

Law Enforcement Agencies Handbook on Safe and Legal Migration



English



Introduction

This handbook for Law Enforcement Agencies is a ready reckoner to ensure Safe and Legal Migration from India. This includes the provisions of the Emigration Act, 1983, with special emphasis on the legal remedies available to handle various complaints of illegal overseas recruitment which governs Safe and Legal Migration from India. The booklet also highlights the Grievance redressal mechanisms for Emigrants like the MADAD portal, Pravasi Bhartiya Sahayata Kendra, Indian Community Welfare Fund. Contact details of Indian Missions/ Posts and Protector of Emigrants Offices in India have also been included.



Any agency which carries out recruitment activity in India for the purpose of employment abroad must be registered under the Emigration Act, 1983.



Travel Agencies, Educational Consultants who have not registered as a Recruiting Agent cannot carry out Recruitment Activities.



The complete list of Registered Recruiting Agents can be found at www.emigrate.gov.in in the dash board of the front page.



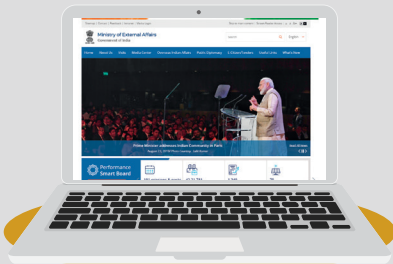
Emigration Check Required (ECR) passport holders travelling for work to any of the Emigration Check Required 18 countries namely Afghanistan, Bahrain, Iraq, Indonesia, Kingdom of Saudi Arabia, Kuwait, Jordan, Libiya, Lebanon, Malaysia, Oman, Qatar, Sudan, South Sudan, Syria, Thailand, United Arab Emirates and Yemen need to take an Emigration Clearance through the eMigrate system.

Background



Over **30 million** strong constituting both NRIs and PIOs. Nearly **9 million** Indians in the Gulf Cooperation Council (GCC) countries.

Indian citizens with ECR notation in passport and traveling for work to 18 notified countries require Emigration Clearance (EC) from one of the ten Protectors of Emigrants (PoEs).



- ★ *MEA website frequently updates information on ban on travel or travel advisory to a specific country.*



Notations in the Indian Passport

★ *Notation/endorsement: Emigration Check Required (ECR) & Emigration Check Not Required (ECNR) – as per notation in Passport. Passports with no notation – means ECNR (since 2007).*

★ *ECR Notation in Passport– Issued to an applicant who is not Ma-tric/X Class Pass.*



★ List of ECR countries– Countries where Emigration Clearance by Protector of Emigrants (PoE) is required for Indians with ECR notation on passports, while traveling for employment/work. The countries include: Afghanistan, Bahrain, Indonesia, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, Oman, Qatar, Saudi Arabia, South Sudan, Sudan, Syria, Thailand, United Arab Emirates and Yemen.



Emigration Act, 1983

Applicability (Section 1):

Whole of India and applies to citizens of India outside India & All notifications are issued in the Official Gazette.

Non Applicability (Section 42):

Recruitment or emigration of any person who is not citizen of India or when control of recruiting in India for the service of foreign states to which the Foreign Recruiting Act, 1874 (4 of 1874) applies.

Authorities (Section 3):

- ★ PGE appointed by notification by Central Govt and as many as PoEs deems fit.
- ★ By general or special order define the area to which authority of PoE so appointed shall extend and in case there are 2 or more PoEs appointed for same area, specify distribution and allocation of work under this Act in relation to such area.
- ★ All PoEs work under supervision of PGE.
- ★ All emigration officers are public servants (Section 8).



General duties of a PoE

Section 4

- ★ Protect and aid with his advice all intending emigrants and emigrants.
- ★ Ensuring compliance of all provisions of the Act.
- ★ Inspect emigrant conveyance or any other conveyance.
- ★ Inquire into treatment received by emigrants - during the journey/stay/return journey back to India - report to PGE.
- ★ Aid and advise emigrants who have returned to India.
- ★ As per Section 5, the Central Government can authorise any person to perform all or any function of the PoE under this Act.



Note: Any individual or agency that is involved in recruitment of Indians for work/employment abroad, irrespective of the country – ECR or ECNR – can approach the PGE for grievance redressal.



Recruiting Agents & Foreign Employers

Registration of Recruiting Agents

Sections 9-14 under Chapter III



Central Govt, by notification, may appoint PGE or any other officer of the Govt of rank higher than PoE to be registering authority for the purposes of this Act (section 9).



No person to function as a recruiting agent (RA) without a valid certificate (Section 10).



While Section 11 explains about the application procedure for obtaining a certificate for carrying recruitment, Sections 12 & 13 explain the terms & conditions and renewal process respectively.

Cancellation, suspension, etc., of a Certificate

Section 14



Holder of certificate is not a fit person to continue to hold the certificate.



Holder of certificate recruited emigrants for purposes prejudicial to the interests of India or purposes contrary to public policy.



Subsequent to the issue of certificate, the holder has been convicted in India for any offence involving moral turpitude.



Subsequent to the issue of certificate, the holder has been convicted under Emigration Act, 1983, Emigration Act, 1922 (7 of 1922), or any law relating to passports, foreign exchange, drugs, narcotics or smuggling and sentenced in respect thereof imprisonment for not less than six months.



Misrepresentation or suppression of facts or Violation of terms and conditions of certificate.



In the interest of friendly relations of India with any foreign country or in the interest of general public – cancellation of certificate.



If cancelled – two year waiting time from date of cancellation.

Permits for Foreign Employers

Section 15:

Foreign Employers can recruit citizens of India under permit.

Section 16:

Two types of recruitment by foreign employers: either through RA registered and competent under this Act to recruit or directly in accordance with the permit issued.

Exemption:

The govt may exempt any class or classes of employers from the requirement of obtaining a permit (Section 21).



Process of Recruitment

Recruitment by RA

Section 5 under Emigration Rules, 1983 authorise



Employer may authorize a RA in India (regd. under this Act), by a Power of Attorney executed in favour of RA, to recruit persons on his behalf.



PoA is valid for the period of employment contract of the recruited worker even if the certificate ceases to be valid before that period.

Always Remember

PoE has the power to determine if a person is an emigrant – Section 29 – has the power to intervene when provisions of the Emigration Act are violated

Central Government has the power to prohibit emigration:

- ★ to any country in the interests of the general public etc., through a notification, for six months on each occasion- Section 30 or
- ★ to any country due to outbreak of epidemics, civil disturbances, etc., – Section 31 or
- ★ of any class or category of persons – Section 32.



Note: RAs registered with PGE (1300 approx.) – complete details of RAs and their status is available on www.emigrate.gov.in which is updated every 24 hours.



Offences & Penalties

Section 24 in Chapter VII

(1) Whoever:

- ★ Emigrates without confirming to provision of the Act.
- ★ Contravenes provision so Section 10 or Section 16.
- ★ Obtained certificate or permit or emigration clearance submitting false information or suppressing facts.
- ★ Making alterations to the certificate/permit/clearance.
- ★ Disobeys or neglects to comply with any order of PoE.
- ★ Collects from an emigrant any charge in excess of limits prescribed under this Act
- ★ Cheats any emigrant

Offences listed under Section 24-

- ★ Are punishable with imprisonment upto two years and fine upto two thousand rupees.
- ★ With minimum imprisonment of six months and minimum fine of one thousand rupees unless provided otherwise in the court's judgement owing to special reasons.
- ★ Upto one year imprisonment or fine upto two thousand rupees for violating terms or conditions of emigration clearance.
- ★ Abetment of the offences is punishable with imprisonment provided for that offence.
- ★ Repeat offences are punishable with double the penalty provided that offence.

Cognizable Offences



All offences provided for in the act are cognizable i.e. the police can make arrests without a warrant. No prosecution can be instituted against any person without the sanction of the central government except in cases where an offence is committed against an emigrant or an intending emigrant and the complaint is filed by such emigrant or intending emigrant or their father, mother, husband, wife, son, daughter, brother, sister or guardian.



Judicial Proceedings

Authorities & Officers to have certain powers of civil court

- ★ PGE and PoE, for purposes 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 following matters (Section 37):
- ★ Summoning and enforcing the attendance of witnesses;
- ★ Requiring the discovery and production of any document;
- ★ Requisitioning any public record or copy thereof from any court or office;
- ★ Receiving evidence on affidavits;
- ★ Issuing commissions for the examination of witnesses and documents.

Every proceeding before PGE or PoE **shall be judicial proceeding** within the meaning of sections 193 & 228 of the IPC (45 of 1860) and the PGE and PoE **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) as per sub-section 2 under section 37 of this Act.



Nature of Complaint & Challenges

Frequently received complaints

Contractual- Poor working conditions, labour contract not signed/adhered to, medical expenses, food, accommodation, excess working hours etc.

Cheating- Difference in job promised and offered, job not given etc.

Wage related- Less wages, allowance not given, deductions etc.

Living Conditions Unhygienic living conditions

_____ including sexual in case 4



SOPs & Helplines

Standard Operating Procedures for State LEAs

Step 1

On receipt of complaint(s) from emigrants or their relatives, State Government must collect the following information:

- ★ Complainant's Passport Details
- ★ Address/Telephone of emigrant
- ★ Foreign employer's name and contact details
- ★ Contact details of the Agent/Agency
- ★ Date of Birth
- ★ Copy of visa affixed on passport
- ★ How the worker(s) has gone abroad & through which agent/Registered Recruiting Agent?

Step 2

MADAD is a user friendly portal, where the complaint can be lodged and automatically transferred to respective Indian Missions. The status of redressal can also be tracked.

- ★ In case of complaint, State Governments are advised to upload relevant details about the complainant on MADAD Portal (madad.gov.in) of MEA. Emigrants or their relatives or anyone on their behalf can upload this information directly on the portal
- ★ All complaints can be uploaded in MADAD portal
- ★ In case of complaints against regd. RAs, as well as unregistered illegal recruiting agents, the complaint(s) may be forwarded to the concerned PoE of the State.



SOP – Complaint against RA

- ★ Complaint received against registered Recruiting Agent (RA)
- ★ Show cause notice is served to settle/resolve the complaint
- ★ Registration Certificate (RC) cancelled for 30 days if RA fails to respond
- ★ RC is cancelled for an indefinite period if complaint still remains unresolved
- ★ Action is dropped only after consultation with the Indian Mission or complainant



SOP –Complaint against illegal agent

- ★ Complaint received against unregistered recruiting agent
- ★ Forwarded to concerned State Governments and Police authorities
- ★ Police and State Government takes action against such illegal acts
- ★ If required complaints are referred to Indian Mission/Post abroad
- ★ Police seek approval from Protector General of Emigrants for prosecuting the accused*

Registered RAs



For registered Recruiting Agents, action is taken by PGE against erring agents by way of suspension and cancellation of Registration Certificate.

In cases where the conduct of the Recruiting Agent is found to be dubious, he is placed in the internal Watch List. Whenever major error is committed by any agents, the Bank Guarantees submitted by the Recruiting Agents are forfeited apart from cancellation of their Registration Certificate

Unregistered RAs



All unregistered Recruiting Agents are proceeded against under this provision. Complaints against them are referred to the concerned police authorities for investigation and filing F.I.R. State Governments have been also requested to advise the District Authorities, in particular the Police Authorities, to ensure that preventive, strict and exemplary action is taken against illegal recruiting agents.

Complaints against Foreign Employer

Complaints against foreign employers are taken up with the Indian Mission abroad. Complaints are mostly relate to:

- ★ Change of employment contract, non-payment and deduction of salaries, unhygienic working conditions, etc.
- ★ As and when the foreign companies are found involved in breach of contract and non-payment of salaries etc, the same companies are placed in the Blacklist by the PGE on the eMigrate platform.

Issues handled by MEA and respective Division

Division	Issues Dealt
Protector General of Emigrants (PGE)	PGE is a registering authority to issue Registration Certificate to the Recruiting Agents. Issues related to Recruiting Agent/ Agent related, salary, overseas employment related issues.
Consular Passport, Visa (CPV)	Passport/ Visa related, matters relating to legalization of documents, registration of births and deaths abroad; extradition policy
Overseas Indian Affairs-I (OIA-I)	All policy related issues, Emigration Bill 2019, ICWF, Bilateral engagement with countries of destination
Overseas Indian Affairs-II (OIA-II)	Diaspora engagement, Pravasi Bharatiya Diwas (PBD), KIP, SIP, SPDC, NRI Marriages, Indian Students Abroad



The India Centre for Migration (ICM) is a research think-tank of the Ministry of External Affairs (MEA) on all matters related to international migration.

Apart from academic research, ICM has been involved in undertaking various activities and programmes at the ground level for the benefit of migrant workers.

Important Contacts

eMigrate: www.emigrate.gov.in

MADAD Portal: <https://portal2.madad.gov.in>

Pravasi Bhartiya Sahayata Kendra

Phone Number: +91-11-40503090/45680197/26885021 (From Outside India)

Phone Number: 1800-11-3090 (Only in India)

Email: helpline@mea.gov.in



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