

The Punjab Prevention of Human Smuggling Act, 2012

(Punjab Act No. 2 of 2013)

pu898

[Dated 4th January, 2013.]

Department of Legal And Legislative Affairs Punjab

No. 2-Leg./2013. - The following Act of the Legislature of the State of Punjab received the assent of the Governor of Punjab on the 4th January, 2013, is hereby published for general information ;-

An Act to provide for the regulation of the profession of travel agents with a view to check and curb their illegal and fraudulent activities, and malpractices of the persons involved in the organized human smuggling in the State of Punjab and for the matters connected therewith or incidental thereto.

Be it enacted by the Legislature of the State of Punjab in the Sixty-third Year of the Republic of India as follows ;-

1. Short title and commencement. - (1) This Act may be called the Punjab Prevention of Human Smuggling Act, 2012.

(2) It shall come into force on such date, as the State Government may, by notification in the *Official Gazette*, appoint.

2. Definitions. - In this Act, unless context otherwise requires, -

- (a) "*cheating*" shall have the same meaning as assigned to it in section 415 and includes cheating by personation as specified in section 416 of the Indian Penal Code, 1860 (Central Act 45 of 1860);
- (b) "*competent authority*" means an officer appointed by the State Government, by notification, to be the competent authority for the purpose of this Act;
- (c) "*dependent*" means any person, who is related to an emigrant and is also dependent on that emigrant;
- (d) "*device*" means any machinery or instrument that may be used or intended to be used for the purpose of forging or counterfeiting any document, passport, visa, entry permit or travel ticket;
- (e) "*document*" means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of these means, intended to be used or which may be used, as evidence of that matter;
- (f) "*emigrant*" means any citizen of India, who intends to emigrate or emigrates or has emigrated, but does not include, -

- (i) a dependent of an emigrant, whether such dependent accompanies that emigrant, or departs subsequently for the purpose of joining that emigrant in the country to which that emigrant has lawfully emigrated; and
 - (ii) any person, who has resided outside India for a minimum period of three years after attaining the age of eighteen years or his spouse or child;
- (g) "*human smuggling*" shall mean and include illegally exporting, sending or transporting persons out of India or any type of facilitation thereto by receiving money from them or their parents, relatives or any other person interested in their welfare, by inducing, alluring or deceiving or cheating;
- (h) "*illegally acquired property*" means any property whether movable or immovable, acquired by illegal means by a travel agent in contravention of the provisions of this Act;
- (i) "*license*" means a license issued by the competent authority under sub-section (2) of section 4 of this Act;
- (j) "*Licensee*" means a person to whom a license is granted under this Act;
- (k) "*prescribed*" means prescribed by rules made under this Act;
- (l) "*State Government*" means the Government of the State of Punjab in the Department of Home Affairs and Justice; and
- (m) "*travel agent*" means a person doing the profession which involves arranging, managing, or conducting affairs relating to sending persons abroad or which arise out of the affairs of persons sent to a foreign country, except for carrying out the business of recruitment being governed under the Emigration Act, 1983 (Central Act 31 of 1983), and shall include all or any of the following, namely:-
 - (a) processing of applications for or relating to grant of passport or visa; or
 - (b) acting as an agent for a company, firm or such type of bodies or entities for-
 - (i) selling air travel tickets; and
 - (ii) providing means of transportation for travel to a foreign country by land or sea; or
 - (c) providing consultancy visa service or guidance to the persons intending to go abroad for-
 - (i) acquiring education;
 - (ii) undertaking a pleasure trip as a tourist or traveler;
 - (iii) getting medical treatment;
 - (iv) arranging cultural entertainment or musical shows;
 - (v) spreading or preaching religion; or
 - (vi) participating in sports tournaments or events; or

- (d) giving an advertisement or publicity, which relates directly or indirectly to any field of travel to a foreign country by means of publication, transmission, communication or internet; or
- (e) holding of seminars or delivering of lectures to promote emigration or rendering assistance for such purposes; or
- (f) arranging matrimonial alliances and adoptions for the purpose of emigration; or
- (g) arranging travel of any person from India to abroad for any purpose whatsoever; or
- (h) acting as freelancing type tout for any of the purposes mentioned in clauses (a) to (g).

3. Regulation of profession of a travel agent. - No person shall undertake the profession of a travel agent unless he obtains a license under and In accordance with the provisions of section 4 of this Act.

4. License. - (1) A person, desiring to undertake the profession of a travel agent or who is already in this profession on the commencement of this Act, shall make an application to the competent authority in such manner alongwith such fee and containing such documents as may be prescribed.

(2) If the competent authority is satisfied that the application made under sub-section (1) is in order, it shall issue a license under such terms and conditions and in such form as may be prescribed:

Provided that if the competent authority is satisfied that the particulars given in the application are incorrect or are incomplete or that any evidence or information required for issuing the license is not furnished, it may, after necessary inquiry and after giving the applicant an opportunity of being heard, reject the application for the reasons, to be recorded in writing:

Provided further that the person, whose application has been rejected for grant of license, may make another application to the competent authority for grant of license after removing the defects pointed out by it.

(3) No license shall be issued to a person under sub-section (2), unless the particulars and documents given by him, in his application, are verified by the police.

(4) The validity of a license shall be for, a period of five years, which shall be renewable for the said period in such manner, as may be prescribed.

5. Endorsement of branches or offices. - If a person, who has obtained a license under this Act for doing the profession of a travel agent at one place in a district, subsequently opens other branch or office at a place situated in another district, he shall not be required to obtain a fresh license for such other branch or office. However, he shall immediately inform, in writing, to the competent authority and to the District Magistrate of the district concerned, where a new branch or office has been opened and shall obtain an acknowledgment for giving such an information.

6. Cancellation or suspension of license. - (1) The competent authority may, on an application made to it by any person or otherwise on information that licensee has,-

- (a) become insolvent or bankrupt; or
- (b) indulged or abetted, directly or indirectly into any act, which is prejudicial to the interest of India or to its security; or
- (e) been convicted by a court for any criminal offence; or

- (d) obtained or got renewed the license on misrepresentation or suppression of any material fact; or
- (e) violated any of the terms and conditions of the license; or
- (f) allowed any other person to do the profession of travel agent from his premises or under his name; or
- (g) failed to do the profession of travel agent for a continuous period of three months, cancel the license:

Provided that before cancellation of license a show cause notice to the Licensee to explain his position within seven days from the receipt of notice as to why his license should not be cancelled shall be issued.

Explanation. - For the purpose of clause (f), the expression 'premises' shall mean any building, tent, vessel, land, structure, shop, booth, vehicle, boat or raft, used as human dwelling or for any other activity by a human being.

(2) If the license is cancelled for the reason mentioned in clause (c) of sub-section (1) and the conviction is set aside by the appellate court, the competent authority may restore the license to the licensee *suo-moto* or on an application made in this regard.

(3) Where the competent authority, for the reasons to be recorded, in writing, is satisfied that the question of cancellation of any license on any of the grounds mentioned in sub-section (1), is pending with it for consideration, it may, by an order, in writing, suspend the operation of the license for such period not exceeding ninety days, as may be specified in the order. The licensee shall be required to show cause within a period of fifteen days from the date of receipt of such order as to why the period of suspension of license may not be extended till the question of cancellation of license is decided by the competent authority.

(4) Before passing an order of cancellation or suspension of a license, the competent authority shall consider the matter keeping in view the interests of the emigrants and may pass such order, as it may deem appropriate.

(5) Except as otherwise provided under this Act, where a license issued to any person has been cancelled, such person shall be debarred from undertaking the profession of a travel agent.

7. Travel agent to inform the competent authority. - If any travel agent wants to give advertisement or publicity with regard to his profession or to hold seminar in respect thereof, he shall have to inform the competent authority, in writing, by giving complete details or contents thereof.

8. Surrendering of license. - (1) A travel agent may surrender his license at any time after its issuance by giving two months' notice to the competent authority and on the expiry of the notice period, the license shall be deemed to have been cancelled.

(2) The fact of cancellation of license under sub-section (2) shall be published by the competent authority in two daily newspapers having wide circulation in the locality concerned.

(3) On the cancellation of license, the travel agent shall not be entitled to refund of fee deposited by him at the time of submitting his application for obtaining license.

(4) Notwithstanding the cancellation of license under this section, the travel agent shall be liable for his acts, omissions and commissions prior to the date of cancellation of the license and he shall be proceeded against as per the provisions of this Act.

9. Appeal against order of the competent authority. - Any person, aggrieved by an order passed by the competent authority rejecting application for grant of license or to comply with any term or condition of the license or suspending or cancelling or refusing to renew the license or any other order, may prefer an appeal against such order to the Principal Secretary to Government of Punjab, Department of Home Affairs and Justice, within such period, as may be prescribed.

10. Power to search, seizure of conveyance, place and arrest of persons. - If any Executive Magistrate not below the rank of Sub-Divisional Magistrate or Gazetted police officer not below the rank of Deputy Superintendent of Police or any other officer authorized in this behalf by a special order by the State Government has reason to believe from his personal knowledge or upon information given to him by any person and taken down, in writing, that any document in respect of which an offence punishable under this Act has been committed or any document or other article, which may furnish evidence of commission of such offence, is kept or concealed in any building, conveyance or place, he may, at any time-

- (a) enter into arid search any such building, conveyance or place;
- (b) break open any door or window of any house and remove any obstacle to such entry in case of any resistance;
- (c) seize any document or substance or material used for fabrication of any document which he has reason to believe to be liable to, confiscation under this Act and any other document or article which he has reason to believe that it may furnish evidence of the commission of any offence punishable under this Act; and
- (d) detain and search, and if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act.

11. Power of investigation. - A police officer, not below the rank of a Deputy Superintendent of Police, shall conduct investigation, which shall be completed by him within a period of two months from the date of information given to him by any person. The police officer of the rank of Superintendent of Police shall verify the investigation conducted by the investigating officer. An officer, not below the rank of Senior Superintendent of Police shall act as Nodal Officer for all the investigations to be made under this Act.

12. Procedure in making confiscation. - In the trial of offences under this Act, the Court shall decide that any illegally acquired property, whether moveable or immovable, is liable to be confiscated or not and if it decides that the property is so liable, it may order confiscation of that property in the prescribed manner.

13. Penalties. - (1) Whoever, contravenes the provisions of this Act or keeps or uses the device for human smuggling, shall be punished with imprisonment for a period not less than three years, which may extend to seven years and with fine which may extend to five lakh rupees.

(2) Whoever attempts to commit any offence punishable under this Act or causes such offence to be committed and in such attempt, does any act towards the commission of the offence, shall be liable to punishment specified for the commission of the offence under this Act.

(3) Whoever abets or is a party to a criminal conspiracy to commit any offence punishable under this Act, shall, if that offence be not committed in consequence of such abetment or

criminal conspiracy, be punished with punishment for a term, which 'may extend to one fourth part of the longest term and with fine provided for such offence under this Act.

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

14. Awarding of compensation. - In addition to imposing any penalty as provided in section 13, the court may also award a reasonable amount of compensation to the aggrieved person to be paid by the travel agent.

15. Offences by companies. - (1) If the person committing any offence punishable under this Act is a Company, every person, who at the time of commission of the offence, was in-charge of, and responsible to the Company for the conduct of its business, 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 provided in 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 the offence.

(2) Notwithstanding anything contained in sub-section (1), where an 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 negligence on the part of any Director, Manager, Secretary or any other officer of the Company, such 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. - Yet the purpose of this section-

(a) "Company" means anybody corporate and includes a firm or other association of individuals; and

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

16. False information, with intend to cause public servant to use his lawful power or authority to the injury of another person. - Whoever gives to any public servant any information, which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant-

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known to him; or

(b) to use-the lawful power of such public servant to the injury or annoyance of any person, shall be punished with imprisonment for a term which may extend to six months and with fine.

17. Punishment to be without prejudice to any other action. - The 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 offence.

18. Power to make rules. - (1) Th e State Government may, by notification in the *Official Gazette*, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to thy generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) prescribing the manner, fee and documents under sub-section (I) of section 4;

(b) prescribing the form of license under sub-section (2) of section 4;

(c) prescribing the manner of renewal of license under sub-section (4) of section 4;

(d) prescribing the manner for confiscation of property under section 12; and

(g) any other matter which have to be or may be prescribed.

(3) Every rule made under this Act, shall be laid, as soon as may be after it is made before the House of the State Legislature, while it is in session, for a total period often days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the successive sessions as aforesaid, the House agrees in making any modification in the rule, or the House agrees, 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 or omitted to be done under that rule.

19. Effect of other laws. - (1) The provisions of this Act and the rules made thereunder, shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any agreement or other instrument having effect by virtue of any other law.

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

20. Delegation. - The State Government may, by notification, direct that any power or function, which may be exercised or performed by it or by the competent authority under this Act or the rules made thereunder may, in relation to such matters and subject to such conditions, if any, be also exercised or performed by any officer or authority subordinate to it, as, may be specified in that notification.

21. Protection of action taken in good faith. - (1) No suit, prosecution or other legal proceeding shall lie against any person for anything, which is done or intended to be done or order issued in good faith in pursuance of the provisions of this Act or the rules made thereunder.

(2) Save as otherwise expressly provided under this Act, no suit or other legal proceeding shall lie against the State Government for any damage caused or likely to be caused by anything done or intended to be done or order issued in good faith in pursuance of the provisions of this Act or the rules made thereunder.

22. Power to remove difficulties. - (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published in the Official Gazette, make such provision, not inconsistent with the provisions of this Act, as may appear to be necessary or expedient for removing the difficulty:

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

(2) Every order made under this section, shall be laid, as soon as may be, after it is made, before the Legislative Assembly.