with focus on new labour markets and related job rules;

(iv) Map labour clusters with the country and analyse skill gap concerns;

(v) Devise parameters and frame guidelines for rating of entities involved in recruitment etc;

(vi) Suggest measures for enhancing welfare and protection of migrants;

(vii) Facilitate gender sensitive programmes and activities to assist particular needs of women migrant workers;

(viii) Make efforts towards online access of information on recruitment and emigration related matters with the destination countries;

(ix) Analyse the source and pattern of remittances;

(x) Maintain information on legal systems, emigration policies, labour and human rights instruments , laws of destination countries along with the profiles of overseas Indians in such

countries ;

12. Subject to the other provisions of this Act, the Bureau of Emigration Administration , in coordination with relevant stakeholders as required, in addition to the special duties assigned to it under this Act shall:

(i) Maintain a digitalized record of the following:

a. Indian national going for overseas employment and returnees.

b. Students emigrating in pursuit of academic interest.

c. Blacklisted foreign employment agencies, fraudulent recruitment agencies, etc;

(ii) Establish a shared database among concerned stakeholders in the government to maintain a comprehensive approach towards emigration;

(iii) Implement appropriate measures and programmes for welfare of emigration including insurance, skill upgradation and training, pre departure orientation, counselling with a view to assist emigrants in all stages of migration cycle;

(iv) To register, cancel/ suspend the certificate of recruitment agencies/ enrolment agencies and accredit the employers;

(v) Specify by regulations the standards for employers,

General Functions of
BEA

recruitment agencies, sub-agents and enrolment agencies;

(vi) Monitor performance of employers, recruitment agencies and enrolment agencies;

(vii) Give ratings for employers, recruitment agencies and enrolment agencies under this Act and formulate incentives and disincentives to them on that basis;

(viii) Call for any information, return, or documents from the recruitment agencies;

(ix) Periodically inspect, any register or records maintained by the recruitment agency;

(x) Encourage self-regulation amongst the recruitment agencies and enrolment agencies;

(xi) Prevent illegal emigration, irregularity in recruitment procedures and misuse of visa;

(xii) Blacklist in such manner as may be specified by regulations, an employer for a breach of contract or contravention of any of the provisions of this Act, rules and regulations made thereunder;

(xiii) Initiate necessary action to prosecute against those involved in illegal recruitment;

(xiv) Establish help desks and migrant resource centres in India and abroad as and where necessary;

(xv) Maintain data of offices and contact details of Indian

<p>Missions in each country and details of posts (consulates) abroad;</p> <p>(xvi) Undertake awareness programmes so as to ensure safe, orderly and legal migration;</p> <p>(xvii) Monitor situations, circumstances and activities affecting overseas Indians;</p> <p>(xviii) 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 assist migrant workers at all stages of the migration cycle;</p> <p>(xix) Protect and aid upon advice or otherwise to all intending emigrants;</p> <p>(xx) Aid and advice, emigrants who have returned to India;</p> <p>(xxi) Work in coordination with the other authorities as has been established for the purposes of this Act to ensure safe migration.</p>	
<p>13. Subject to the other provisions of this Act, the Nodal Authority working in coordination with the Chief Emigration Officer, Emigration Officers and other competent authorities as mentioned for the purposes of the Act and in addition to the</p>	<p>Function of Nodal Authority</p>

special duties assigned to it under this Act shall:

- (i) Initiate action to prosecute Illegal recruitment agents;
- (ii) Initiate action to prosecute travel agencies, tour operators, emigration consultants or any other entity involved in human trafficking;
- (iii) Undertake pre departure orientation programs, skill up gradation programmes for prospective emigrants;
- (iv) Work in coordination with relevant State departments to devise and implement effective policies and programmes towards relief, rehabilitation and harnessing skills of returnee emigrants and mapping of labour clusters in States/ Union Territories;
- (v) Maintain a database of returnee migrants and work towards their resettlement in the States/ Union Territories;
- (vi) Assist in creating awareness to ensure safe, orderly and regular migration;

CHAPTER III

Emigration of Indian Nationals and Students

14. A registration, electronically or otherwise, as in the manner prescribed by the Central Government, shall be mandatory for migrants for overseas employment and subject to such conditions as may be specified by regulations:

Provided that the Central Government, if satisfied that it is necessary to do so, may exempt certain category of emigrants from mandatory registration for the purposes of this Act

15(1) An intimation, electronically or otherwise, as in the manner specified by the Government, shall be mandatory for all students. Every student before his departure from India shall intimate the competent authority in such manner and subject to such conditions as may be specified by regulations.

(2) For the purposes of the Act, migration of students means departure of students, in pursuit of academic interest in any country outside India and students means a citizen of India enrolled or seeking enrolment for study in an educational institution in a country or place outside India either directly or through an enrolment agency.

Registration of Migrants

Registration of Students

<p style="text-align: center;">Chapter IV Recruitment Agencies</p>	
<p>16. Save as otherwise provided in this Act, no recruitment agency shall after the commencement of this Act commence or carry on the business of recruitment except in accordance with a certificate issued in that behalf by the competent authority.</p> <p>Provided that a person, who had been issued a valid certificate immediately before the commencement of this Act for carrying on the business of a recruitment agent, may continue to do so till the date of its expiry, or for a period of twelve months, whichever is earlier, from such commencement; and if he has made an application for registration within a period of six months from the date of commencement of this Act, till disposal of such application by the competent authority</p> <p>17(1) An application for registration shall be made to the competent authority in such form and shall contain such particulars as to the applicants financial soundness, trustworthiness, premises at which he intends to carry on his</p>	<p style="text-align: center;">Registration of Recruitment Agencies</p> <p style="text-align: center;">Procedure for registration of Recruitment Agencies</p>

business, facilities at his disposal for recruitment or placement or otherwise, his antecedents (including information as to whether any certificate has been issued to him under this chapter earlier and if so, whether such certificate had been canceled) and previous experience, if any, of recruitment and other relevant matters as may be prescribed 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 canceled 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 Section 17(1) till the expiry of the period of such disqualification ends.

(2) The competent authority shall issue the certificate of registration in such form and manner, within such period, not exceeding six months, and subject to such terms and conditions, as may be specified by regulations.

(3) On receipt of the application the competent authority in the Central Government shall,

(i) If the application is not in the specified form or does not

contain any of the specified particulars, return the application to the applicant;

(ii) On being satisfied that the application fulfill the requirements specified there under, inform the applicant that he is eligible for registration and require him to furnish the security specified, for issue of certificate. If the applicant furnishes the security as specified within a period of one month from the date on which the Central Government requires him to furnish such security, the Central Government shall register the recruitment agency and issue a certificate in accordance with the provisions of the Act. If the applicant fails to furnish the security specified within a period of one month, his application shall be deemed to have been rejected by the Central Government on the date of expiry of the said period;

(iii) On being satisfied that the application does not fulfill the requirements specified there under, reject such application by an order in writing, after giving an opportunity of being heard to the applicant.

(4) For the purposes of securing due performance of duties of the recruitment agency, compliance with the terms and conditions of the certificate to be issued under sub section (2), compliance with the provisions of this Act and the rules and regulations made there under, for meeting expenses which may

<p>have to be incurred in the event of repatriation to India of any of the emigrant who may be recruited by the applicant and to pay him the amount which he has been deprived of by the employer in breach of the contract, the Authority shall require the recruitment agency to deposit such amount of security, not less than fifty lakh rupees, in such manner as may be specified by regulations.</p> <p>(5) If the applicant furnishes the security specified in sub section (4) within a period of one month from the date on which the authority requires him to furnish such security, the Authority shall register the recruitment agency and issue a certificate in accordance with the provision of sub section (2)</p> <p>(6) If the applicant fails to furnish the security specified in sub section (4) within a period of one month, his application shall be deemed to have been rejected by the Authority on the date of expiry of the said period.</p>	
<p>18. The authority shall issue the certificate of registration in such form and manner, within such period, not exceeding six months, and subject to such terms and conditions, as may be</p>	<p>Certificate of registration</p>

<p>specified by regulations.</p>	
<p>19. The duties of the recruitment agencies shall include and not be limited to following:</p> <ul style="list-style-type: none"> (i) To recruit on behalf of employer and provide details of employment, including conditions of contracts of employment, to the intending emigrants before recruitment; (ii) Ensure that the employer carries out his contractual obligations under the contract of employment during the period of contract without any alterations; (iii) Procure employment and travel documents, insurance policy, as may be necessary, on behalf of emigrants and ensure that the emigrant is not deprived of the custody of these documents by the employer at any point of time on any ground whatsoever; (iv) Ensure proper reception of emigrant in the country of employment; (v) Ensure timely renewal of documents which authorize the stay of emigrant in the country of employment; (vi) Facilitate settlement of disputes between the employer and emigrants, if any; (vii) Issue receipts of charges collected by the emigrants; (viii) Maintain reports, periodically on the status of employment, 	<p>Duties, Functions and Rating of Recruitment Agency</p>

<p>placement vacancies, departures and such other matters or information in a manner as may be specified by the Central Government;</p> <p>(ix) Ensure that sub-agents engaged by it duly comply with the standards specified by regulations by the competent authority for sub-agents;</p> <p>(x) Furnish particulars of sub-agents engaged by it to the Authority in such manner and at such time as may be prescribed by regulations;</p> <p>(xi) Maintain specified performance standards and minimum ratings to be assessed by Central Government for rating;</p> <p>(xii) Ensure a pre-departure orientation of the emigrants have been conducted and that they are sufficiently equipped with a skill up gradation programme, wherever required for such category of workers as may be specified by the Central Government;</p> <p>(xiii) Provide the contact details of concerned Indian Mission in the country of employment (including its office address, telephone, email and such other information as may be necessary) to the emigrant before his departure.</p>	
<p>20(1) The competent authority may cancel any certificate on any</p>	<p>Cancellation/suspension</p>

one or more of the following grounds, namely;

(i) 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, or the holder of the certificate is not a fit person to continue to hold the certificate;

(ii) That the holder of the certificate has recruited/ placed emigrants for purposes prejudicial to the interest of India or for purposes contrary to public policy;

(iii) That the holder of the certificate or the recruitment agency has, subsequent to the issue of the certificate, been convicted by a court in India for any offence under this Act, or any other law relating to passport, foreign exchanges, narcotics, drugs or smuggling and sentenced in respect thereof, to imprisonment for not less than six months;

(iv) That the certificate has been issued or renewed on misrepresentation or suppression of any material fact;

(v) That the holder of the certificate has violated any of the terms and conditions of the certificate;

(vi) That in the opinion of the Central Government it is necessary in the interests of friendly relations of India with any foreign country or in the interests of the general public to cancel the certificate;

(vii) The recruitment agency has recruited an emigrant in

of a certificate.

contravention of any of the provisions of this Act or the rules and regulations made there under or any other law for the time being in force;

(viii) Any person recruited by a recruitment agency has been denied entry or employment in the country of destination owing to an act of commission or omission on the part of such recruitment agency;

(ix) The recruitment agency has collected charges from an emigrant in excess of the limits whenever specified by the regulations;

(x) The recruitment agency has failed to maintain specified minimum ratings;

(xi) The recruitment agency has committed breach of any of the terms and conditions of the certificate of registration;

(2) Where the competent authority, for reasons to be recorded in writing, is dissatisfied that pending the consideration of the question of canceling any certificate on any of the grounds mentioned in sub section (1) it is necessary so to do, the registering competent 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 canceled;

(3) While passing an order of cancellation of certificate under this sub section (1), the Authority shall follow such procedure as may be prescribed:

Provided that no such order shall be made unless the person concerned has been given a reasonable opportunity of being heard in respect of the grounds for such cancellation.

(4) Where, after taking into consideration the facts and circumstances of the case, the Authority is of the opinion that in respect of the grounds specified in clauses iv, v, ix, x, xi of sub section (1) , it may not be proper to cancel the certificate, it may, instead of canceling, impose such fine, not exceeding ten lakh rupees, or as may deem proper.

(5) Where the certificate of a recruitment agency has been canceled under this section, it shall not be eligible to make another application for registration until the expiry of a period of five years from the date of such cancellation.

(6) A court convicting a holder of a certificate for an offense under this Act may also cancel the certificate;

(7) Before passing an order canceling or suspending a certificate the competent authority or the court, as the case may be, shall consider the question as to provisions and arrangements which should be made for safeguarding the interests of emigrant and other persons with whom the holder of the certificate had any transactions in the course of his business as recruitment 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;

Chapter V

Accreditation of Employers

21. Save as otherwise provided, every employer who intends to recruit, either directly or through a recruitment agency, an emigrant, whether to any country as is specified by regulations

Accreditation of
Employers

<p>or otherwise, shall have an accreditation obtained under this chapter.</p> <p>Provided that an employer, who had been granted a valid permit immediately before the commencement of the Act for recruiting any citizen of India for employment, may continue to do so till the date of its expiry, or for a period of six months, whichever is earlier, from the date of commencement of this Act, and if he has made an application to obtain accreditation.</p>	
<p>22(1) An employer desiring to obtain accreditation may make an application to the Central Government in such form, containing such particulars, accompanied by such fee and in such manner as may be specified by regulation.</p> <p>(2) For the purposes of facilitating transparency and timely disposal of applications, the competent authority may specify minimum eligibility criteria for such accreditation of employers.</p> <p>(3) Upon receipt of such an application, the competent authority shall:</p> <p>(i) after making such inquiry as may be required or as it may deem necessary, and on being satisfied that applicant fulfills</p>	<p>Procedure for Accreditation</p>

minimum eligibility criteria as is specified require him to furnish the specified security;

(ii) on being satisfied that the applicant does not fulfill the minimum eligibility criteria or on any other ground as is mentioned by the regulations, or otherwise, reject such an application and record a brief statement of his reasons for making such rejection and furnish a copy thereof to the applicant and also exhibit the same on the website unless it is detrimental to the friendly relations with the foreign country or is within the interest of the general public.

23. The accreditation granted under this chapter shall be valid for such period, not exceeding five years, as may be specified by order.

Period of validity of accreditation

24. The provisions of Section 20 relating to cancellation and suspension of Certificate of registration of recruitment agencies shall, subject to such modifications as may be necessary apply for cancellation and suspension of grant of accreditation to employers.

Cancellation of Accreditation

Chapter VI

Registration of Enrollment Agencies for Students

<p>25. Save as otherwise provided in this Act, no enrolment agency including foreign universities shall after the commencement of this Act conduct or facilitate enrolment of a student for study from the territory of India at any educational institution in a country or place outside India, except under and in accordance with a certificate issued in that behalf by the competent authority.</p> <p>26. The provisions of Section 16, 17, 19 and 20 shall apply to registration, duties and functions, cancellation/suspension of the certificate of enrolment agencies, with such modifications and adaptations, as may be specified by regulations.</p> <p>For the purposes of this chapter, enrolment agencies means a person or a body of persons or an entity engaged in India in the business of enrolment of Indian students for study in a foreign educational institution or providing consultancy services for such enrolment.</p>	<p>Registration of Enrollment Agencies</p> <p>Procedure for registration/ cancellation of Certificate and Duties and function of enrolment agencies</p>
<p>Chapter VII</p>	

Appeals	
<p>27(1) Any person aggrieved by</p> <p>(i) an order of the competent authority rejecting his application for registration as a recruitment agency under section 17(1) or requiring him to furnish security thereof or to comply with any term and condition (not being a specified term and condition) specified in the certificate issued to him under section 17(4) or canceling/suspending the certificate of registration under section 20 thereof; or</p> <p>(ii) an order of the competent authority rejecting his application for accreditation as an employer under section 22(1) or to comply with any term and condition (not being specified term and condition) of accreditation granted to him thereof or refusing to furnish copy of the order under section 22(3) thereof or canceling or suspending grant of accreditation under section 24; or</p> <p>(iii) An order of the competent authority refusing to register an emigrant under the section 14 or a student under section 15;</p> <p>may prefer an appeal against such order or non-assignment to</p>	

the Central Government in such form and within such period as may be prescribed:

(2) No such appeal shall be admitted after expiry of the period so specified unless 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 with respect to the computation of periods there under;

(4) Every appeal under this section shall be accompanied by a copy of the order appealed against and 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 the case;

(6) Every order made on an appeal under this section

<p>confirming modifying or reversing the order appealed against shall be final;</p> <p>(7) Such appellate authority shall be an officer not below the rank of an Additional Secretary or equivalent to the Government of India.</p>	
<p style="text-align: center;">Chapter VIII Offences and Penalties</p>	
<p>28 (1) Whoever :-,</p> <p>(i) By intentionally furnishing false information or by suppressing material facts, obtains a certificate of registration under section 16 or under section 25 or an accreditation under section 21 of this Act or;</p> <p>(ii) Without lawful competent authority, make or causes to make any alteration in a certificate or document or endorsement issued or made under this Act or;</p> <p>(iii) Disobeys or fails to comply with an order issued by the competent authority or;</p>	

(iv) Collects from an emigrant, charges in excess of the limits specified or fails to issue receipts for payments received by him or;

(v) Cheats or intends to cheat emigrants or;

(vi) Indulges into Illegal recruitment or;

Explanation: "Illegal Recruitment" shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, procuring individuals and includes referring, contact services, promising or advertising for employment abroad, by all means of communication, whether for profit or not, when undertaken by a non-license or non-holder of competent authority contemplated under the Act

(vii) Indulges into any act of human trafficking, or any other Act ,which may constitute an offence or;

(viii) Indulges into illicit trafficking of Drugs or harbour offenders

shall be punishable with imprisonment for a term which shall, in the absence of any special and adequate reasons to be recorded in the judgement by the Court, be not less than three years but which may extend to seven years and/or with fine, which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(2) Whoever:-

(i) fails to register or intimate the Authority, in the manner as may be prescribed under section 14 and section 15 or,

(ii) emigrates in violation of the Section 34 of the Act or,

(iii) in contravention of any provisions of this Act and the rules and regulations made thereunder, emigrates

shall be punishable with a fine of no less than ten thousand rupees.

Provided that the Central Government may revoke, suspend or cancel the passport in such cases as it may deem fit for the purposes of sub section (2).

(3) Provided that where the person exploited is a woman or a child, such punishment of imprisonment shall not be less than seven years and the fine shall not be less than five lakh rupees.

(4) Provided that where an offence has been committed under sub-section (vii), provisions of the Indian Penal Code shall be applicable.

(5) Provided that where an offence has been committed under sub-section (viii), provisions of the Narcotics Drugs and

Psychotropic Substances Act shall be applicable

(6) Whoever attempts to commit any of the offences specified under sub section (1) shall be punishable in the like manner as provided for such offence under that sub section.

(7) Whoever abets any of the offences specified under sub section (1) shall, if the act so abetted is committed in consequence thereof, shall be punishable in the like manner as provided for such offence under that sub section.

(8) Whoever, having been convicted of any of the offences specified under sub section (1), is again convicted of an offence thereunder, shall be punishable for the second and each subsequent offences, with double the penalty provided for such offence under that sub section

Offences by Companies

29 (1) Wherever, an offence under this Act has been committed by a Company, every person who at the time the offence was committed, was directly 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 under this Act, if he proves that the offence was committed without his knowledge or that he 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 shall also 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 anybody, corporate and includes a firm or other association of individuals:

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

Notwithstanding anything contained in the Code of Criminal

Offences to be
Cognizable

<p>Procedure, 1973, all offences under this Act shall be cognizable.</p> <p>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.</p>	<p>Punishment to be without prejudice to any other action</p>
<p style="text-align: center;">Chapter IX</p> <p style="text-align: center;">Miscellaneous</p>	
<p>30(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an officer of the Central Government or of a State Government authorised by the Central Government in this behalf, may enter any public place and search, and arrest without warrant, any person found therein who is reasonably suspected to have committed or to be committing or about to commit any offence under this Act.</p> <p>Explanation:– <i>For the purpose of this section, the expression “public place” includes any public conveyance, hotel, shop or any other place intended for use by, or accessible to, the public.</i></p> <p>(2) Where any person is arrested under sub section (1) by an officer other than a police officer, such officer shall, without</p>	

unnecessary delay, take or arrange to send the person so arrested before a magistrate having jurisdiction in the case or before the officer in charge of a police station.

(3) The provisions of the Code of Criminal Procedure, 1973 shall, subject to the provisions of this section, apply, so far as may be, in relation to any entry, search or arrest, made under this section.

31. 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 competent authority or an officer authorised by it, or
- (c) an officer in charge of an emigration check-post.

Power to search, seize, detain, arrest etc persons under the provision of Customs Act 1962.

<p>32. Nothing contained in this Act shall apply, with regard to –</p> <p>(i) Recruitment or emigration of a person who is not a citizen of India;</p> <p>(ii) Recruitment in India, for the services of foreign States to which the Foreign Recruiting Act, 1874 applies.</p>	<p>Exemption of certain emigrants from application of Act.</p>
<p>33. Where any question arises, before the competent authority as to whether a person intending to depart from India is or is not an emigrant or a student, such question shall be decided by the competent authority after holding an inquiry in such manner, and upon considering such evidences, including any other evidence, which, in the opinion of the competent authority, is relevant and communicate the decision thereof to the person concerned in such form and manner, as may be specified by regulations.</p>	<p>Determination of question whether a person is an emigrant/student.</p>
<p>34(1) Where the Central Government has reason to believe, that sufficient grounds exist for prohibiting emigration to a country by reason of:</p> <p>(i) outbreak of any disease or grave pollution of environment in</p>	<p>Power to prohibit emigration due to epidemic, civil disturbances, general public, etc.</p>

such a country;

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

(iii) that by reason of India not being in diplomatic relations with that country ;

(iv) 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;

(v) any other sufficient ground;

it may, by notification, prohibit emigration to such country.

Provided that if the Central Government has reasons to believe that any ground 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 as may be specified in the notification.

(2) The Central Government, may upon, any person who emigrates against such restriction as mentioned in sub clause (1) impose a penalty under such circumstances as may be specified by rules and regulations.

35. Any security furnished under this Act shall, when no longer

<p>required for the purpose for which it was furnished, shall be refunded or released to the person concerned in such manner as may be specified by regulations.</p>	<p>Refund of Security</p>
<p>36(1) The competent authority, as the case may be for the purposes of discharging functions under this Act, have the same power as are vested in a civil court, under the Code of Civil Procedure 1908 while trying a suit, in respect of the following matters namely:-</p> <ul style="list-style-type: none"> (i) summoning and enforcing the attendance of witness; (ii) requiring the discovery and production of any document; (iii) requisitioning any public record or copy thereof from any office; (iv) issuing commissions for the examination of witnesses or documents; <p>(2) Every proceeding before the competent authority under this Act shall be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code 1860 and shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure 1973.</p>	<p>Authorities and officers to have certain powers of Civil Court</p>

<p>37. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law.</p>	<p>Overriding provision</p>
<p>38. The Central Government may, by general or special order, direct that any power or authority or function –</p> <p>(i) which may be exercised or performed by it; or</p> <p>(ii) which may be exercised or performed by the competent authority,</p> <p>under or in relation to any such provisions of this Act as may be specified in that order may, subject to such conditions and restrictions as may be specified therein, be exercised or performed by-</p> <p>(a) the competent authority; or</p> <p>(b) any State Government or any officer or competent authority subordinate to such State Government; or</p> <p>(c) in any foreign country in which there is no diplomatic mission of India, by a foreign consular office.</p>	<p>Delegation of Power</p>
<p>39. The Central Government may, for the purposes of, and in exercise of its powers and performance of its functions under this Act, give such directions, as it may think necessary, to the</p>	<p>Power to give directions.</p>

<p>competent authority or any person or officer and the competent authority, person or officer shall be bound to comply with such directions.</p>	
<p>40. No suit, prosecution or other legal proceedings shall be against the Central Government or the competent authority or any officer of Central Government or any member, officer or other employees of the competent authority for anything which is done in good faith or intended to be done under this Act or the rules or regulations made there under.</p>	<p>Protection of Action taken in good faith.</p>
<p>41(1) The Central Government may, by notification, make rules to carry out the provisions of this Act.</p> <p>(2) In particular and without prejudice to the generality of the forgoing power, such rules may provide for all or any of the matters, as mentioned in the Act.</p>	<p>Power to make Rules</p>
<p>42. The competent authority may, by notification, make regulations consistent with this Act and the rules made there under to carry out the purposes of this Act.</p>	<p>Power to make regulations</p>

43. Every notification, every rule and every regulation made under this Act shall be laid, as soon as may be after it is issued or made, before the each House of Parliament, while it is in session, for a total period of 30 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 rules or regulation should not be issued or made, the notification or rule or regulation 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 or regulation.

Rules and regulations to be laid before Parliament.

44(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the official gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing difficulty:

Provided that no order shall be made under this section, after the expiry period of two years from the date of commencement of this Act.

Power to remove difficulties.

(2) Every order made under this section shall be laid, as soon as may be after it made, before each House of Parliament.

45(1) The Emigration Act 1983 (hereinafter referred to as the repealed Act) is hereby repealed.

Repeal and Saving

Provided that such repeal shall not affect.

(i) the previous operation of the law so repealed, or anything duly done or suffered there-under; or

(ii) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection order or notice made or issued or any appointment or confirmation made or any certificate of registration granted, permission, authorization or exemption granted or any document or instrument executed or any direction given under the repealed Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provision of this Act; or

(iii) any right privilege obligation or liability acquired occurred or incurred under the law so repealed; or

(iv) any right, privileged, obligation or liability acquired, accrued or incurred under the Law so repealed; or,

(v) any penalty, forfeiture or punishment incurred in respect of any offense committed against the Act so repealed; or,

(vi) any investigation, proceeding, legal proceeding or remedy in respect of any such right, privilege, obligation. liability, penalty. Forfeiture or punishment as aforesaid; and any such investigation, proceedings, legal proceedings or remedy may be instituted, continued or enforced; any such penalty forfeiture or punishment may be imposed as if this Act had not been passed.

(2) Save as otherwise provided in sub section (i), the mention of particular matters therein shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.