

Bill No. 317 of 2019

THE EMPLOYMENT AGENCIES (REGULATION) BILL, 2019

By

SHRI SHRIRANG APPA BARNE, M.P.

A

BILL

to regulate employment agencies for the help of domestic workers, interns and other employees seeking employment, apprenticeship or internship with employers indulged in legitimate occupation in order to enhance social security of employees and for matters connected therewith or incidental thereto.

BE it enacted in the Parliament in the Seventieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

- 5 1. (1) This Act may be called the Employment Agencies (Regulation) Act, 2019.
 (2) It extends to the whole of India.
 (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title,
extent and
commencement.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "appropriate Government" means in the case of a State the Government of that State and in all other cases, the Central Government;

(b) "child" means a person who has not attained the age of eighteen years;

(c) "domestic worker" means any person who is employed for remuneration in any household, through any agency either on a temporary, permanent, part time or full time basis;

(d) "employee" means any person who is employed or engaged on contract basis, continuously for a period not less than one hundred and eighty days, in an establishment to do any work for remuneration;

(e) "employer" means a person who hires the service of another person whether part time or full time and includes a natural or judicial person or an association of such persons by whom any person is engaged or employed through any agency for remuneration;

(f) "employment agency" means an agency involved in the employment of persons in any capacity and finding workers for employment with employers or of supplying employers with workers for employment by them; whether through physically established office or operating electronically/online through a website and includes a placement agency or any agency by any other name called (whether for the purpose of gain or reward or not).

(g) "intern" means any person who is employed or engaged on contract basis, continuously for a period less than one hundred and eighty days in an establishment to do any work;

(h) "license" means a licence granted under this Act;

(i) "licensee" means the person to whom a licence is granted under this Act; and

(j) "prescribed" means prescribed by rules made under this Act.

CHAPTER II

RESTRICTIONS

Act not in derogation of other laws.

3. Nothing in this Act shall operate to relieve any employment agency of any duty or liability imposed upon it by any other law for the time being in force or to limit any powers given to any public officer under any other law.

Prohibition on employment of a child.

4. No child shall be employed as a domestic worker or for any work which is prohibited under any law for the time being in force.

Employment for illegal occupations.

5. No employment agency shall hire any person for employers engaged in occupation deemed illegal by the Government of India such as gambling.

CHAPTER III

LICENSING

Persons carrying on an employment agency to be Licensed.

6. (1) No person shall carry on an employment agency unless he is the holder of a license authorizing him to carry on such an agency.

(2) The appropriate Governments shall on an application from an agency for functioning as an employment agency in the prescribed format, issue a license after having been duly satisfied that:

(a) the agency is registered either as a sole proprietorship, partnership firm, company or as a non-profit organization;

(b) maintains proper books of accounts, Memorandum of association, rules, bye laws, as the case may be and the details of the office bearers of the organization and details of persons employed by such agency;

5 (c) there is no criminal cases pending against the said agency or agency owners or both; and

(d) premises or place being or to be used for the purpose of placement or employment agency exists are as per requirement.

10 (3) The form of a licence which may be granted or renewed under this Act, the conditions subject to which the licence may be granted or renewed, the fees payable for the grant or renewal of a licence and the security, if any, required to be submitted for fulfillment of the conditions of the licence shall be such as may be prescribed.

(4) Every employment agency shall, upon issues of license which is valid for a period of twelve months and is to be renewed periodically, furnish to the appropriate Government, quarterly of details of the persons who are registered with the agency for employment:—

15 (a) the details of the addresses where these persons are placed;

(b) the fees charged against each individual for placement; and

(c) proof of adequate verification process for each individual.

7. The appropriate Government shall, by notification in the Official Gazette,—

20 (a) **appoint such persons, being officers of appropriate Government, as it thinks fit to be licensing officers for the purposes of this Act; and**

(b) **define the limits, within which a licensing officer shall exercise the jurisdiction and powers conferred on licensing officers by or under this Act.**

Appointment of licensing officers.

25 8. (1) Every owner of the employment agencies to which this Act applies shall, within the period as the appropriate Government may fix, make an application to the licensing officer in such form and manner and on payment of such fees as may be prescribed for the license of employment agency.

Procedure for licensing of agency.

30 (2) The licensing officer shall within one month after the receipt of an application for license, if the application is complete in all respects, issue license to the employment agency or if the application is not so complete then return the application to the principal owner of the agency in such manner as may be prescribed.

(3) No principal owner of the employment agency to which the Act applies shall procure or place any worker or employee or intern in any household or any other work unless he holds a valid license issued to the agency under this Act.

35 9. If the licensing officer is satisfied either on a reference made to him or otherwise that the license granted to any employment agency has been obtained by misrepresentation or suppression of any material fact or the holder of the license has without reasonable cause failed to comply with the conditions subject to which the license was granted or has contravened any provisions of the Act or rules made thereunder then the licensing officer after giving the reasonable opportunity to the principal owner of the agency to be heard, by order in writing revoke the license and communicate it to the principal owner in such manner as may be prescribed.

Revocation of license.

40 10. Where an order of revocation becomes effective under section 9, the licensee concerned shall forthwith cease to carry on the employment agency:

Effect of revocation.

45 Provided that revocation of license shall not prejudice the enforcement by any person of any right or claim against the licensee concerned or by the licensee concerned of any right or claim against any person arising out of or concerning any matter or thing done prior to the revocation of the license.

CHAPTER IV

POWERS AND DUTIES OF LICENSED EMPLOYMENT AGENCIES

- Fees for services rendered. **11.** (1) It shall be lawful for a licensee to charge and receive such fees as may be prescribed, from time to time.
- (2) No licensee shall charge or receive any form of fees, remuneration, profit or compensation otherwise than as may be prescribed. 5
- Maintenance of registers. **12.** (1) Every employment agency shall maintain the records of all the domestic workers and other workers or employees being contracted by them for purposes of employment.
- (2) The record maintained under sub-section (1) shall consist of the following:—
- (a) name and address of the employer under whom such domestic worker-or any other employee or intern is working; 10
- (b) the period of employment;
- (c) rate of wages and the mode of payment of the wages;
- (d) displacement allowance payable;
- (e) passport size photograph of the employer and the domestic worker or any other employee or intern; 15
- (f) nature of work and the working hours; and
- (g) copy of contract.
- Ensure the given minimum terms of contract. **13.** The terms of contract between employee and the employment agency shall include *inter alia* the following:— 20
- (a) whether the work-seeker is or may be employed by the employment business under a contract of service or apprenticeship or internship, or a contract for services, and in either case, the terms and conditions of employment of the work-seeker which apply, or may apply;
- (b) an undertaking that the agency shall pay the work-seeker in respect of work done by him, whether or not it is paid by the hirer in respect of that work; 25
- (c) The length of notice of termination which the work-seeker may be required to give, and which he shall be entitled to receive in respect of particular assignments with hirers;
- (d) the rate of remuneration payable to the work-seeker; and 30
- (e) the minimum rate of remuneration, the employment business reasonably expects to achieve for the work-seeker, details of the intervals at which remuneration shall be paid and such other amenities.
- Entering into a contract on behalf of a client. **14.** (1) An employment agency shall not enter into nor purport to enter into, a contract:— 35
- (a) on behalf of a work-seeker with a hirer; or
- (b) on behalf of a hirer, with a work-seeker,
- unless the following requirements are fulfilled—
- (a) the person for whom the employment agency acts has appointed the agency as his agent with authority to enter into the contract on his behalf; and
- (b) where the agency acts for the work-seeker, it has been permitted by the Act to charge a fee in relation to the introduction or supply to which the contract relates. 40
- (2) where an employment agency enters into a contract on behalf of a work-seeker with a hirer, or on behalf of a hirer with a work-seeker, the agency shall ensure that the terms of the

contract are notified to the party on whose behalf the agency entered into the contract, as soon as is reasonably practicable and in any event no later than the end of the fifth business day following the day on which such agency entered into the contract.

5 (3) Where an employment agency enters into a contract on behalf of a work seeker with a hirer, or on behalf of a hirer with a work-seeker, the agency shall ensure that the terms of the contract are notified to the party or parties to the contract other than the party on whose behalf the contract was entered into, as soon as is reasonably practicable and in any event no later than the end of the fifth business day following the day on which the agency entered into the contract.

10

CHAPTER V

GRIEVANCE REDRESSAL AND DISPUTE RESOLUTION

15. (1) Any person aggrieved by an order made under section 9, may, within thirty days from the date on which such order is communicated to him, prefer an appeal to an appellate officer who shall be a person nominated in this behalf by the appropriate Government:

Appeals.

Provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellate was prevented by sufficient cause from filing the aggrieved person in time.

20 (2) On receipt of an appeal under sub-section (1), the appellate officer shall, after giving the aggrieved person an opportunity of being heard, dispose of the appeal as expeditiously as possible.

16. No court shall take cognizance of any offence under this Act except on a complaint made by an inspector or authorized person or a non-Governmental Organization and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

Cognizance of offences.

CHAPTER VI

APPOINTMENT AND DUTIES OF INSPECTORS

17. (1) The appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act, and define the local limits within which they shall exercise their powers under this Act.

Role of Inspector.

(2) Subject to any rules made in this behalf, within the local limits for which he is appointed, an Inspector may—

35 (a) if he has reason to believe that any child is employed in any premises or place, enter, at all reasonable hours, with such assistants (if any), being persons in the service of the Government or any non-Governmental organization as he thinks fit;

(b) if he has a reason to believe that any illegal work is being undertaken in any premises or place, enter, at all reasonable hours, with such assistants (if any), being persons in the service of the Government or any non-Governmental Organization as he thinks fit;

40 (c) satisfy himself whether the provisions of this Act are being complied with;

(d) at any reasonable time, and without previous notice, enter and inspect any employment agency or any premises reasonably suspected of being used for the purposes of an employment agency, and examine all books, or other documents found in the premises, which may appear to him to be the property of or to have been used for the purposes of an employment agency and remove them for further examination; seize or take copies of such register, record of wages, or notices or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by a principal employer or contractor; and

45

(e) exercise such other powers as may be prescribed.

(3) Where there is reason to believe that any person has been subjected to any form of abuse which *prima facie* discloses the commission of any cognizable offence, the Inspectors shall take assistance from any non-Governmental Organization agency in rescue and rehabilitation of victims in such manner as may be prescribed.

5

(4) Any person required to produce any document or thing, or to give any information required, by an Inspector under sub-section (2), or by a person appointed under sub-section (3), shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code, 1860.

45 of 1860.

(5) The provisions of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code.

10 2 of 1974.

CHAPTER VII

OFFENCES AND PENALTIES

Penalty for not obtaining license under the Act.

18. Any person who contravenes or fails to comply with the provisions in Chapter III of the Act shall be guilty of an offence and shall be liable to a fine not exceeding rupees fifteen thousand and in the case of a second or subsequent conviction to a fine not exceeding rupees one lakh and /or to imprisonment for a term not exceeding six months or with both.

15

19. Whoever, if any licensee,—

(a) charges or receives himself or through another person, for his services, any sum greater than the prescribed fee; or

20

(b) knowingly and voluntarily deceives any person by giving false information; or

(c) instigates or induces any person not to admit in his service any employee who has not applied for employment, work or position through his employment agency; or

25

(d) knowingly sends, directs or takes any girl or woman to any place for immoral purposes or to a place where she is likely to be morally corrupted; or

(e) make available young children as domestic workers; or

(f) fail to maintain records of the workers placed by them; or

30

(g) fails to adhere to any other matter as may be prescribed,

shall be punished with imprisonment for a term which shall not be less than six months but which may extend upto seven years and with fine which may extend upto rupees fifty thousand or with both.

Offences by Companies.

20. (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:

35

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.

40

(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.

45

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.

5

CHAPTER VIII

MISCELLANEOUS PROVISIONS

21. (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any agreement or contract of service, or in any standing orders applicable to the establishment whether made before or after the commencement of this Act.

Effect of laws and agreements inconsistent with the Act.

(2) Nothing contained in this Act shall be construed as precluding any domestic worker or employee or intern from entering into an agreement with the principal employer or the contractor, as the case may be, for granting them rights or privileges in respect of any matter which are more favourable to them than those to which they may be entitled under this Act.

15

22. (1) No suit, prosecution or other legal proceedings shall lie against any licensing officer, inspecting officer or any other employee of the Government or any non-Governmental Organization for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

Protection of action taken in good faith under Act.

(2) No suit or other legal proceedings shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or notification or order made or issued thereunder.

20

23. (1) The appropriate Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

Power to make rules.

(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:—

25

(a) the form and manner in which an application for functioning as an employment agency in the prescribed format may be made under section 6 (2);

(b) the form in which an application for the grant or renewal of a licence may be made under section 6 (3) and the particulars it may contain;

30

(c) the manner in which an investigation is to be made in respect of an application for the grant of a licence and the matters to be taken into account in granting or refusing or revoking a licence;

(d) the form of a licence which may be granted or renewed under this Act, the conditions subject to which the licence may be granted or renewed, the fees payable for the grant or renewal of a licence and the security, if any, required to be furnished for the due performance of the conditions of the licence;

35

(e) the circumstances under which license may be varied or amended under section 10;

(f) the form and the manner in which appeals may be filed under section 15 and the procedure to be followed by appellate officers in disposing of the appeals;

40

(g) the powers that may be exercised by Inspectors under section 17 and the local limits within which they shall exercise their powers under this Act;

(h) fees to be charged by the agencies under section 11; and

(i) any other matter which is required to be, or may be, prescribed under this Act.

45

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is 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 rule or both Houses agree that the rule should not be made, 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 rule. 5

(4) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature. 10

STATEMENT OF OBJECTS AND REASONS

The Periodic Labour Force Survey (PLFS) of the National Sample Survey Office (NSSO) released in May 2019 for the period July 2017 to July 2018 showed the unemployment rate in the country was at 5.3 per cent in rural India and 7.8 per cent in urban India, resulting in overall unemployment rate of 6.1 per cent. According to Centre for Monitoring Indian Economy (CMIE) the unemployment rate in India rose to 7.2 per cent in February 2019, the highest since September 2016, and up from 5.9 per cent in February 2018.

As a result the exploitation of workers has been increasing rapidly in the country. Poverty has forced people to migrate in search of work and workers with no other skills, turn to domestic work. This has also led to the trafficking and other forms of exploitation of millions of women and children of both the sexes. To meet growing demand of domestic help, there has been a spurt of thousands of placement agencies providing domestic workers in metro-towns of many States which remain outside the purview of any legislative control. The issue of exploitation of women and children domestic workers is frequent and regularly reported. With no rights and rules to fall back on, the domestic helps, mostly migrants from eastern States, have become contemporary slaves. It is also a known fact that many women and children are trafficked and exploited by the placement agencies, which operate openly without any form of restrictions and regulations, also escaping the tax net, thus necessitating the need for regulation and control. The domestic workers fall outside the Labour legislations thus domestic workers are unable to access their rights. That non-recognition of domestic work as legitimate work combined with hidden nature of the worksite results in exploitative living and working conditions and sometimes forced labour and trafficking. Reports of abuse are many with workers facing among other things , extremely long working hours , absence of rest and leave periods, deprivation of food, delayed or non-payment of wages and physical and sexual abuse, recruitment related fees, deceptive recruitment practices and discriminative policies further jeopardizes domestic workers right to just and favorable working conditions.

Formal employment has become very competitive which forces young people to apply for various internships so as to gain experience. Unpaid internships have become a big, exploitative, self-perpetuating circle in India, where countless graduates enter into these internships every year to gather that all important marker for employment — experience. Since most companies insist on a certain amount of work experience before they hire for a particular role, the only avenue for many fresh graduates is to allow their labour to be exploited *via* internship work over a specific period of time. The world of internships and interns in India is by no means tiny. It is mildly disturbing, then, that there are absolutely no laws that cover interns in India. Thus, there is a need for a new law which regulates the huge market of internships in the country. The vast reach of internet and increasing use of online and electronic services to seek job also creates a need to regulate such employment agencies which operate online.

To add more in exploitation of job seekers, fraudulent and fake employment agencies have mushroomed in India and de-frauding job seekers to the extent of publishing fake employment notices in the name of Public Sector Undertakings (PSUs). Recent example is of 'South Central Coalfield Ltd. a fake company that claimed to be a subsidiary of Coal India Ltd. This fake company not only published employment notice but also demanded security deposits from job seekers. Later, Coal India published a notice to beware job seekers from this fraudulent company.

Thus it is imperative that a law be enacted to provide for safety and security of domestic workers, interns and other employees and regulate the placement/employment agencies which cater to providing employment to any class/category of persons. The law needs to be broader and go beyond the scope of domestic workers as placement agencies not only cater to domestic but also other employment requirements.

Hence this Bill.

NEW DELHI;
October 29, 2019.

SHRIRANG APPA BARNE

FINANCIAL MEMORANDUM

Clause 7 of the Bill provides for appointment of Licensing Officer. Clause 15 provides for nomination of an Appellate Officer. Clause 17 provides for appointment of Inspector. The Bill, therefore, if enacted, would involve expenditure from the Consolidated Fund of India. It is estimated that a recurring expenditure of about rupees five hundred crore per annum will be involved from the Consolidated Fund of India.

A non-recurring expenditure of about rupees three hundred crore is also likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 23 of the Bill empowers the appropriate Government to make rules for carrying out the purposes of the Bill. As the rules will relate to matters of detail only, the delegation of legislative powers is of a normal character.

LOK SABHA

A

BILL

to regulate employment agencies for the help of domestic workers, interns and other employees seeking employment, apprenticeship or internship with employers indulged in legitimate occupation in order to enhance social security of employees and for matters connected therewith or incidental thereto.

(Shri Shirang Appa Barne, M.P.)