

## **FOREIGNERS ACT, 1946**

**31 of 1946**

**[23rd November, 1946]**

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STATEMENT OF OBJECTS AND REASONS "At present the only permanent measures governing foreigners specifically are the Registration of Foreigners Act, 1939 and the Foreigners Act, 1864. The Act of 1939 provides for the making of rules to regulate registration of foreigners and formalities connected therewith, their movement in, or departure from, India. The Act of 1864 provides for the expulsion of foreigners and their apprehension and

detention pending removal and for a ban on their entry into India after removal; the rest of the Act which provides for report on arrival, travel under a licence and certain incidental measures can be enforced only on the declaration of an emergency. The powers under this Act have been found to be ineffective and inadequate both during normal times and during an emergency. The needs of the war emergency were met by the enactment of a Foreigners Ordinance in 1939 and the promulgation under it of the Foreigners Order and the Enemy Foreigners Order. Even at that time the need for more satisfactory permanent legislation was recognised but it was decided to postpone consideration of such a measure until after the war. The Ordinance was, therefore, replaced by the Foreigners Act, 1940, the life of which was to expire on the 30th September, 1946, but has recently been extended by the Foreigners Act (Amendment) Ordinance, 1946, up to the 25th March, 1947. Meanwhile the question of permanent legislation, more or less on the lines of the Act of 1940 has been examined, in consultation with the Provincial Governments. All Provincial Governments agree that such permanent legislation in repeal of the Act of 1864, is necessary. The Bill in the main reproduces the provisions of the Foreigners Act of 1940". -Gazette of India, 1946, Part V, page 361.

AMENDING ACT OF 42 OF 1962 "In view of the present emergency, it is necessary that powers should be available to deal with any person not of Indian origin who was at birth a citizen or subject of any country at war with, or committing external aggression against, India or of any other country assisting the country at war with or committing such aggression against India but who may have subsequently acquired Indian citizenship in the same manner as a foreigner. It is also necessary to take powers to arrest and detain and confine these persons and the nationals of all such countries under the Foreigners Act, 1946, should such need arise. 2. Since the Parliament was not in session and immediate action had to be taken in the interest of national security an Ordinance called the Foreigners Law (Application and Amendment) Ordinance, 1962, was promulgated on 30th October, 1962, to take the above powers. The object of the Bill is to convert this Ordinance into an Act of the Parliament," - S.O.P., Gaz. of Ind., 13-11-1962, Pt. II. Section 2, Ext., page 823.

### **1. Short title and extent :-**

(1) This Act may be called The Foreigners Act, 1946.

(2) It extends to the whole of <sup>1</sup>[India] <sup>2</sup> [\* \* \* \* \*].

1. Substituted for "British India", by the Foreigners (Amendment) Act, 1947 (38 of 1947), Section 2 (15-12-1947).

2. Words "except the State of Hyderabad" were omitted by Part B States (Laws) Act, 1951 (III of 1951), Section 3 and Sch. (1-4-1951).

## **2. Definitions :-**

In this Act-

<sup>1</sup> [(a) "foreigner" means a person who is not a citizen of India;]

(b) "prescribed" means prescribed by orders made under this Act;

(c) "specified" means specified by direction of a prescribed authority.

1. Substituted for the former Clause (a), by the Foreigners Laws (Amendment) Act, 1957 (II of 1957), S. 2 (w.r.e.f. 19-1-1957).

## **3. Power to make orders :-**

(1) The Central Government may by order <sup>1</sup>make provision, either generally or with respect to all foreigners or with respect of any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into <sup>2</sup>[India] or their departure therefrom or their presence or continued presence therein.

(2) In particular and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner-

(a), shall not enter <sup>2</sup>[India], or shall enter <sup>2</sup>[India] only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed'.

(b) shall not depart from <sup>2</sup>[India], or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed,

(c) shall not remain in <sup>2</sup>[India] or in any prescribed area therein;

<sup>7</sup>[(cc) shall, if he has been required by order under this section not remain in India, meet from any resources at his disposal the cost of his removal from India and of his maintenance therein pending

such removal];

(d) shall remove himself to, and remain in. such area in <sup>2</sup>[India] as may be prescribed;

(e) shall comply with such conditions as may be prescribed or specified---

(i) requiring him to reside in a particular place;

(ii) imposing any restrictions on his movements;

(iii) requiring him to furnish such proof of his identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;

(iv) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as may be prescribed or specified.

(v) requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified,

(vi) prohibiting him from association with persons of a prescribed or specified description;

(vii)prohibiting him from engaging in activities of a prescribed or specified description;

(viii)prohibiting him from using or possessing prescribed or specified articles;

(ix) otherwise .regulating his conduct in any such particular as may be prescribed or specified;

(f) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions;

<sup>9</sup>[(g) shall be arrested and detained or confined;] and may make provision <sup>10</sup>[for any matter which is to be or may be prescribed and] for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act.

<sup>5</sup>[(3) Any authority prescribed in this behalf may with respect to

any particular foreigner make orders under clause (e) <sup>12</sup> [or clause (f)] of sub-section (2).]

1. See the Foreigners Order, 1948, published in Gaz. of Ind., 1948 Pt. I, page 193 and the Foreigners (Protected Areas) Order, 1958 published in 1958, Pt. II, S. 3 (i), page 657; Foreigners (Exemption) Order, 1957, Gaz. of Ind., 1957, Pt. II, S. 3, Ext., page 200; Foreigners (Restriction on Movements) Order, 1960, Gaz. of Ind., 1960, Pt. II, S.3 (i), page 1831; Foreigners (Restriction on Activities) Order, 1962, Gaz. of Ind, 20-1-1962, Pt. II, Section 3 (i), page 62; Foreigners (Internment) Order, 1962, Gaz. of Ind, 3-11-1962, Pt. II, Section 3 (i) Ext., p. 575; Foreigners (Restriction on Chinese National) Order, 1962, Gaz. of Ind., 1962, Pt. II, S. 3 (i) Ext., p. 543. Am. by GSR 813/72, Gaz. of Ind. 1973, Pt. II S. 3 (i). Extra; Foreigners (Restricted Areas) Order, 1963, Gaz. of Ind., 1963, Pt. II, S. 3 (i), Ext., p. 61., Am. by GSR 1776 of 1971 and G.S.R. 1870 of 1971-See Gaz. of Ind., 1971, Pt. II, S. 3 (i), Extra, pp. 1179 and 1269; Internees (Discipline and Offences) Order, 1963, Gaz. of Ind., Pt. II, S. 3 (i), Ext., p. 367; Foreigners (Tribunal) Order, 1964, Gaz. of Ind., 1964, Pt. II, S. 3 (i), Ext., p. 705; Foreigners (Restriction on Pakistani Nationals) Order, 1965, Oaz. of Ind., 1965, Pt. II, S. 3 (i), p. 1463. (Am. by GSR 1844 of 1971- G.S. 1971, Pt. II, S. 3 (i). Extra., p. 1251); Foreigners (Report to Police Order 1971- Gaz. of Ind., 14-12-1971, Pt. II, S. 3 (i). Extra., p. 1353; M.P. Foreigners (Arrest, and Conditions of Detention or Confinement) Order, 1974 - M.P. Gaz., 11-1-1974, Pt. I, p.75.

2. Substituted for "British India", by Foreigners (Amendment) Act, 1947 (38 of 1947), Section 2 (15-12-1947).

7. Inserted, by Foreigners (Amendment) Act, 1947 (38 of 1947), Section 4.

9. Inserted by Act 42 of 1962, Section 3 (9) (24-11-1962).

10. Inserted by Act 38 of 1947, Section 4.

12. Substituted for "clause (f) or clause (g)" by Act II of 1957.

### **3A. Power to exempt citizens of Commonwealth countries and other persons from application of Act in certain cases :-**

(1) The Central Government may, by order,<sup>1</sup> declare that all or any of the provisions of this Act or of any order made thereunder shall not apply, or shall apply only in such circumstances or with such exceptions or modifications or subject to such conditions as may be specified in the order, to or in relation to ---

(a) the citizens of any such Commonwealth country as may be so specified, or

(b) any other individual foreigner or class or description of foreigner.

(2) A copy of every order made under this section shall be placed on the table of both Houses of Parliament as soon as may be after it is made.]

1. See Foreigners (Exemption) Order, 1957. published in Gaz. of Ind., Extra., 19-1-1957, Pt. II, S. 3, p. 200.

#### **4. Internees :-**

**1**

[(1) Any foreigner (hereinafter referred to as an internee) in respect of whom there is in force any order made under clause (g) of sub-section (2) of section 3 , directing that he be detained or confined, shall be detained or confined in such place and manner and subject to such conditions as to maintenance, discipline and the punishment of offences and breaches of discipline as the Central Government may from time to time by order determine.]

(2) Any foreigner (hereinafter referred to as a person on parole) in respect of whom there is in force any order under cl. (e) of sub-section (2) of Section 3 requiring him to reside at a place set apart for the residence under supervision of a number of foreigners, shall while residing therein be subject to such conditions as to maintenance, discipline and the punishment of offences and breaches of discipline as the Central Government may from time to time by order determine.

**2**[(3) No person shall---

(a) knowingly assist an internee or a person on parole to escape from custody or the place set apart for his residence, or knowingly harbour an escaped internee or person on parole, or

(b) give an escaped internee or person on parole any assistance with intent thereby to prevent, hinder or interfere with the apprehension of the internee or the person on parole.

(4) The Central Government may, by order<sup>3</sup> , provide for regulating access to, and the conduct of persons in, places in India where internees or persons on parole are detained or restricted, as the case may be and for prohibiting or regulating the despatch or conveyance from outside such places to or for internment or persons on parole therein of such articles as may be prescribed.]

1. Inserted by Foreigners Law (Application and Amendment) Act, 1962 (42 of 1962), Section 3 (b) (i) (24-11-1962).

2. Substituted for original sub-section (3) and (4), by Foreigners

Law (Application and Amendment) Act, 1962 (42 of 1962), S. 3 (b) (ii) (24-11-1962).

3. For some relevant Orders see Internees (Discipline and Offences) Order, 1963, published in Gaz. of Ind., 1963. Pt. II, Section 3 (i), Ext., p. 367; (ii) Foreigners (Internment) Order, 1962, published in Gaz. of Ind., 1962. Pt. II, S. 3 (i), Ext. P. 575; (iii) Foreigners (Restricted Areas), Order, 1963, Gaz. of Ind., 1963, Pt. II, S. 3 (i), Ext., p. 61.

## **5. Change of name :-**

(1) No foreigner who was in <sup>1</sup>[India] on the date on which this Act came into force shall, while in '[India] after that date, assume or use or purport to assume or use for any purpose any name other than that by which he was ordinarily known immediately before the said date.

(2) Where, after the date on which this Act came into force, any foreigner carries on or purports to carry on (whether alone or in association with any other person) any trade or business under any name or style, other than that under which that trade or business was being carried on immediately before the said date, he shall, for the purposes of sub-section (1), be deemed to be using a name other than that by which he was ordinarily known immediately before the said date.

(3) In relation to any foreigner who, not having been in <sup>1</sup>[India] on the date on which this Act came into force, thereafter enters <sup>1</sup>[India], sub-sections (1) and (2) shall have effect as if for any reference in those sub-sections to the date on which this Act came into force there were substituted a reference to the date on which he first enters <sup>1</sup>[India] thereafter,

(4) For the purposes of this section---

(a) the expression "name" includes a surname, and

(b) a name shall be deemed to be changed if the spelling thereof is altered.

(5) Nothing in this section shall apply to the assumption or use -

(a) of any name in pursuance of a <sup>5</sup> [\* \*] licence or permission granted by the Central Government; or

(b) by any married woman, of her husband's name

1. Substituted for "British India" by the Foreigners (Amendment)

Act, 1947 (38 of 1947), S. 2 (15- 12-1947).

5. Word "Royal" was omitted by the Foreigners Laws (Amendment) Act, 1957 (II of 1957), S. 6 (w.r.e.f. 19-1-1957).

## **6. Obligations of masters of vessels etc :-**

(1) The master of any vessel landing or embarking at a port in <sup>1</sup>[India] passengers coming to or going from that port by 'sea and the pilot of any aircraft landing or embarking at any place in <sup>1</sup>[India] passengers coming to or going from that place by air, shall furnish to such person and in such manner as may be prescribed a return giving the prescribed particulars with respect to any passengers for members of the crew, who are foreigners.

(2) Any District Magistrate and any Commissioner of police or, where there is no Commissioner of police, any Superintendent of police may, for any purpose connected with the enforcement of this Act or any order made thereunder, require the master of any such vessel or the pilot of any such aircraft to furnish such information as may be prescribed in respect of passengers or members of the crew on such vessel or aircraft, as the case may be.

(3) Any passenger on such vessel or such aircraft and any member of the crew of such vessel or aircraft shall furnish to the master of the vessel or the pilot of the aircraft, as the case may be, any information required by him for the purpose of furnishing the return referred to in sub-section (1) or for furnishing the information required under sub-section (2).

<sup>3</sup>[(4) If any foreigner enters India in contravention of any provision of this Act or any order made thereunder, the prescribed authority may, within two months from the date of such entry, direct the master of the vessel or the pilot of the aircraft on which such entry was effected or the owner or the agent of the owner of such vessel or aircraft, to provide, to the satisfaction of the said authority and otherwise than at the expense of Government, accommodation on a vessel or aircraft for the purpose of removing the said foreigner from India.

(5) The master of any vessel or the pilot of any aircraft which is about to carry passengers from a port or place in India to any destination outside India, or the owner or the agent of the owner of any such vessel or aircraft shall, if so directed by the Central Government and on tender of payment therefor at the current rates, provide on the vessel or aircraft accommodation to such port

or place outside India, being a port or place at which the vessel or aircraft is due to call, as the Central Government may specify, for any foreigner ordered under Section 3 not to remain in India and for his dependants, if any, travelling with him.]

**2** [(6)] For the purposes of this section---

(a) "master of a vessel" and "pilot of any aircraft" shall include any person authorised by such master or pilot, as the case may be, to discharge on his behalf any of the duties imposed on him by this section;

(b) "passenger" means any person not being a bona fide member of the crew, travelling or seeking to travel on a vessel or aircraft.

1. Substituted for "British India" by the Foreigners (Amendment) Act, 1947 (38 of 1947), S. 2 (15- 12-1947).

3. Sub-sections (4) and (5) inserted and the original sub-section '(4) was renumbered as sub-section (6), by the Foreigners (Amendment) Act, 1947 (38 of 1947), S. 5 (15-12-1947).

## **7. Obligation of hotel keepers and others to furnish particulars :-**

(1) It shall be the duty of the keeper of any premises whether furnished or unfurnished where lodging or sleeping accommodation is provided for reward, to submit to such person and in such manner such information in respect of foreigners accommodated in such premises, as may be prescribed.

Explanation.- The information referred to in this sub-section may relate to all or any of the foreigners accommodated at such premises and may be required to be submitted periodically or at any specific time or occasion.

(2) Every person accommodated in any such premises shall furnish to the keeper thereof a statement, containing such particulars as may be required by the keeper for the purpose of furnishing the information referred to in sub-section (1).

(3) The keeper of every such premises shall maintain a record of the information furnished by him under sub-section (1) and of the information obtained by him under sub-section (2) and such record shall be maintained in such manner and preserved for such period as may be prescribed, and shall at all times be open to inspection by any police officer or by a person authorised in this behalf by the district magistrate.

<sup>1</sup> [(4) If in any area prescribed in this behalf the prescribed authority by notice published in such manner as may in the opinion of the authority be best adapted for informing the persons concerned so directs, it shall be the duty of every person occupying or having under his control any residential premises to submit to such person and in such manner such information in respect of foreigners accommodated in such premises as may be specified, and the provisions of sub-section (2) shall apply to every person accommodated in any such premises].

1. Inserted by the Foreigners (Amendment) Act, 1947 (38 of 1947), 'Section 6 (15-12-1947).

### **7A. Power to control places frequented by foreigners :-**

(1) The prescribed authority may, subject to such conditions as may be prescribed, direct the owner or person having control of any premises used as a restaurant or as a place of public resort or entertainment or as a club and frequented by foreigners---

(a) to close such premises either entirely or during specified periods; or

(b) to use or permit the use of such premises only under such conditions as may be specified, or

(c) to refuse admission to such premises either to all foreigners or to any specified foreigner or class of foreigner.

(2) A person to whom any direction has been given under sub-section (1) shall not, while such direction remains in force, use or permit to be used any other premises for any of the aforesaid purposes, except with the previous permission in writing of the prescribed authority and in accordance with any conditions which that authority may think fit to impose.

(3) Any person to whom any direction has been given under sub-section (1) and who is aggrieved thereby may, within thirty days from the date of such direction, appeal to the Central government; and the decision of the Central Government in the matter shall be final.

### **8. Determination of nationality :-**

(1) When a foreigner is recognised as a national by the law of more than one foreign country or where for any reason it is uncertain what nationality if any is to be ascribed to a foreigner, that

foreigner may be treated as the national of the country with which he appears to the prescribed authority to be most closely connected for the time being in interest or sympathy or if he is of uncertain nationality, of the country with which he was last so connected: Provided that where a foreigner acquired a nationality by birth, he shall, except where the Central Government so directs either generally or in a particular case, be deemed to retain that nationality unless he proves to the satisfaction of the said authority that he has subsequently acquired by naturalization or otherwise some other nationality and still recognised as entitled to protection by the Government of the country whose nationality he has so acquired.

(2) A decision as to nationality given under sub-section (1) shall be final and shall not be called in question in any court: Provided that the Central Government, either of its own motion or on an application by the foreigner concerned, may revise any such decision.

**9. Burden of proof :-**

If in any case not falling under Section 8 any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner of a particular class or description the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall notwithstanding anything contained in the Indian Evidence Act, 1872, lie upon such person.

**10. Power to exempt from application of Act :-**

Omitted by Foreigners Laws (Amendment) Act, 1957 (II of 1957) S. 7 (w.r.e.f. 19-1-1957)].

**11. Power to give effect to orders, directions, etc :-**

(1) Any authority empowered by or under in pursuance of the provisions of this Act to give any direction or to exercise any other power, may, in addition to any other action expressly provided for in this Act, take, or cause to be taken such steps and use, or cause to be used, such force as may, in its opinion, be reasonably necessary for securing compliance with such direction or for preventing or rectifying any breach thereof, or for the effective exercise of such power, as the case may be.

(2) Any police officer may take such steps and use such force as

may, in his opinion, be reasonably necessary for securing compliance with any order made or direction given under or in pursuance of the provisions of this Act or for preventing or rectifying any breach of such order or direction.

(3) The power conferred by this section shall be deemed to confer upon any person acting in exercise thereof a right of access to any land or other property whatsoever.

**12. Power to delegate authority :-**

Any authority upon which any power to make or give any direction, consent or permission or to do any other act' is conferred by this Act or by any order made thereunder may, unless express provision is made to the contrary, in writing authorise, conditionally or otherwise, any authority subordinate to it to exercise such power on its behalf, and thereupon the said subordinate authority shall, subject to such conditions as may be contained in the authorisation, be deemed to be the authority upon which such power is conferred by or under this Act.

**13. Attempts, etc., to contravene the provisions of this Act, etc :-**

(1) Any person who attempts to contravene, or abets or attempts to abet, or does any act preparatory to, a contravention of the provisions of this Act or of any order made or direction given thereunder, or fails to comply with any direction given in pursuance of any such order, shall be deemed to have contravened the provisions of this Act.

(2) Any person who, knowing or having reasonable cause to believe that any other person has contravened the provisions of that Act or of any order made or direction given thereunder, gives that other person any assistance with intent thereby to prevent, hinder or otherwise interfere with his arrest, trial or punishment for the said contravention shall be deemed to have abetted that contravention.

(3) The master of any vessel or the pilot of any aircraft, as the case may be, by means of which any foreigner enters or leaves "[India] in contravention .of any order made under, or direction given in pursuance of. Section 3 shall, unless he proves that he exercised all due diligence to prevent the said. contravention, be deemed to have contravened this Act.

**14. Penalty for contravention of provisions of the Act, etc :-**

**1** . Whoever

(a) remains in any area in India for a period exceeding the period for which the visa was issued to him;

(b) does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder;

(c) contravenes the provisions of this Act or of any order made thereunder or any direction given in pursuance of this Act or such order for which no specific punishment is provided under this Act, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if he has entered into a bond in pursuance of clause (f) of sub- section (2) of Section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the convicting court why such penalty should not be paid by him.

Explanation. For the purposes of this section, the expression "visa" shall have the same meaning as assigned to it under the Passport (Entry into India) Rules, 1950 made under the Passport (Entry into India) Act, 1920 (34 of 1920).

1. Substituted by Foreigners (Amendment) Act, 2004, [No. 16 OF 2004], [February 20, 2004]

**14A. Penalty for entry in restricted areas, etc :-**

**1** . Whoever

(a) enters into any area in India, which is restricted for his entry under any order made under this Act, or any direction given in pursuance thereof, without obtaining a permit from the authority, notified by the Central Government in the Official Gazette, for this purpose or remains in such area beyond the period specified in such permit for his stay; or

(b) enters into or stays in any area in India without the valid documents required for such entry or for such stay, as the case may be, under the provisions of any order made under this Act or any direction given in pursuance thereof, shall be punished with imprisonment for a term which shall not be less than two years, but may extend to eight years and shall also be liable to fine which shall not be less than ten thousand rupees but may extend to fifty thousand rupees; and if he has entered into a bond in pursuance of

clause (f) of sub-section (2) of Section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting court why such penalty should not be paid by him.

1. Inserted by Foreigners (Amendment) Act, 2004, [No. 16 OF 2004], [February 20, 2004]

**14B. Penalty for using forged passport :-**

**1** . Whoever knowingly uses a forged passport for entering into India or remains therein without the authority of law for the time being in force shall be punishable with imprisonment for a term which shall not be less than two years, but may extend to eight years and shall also be liable to fine which shall not be less than ten thousand rupees but may extend to fifty thousand rupees.

1. Inserted by Foreigners (Amendment) Act, 2004, [No. 16 OF 2004], [February 20, 2004]

**14C. Penalty for abetment :-**

**1** . Whoever abets any offence punishable under Section 14 or Section 14-A or Section 14-B shall, if the act abetted is committed in consequence of the abetment, be punished with the punishment provided for the offence.

Explanation. For the purposes of this section,

(i) an act or offence is said to be committed in consequence of the abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the offence;

(ii) the expression "abetment" shall have the same meaning as assigned to it under Section 107 of the Indian Penal Code (45 of 1860).

1. Inserted by Foreigners (Amendment) Act, 2004, [No. 16 OF 2004], [February 20, 2004]

**15. Protection to persons acting under this Act :-**

No suit, prosecution or other legal- proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

**16. Application of other laws not barred :-**

The provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Registration of Foreigners Act,

1939, the Indian Passport Act, 1920, and of any other enactment for the time being in force.

**17. Repeals :-**

Repealed by the Repealing and Amending Act, 1950 (35 of 1950), Section 2 and Schedule 1. (19-4-1950).]