

# ILO Convention 181: Issues and Challenges in the Context of Private Placement Agencies in India

NLI Research Studies Series  
No. 109/2013

Ellina Samantroy



**V.V. Giri National Labour Institute**

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# ILO Convention 181: Issues and Challenges in the Context of Private Placement Agencies in India

Ellina Samantroy\*



**V.V. Giri National Labour Institute**

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\* Dr. Ellina Samantroy is Associate Fellow, V.V. Giri National Labour Institute, Noida  
Email: [ellinasamantroy@gmail.com](mailto:ellinasamantroy@gmail.com)

ISBN: 978-93-82902-01-0

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No. of Copies : 300

Year of Publication : 2013

This document can be downloaded from the Institute's website:  
at [www.vvgnli.org](http://www.vvgnli.org)

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Printed and Published by V.V. Giri National Labour Institute, Sector - 24,  
NOIDA - 201301, U.P.

Printed at: Chandu Press, D-97, Shakarpur, Delhi -110092.

## Preface

The changes in world of work in recent years have brought a new set of challenges to economies and labour market. With the shifts in the nature of work, the demand for the workforce has also seen fluctuations. Globalization, changing market trends, unpredictability and the demographic evolution has contributed to new attitudes towards work. Adapting labour markets to these dynamics is one of the challenges that the developing countries are facing. Within these developments, the expansion of productive employment opportunities to people and the role of labour market intermediaries assume crucial importance.

With the flexibility of labour market and changing nature of work there has been tremendous growth of Private employment agencies and it is believed that these agencies would contribute positively in addressing the global employment challenge to a large extent. Economic liberalism and international competition led to increasing acceptance of the role that private employment agencies could play in improving the functioning of the labour market. Their spectacular growth since then has been linked to the need to provide services to a rapidly developing and increasingly flexible labour market. With these developments there were also subsequent formulations of international labour standards by the International Labour Organisation through the Private Employment Agencies Convention 1997 (No. 181). The purpose of this Convention is to allow the operation of private employment agencies as well as to protect the workers using their services.

In the above background, the study aims at developing an understanding about the various Private Placement Agencies, their modes of operation and the kinds of employment opportunities they provide. This study expounds how the regulatory regimes of different countries have embraced policy measures, to address the issues and concerns which came forth with the emergence of private placement agencies. The study has also analyzed the legislations of countries that have ratified the ILO convention 181 as well as who have not ratified it but have made a separate law catering to the issues of private placement agencies.

Finally, the study arrives at recommendations for the policy makers underscoring that the private placement agencies can maximize their contribution to labour market and play an eminent role in meeting the

challenges of the new economic reality. However, at the same time they should be regulated in order to facilitate their smooth functioning. On the whole, the study is an important contribution to the area of Placement industry, thereby recognizing the role of Private Placement Agencies in creation of diverse employment opportunities in a developing nation like India. It is also an important addition to a wide array of academic debates on regulation and monitoring of agency work in order to facilitate them to contribute more efficiently in addressing various labour market challenges.

I am sure that this work, will definitely prove to be a valuable asset in guiding the policy makers, planners, social scientists, civil society organizations, researchers, social partners, stakeholders, Trade unions in contributing sincerely in this field and designing effective policies for regulation and smooth functioning of placement industry in India.



**V.P. Yajurvedi**

Director General

V.V. Giri National Labour Institute

Noida

## Acknowledgement

I take this opportunity to express my gratitude to many people who have been instrumental in the successful completion of this work.

I owe my profound gratitude to Shri A.C.Pandey, Joint Secretary (Ministry of Labour and Employment, Government of India) for entrusting V.V.Giri National Labour Institute with the responsibility to undertake this study. He has been a constant source of inspiration in the entire endeavour.

I would like to express my special thanks to Shri V.P. Yajurvedi, Director General of V.V Giri National Labour Institute for endorsing his faith in me by giving me the opportunity to take up this study. His constant encouragement and guidance has really helped me in accomplishing this research.

I would like to extend my sincere gratitude to Late Shri. Vikas, Director, Ministry of Labour and Employment for his valuable insights and suggestions. My sincere thanks to Mr. Coen Kompier, Mr. Paul Comyn, Ms. Seeta Sharma, Ms. Suneetha Elluri (International Labour organization) Ms. Amarjeet Kaur, Shri A.S Khan, Shri Jitender Kumar( DGE&T); Shri K.C Behera (Ministry of Overseas Indian Affairs); Ms. Rituparna Chakraborty, Mr. Vikas Kamboj (Indian Staffing Federation), Ms. Bettina Schaller (CIETT), Mr. Abhijit Sarkar (Indicus), Mr Sanjib Pradhan,(JNU, New Delhi), Mr. M. Bheem Reddy(Migrants Rights Council),Shri Piyush Sharma (Labour Department Delhi), Mr Manab Chakraborty and Mr. Vivek Kaushik of Bodhcrew Services for their constant support and intellectual insights in enriching the study. In addition to this, I express my sincere gratitude to all those institutions and individuals who extended their support during the literature collection and other information for research work.

Sincere thanks are also due to all the resource persons and participants of the workshop held on 22nd July 2013 at V.V. Giri National Labour Institute to disseminate the findings of the study. Their comments and suggestions have indeed contributed a lot in enriching the study.

I would like to express my deepest appreciation to my colleagues Dr. S.K Sasikumar, Dr Helen Sekar, Dr. Sanjay Upadhyay, Dr Anoop Satpathy, Dr.Onkar Sharma, Mr. Otojit Kshetrimayum, Mr. Amitav Khuntia & Dr. Rinju Rasaily for the valuable information provided by them in their

respective fields. I would also like to thank all the officers and staff of VVG NLI for their efforts in smooth facilitation of the study.

My heartfelt thanks to Ms. Pushpa Goswami, Research Associate, VVG NLI for her constant support at various stages of the study. The intellectual discussions and exchange of ideas with her has really been fruitful in enriching the study. This study would not have reached its final shape without her technical expertise, dedication and commitment towards work.

Last but not the least, I would like to express special thanks to Mr. Ashish Singh Negi and Mr. Zubair Alam Ansari for their tremendous support in eliciting relevant information from the field.

**Ellina Samantroy**

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## List of Acronyms and Abbreviations

ANPE: French PES

C-181: Convention – 181

CIETT: European Confederation of Private Employment Agencies

DGE&T: Directorate General of Employment Training

EAS: Employment Agency Standards

EAS: Employment Agency Standards Inspectorate

ECNR: Emigration Check Not Required

ECR: Emigration Check Required

EEA: European Economic Area

EECNV: Employment Exchange Compulsory Notification Act

EMB: Emigration Management Bill

EMI: Equated Monthly Installment

Eurostat: Statistical Office of the European Communities

EUTC: European Utilities Telecom Council

FNV: De Federatie Nederlandse Vakbeweging / Federation of Dutch Trade Unions

GCC: Gulf Cooperation Council

GCE: General Certificate of Education

GDP: Gross Domestic Product

GOI: Government of India

IHRB: Institute of Human Rights and Business

ILO: International Labour Organisation

IOE: International Organisation of Employers

IOM: International Organization for Migration

ISF: Indian Staffing Federation

IT: Information Technology

ITUC: International Trade Union Confederation  
JWG: Joint Working Group  
L&E: Labour & Employment  
MOIA: Ministry of Overseas Indian Affairs  
MRC: Migrants Rights Council  
NCEUS: National Commission for Enterprises in the Unorganised Sector  
NCR: National Capital Region  
NSDC: National Skill Development Corporation  
NSSO: National Sample Survey Organisation  
OECD: Organisation for Economic Co-operation and Development  
PARES: Partnerships between Employment Services  
PES: Public Employment Services  
POE: Protector General of Emigrants  
PPP: Public Private Partnership  
PrEAs: Private Employment Agencies  
SNA: Stichting Normering Arbeid  
SNCU: Stichting Naleving CAO Uitzendkrachten  
TAW: Temporary Agency Work  
TLO: Turkish Labour Organization  
TWA: Temporary work agencies  
UAE: United Arab Emirates  
UK: United Kingdom  
UN: United Nations  
UNIFEM: United Nations Development Fund for Women  
UPEA: Albanian Union of Private Employment Agencies  
UT: Union Territories  
WAADI: Wet Allocatie Arbeidskrachten Door Intermediairs  
WB: World Bank

# Chapter 1

## Introduction

### 1.1 Background

The onset of globalization and international competition has led to significant changes in the labour market. Such changes have not only brought about a plethora of employment opportunities but at the same time they have also led to creation of new forms of employment. There has been an ongoing process of debates on the role of labour institutions and their regulations in the current era of globalization. Disappointing job growth and poor-quality jobs continue to characterize the labour markets of many developing countries, even in those countries that have experienced high rates of economic growth. The recent ILO Report on Global Employment Trends 2012 refers to serious employment challenge and decent work deficits throughout the globe.<sup>1</sup>

*After three years of continuous crisis conditions in global labour markets and against the prospect of a further deterioration of economic activity, there is a backlog of global unemployment of 200 million – an increase of 27 million since the start of the crisis. In addition, more than 400 million new jobs will be needed over the next decade to avoid a further increase in unemployment. Hence, to generate sustainable growth while maintaining social cohesion, the world must rise to the urgent challenge of creating 600 million productive jobs over the next decade, which would still leave 900 million workers living with their families below the US\$2 a day poverty line, largely in developing countries.(ILO,2012)<sup>2</sup>*

Admst, these labour market challenges, the creation of productive jobs has been a challenging task with the policy makers throughout the globe. The ILO's Decent Work Agenda further reinforces the idea of providing better working conditions for the workers. It provides both an over arching framework and a set of mechanisms and strategies to achieve "a fair globalization" with robust wealth and income distributive mechanisms. Decent work sums up the aspirations of people in their working lives. It involves opportunities for productive work that delivers a fair income, security in the workplace and social protection for families; better prospects for personal development and social integration; freedom for people to

<sup>1</sup> For details refer to *Global Employment Trends 2012: Preventing a Deeper Job Crisis*, International Labour Organisation 2012.

<sup>2</sup> Ibid

express their concerns, to organize and participate in the decisions that affect their lives; and equality of opportunity and treatment for all women and men<sup>3</sup>.

The phenomenon of a high level of employment of casual wage labour in the informal market through sub contracting, is not only restricted within national boundaries, but also extends to global supply chains. Globalization led capital centric development is resulting in informalisation, and the casualisation of labour force across the globe. Inadequate availability of productive jobs is now a worldwide phenomenon. Global forces, cross border flows of trade, capital and labour-have significant consequences for employment in individual countries. (Ghosh *et al* 2008). There has been severe consequences like persistence of high level of youth unemployment, low occupational mobility, low labour force participation rates (especially for women in a country like India) and lack of decent working conditions.

Against this backdrop, it becomes imperative to consider expansion of productive employment opportunities to people where the role of labour market intermediaries is of crucial importance. With the flexibility of labour market and changing nature of work there has been tremendous growth of Private employment agencies and it is believed that these agencies would contribute positively in addressing the global employment challenge to a large extent. Economic liberalism and international competition led to increasing acceptance of the role that private employment agencies could play in improving the functioning of the labour market. Their spectacular growth since then has been linked to the need to provide services to a rapidly developing and increasingly flexible labour market. While they have long complemented the traditional employment market, they are more recently been seen as a catalyst for new forms of human resource management services that can contribute strongly to improvements in working conditions. (ILO 2009)<sup>4</sup>. With these developments there were subsequent formulation of international labour standards by the International Labour Organisation through the Private Employment Agencies Convention 1997(No. 181). Convention No. 181 balances enterprises' needs for flexibility to expand or reduce their workforce with workers' needs for employment

<sup>3</sup> ILO. 2006. Decent Work FAQ: Making Decent Work a Global Goal (available at [www.ilo.org](http://www.ilo.org)).

<sup>4</sup> See *Private Employment Agencies, Temporary Agency Workers and their Contribution to Labour Market*, Issues paper for discussion at the Workshop to promote ratification of the Private Employment Agencies Convention, 1997 (No. 181) (20–21 October 2009), Geneva 2009 International Labour Organization 2011

stability, a safe work environment, decent conditions of work, and a safety net when they are unable to work.(ILO,2009)<sup>5</sup>

## 1.2 Private Employment Agencies Convention 1997 (No. 181)

The convention No.181 concerning Private Placement Agencies was adopted by the General Conference of the International Labour Organisation in its 85th Session on 3rd June 1997. It replaces the Fee charging Employment Agencies Convention 1949 as a follow up to the decision of International Labour Conference at its 81st session,1994 to revise the Fee-charging Employment Agencies Convention (revised)1949. Convention 181 replaces the Fee-Charging Employment Agencies Convention of 1949 (No. 96), effectively abandoning the ILO's restrictive or prohibitive policy towards private employment agencies and encouraging the effective operation of services provided by private employment agencies, and especially temporary work agencies.

Following these developments and debate on this among governments, employers and trade unions in the 1990s, the ILO's tripartite constituents in the International Labour Conference voted for Convention No. 181, which aims "to allow the operation of private employment agencies as well as the protection of the workers using their services" (Article 2)<sup>6</sup>. Employers acknowledged that it represented major progress over the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), and that recognition of private employment agencies' role could not be obtained without regulation, such as licensing, certification, prohibition of charging fees to workers (apart from certain exceptions), and establishing respective responsibilities of employment agencies and user enterprises regarding agency work. Worker delegates at the 85th Session (1997) of the International Labour Conference overcame their initial opposition to private employment agencies and supported the proposed Convention because it offered protection to temporary and migrant workers and an opportunity to reduce unfair competition from unregulated recruitment agents frequently associated with malpractice and abuse (ILO, 2011)<sup>7</sup>.The

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<sup>5</sup> Ibid

<sup>6</sup> See annexure 1

<sup>7</sup> For details on background of the convention see *Private Employment Agencies, Temporary Agency Workers and their Contribution to Labour Market*, Issues paper for discussion at the Workshop to promote ratification of the Private Employment Agencies Convention, 1997 (No. 181) (20–21 October 2009), Geneva 2009, International Labour Organization 2011



Convention came into force in May 2000 and presently 25 countries have ratified the Convention.<sup>8</sup>

The new convention recognizes the role which private employment agencies may play in a well functioning labour market as well as the need to protect workers against abuses taking into account the importance of flexibility in the functioning of labour markets. The purpose of this Convention is to allow the operation of private employment agencies as well as to protect the workers using their services. The Convention Provides for cooperation between private and public employment services, general principles to protect jobseekers against unethical or inappropriate practices, and protection of workers under subcontracting arrangements and workers recruited from abroad. Meanwhile, liberalization and competition led to agencies increasingly being seen by user enterprises and by many governments as smoothening the functioning of labour markets. The growth of agencies thereafter has been linked to providing services to facilitate labour market flexibility.

#### *Status of Convention 181 in India: Attempt towards Ratification*

With regard the status of ratification of the Convention it is found that though India has not ratified the Convention sincere efforts are undertaken by the government of India for regulation of Private Placement Agencies. The structural constraints identified in the process of ratification are the peculiar labour market situation in the country with a vast majority i.e. 94 percent of the population in the unorganized sector. However, the other factors responsible for the non ratification of Convention 181 is the lack of data base on the number of private placement agencies operating in India and the lack of compatibility between the existing laws on private placement agencies and the provisions of the Convention.

Countries that have not yet ratified Convention No. 181 are encouraged to do so, as its implementation can be an engine for job creation, structural growth, improved efficiency of national labour markets, better matching of supply and demand for workers, higher labour participation rates and increased diversity. It also sets a clear framework for regulation, licensing and self-regulation, thereby encouraging reliability; ensuring effective

<sup>8</sup> Albania, Algeria, Belgium, Bosnia and Herzegovina, Bulgaria, Czech Republic, Ethiopia, Finland, Georgia, Hungary, Italy, Japan, Lithuania, Republic of Moldova, Morocco, Netherlands, Panama, Poland, Portugal, Slovakia, Spain, Suriname, Uruguay, Israel, Yugoslavia

protection of workers against unfair practices; discouraging human trafficking; and promoting cooperation between public and private employment services. The International Labour Organisation believes that ratification could help to promote and implement the Decent Work Agenda by ensuring protection of the rights and working conditions of agency workers.

Within the Indian context, the question of bringing a legislation to regulate private placement agencies has been considered at various forums. A Committee on Private Placement Agencies was constituted under the Chairmanship of Principal Secretary (L&E), Government of Gujarat with representatives from Governments of Maharashtra, Rajasthan, Punjab and DGE&T to evolve guidelines on operation of Placement Agencies. Accordingly, the guidelines on regulation of Private Placement Agencies were finalized in the meeting of the said committee held on 26.9.2003 and the Committee unanimously recommended for its adoption and thereafter, these guidelines were issued to all the States/UTs by DGE&T on 30.10.2003. It is now left to the respective State Governments to frame regulation and/or guideline for monitoring the private placement agencies keeping in view the current position and local needs.<sup>9</sup>

In view of these developments, it becomes imperative to examine the existing mechanism, measures, legal framework, etc. to find out if they are aligned with C-181. Moreover there arises a need to uncover the gaps in existing legislations and thereby explore the possibility of formulating a new legislation concerning Private Placement Agencies.

### 1.3 Private Employment Agencies at a Glance

The increasing flexibility of labour markets in the last few decades has led to the growth of Private Employment Agencies. The private employment agencies are considered to play an important role in effective functioning of labour markets. Private Employment Agencies or *agency work* has received considerable attention due to its huge contribution in addressing the demands of the changing labour market. Private placement agencies or temporary work agencies are intermediaries in modern labour markets that allow enterprisers to have more flexibility to increase or decrease their workforces, while ensuring for the workers sufficient security in terms of job opportunities and employment standards including pay,

<sup>9</sup> For the copy of guidelines see annexure II

working time and training.(ILO,2009)<sup>10</sup>. The Private Employment Agency industry has grown at an incredible pace over the past three decades due to the increasing need to provide workers and services to a growing and flexible labour market. User enterprises hire temporary agency workers to be able to rapidly adjust to the shifting economic realities. The placement agencies popularly termed as PrEAs Private Employment Agencies have contributed significantly to the job market demands of the European Union. The Private Employment Agency (PrEA) industry is one of the largest private employers in Europe: In 2006, PrEAs employed 3.3 million agency workers employed daily in full-time equivalent. On average, the PrEA industry accounts for 1.8% of the European total employment. (CIETT, 2008)<sup>11</sup>

Over the past 30 years, employment agencies have become large-scale labour market intermediaries, acquiring the status of brokers of flexibility at both the micro level (meeting the preferred needs of individuals and enterprises) and the macro level (managing economic uncertainty and risk across labour markets) (Peck and Theodore 2007). There has been growing opposition from various governments to abolish private placement agencies who later on revised their policies to prevent PrEAs from operating in the market. In this spirit the ILO Convention 181 was adopted in 1997 which replaced the earlier standards that were aimed at abolition of these placement agencies. The convention recognizes the role of Private Employment Agencies in their contribution to the labour market and also sets general parameters for the regulation, placement and employment of workers recruited by these agencies. At the same time, the Convention promotes cooperation between the public employment services (PES) and PrEA to ensure the most efficient functioning of the labour market, with the PES still maintaining the authority in formulating labour market policies. The Private Employment Agencies Recommendation No. 188<sup>12</sup> relates to Convention No. 181 and specifies provisions for this cooperation. (ILO 2007)

<sup>10</sup> *Private Employment Agencies, Temporary Agency Workers and their Contribution to Labour Market*, Issues paper for discussion at the Workshop to promote ratification of the Private Employment Agencies Convention, 1997 (No. 181) (20–21 October 2009), Geneva: International Labour Organization.

<sup>11</sup> Founded in Paris in 1967, Ciett is the authoritative voice representing the interests of the private employment agencies across the world. It is recognised as such by international bodies (e.g. European Union, International Labour Organisation, OECD, IOM) as well as by key stakeholders (IOE, ITUC, Business Europe).

<sup>12</sup> See appendix on recommendation 188.

### 1.3.1 Defining Private Placement Agencies

There have been wide ranging discourses on the definition and functions of private employment agencies. Traditionally, private employment agencies have been defined as private enterprises that employ workers to make them available to a third party that assign and supervise their tasks. In countries where this is not allowed, private employment agencies act as brokers between workers and companies. Some popular viewpoints on Private Employment Agents is offered by scholars like Thomas Martinez:

*Private employment agents can exist only while labour is a commodity subject to free pricing within a market economy and when the labourer is free to leave his employment or geographic area in pursuit of better wages and/or working conditions. The social role of private employment agent developed within a social context characterized by four general societal processes1) increasingly rational, efficient solutions to labour problems in a rapidly changing economy (2) expanding opportunities for entrepreneurs; (3) changing social and self-conceptions of workers and (4) changing legal definitions of the nature of the relationship between workers, employers and job middlemen.(1976)*

Since there is no standard definition followed in India for Private Employment Agency, the following definition is considered for the purpose of the present study and the Private Employment Agencies are termed as *Placement Agencies* throughout the study:

*Private Employment Agency:* Article 1 of Convention No. 181 defines this as any enterprise or person, independent of the public authorities, which provides one or more of the following labour market services: (a) services for matching offers of and applications for employment; (b) services for employing workers with a view to making them available to a third party ("user enterprise"); 4 or (c) other services relating to job seeking, such as the provision of information, that do not aim to match specific employment offers and applications. Agencies are generally prohibited from charging workers for finding work; however, Article 7(2) of the Convention envisages some exceptions for certain categories of workers (for example in the entertainment industries).

However, there have been diverse viewpoints with regard to the issue of operation of private employment agencies. Some of these viewpoints have been expressed in various international forums. For example the recent discussions in the Russian Federation, South Africa and elsewhere over possible changes to labour legislation, with some groups favouring a ban on

labour brooking, while others preferred reforms to enhance the functioning and regulation of private employment agencies. Agencies are a growing force in many sectors in an increasing number of countries. In recent years, the largest agencies have pursued strategies of internationalization and diversification, entering new geographical markets, transforming labour markets and making temporary work more acceptable to jobseekers in an increasing number of countries. (ILO, 2011)<sup>13</sup>. There have been two critical perspectives on agency work highlighted by the International Labour Organisation; firstly, agencies growth has coincided with the with the deregulation of the labour market and those who are critical of this frequently blame agencies for being a driving force behind that deregulation, and not just the beneficiary. Secondly, there are still many unscrupulous agencies which exploit the naivety and desperation of workers and others in vulnerable situations – often foreigners, many of them irregular migrants and give the whole agency industry a bad name.

Inspite of these criticisms private employment agencies are evolving as they increasingly offer more comprehensive services beyond these basic staffing services in many developing countries like India. Keeping in view, the large informal sector in India it becomes an urgent necessity to understand the role of private placement agencies in employment generation and also assure decent working conditions to workers recruited through these agencies.

### ***1.3.2 Private Placement Agencies in India***

There are different types of Private Placements Agencies working in India catering to various labour market needs. Some of the placement agencies providing services to some specific sectors are regulated through various legislations. But there are many Private Placement Agencies providing diverse job opportunities which are not covered under any legislation. However, for the purpose of the present study, and on the basis of their regulation/coverage these can be broadly classified into the following four categories.

- i) **Manpower Export and Placement Agencies-** These are covered under Immigration Act, 1983

<sup>13</sup> Private employment agencies, promotion of decent work and improving the functioning of labour markets in private services sectors Issues paper for discussion at the Global Dialogue Forum on the Role of Private Employment Agencies in Promoting Decent Work and Improving the Functioning of Labour Markets in Private Services Sectors (18–19 October 2011), Geneva: International Labour Organisation.

- ii) Labour Contractors-These are covered under Contract (Abolition & Regulation) Act, 1970 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
- iii) Private Securities Agencies – Governed by Private Security Agencies (Regulation) Act, 2005
- iv) Private Placement Agencies catering to specific needs of the employer / labour market mainly operating for domestic needs and not covered by any specific Act – Some States/UTs register them under their Shop & Establishment Act<sup>14</sup>

The temporary and contract workers employed through private placement agencies in India face a plethora of problems like charging of fee for certain category of workers, particularly international migrant workers to cover visa fee, processing fee etc. Apart from this there are many placement agencies basically belonging to the fourth category which provide different kinds of placement services and are highly unregulated. Lack of regulation, licensing and a well defined labour law concerning Private Placement Agencies have led to their illegal operation and exploitation of jobseekers.

Against this backdrop, the demand for ratification of the convention 181 poses many challenges for the government and the policy makers in India. It is believed that the current Contract Labour Act includes certain provisions underlined by the Convention 181 but there is a need to bring the Contract Labour system in India in line with international norms. International experience reveals that several countries in the European Union have reformed legislation in line with Convention 181. The Euro CIETT (European Confederation of Private Employment Agencies) is the authoritative voice representing the interests of agency work business in Europe and has been instrumental in improving labour market efficiency thereby increasing participation and diversity in employment. Many countries like Turkey have drafted legislations in accordance with International Standards. The legislations regulate the private employment agencies under Turkish Labour law. Countries like China have developed a rating system for agencies to ensure quality of service operations and protection of workers.

<sup>14</sup> Such classifications were made after series of discussions and meetings in the Ministry of Labour and Employment regarding ILO Convention 181 and later on formulated by DGE&T,GOI

However in a country like India where the majority of the workforce is in the unorganized sector and being a manpower exporting country there is an urgent necessity to address the issue of temporary and contract workers recruited through these agencies. In this context the present study endeavours to understand the peculiar labour market scenario of India with majority of workers engaged in the unorganized sector and analyze the obstacles in ratification of the convention 181. The study would also attempt to understand the various legislations existing in the country and find its alignment with the convention 181 and also analyze cross country perspectives in regulating Private Placement Agencies.

Some of the private placement agencies working in India are now covered under the umbrella of Indian staffing Federation (ISF). The ISF is a recent venture which came into existence in post-liberalization period in 2011 created by leading staffing companies in the country with one common goal—staffing India’s growth. The staffing industry provides a platform for recognized employment, work choice, even compensation, annual benefits and health benefits for the temporary workforce that constitutes around 40 % of India’s total workforce. Staffing creates jobs that would not otherwise exist, enhancing competitiveness and workers employability, thereby promoting a labour market that corresponds better to the needs and aspirations of peoples and companies (ISF, 2012). ISF comprises of 26 member companies who collectively provide employment to over 3.5 lakh people throughout the country.

#### **1.4 Rationale, Scope and Objective of the Study**

The present study is contextualized on the basis of above mentioned arguments and the need to develop a thorough understanding about Private Placement Industry .The recent developments in the European countries about staffing industry or Private Employment Agencies and their contribution to flexible labour markets provide enough impetus to explore the role of Placement Industries in India. Apart from looking at the recruitment practices, regulatory framework and legal provisions concerning Private Placement Agencies, the study also tries to understand relatively new concepts like *flexi staffing* or *temporary staffing* and their role in addressing the needs of the present labour market scenario in a country where temporary work or agency work had not received much attention.

The objectives of this study are as follows:

1. To develop an understanding about the various private placement agencies, their modes of operation and the kinds of employment opportunities they provide.
2. To examine the existing mechanism, measures, legal framework etc and find out if they are aligned with C 181.
3. To identify the legal status, licensing of private employment agencies and also explore the prospects for developing a regulatory framework
4. To understand cross country perspectives and examine the low ratification rate of C 181 among countries.
5. To ascertain the need for new legislation by finding gaps in the existing legislations.

## 1.5 Methodology

The study is based on analysis of both primary and secondary data. Secondary data was collected from books, journals, periodicals, official records, published governmental reports, reports of international agencies, newspapers etc. Conceptual and theoretical understanding was developed through rigorous review of literature. The study referred to data sources like Census, NSSO, NCEUS etc. The study also referred to the ILO sources for information about ILO conventions and other relevant ILO publications required for the study. Various reports published from ISF (Indian Staffing Federation) and CIETT were also analyzed in the present study.

For primary data collection the universe of the study was Delhi & NCR (National Capital Region). Sampling procedure involved sample size of 100 placement agencies selected randomly from eighteen areas of Delhi and NCR according to high frequency of their existences in certain pockets of Delhi. The choice of these pockets depended upon the insights from the meetings with stakeholders and newspapers. The primary survey was conducted through the help of questionnaire & supplemented through in-depth interviews and some case studies. In order to avoid the bias, the field survey also included the method of participant observation through interaction with Private Placement Agencies as jobseekers without disclosing the identity of the researcher. The primary survey also involved the identification of control group comprising of 100 (Job seekers) selected randomly from the same localities as of agencies.

The number of Placement Agencies covered from various areas of Delhi and NCR are as follows:

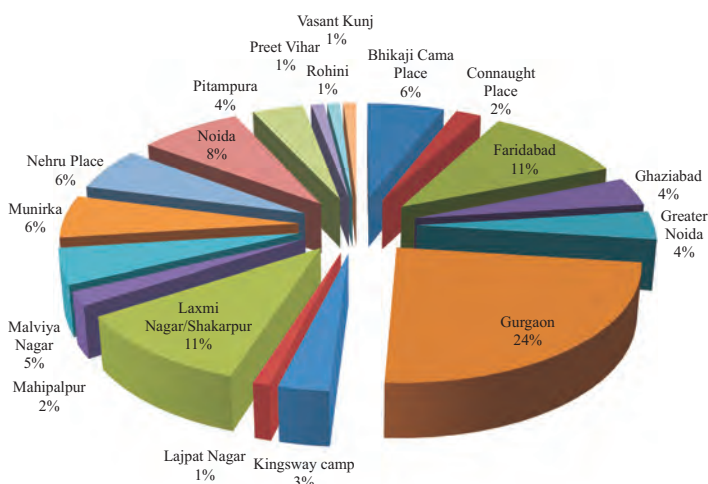


**Table 1.1**  
**Coverage of Placement Agencies**

Places Covered	No. of Agency covered
Bhikaji Cama Place	6
Connaught Place	2
Faridabad	11
Ghaziabad	4
Greater Noida	4
Gurgaon	24
Kingsway camp	3
Lajpat Nagar	1
Laxmi Nagar/Shakarapur	11
Mahipalpur	2
Malviya Nagar	5
Munirka	6
Nehru Place	6
Noida	8
Pitampura	4
Preet Vihar	1
Rohini	1
Vasant Kunj	1
<b>Total</b>	<b>100</b>

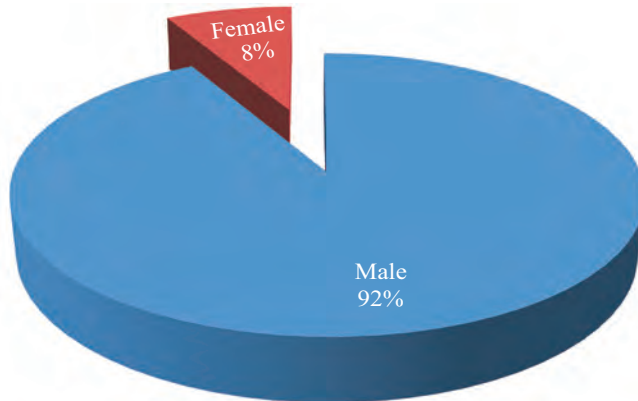
Source: Primary Survey, 2013

**Figure 1.1**  
**Coverage of Placement Agencies**



Source: Primary Survey, 2013

**Figure 1.2**  
**Gender-wise breakup of respondents**  
**Jobseekers**



Source: Primary Survey, 2013

The study also included information collected from 100 job seekers who were identified in and around the various placement agencies located in Delhi and NCR. The gender breakup of the respondents (jobseekers) is shown in the figure below:

The respondents were mainly males (92%) and (8%) females belonging to various educational backgrounds who were in search of different jobs as per their education and skill levels.

## **1.6 Outline of the Study**

The present study includes seven chapters. The study begins with contextualization of the background of the study with an introduction to the issue of global employment challenges and the growth of private employment agencies in generating plethora of employment opportunities and the introduction of international labour standards through ILO Convention 181 concerning Private Employment Agencies. The second chapter focuses on labour market scenario with special reference to the Indian situation. The chapter discusses about the magnitude and various trends in the labour market specifically the trends related to employment and unemployment. The third chapter is based on the mode of operation of private placement agencies in select places in Delhi and NCR. The chapter is based on primary data analysis collected from the field. It

throws light on important dimensions related to the functioning of Private Placement Agencies in India and the kinds of exploitative practices they are engaged to run their business. However, it provides a detailed insight into the recruitment practices of small and medium placement agencies in Delhi and NCR. The fourth chapter is an exploration into the existing legislative framework to regulate the Private Placement Agencies. The chapter tries to understand various labour laws existing in the country and examine how far they have been able to regulate certain kinds of placement agencies. The chapter also tries to probe into the provisions of the laws and find out whether they are in line with the provisions of ILO Convention 181 concerning Private Placement Agencies. It also tries to uncover the gaps in the existing legal provisions and provides information on the proposed new legislations. The fifth chapter tries to understand the issue of emigration and the role of placement agencies facilitating the process of emigration. The chapter also attempts to understand the exploitative practices by the Private Placement Agencies involved in the process of international migration. The sixth chapter provides an analysis of cross country perspectives on ratification of ILO convention 181 and the legal provisions made by these countries to regulate private placement agencies in order to facilitate their smooth functioning. The last chapter is summary of the entire study and also tries to address the policy concerns involved in the regulation of private placement agencies. At the end, the chapter tries to provide some recommendations regarding the monitoring and regulation of Private Placement Agencies vis a vis the provisions of Convention 181.

## **1.7 Limitations of the Study**

The study aimed to cover the modus operandi of Private Placement Agencies in India. Due to paucity of time the universe of the study was confined to Delhi and National Capital Region. Since there is no database on the number of Private Placement Agencies operating in India it became difficult to select the sample for collection of primary data. Due to dearth of relevant literature for the present study the secondary data analysis also became quite difficult. The fieldwork involved lot of difficulties as the placement agencies would not provide appropriate responses about the functioning mechanism and they also hesitated to reveal the fee charging aspect of their agencies. So it became quite challenging to establish rapport with these agencies in order to get accurate information from them. The field investigation process became smooth when the research team did not

disclose their identity and approached these agencies as job seekers. The problems encountered in the field included incorrect information from placement agencies regarding registration and fee charging, difficulties in establishing rapport with the respondents, spending long hours in the field loitering around placement agencies to find jobseekers in order to get some information and getting threatened by owners of some placement agencies located in Gurgaon about the purpose of the study. Apart from this due to lack of data on agency work it became difficult to have an estimate of number of placement agencies operating in Delhi and NCR and also understand their contribution through penetration rate etc. Nevertheless, inspite of difficulties the primary survey was carried out successfully and the field experience was quite enriching and memorable.

## Chapter 2

# Labour Market Scenario in India: An Overview

### 2.1 Background

Globalization has led to many changes in the Indian labour market. It has experienced fairly high growth rate under different policy regimes. The economic and social reforms after 1991 had a profound impact on the functioning of labour market. One such effect is the modernization of India's Labour market. The modernization process can be explained in various facets like the changing nature of employment opportunities available, the improvement in the skill and education levels of the workforce, emergence of new industries that require special skills. Though it is a constant argument in the west, that the demographic dividend will take India to the front lines of global economy but the reality is yet to be examined. The movement of labour force away from agriculture to other sectors of the economy is clearly evident from the recent NSSO round 2009-10. However, the modernization of the labour market has not resulted in the creation of jobs in non-agricultural sectors.

Presently, India is passing through a phase of demographic dividend with a bulge in youth population. The total population of India as per census 2011 is 1,210,569,573 and the estimated working age (15-59 years) population is 744,024,762. This has made the country rich in terms of potential workforce which if properly utilized can take India to the new heights of economic growth. The latest (66<sup>th</sup>) round of the NSSO in 2009-2010 indicated that employment generation in the Indian economy declined sharply again, with only 1.25 million new jobs recorded in the country between 2004-05 and 2009-10. This slowdown in the employment trends have occurred with the significant changes occurring in the structure of Indian Economy. The contributions of agriculture and allied sector, industry sector, and services sector have undergone tremendous changes over time. The long term growth rate of agriculture sector (over the last 60 years) has been 2.7 percent. Growth in the industry sector increased from 5.2 percent in the earlier period to 6.4 percent between 1980-81 and 2011-12. Similarly, growth in services sector was 4.4 percent and 7.8 percent respectively during these two sub periods. The share of industry sector in the GDP increased around 9 percentage points from 16.6 percent to 25.9 percent during the period from 1950-51 to 1980-81. It started growing rapidly thereafter with the share of industry sector remaining in the range of 26 to 28 percent of GDP, while the entire decline in share of agriculture has been balanced by an

increase in share of the services sector. Thus the resilience of the economy to shocks owe to the services sector which has the largest share and most consistent growth performance. (Economic survey 2011-12).

Against this backdrop, an examination of the present labour market reveals that there is a large chunk of population in the unorganized sector facing problems of unemployment, disguised employment and low quality jobs. The unorganised sector in India is very large and 93 per cent (370 million) of the labour force is in this sector. Most of these workers work in an environment where there is no formal employer-employee relation, an absence of any legal protection, little access to credit or technology, poor working conditions and no social security to fall back upon. The wage/ remuneration of most such workers including others in the informal sector are very low which explains the divergence in the proportion of people below the poverty line and the unemployed. Illiteracy, ignorance, lack of skills and training acts as barrier for their access to gainful employment opportunities.

The large number of people in the unorganized sector has led to an increase in new forms of employment like temporary employment, self employment etc. The growing realization about the severity of the unemployment situation and the jobless growth during the nineties led to the setting up of two committees. In 2005, an ambitious umbrella programme, the National Rural Employment Guarantee Programme (NREGP) of employment generation was launched in 200 districts of the country in 2006 which has been increased to 330 districts for 2007-08. The National Rural Employment Guarantee Act, 2006, makes it legal for the government to provide 100 days of employment to every job seeker. This programme was launched with much fanfare and was touted as a leading policy initiative to reduce unemployment. (Sodhi, 2008). In spite of the programmes launched by the government of India to provide employment and social security coverage to the informal sector a lot more needs to be done.

While on one hand, there have been significant efforts undertaken by the government to address the challenges of informal sector. On the other hand, the parallel growth of flexi staffing industry is believed to cater to various employment needs of millions of workers. The Flexi staffing industry is a recent development and has immense potential to contribute to the economy through effective job creation. But the challenge lies in understanding the contribution of the flexi staffing industry, their operational mechanism and the role played by them as job providers. It is also imperative to explore the various policy concerns with regard to the growth and development of Flexi staffing industry and channelize their efforts in addressing the labour market challenges of the Indian economy.

## 2.2 Recent Trends in Employment and Unemployment

### 2.2.1 Employment

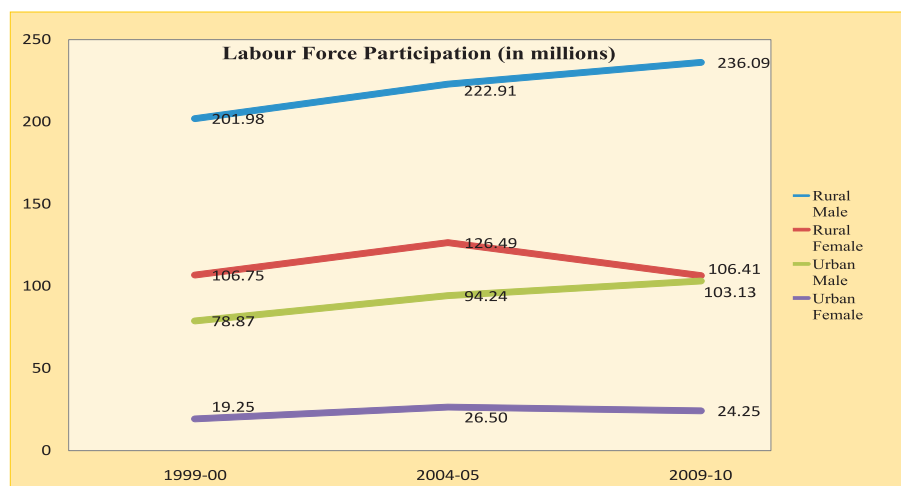
The employment trends in India are a reflection of the highly complex labour market prevalent in the country. The gender differentials in labour market participation and a very low recorded female labour force participation have raised serious concern among the policy makers, economists and the academia. The table below (2.1) clearly reveals that the dipping female labour force participation over the years both in rural and urban areas. The total female labour force participation was 152.99 million in 2004-05 and has considerably gone down to 130.66 million in 2009-10. However the labour force participation for males have shown an increasing trend.

**Table. No. 2.1**  
**The Labour Force Participation in India (in millions)**

Year	Rural		Urban		Total	
	Male	Female	Male	Female	Male	Female
1999-00	201.98	106.75	78.87	19.25	280.85	126.00
2004-05	222.91	126.49	94.24	26.50	317.15	152.99
2009-10	236.09	106.41	103.13	24.25	339.22	130.66

Source: Rangarajan, Padma Iyer, Seema (2011)

**Figure 2.1**  
**Labour Force Participation (in millions)**



The above Figure (2.1) clearly reflects the differential trends in labour force participation rates for males and females in rural and urban areas. While the labour force participation for rural males was 236.09 millions in 2009-10, for females it was 106.41 millions in rural areas. The labour force participation for urban males was 103.13 million in 2009-10 and 24.25 millions for females. This clearly reveals a huge gap between the labour force participation of males and females.

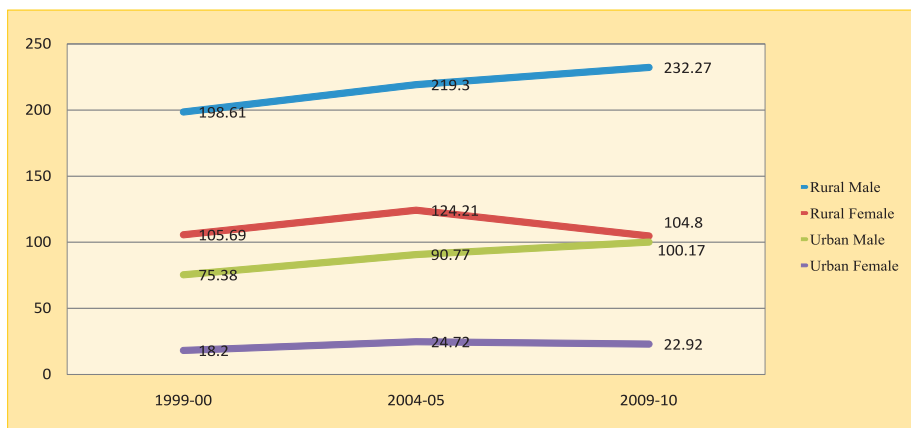
**Table 2.2**  
**The Workforce Participation (in millions)**

Year	Rural		Urban		Total	
	Male	Female	Male	Female	Male	Female
1999-00	198.61	105.69	75.38	18.20	273.99	123.89
2004-05	219.30	124.21	90.77	24.72	310.06	148.93
2009-10	232.27	104.80	100.17	22.92	332.44	127.72

Source: Rangarajan, Padma Iyer, Seema (2011)

The work force participation for both males and females also provided a similar picture about the existing gender differentials prevalent in the world of work. The above table (2.2) shows that the total female work force participation was 148.93 million in 2004-05 and reduced to 127.72 million in 2009-10. On the contrary the male work force participation has shown an increasing trend.

**Figure 2.2**  
**Work Force Participation (millions)**





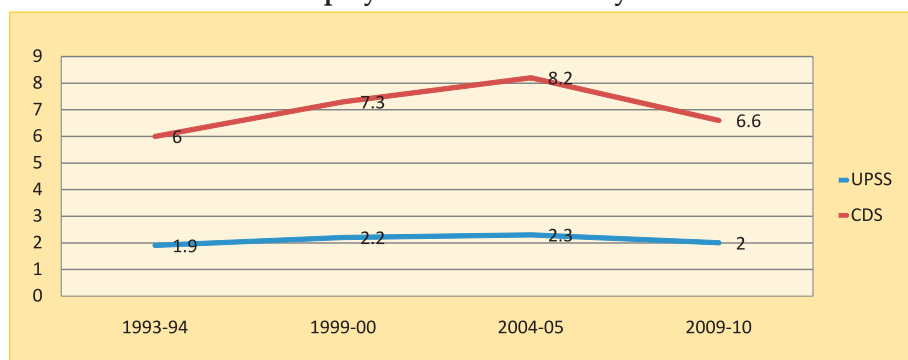
The above Figure (2.2) shows rural-urban differentials in male and female workforce participation. It is clearly evident that the female workforce participation have been much lower than the males over the years and has also shown a decreasing trend.

### 2.2.2 Unemployment:

In 2000, 10.5 million persons were unemployed in India, so that the rate of unemployment was only 2.8 per cent. In advanced industrial countries, this rate of unemployment would be taken to indicate full employment. In India, it merely underlines the fact that most Indians cannot afford to be unemployed. That this is so is most clearly indicated by the fact that the unemployed in India actually belong to the relatively well off sections of the population. The level of education of an average unemployed person (9.1 years) is significantly higher than even that of the average regular employee in industry or services (7.9 years).

The unemployment rate increased at a slow pace on UPSS basis and relatively higher pace on CDS basis from 1993-94 to 2004-05. In 2009-10 there was a fall in unemployment rate from 8.2 in 2004-05 to 6.6 in 2009-10 (Fig. 2.3). Since the CDS approach measures the number of person-days in employed or unemployed categories, the decline in CDS unemployment rates implies that in absolute terms, the total number of unemployed person-days declined by 6.5 million persons, from approximately 34.5 million in 2004-05 to 28 million in 2009-10. (GOI, 2011)<sup>15</sup>

**Figure 2.3**  
Unemployment Rate over the years



Source: Second Annual Report to the people on Employment 2011, Ministry of Labour & Employment

<sup>15</sup> Second Annual Report to the people on Employment 2011, Ministry of Labour & Employment, Government of India

The fall in unemployment despite marginal growth in employment in 2009-10 could be due to the demographic dividend, as an increasing proportion of the young population opt for education rather than participating in the labour market.

### **2.3 Education and Labour Market**

The relationship between education and labour market participation has not been encouraging, inspite of the progress achieved in the education sector in India. There is a rise in growth in enrollment of students in higher education from 49.25 lakh in 1990-91 to 169.75 lakh in 2010-11. Similarly, gross enrollment ratio in class I to VIII has risen from 93.54 in 2004-05 to 104.3 in 2010-11 (Economic Survey, 2012-13). The expansion in the education sector may be attributed to the introduction of various education programmes like Sarva Shiksha Abhiyan and other initiatives undertaken by the government like the Right to Education Act, 2005.

However, these developments have not been complementary to the overall employment situation in India. The complexities of the employment situation in India can be explained through various reasons; skill mismatches occurring as a result of lack of industry oriented skills and training to cope with current labour market needs. The orientation of students towards traditional courses has further limited their scope for employment in the current industrial scenario. In this context there is a need to understand the educational achievements of the working population and the type of training received by them.

The analysis on the educational achievements of the working population (15-59) was computed from NSSO unit level data 2009-10. For the foregoing analysis the estimated population in 15-59 age group was 744,024,762 which is around 61.5 percent of the total population. In the present chapter, working population is considered within 15-19 years and further classified into formal and informal workers. The formal workers within 15-59 age group comprise 12.5 percent of the total working age population whereas the informal workers comprise of 87.5 percent.<sup>16</sup>

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<sup>16</sup> The formal sector is the set of those productive entities that include (i) the government and quasi-government bodies (including public sector companies), (ii) private and public limited companies, and (iii) other registered organizations such as cooperatives, trusts and societies. Note that these days even partnerships and proprietorships need to be registered, but these are not included in our definition of the formal sector. And, the informal sector here has been defined as anything that is not in the formal sector.

**Table 2.3**  
**Educational Achievements of the Working Population**  
**(15-59 years) in India (in percentage)**

Years of Education	Formal	Informal	Unemployed	Not In Lab force	Total
Illiterate	16.6	31.6	4.5	26.2	28.0
Literate thru informal/formal schemes	0.2	0.5	0.1	0.5	0.5
Below Primary	4.6	10.1	3.2	6.6	8.2
Primary	8.4	15.5	8.4	11.3	13.2
Upper Primary/ Middle	11.8	18.5	17.6	18.8	18.1
Secondary	12.6	12.0	15.8	17.4	14.3
Sr. Secondary	9.8	6.1	16.6	12.1	8.9
Diploma/Certificate	4.9	0.8	6.3	0.8	1.1
Degree (Non-Tech)	17.5	3.6	17.0	4.9	5.3
Degree (Tech)	3.9	0.4	3.8	0.4	0.7
PG & above (Tech, Non Tech)	9.6	1.0	6.8	1.1	1.7
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

Computed from NSSO unit level Data 2009-10, 66<sup>th</sup> Round

The above table (2.3) shows the educational achievements of the number of people in Formal, Informal, unemployed and Not in Labour force. Though it is evident from the table that a huge number of people in Informal sector are illiterate i.e. 31.6%, the table also clearly reflects that a large amount of population who have Degree (Non-Technical) comprise the Informal sector employment, Unemployed and Not in labour force category. It can be argued that this situation is a result of the lack of industry oriented skills. The working age population in the informal sector has been the most deprived section with high levels of illiteracy on one hand and lack of higher education and training in professional courses. 0.4 percent of the working age population had a technical degree and only 1.0 percent were post graduates. This situation is a reflection of lack of appropriate skills to match industry needs which leaves most of the working age population in the informal sector to engage in informal jobs and minimal access to social security.

**Table 2.4**  
**Types of Training Received by the Working Age Population (in percentage)**

training	Formal	Informal	Unemployed	Not In Lab	Total
mechanical engineering trades	11.3	8.4	4.6	6.9	8.4
electrical and electronic engineering trades	20.3	12.8	10.3	7.7	13.1
computer trades	21.3	18.0	39.8	35.3	25.8
civil engineering and building construction related works	7.5	3.1	2.0	2.2	3.9
chemical engineering trades	0.5	0.6	0.4	0.4	0.5
leather related work	0.1	0.0	0.0	0.0	0.0
textile related work	1.0	8.7	4.9	13.9	8.0
catering, nutrition, hotels and restaurant related work	0.6	1.1	0.9	0.8	0.9
artisan/ craftsman/ handicraft and cottage based production work	0.3	2.0	0.4	2.1	1.5
creative arts/ artists	0.6	0.8	0.0	0.9	0.7
agriculture and crop production related skills and food preservation related work	0.4	0.6	0.2	0.7	0.6
non-crop based agricultural and other related activities	0.3	0.1	0.0	0.7	0.3
health and paramedical services related work	9.1	8.1	8.8	6.2	7.8
office and business related work	4.3	3.5	4.1	4.6	4.1
driving and motor mechanic work	6.5	16.4	5.8	0.7	8.2

beautician, hairdressing & related work	0.7	2.7	2.7	4.3	2.6
work related to tour operators/travel managers	0.1	0.2	0.2	0.1	0.1
photography and related work	0.0	0.9	0.5	0.0	0.4
work related to childcare, nutrition, pre-schools and crèche	2.7	0.8	3.9	1.5	1.7
journalism, mass communication and media related work	0.4	0.3	0.3	0.3	0.3
printing technology related work	0.3	0.7	0.7	0.3	0.4
other	11.8	10.0	9.5	10.4	10.6
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

Source: Computed from NSSO unit level Data 66<sup>th</sup> Round 2009-10

The above table (2.4) shows the classification of the types of training received by the working population in different trades. It essentially reflects that a large number of youth in the formal sector have received training in electrical and electronic engineering trades (20.3%) and computer trades (21.3%). On the other hand, the informal sector working age population had received less training relatively. There is no denying the fact that the majority of unemployed population is also comprised of the computer trade professionals.(39.8%) which again shows a high level of professionally qualified population not receiving proper jobs. There is no denying the fact that the majority of unemployed population is comprised of the computer trade professionals. There is also a striking fact that these make large share in the Not in Labour force population, the reason could be that some of them opted for higher education while others are not interested in working but they joined the training for the purpose of being a computer literate. Further the next most accommodating trade is engineering which include various streams of engineering like the civil, mechanical and electrical engineering. Engineering has also offered employment in formal as well as informal sector. Notwithstanding, photography, tourism, textile related work show a minimum enrollment in training and thereby do not show a considerable number in the employment figures.

**Table 2.5**  
**Vocational Training and Jobs**

Whether vocational training was helpful to get job	Formal	Informal	Unemployed	Not in Lab	Total
yes:helped in self-emp activity	4.2	32.7	2.9	6.8	15.8
yes:helped in wage/salaried emp	81.2	39.3	21.5	12.9	44.4
No	11.7	23.6	62.3	48.1	29.0
Not Applicable	2.9	4.4	13.3	32.2	10.9
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

Computed from NSSO unit level Data 66<sup>th</sup> Round 2009-10

The above table 2.5 clearly shows that vocational training was helpful in fetching employment to the people who received training. The kind of employment has been broadly categorized as: Self-employment activities and Wage -Salaried employment. It was revealed that 32.7 percent of working age population in the informal sector were benefited from vocational training and could manage to be self employed whereas 39.3 percent in the informal sector could find a wage salaried employment. A significant proportion of the trained individuals (81.2%) were able to get employed in Formal sector as wage/salaried employees after receiving training. One of the reasons for success of the training may be attributed to the contribution of vocational training providers under the National Skill Development Mission of Government of India. Other reasons include the role of technical education providers in providing education as per industry needs.

## 2.4 Discussion

The present chapter provided a brief overview of the labour market situation prevailing in India and the growing youth population. The chapter also provided insight into the situation of the working age population (15-59) and also discussed the relationship between education and labour market participation. Though there has been expansion in educational opportunities yet there has not been proper skill orientation of the working age population. The skill mismatches evident in the labour market leaves many of the working age population either in unsatisfactory low paid jobs, or unemployed or not being a part of the labour force. However, various efforts have been undertaken by the government to address the skill needs of the working age population. The robust and ambitious skill development mission of the Government of India is believed to contribute in terms of skilling millions of workforce and bring them to gainful employment.

## Chapter 3

# Recruitment Practices of Private Placement Agencies in India

### 3.1 The Context

The growth of private placement agencies in the last few years in India is believed to play a major role in job creation and employment generation for a large chunk of population in the country. The Indian labour market provides a very gloomy picture with a majority of population in the unorganized sector. There are about 93 percent of workers in the unorganized sector marked by huge gender differentials. The female workforce population has been comparatively low than the male counterparts. In a highly diversified and complex labour market scenario in India it becomes imperative to understand the role of private employment agencies in India and their contribution to enrich economic growth by transforming many informal jobs to formal temporary agency jobs and removing people from all kinds of precarious employment. However private employment agencies have immense potential to increase employment rate by facilitating the entry of more people to the labour market and also providing training and facilities to make the workforce competent enough to find a permanent job. When properly regulated, agencies contributed to fostering decent work and ensuring better functioning of labour market by meeting employers' as well as workers' needs.(2011)<sup>17</sup>

The international experience reveals that the private employment agencies are well regulated and have been contributing immensely in terms of employment generation to the masses. At the global level, the role of CIETT cannot be ignored who have been major players in not only providing employment but also decent working conditions to the people. The private employment sector is an enabler of social innovation. It has organised new ways to secure social protection for workers under labour relations that are different from permanent contracts. In several countries, the industry has developed schemes to ensure the portability and transferability of the agency workers' rights (health insurance, complimentary pension schemes,

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<sup>17</sup> This was discussed in the Final report of the discussion on *Global Dialogue Forum on the Role of Private Employment Agencies in Promoting Decent Work and Improving the Functioning of Labour Markets in Private Services Sectors* 18-19 October 2011, International Labour office, Geneva

and vocational training). In Europe, private employment agencies are often viewed as the embodiment of *flexicurity* due to their combination of flexibility and security for both companies and workers (Ciett,2011).

Flexicurity, a relatively new approach is developed in European countries in order to combine a more flexible labour market with effective social protection with active labour market policies. Flexicurity policies can be observed in various national and international governance systems: in the European Union (EU) Lisbon Strategy and the ILO Global Employment Agenda, in the systems currently used in Austria and in Belgium, and in the Scandinavian countries (Cazes and Nesporova,2007). In fact many industrialized nations have promoted the flexicurity approach with systematic interaction between labour market institutions, national labour laws and active labour market policies. However there is no universal flexicurity approach but there is enough scope for variation in the approach keeping in view the economy and national context of different countries.

### **3.2 Placement Agencies in India : Insights from the Field**

The Indian labour market scenario is engulfed with many problems. The existence of a large unorganized sector without sufficient social security has been a concern for not only the policy makers but many scholars in the academia. Though there has been a lot of government initiatives to address the unorganized workers social security needs yet a lot more needs to be done. There are many challenges which need to be addressed in India in order to have effective balance between active labour market policies and social security needs of workers. The existing data sources like NSSO have certain limitations in capturing the data on informal workers. Moreover almost half the population of the unorganized workers is women who work in all kinds of precarious employment and engulfed in *double burden*. The recent NSSO 2009-10 recorded that female labour force participation has declined from 152.99 million in 2004-2005 to 130.66 million in 2009-2010. On the contrary, the male labour force participation showed an increase from 317.15 million in 2004-2005 to 339.22 in 2009-2010. The strikingly low female labour force participation rates and gender gaps prevalent in the world of work has been a serious issue of concern among many scholars and policy makers in India. There have been gross underestimation of women's work in labour force and National Accounting Statistics and large amount of women's work remain statistically invisible. The existing socio-cultural context of India have institutionalized certain practices which are detrimental to women's entry into the labour market, a large section of the population being in



unorganised sector coupled with statistical invisibility of many kinds of unpaid work and dearth of social policies to promote care economy. Moreover, international policy initiatives like *flexicurity* and effective work-family life balance policies have not been implemented in India.

On the one hand, there is existence of large unorganized sector while on the other there has also been growing trend of unregulated small private placement agencies involved in unscrupulous recruitment practices luring young job seekers and resorting to unfair exploitative practices in India. In a country where there are lot of debates and discussions in tackling the challenge of informal sector and the drive towards formalizing the informal economy, these private placement agencies can actually play an important role in addressing the employment needs of the population. Since there is no effective regulation of the private placement agencies through an appropriate legislation such agencies are escaping from the hands of law. Moreover there is lack of a database on the number of such agencies since most of them are unregistered and are operating illegally. Since the government is aware of their illegal practices initiatives are taken by the government to regulate such agencies. India has around 44 labour legislations but some of them have not been amended since long therefore they fail to address the modern labour market challenges.

Against this backdrop, the present chapter is an analysis of the recruitment practices of these small and medium private placement agencies which have witnessed phenomenal growth in last few years. The chapter is an analysis of primary data collected through fieldwork in Delhi and National Capital Region. Though the government data sources do not have any record of these small and medium private placement agencies yet for the research purpose many pockets of Delhi and NCR were randomly selected on sporadic locations where these agencies had mushroomed in last few years. The present chapter is an attempt to analyze the operational mechanism of private placement agencies in Delhi and NCR. As a control group the interview of jobseekers were taken to cross check the data collected through the field and also to document their experiences with private placement agencies.

### **3.3 Growth of Private Placement Agencies in Delhi and NCR**

The Ranstad Seo Economic Research Report *Into the Gap Exploring Skills and Mismatches* quite aptly explains the problem of existing skill gaps witnessed in post globalization era. The recent global downturn and associated changes has led to a highly unpredictable and volatile labour market with a high level of talent mismatch. Shifting global demographics are creating a significant

mismatch of talent around the world with labour shortages growing in USA, Japan and Europe while the southern hemisphere is facing the prospect of more workers than jobs-and often, where jobs are available, workers do not have the skills needed. The activities of Private Employment Agencies not only reflect sectoral shifts but also help economies to adapt to them. By providing access to vocational training, the sector also helps to plug the talent gap and develop a higher skilled workforce. (CIETT, 2011). However the growth of these agencies around the world has brought about many reforms in the labour market scenario which has been possible due to effective public private partnership and a well developed regulatory framework.

The Indian reality provides a completely different picture about the private placement agencies. Though there are large players in the industry like Indian Staffing Federation which has around 26 member companies and provide employment to 3.5 lakh people in India<sup>18</sup> yet there are many other small companies, establishments etc which operate illegally without registration. The companies included in ISF membership are registered companies and they provide social security benefits to their workers by following the flexicurity approach of the European federation, CIETT and labeling their workers as *flexi-workers*. On the contrary, the small and medium industries which claim to provide employment to young job seekers charge exorbitant placement and registration fees from these youngsters without providing them proper employment opportunities. Such agencies are highly unregulated and exist without the knowledge of the government since there is no database to collect information on their numbers they remain unregistered and fall outside the purview of any legislation existing in the country. In fact many of these small and medium enterprises claim to have tie ups with larger companies like Ranstad, Hero Honda, HCL, Confederation of Indian Industries (CII), L&T etc.

An important concern here is to understand how far these small and medium private placement agencies have been able to address the challenges of youth unemployment and labour market segmentation in India? The present chapter provides an in-depth analysis of the recruitment practices followed by these agencies and critically examines their role in contribution to the labour market in India. There would also be an attempt to address the problems of young job seekers who become silent victims to the exploitative practices followed by these agencies. The rapid growth of recruiting agencies or Private Placement

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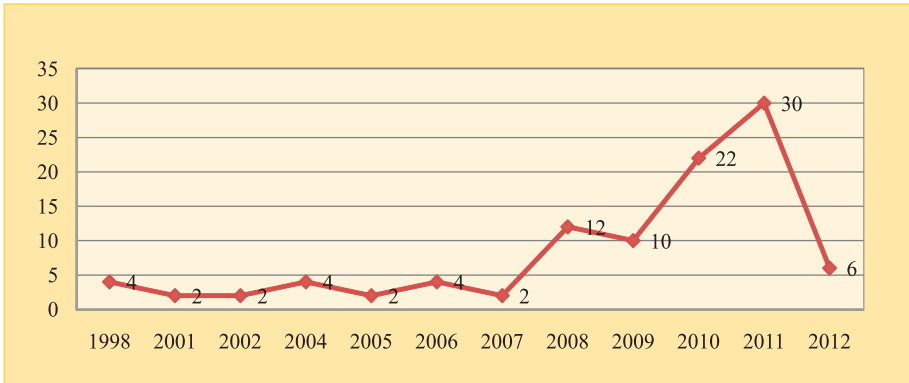
<sup>18</sup> As mentioned in a report published by Indian Staffing Federation 2012. For more details see Indian Staffing Industry Research, Turning Available Work into Jobs, 2012 pp 118.

Agencies in Delhi and NCR has caused serious concern among policy makers to uncover the dynamics of their operation and also formulate polices for their monitor, control and regulation so that they can effectively contribute to the highly segmented and complex labour market in India.

### 3.4 Private Placement Agencies: Modes of Operation

The information collected through field experience among 100 placement consultants (Placement Agencies)<sup>19</sup> in Delhi and NCR revealed important facts about the mode of operation of these placement agencies. There is no denying the fact that registration process is an important milestone for establishing a placement agency in any country. With regard to the registration of the placement agencies it was revealed that many of these agencies claimed to be registered but were not able to furnish any documentary evidence to accept the fact that they had undergone a formal process of registration as per national law and practice. However, an interesting feature about these small and medium placement agencies is that the respondents/agencies who stated that they had registered pointed out that they do not have any registration number or they do not remember their number.

**Figure 3.1**  
**Year-wise Registration of Placement Agencies**



Source: Primary Survey, 2013

<sup>19</sup> For the purpose of the present study the term Placement agencies are used throughout the study though there are various other terminologies used in other countries of the world. Some of the other terminologies include Private Employment Agency, Temporary staffing etc. Since the study focusses on small and medium agencies which are placement providers acting as a third party, the term placement agencies is used instead of Employment Agencies which are known to provide employment themselves.

With regard to the trends in growth of these agencies it becomes quite apparent that these agencies have mushroomed in the last two or three years. However, historically the growth of these agencies can be traced back to the post liberalization phase. The onslaught of globalization and corresponding flexibility in the labour market has been instrumental in the rise of these private placement agencies. The survey data reveals that most of the agencies were registered in the year 1998 which is significant in order to understand the impact of a liberalized economy promoting the growth of such agencies. The Figure (3.1) clearly shows that there has been a remarkable growth of these agencies in the year 2010 and 2011 turning out to be a potential market for young jobseekers. The genesis of these agencies and their subsequent growth later on, clearly reveals that their business has gained considerable momentum and their numbers have multiplied in 2010 and 2011. But subsequently there was a decline in their growth in 2012. In 2011-12 and 2012-13, there has also been a deceleration in growth rate of services sector at 8.2 per cent and 6.6 per cent respectively. Among the major broad categories of services, 'financing, insurance, real estate, and business services', which continued to grow robustly both in 2010-11 and 2011-12 decelerated to 8.6 percent in 2012-13 (GoI, 2013). However, the deceleration of services cannot be considered as the only reason for decrease in number of agencies registered since there was dearth of any documentary evidence to certify their registration. Moreover, the entire registration process was fraught with serious anomalies.

It was analyzed that 64 percent of these agencies were registered without any number or without having completed the formalities of a formal registration process. This causes serious doubt about their authenticity as a placement provider. It was found that only 3 percent of the agencies had undergone the formal registration process as per national practice. The agencies were mainly placement agencies related to domestic workers, security/manpower and overseas consultancies that were covered under Companies Act 1956, The Private Security Agencies (Regulation) Act 2005 and Emigration Act 1983. However 33 percent of these small and medium agencies reported that they were operating without any registration. The agencies which were operating without any registration were mainly providing employment in industries like manufacturing, retail, hospitality, BPO, KPOs, HR/Manpower consultants, Marketing, Sales, insurance, transport, construction, mining, petroleum, airlines etc. These placement agencies were mainly found in locations having commercial business places and frequently visited by youth. On the one hand, these agencies

were claiming to provide innumerable job opportunities to young people but at the same time they were not devoid of exploitative practices in name of registration fees from these young job seekers. The lack of regulation and monitoring of these agencies gives them an opportunity to have flexibility in determining the recruitment practices based solely on profit motive and exploitation through exorbitant fees.

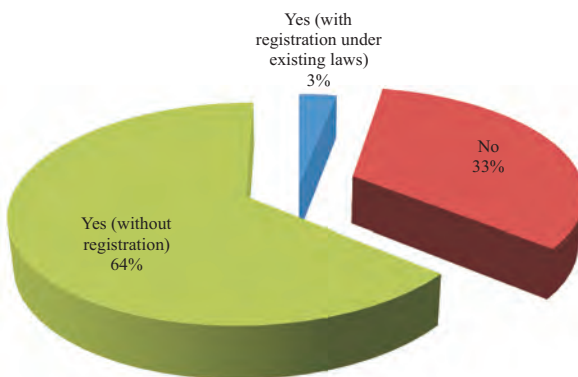
**Table No. 3.1**  
**Registration of Placement Agencies**

Whether the placement agency is registered	No. of Agencies Registered	Percentage
YES (with registration number)	3	3
(without registration number)	64	64
No	33	33
Total	100	100

Source: Primary Survey, 2013

The Figure (3.2) clearly shows that a very limited number of private placement agencies were registered formally and therefore had benefits of social security for the workers. Moreover such agencies were thoroughly regulated hence there is less scope for them to charge fees or exploit workers. It is interesting to note that one of the domestic workers agencies (Bodhicrew services) registered in the name of *Just Help* had been operating as a complete domestic work solution to a rapidly growing middle and higher class in India. It also engages in skill development by providing training to domestic workers for better employability. Such agencies are also recognized nationally and have received media attention recently for their achievements. Recently

**Figure No.3.2**  
**Percentage of Registered Placement Agencies**



Source: Primary Survey, 2013

the Indian Express on 30th March 2013 published an article on these agencies with the title “A clutch of websites helps organize and train millions of informal workers in Indian cities, from drivers to domestics, beauticians to sales people, and connect them to employers like you.”

### 3.4.1 Fee Charging and the ILO Convention 181

The question of fee charging by private placement agencies has been debated in many International forums. The principle of free placement services for workers and employers was first established as a standard for employment services in the Unemployment Convention, 1919(No. 2), and confirmed in the Employment Service Convention, 1948 (No. 88). In Convention No.

181, free job-placement services for jobseekers was retained as a provision to safeguard the interests of workers, but governments were allowed to grant exceptions to this principle if there were clearly justifiable reasons.<sup>20</sup>

Article 7 of Convention 181 clearly states that “Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or cost to its workers”. But the Convention also allows for some flexibility by allowing for exceptional cases. The ILO Committee of Experts on the Application of Conventions and Recommendations is responsible for considering whether exceptions under national law are in accordance with the Convention. The discussion paper emphasized that fee collection from jobseekers by agencies may be tolerated in order to compete with illegal market participants gaining profit through acceptance of bribes, but only

*Kaushik and Manab Chakraborty, a management consultant and co-founder of Bodhcrew Services, soon realised that Web and mobile services were the best way to bring together employers and candidates. Chakraborty says, “The middleman is usually the social or regional network. We are trying to broaden that circle through mobile connectivity.” bodhijobs.com went live in February this year, and they have already registered close to 11,000 candidates, far exceeding their initial expectations. They reach job seekers through four channels, the website, short-code SMS, a network of volunteers and through their call centre. They quickly found that the Web portal proved the least effective while the volunteers proved the most efficient (Indian Express 30<sup>th</sup> March 2013)*

<sup>20</sup> This was reported in the Issue Paper for Discussion at a workshop to promote ratification of Private Employment Agencies Convention 1997 (no.181) 20-21 Oct 2009 titled Private Employment Agencies, Temporary Agency workers and their contribution to the labour Market.

if safeguards to protect jobseekers from exploitation are introduced and the level of fees is regulated. To ease the implementation and monitoring of fees collected from jobseekers, a maximum should be fixed in the legislation, and, it is important that the fees agencies are permitted to charge are transparent and made public.<sup>21</sup>

Against this backdrop, there was an exploration into the fee charging aspect of Private placement agencies through the primary survey. The survey revealed that most of the unregulated Private placement Agencies were charging fees from job seekers under two broad categories (a) *Registration Fees* and (b) *Placement Fees*

### **Registration Fees:**

This fee is charged for registration of the candidate with the Agency followed by suitable job search for the candidate by the placement agency. In some cases these placement agencies did not entertain candidates without undergoing the registration process and paying the required registration fees. This registration or enrollment is done by registering the candidate and then begins the procedure of finding suitable job for the candidate. As per conversation with the placement agencies, they claim that this cost only covers the cost of the phone and other such needs which are the minimum resources required by the agency to place a jobseeker in any company.

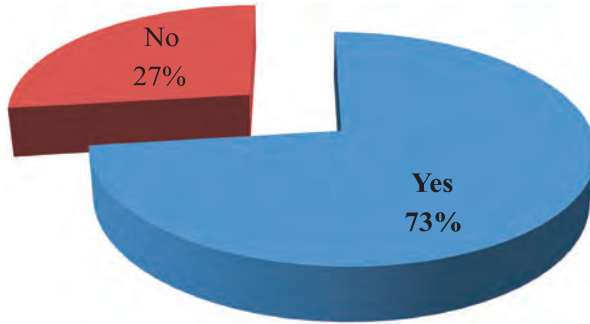
### **Placement Fees:**

The placement fees are charged from the jobseekers after his placement in some organization. The jobseeker is entitled to pay a substantial amount decided by the placement agency. The amount of placement fee is sometimes to be deducted from the salary of the candidate which ranges from 10 day's salary to 2 month's salary of the jobseeker. In some other occasions the placement fees charged is 10 - 50 percent of the total salary of the candidate for one month. Therefore the amount of both the fees charged from the jobseekers vary across agencies.

Figure (3.3) revealed that 73 percent of the Placement Agencies charged registration fees from the candidates and only 27 percent of the respondents did not charge any registration fees. However, collecting information on fee charging was the most difficult part in the entire research endeavour.

<sup>21</sup> ibid

**Figure 3.3**  
**Percentage of Placement Agencies charging registration fee from jobseekers**



Source: Primary Survey, 2013

When the research team approached the agencies as researchers, almost 90 percent of these agencies answered in the negative that they did not charge any fees from the jobseekers. Interestingly, some of them said they were doing social service and charged Rs. 1 towards welfare fund. But when the same agencies were studied by the research team as job seekers they firmly stated that they would register the jobseekers only when a particular amount was paid towards registration charges. Some of the placement agencies even charged both registration fees and placement fees.

**Table No.3.2**  
**Amount of Registration Fee Charged by the Placement Agency**

Registration fee Amount	Number of Placement agencies	Percentage
Upto 50	2	2.74
100-500	58	79.45
500-1000	10	13.69
Above 1500 till 3500	3	4.10
Total	73	100

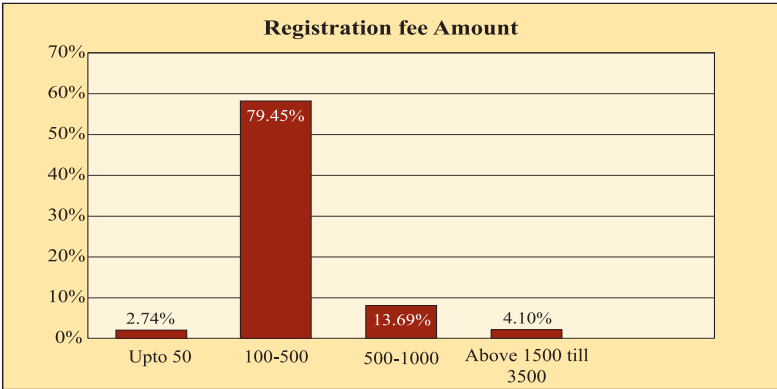
Source: Primary Survey, 2013

The above table (3.2) regarding amount of registration fees charged by the placement agencies was analyzed from 73 percent of placement agencies which agreed to have charged fees from the jobseekers. It was revealed that 79.5 percent of placement agencies charged registration fees within the range of Rs 100-500. But, it was also reported that 13.69 percent of the agencies charged within the range of Rs. 500-1000 as registration



fees while the rest were charging more than Rs. 1000 with the maximum charge being Rs. 3500. Only 2.74 percent charged a nominal amount i.e. Rs. 50. In this context it can be stated that the guidelines on operation of private placement agencies issued to various States/UTs by DGE&T (Ministry of Labour and Employment, Government of India) clearly mentioned that *Private Placement Agencies may not be allowed to charge more than Rs 100 as registration charges from the jobseekers to meet the initial service charges*<sup>22</sup> 13.69 percent charged between 500-1000, 4.10 percent charged from 1500-3500 and 2.74 percent charged a nominal amount of Rs 50. However, those who charged Rs 50 stated that the reason behind this low cost is that it keeps them in an advantageous position in terms of not paying back the registration fees in case there is no available job for the candidate and also reduces the candidates pressure on the agency to find them a suitable job within a stipulated time period. However, it may also be emphasized that in any case the registration fees were non-refundable from the placement agencies.

**Figure 3.4**  
**Amount of the Registration Fee charged by the Placement Agencies (in percentage)**



Source: Primary Survey, 2013

The registration and the recruitment practices of the placement agencies involved a two step procedure namely:

The first step of the recruitment practice is the enrollment of the candidate with the placement agency. This registration or enrollment is done by

<sup>22</sup> These guidelines were submitted to various States/UT Administration vide letter no.DGE&T.M-27014/1/2004-E.E.I dated 5<sup>th</sup> May 2008.

registering the candidate and then begins the procedure of finding suitable job for the candidate. After this the resume of the candidate is forwarded to the organizations and if shortlisted the candidate is called for the interview.

The second step is after the recruitment of the candidate in any organization. If the candidate is selected and joins the organization, then the placement comes into the picture. Now the jobseeker has to pay the placement fee to the agency for the work done by them in the successful placement of the jobseeker.

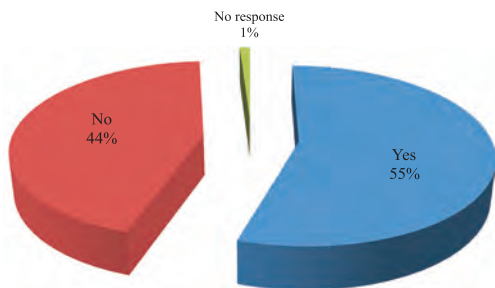
**Table No. 3.3**  
**Placement Fees Charged by Placement Agencies**

whether the placement agency charges placement Fees	No. of responses	Percentage
Yes	55	55
No	44	44
No response	1	1
<b>Total</b>	<b>100</b>	<b>100</b>

Source: Primary Survey, 2013

The above table 3.3 clearly shows that 55 percent of the agencies were charging placement fees and only 44 percent of them were not charging any placement fees but they were charging registration fees. The required fee is usually deducted from the jobseekers first salary which ranges from a minimum of 10 days salary to maximum 2 months' salary. The amount of fee charged also varies according to the jobseeker's academic profile and job experience and is different across industries. For example, in case of job of a *Librarian* the amount was Rs700 while in case of an *Electrician* the amount was Rs 500. However, only one percent of the placement agencies did not reveal anything on the fee charging aspect.

**Figure 3.5**  
**Percentage of Placement Agencies charging Placement Fee**



Source: Primary Survey, 2013

It was also revealed that such agencies did not disclose the amount of placement fees to the jobseekers with the assurance that it would be determined according to the position of the jobseeker and his salary structure in the organization where he/she is placed. Such practices have become a regular feature of these small placement agencies and the lack of regulation has made them adhere to monopolistic practices

*These placement agencies take the registration fee. After that they do not pick up the phone. At least these consultancies/Agencies should be conducting the interview in the company. They should fulfill their promises which they were committed before registration.*

*(B.Tech Graduate, Lucknow)*

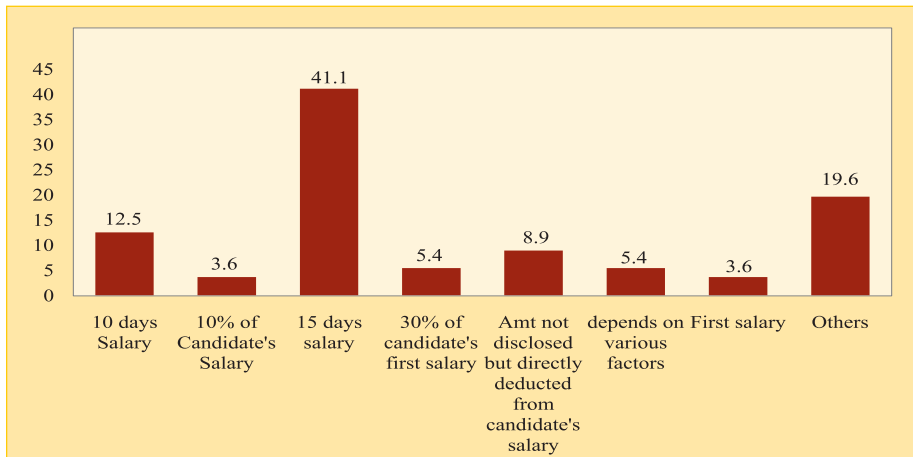
and cheating young jobseekers. Since the survey was also conducted among the jobseekers, many facts were uncovered about the exploitative practices adopted by these small placement agencies. Most of the job seekers reported about how they were victimized by these placement agencies in the name of registration and placement fees.

The Figure below (3.6) provides a clear picture about various kinds of mechanisms adopted by the placement agencies to charge placement fees from the jobseekers. It was analyzed that the placement fees charged by the placement agencies on account of successful placement of the jobseekers differed from agency to agency. There was no fixed amount applicable to all the agencies. The survey data revealed that 41.1 percent of the placement agencies were charging 15 days salary from the jobseeker. 19.6 percent of the agencies (others) reported to have charged differently from different candidates/jobseekers. Some of the overseas placement agencies charged a very high amount of Rs 50000/ for providing various kinds of jobs in the Gulf and Middle East. The various kinds of jobs included medical officers, staff nurse, electrical engineers, light van drivers, waiter, counter cashiers etc. These agencies were already registered under Emigration Act 1983 and section 25 of the act has fixed certain charges to be charged with regard to kind of employment as permissible under law. However, these charges should not exceed Rs 10000 in any case.<sup>23</sup> It may be argued that the Emigration Act has not been able to address the problems of migrant workers by the intermediaries and the existing emigration management system has many shortcomings. In this context, some of the efforts initiated by the Ministry of Overseas Indian Affairs include the proposal

<sup>23</sup> As mentioned in section 25 of Emigration Act 1983.

for introduction of *The Emigration Management Bill 2012*. The Draft Bill is still pending before the government. However, it can be pointed out that the people have lot of expectations from the Bill since the bill is believed to bring about a stricter and transparent emigration management system with focus on ethical recruitment.<sup>24</sup>

**Figure 3.6**  
**Amount of Placement Fees charged by Placement Agencies**



Source: Primary Survey, 2013

The survey also revealed that some of the agencies charged between 10000-15000 for providing employment in hotel, manufacturing and other industries internationally. Apart from these overseas consultancies or placement agencies some agencies had fixed charges for different kinds of jobs in India. For example Rs 2500 for B.Tech candidates, Rs 2000 for employment in Public Sector Undertakings, firms and Government offices etc, Rs 700 for librarian, Rs 500 for Electrician etc. Such agencies are operating without any fear of being charged for unscrupulous practices since there has been no monitoring and regulation on them.

It was also found that 12.5 percent of the agencies were charging 10 days salary from the candidates, 8.9 percent of the agencies did not disclose the amount to be deducted to the jobseeker but used to directly deduct a certain amount from the candidate's salary. This amount can be either salary of one or two months or any amount decided by the placement agency. Such flexible

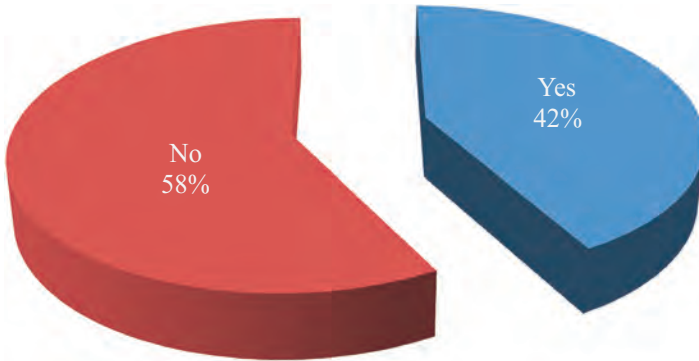
<sup>24</sup> Analyzed from discussions held with officials from Ministry of Overseas Indian Affairs.

arrangements for deduction of salary from the jobseekers results in lot of exploitation and lack of control and regulation may allow them to increase the placement fees at their own will. Such practices are not only unacceptable but also raise serious questions on the rule of law of any country.

Further, it was analyzed that 5.4 percent of the placement agencies charged 30 percent of the candidate’s salary and 5.4 percent reported that the fee charging depended on various factors like designation, educational qualification, amount of salary received from the organisation, job experience and kind of industry or sector where the candidate is placed. While 3.6 percent of the respondents charged 10 percent of the candidate’s salary the remaining 3.6 percent deducted the entire first salary of the candidate.

Apart from all these anomalies regarding registration and placement fees, it was quite disturbing to find that many of these private placement agencies charged both registration fees as well as placement fees.

**Figure 3.7**  
**Percentage of Placement Agencies charging both Registration and Placement Fees**



Source: Primary Survey, 2013

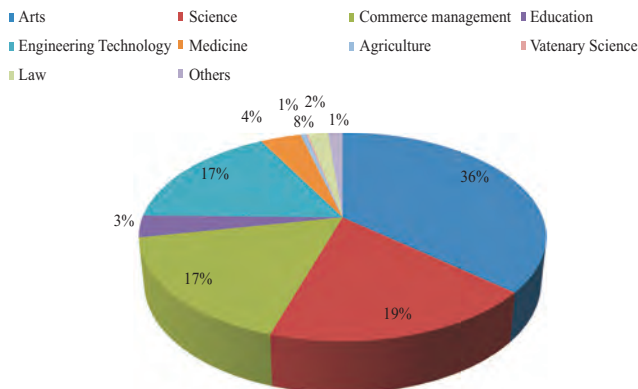
The survey data further revealed that 42 percent of the placement agencies charged both registration fees and placement fees while 58 percent of the respondents answered in the negative. Another interesting observation was about the registration fees charged by online job portals like Timesjobs, naukri, shine etc. These online job portals were charging a quite heavy amount as registration fees with minimum amount being Rs 1000 and maximum Rs 3000 which were charged at different stages of recruitment process. For example these job portals trap innocent job seekers by promising them appropriate jobs in various companies and when the jobseekers start uploading their bio data, then these job portals inform them that their bio data is not in the

required format and they can help the jobseekers in preparing a professional bio data as per company requirements so that it becomes easier for them to find a job. It was revealed that these job portals charge fees ranging from 1000- 5000 for preparing a professional bio data.

### 3.4.2 Training and Skills

India’s transition into a knowledge economy requires adequate skills to cope up with the complex and dynamic labour market situation prevailing in the country. The 11<sup>th</sup> Five Year Plan 2007-12 further reiterated the fact that the focus should be on skills in a changing world economy. The Plan document states that “Skills and knowledge are the driving forces of economic growth and social development for any country. Countries with higher and better levels of skills adjust more effectively to the challenges and opportunities of world of work.” (2007-2012) The Government’s ambitious Skill Development Mission is believed to provide skill training to the Indian youth through various professional institutions. The National Skill Development Policy introduced by the Government of India has set a target of skilling 500 million people by the year 2022. But a question which arises here is whether this government run ITIs or other vocational institutions would be able to address the issue of skill gaps existing in India due to the bias of the higher education system towards arts, science and commerce streams? Such biases have considerably affected the employment prospects of students by not being able to equip students with the skills appropriate for industry and professional occupations. Hence there has been an evidence of skill mismatch which deprives many young jobseekers from finding suitable employment avenues.

**Figure 3.8**  
**Faculty-Wise Enrollment of Higher Education for the Year 2010-2011.**



Source: Adapted from UGC’s Annual report 2010-11 and Annual Report of MHRD 2011-12

The skills mismatch has two serious implications for the labour market. On the one hand, it prevents the growth of the workforce in a manner that is responsive to the needs of the economy. This leads to bottlenecks in the availability of labour for industrial requirements. While this is the supply-side perspective, the demand-side perspective is also affected by adversities. Due to inappropriate qualifications, large sections of the workforce do not find adequately remunerative occupations. (Palit, 2009)

The above figure (3.8) clearly reveals that majority of students are enrolled in Arts, Science and Commerce streams (36%, 19% and 17%). While engineering and technology had 16.86% of students enrolled in them the other streams like medicine, law, veterinary etc had very less enrollment in the year 2010-2011. The enrollment ratios reflect a lot of bias towards specific streams in higher education. However, the challenge of skill development can be realized with not only reforms in primary, secondary and higher education but also necessary impetus given to skill development initiatives. In this context, the government initiative on PPP (Public Private Partnership) mode can play a prominent role in skilling the massive youth population in India and equipping them with industry-specific skills. Here, a prominent role can also be played by the private placement agencies. For instance, the private placement agencies can assist college graduates for job transitions and expectations from the job market. These agencies can also work with training institutions like ITI's in developing skills and competencies matching with the employers needs. Such initiatives can be possible with effective co-ordination with public employment services and private employment agencies through public private partnership.

International experience shows that countries that have succeeded in linking skills development to gains in productivity, employment and development have targeted skills development policy towards three main objectives: matching supply to current demand for skills; helping workers and enterprises adjust to change; and building and sustaining competencies for future labour market needs (ILO, 2011).

A study by the Boston Consulting Group and CIETT stated that there is an increasing demand for highly qualified people since jobs are increasingly requiring skilled workers. Across the EU the main areas of employment growth will be in services, especially marketed services and businesses.

The study further mentioned that the private employment services is well placed to support this structural shift and deliver the skills needed by helping the workers to move from declining sectors to in demand sectors. Private employment services with their access to a wide pool of talent and ability to train workers in the skills that employers need are well placed to support companies in such periods.<sup>25</sup> However, the CIETT (International Confederation of Private Employment Agencies) represents the interests of organized and well regulated private employment agency industry across the world and provides employment, skills and training to millions of workers.

**Table No. 3.4**  
**Training Facilities Offered by Placement Agencies**

Whether providing training	Number of placement agencies	Percentage
Yes	6	6.0
No	90	90.0
No response	4	4.0
Total	100	100.0

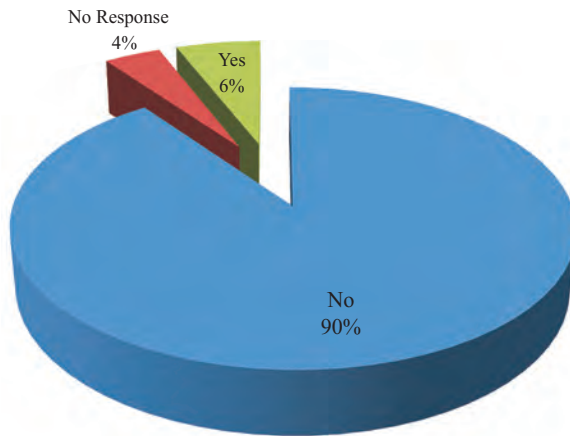
Source: Primary Survey, 2013

However, the situation is quite different in India where the private placement agencies are highly unregulated due to lack of any legislation covering all the employment agencies. The survey data has revealed within last few years there has been an increasing growth of small and medium private placement agencies mushrooming almost everywhere throughout the country. With regard to training provided by the placement agencies it was found that 90 percent of the placement agencies answered in the negative. It was also observed that these agencies did not have the required infrastructural support to provide training nor any trainers in their organizations. In fact most of these agencies were operating in small one room set-ups in commercial complexes inside dingy and congested rooms.

<sup>25</sup> This study is conducted by the Boston Consulting Group and CIETT and published in a report titled "Adapting to Change: How Private Employment Services Facilitate Adaptation to Change, Better Labour markets and Decent work, CIETT 2011.



**Figure 3.9**  
**Placement Agencies Providing Training to Jobseekers**



Source: Primary Survey, 2013

Some of the interesting observations were that these agencies had appointed a person to lure jobseekers outside their premises who would be loitering around to find a suitable agency to submit their bio data. These people would bring the jobseekers to the concerned placement agency with the assurance that the agency would enable them to find a suitable job. This was a phenomenon with many agencies operating in commercial complexes like Nehru Place and others where these small placement agencies would be located in some small corner or basement or even space below the staircase of any building.

While only 6 percent of these agencies agreed to have provided training, 4 percent of the respondents did not give any responses. Those agencies which provided training to the jobseekers conducted the trainings under two broad-based categories as follows:

- **Project based training:** This kind of training includes 3-4 months training on some project in any company or the placement agency itself.
- **Industry specific skill training:** In this type of training, the placement agencies claim to provide training on the latest technologies used by the industry in specific fields

**e.g:** Communication skills training and voice and accent training for BPO industries personality development and communication skills training for receptionist, training on how to use modern appliances in homes for domestic workers.

But the comparison with the international experiences clearly reveals that in India these small and medium industries have not been able to address the situation of skill mismatch. This is perhaps the reason why jobseekers were quite dissatisfied with the jobs provided to them.

### 3.4.3 Private Placement Agencies: Employment Opportunities

The CIETT Economic Report 2013 stated that in 2011 the global agency work industry continued in its recovery from the economic downturn that started in 2007 in USA and quickly spread to the rest of the world. In Europe the private employment agencies or agency work has contributed a lot in terms of labour market recovery and dealing with labour market segmentation and overall job creation. The report

*There is a global average of 4 people employed as internal staff per branch, and 10 per private employment agency. This illustrates that agency work industry is still mostly composed of small and medium sized companies, despite the presence of several large multinationals operating worldwide. (CIETT Economic Report 2013)*

further provided a statistical picture about agency work penetration rate which recorded 1.6 percent in Europe and the existence of 140,000 private employment agencies globally. It was also reported that there were around 12.4 million agency workers in full time equivalents were employed by private placement agencies across the globe.<sup>26</sup> India has also witnessed tremendous growth in private placement agencies post globalisation as already discussed earlier in this chapter. But a question which arises here is understand how far these agencies have addressed the employment related aspects in a dynamic and complex labour market like India.

One of the major limitations witnessed is that there are no available statistics on the number of private placement agencies operating in India, their penetration rate and the kind of employment provided by them. On the contrary CIETT has a robust database on agency work and contribute a lot in terms of improving people's participation in agency work. In 2011 there were 179000 branches of Pr EAs (Private Employment agencies) as calculated from CIETT database and mentioned in Economic Report 2013. The Asia/ Pacific Region accounting for 51 percent, Europe for 26 percent, North America for 20 percent, Japan, USA and UK are the top three countries by number of branches. The global average is 3 physical branches per PrEA<sup>27</sup>.

<sup>26</sup> CIETT The Agency Work Industry Around the World, Economic Report 2013

<sup>27</sup> Ibid.

These agencies are big agencies with a substantial annual turnover and have the capacity to provide employment to many people as internal staff. It is interesting to note that inspite of the existence of large multinationals private employment agencies also contribute substantially to employment growth.

However, the Indian situation is quite different than the European countries. The study revealed that none of these placement agencies provided employment to people as internal staff. While some of the agencies, who had ties with big employers like Ranstad, CII, FICCI, Teamlease etc could afford to provide some employment as a part of their training. For example project based training and employment as already discussed earlier in this chapter. There is no denying the fact that the European countries have a highly regulated labour market with significant contribution from private employment agencies. Moreover the European countries have also ratified the ILO Convention 181 which definitely makes the operation of agency work more transparent and result oriented.

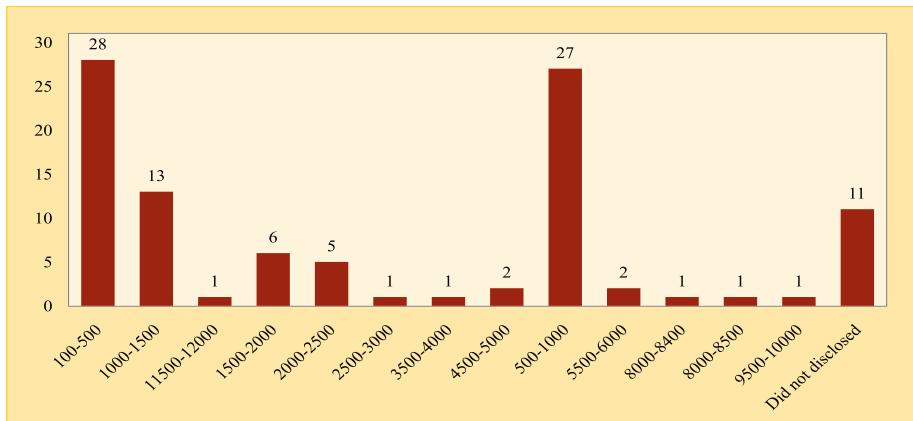
**Table 3.5**  
**Number of Placements in a Year**

Placements in a year	Number of agencies	Percentage
100-500	28	28.0
1000-1500	13	13.0
11500-12000	1	1.0
1500-2000	6	6.0
2000-2500	5	5.0
2500-3000	1	1.0
3500-4000	1	1.0
4500-5000	2	2.0
500-1000	27	27.0
5500-6000	2	2.0
8000-8400	1	1.0
8000-8500	1	1.0
9500-10000	1	1.0
Did not disclose	11	11.0
<b>Total</b>	<b>100</b>	<b>100.0</b>

Source: Primary Survey, 2013

With regard to number of placements in a year it was revealed that 28 percent of agencies agreed to have provided 100-500 placements per year. 27 percent of the placement agencies provided placements between 500-1000. 13 percent reported that they provided around 1000-1500 placements annually. The maximum number of placements reported by them was within 9500-10000 which is only one percent. These placement agencies maintained a complete database about the candidates /jobseekers that had approached them and also recorded the name of the companies where they were recruited. But there is no official database with the Government on the number of placements provided by these agencies. These placement agencies have been operating without the knowledge of the Government; there is dearth of data on their contribution to employment opportunities.

**Figure 3.10**  
**Number of Placements in a Year**



Source: Primary Survey, 2013

**Table No. 3.6**  
**Industry-wise Distribution of Placements**

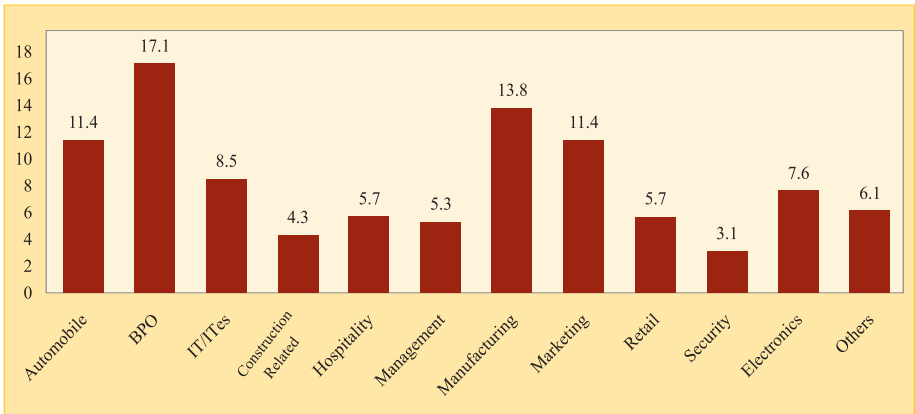
Industries where the placement is provided	Number of placements in this industry	Percentage
Automobile	30	11.4
BPO	45	17.1
IT/ITes	22	8.5
Construction & related sectors	12	4.3
Hospitality	15	5.7
Management	14	5.3

Manufacturing	36	13.8
Marketing	30	11.4
Retail	15	5.7
Security	8	3.1
Electronics	20	7.6
Others	16	6.1
<b>Total</b>	<b>263</b>	<b>100</b>

Source: Primary Survey, 2013

With regard to the kind of industries where placement was provided, it was analyzed that maximum number of placements were in the BPO industry (17.1 percent).13.8 percent of the placements were in manufacturing sector,11.4 percent in automobiles,11.4 percent in marketing, 8.5 in IT and ITes,7.6 in electronics,6.1 percent in others (radio jockeys, event management, fashion designing, interior designing, barber, cooks, liftmen etc.), 5.7 percent in retail, 5.7 percent in hospitality, 5.3 percent in management,4.3 percent in construction and related sectors and 3.1 percent in security. Further it can be stated that the proper channelization of the efforts of these placement agencies which are genuine can lead to more job creation and employment generation for jobless youth. Arrangements like *flexi-work* for women workers can contribute a lot in reducing labour market segmentation and gender differentials in work and occupational segregation.

**Figure 3.11**  
**Industry-wise Distribution of Placements**



Source: Primary Survey, 2013

### 3.4.4 Modes of Advertisement in Placement Agencies

The increasing number of eye catching advertisements about job opportunities in the electronic and print media has been a serious concern for the government authorities. These advertisements are released by private placement agencies for luring young jobseekers with a promise for lucrative jobs. However most of these placement agencies resort to unfair practices and mislead innocent jobseekers and exploit them. Keeping in view,

*“The committee will examine the whole issues relating to private placement agencies and how to regulate and control their illegitimate activities”, the Ministry said (Indian Express Apr101,2012)*

the seriousness of the issue, the Indian government has proposed a tripartite committee to examine issues relating to private placement agencies in the wake of rising complaints of some of them misleading job aspirants and resorting to irregularities. This Tripartite Committee was constituted on 31.10.2011. The news about the proposal for constitution of the tripartite committee was published in newspapers. The first meeting of the Committee was held on 11.11.2011 and there was a unanimous decision to have a regulatory mechanism to control the private placement agencies cheating the jobseekers by frivolous advertisements and bringing about draft legislation. Since there has not been any data on the number of the private placement agencies or any research on their recruitment practices it became a challenging task to draft legislation. Though there has not been any substantial progress in this regard, there is no denying the fact that that the government has taken initiatives to understand the ground reality and also uncover the unfair recruitment practices through this present study so that they are well aware about the recruitment practices and also are able to formulate draft legislation accordingly. The study has made a serious attempt to deal with the above mentioned aspect.

Recommendation 188 of The ILO Convention 181, Paragraph II, on Protection of Workers No.7 clearly states *that the competent authority should combat unfair advertising practices and misleading advertisements, including advertisements for non-existent jobs.* No.9 of the same paragraph states *private employment agencies should be prohibited, or by other means prevented, from drawing up and publishing vacancy notices or offers of employment in ways that directly or indirectly result in discrimination on grounds such as race, colour, sex, age, religion, political opinion, national extraction, social origin, ethnic origin, disability, marital or family status, sexual orientation or membership of a workers organization* <sup>28</sup>.

<sup>28</sup> Recommendation 188 Private Employment Agencies Recommendation 1997.ILO. For details see Annexure I.

In this context, the various advertisement practices adopted by the private placement agencies in Delhi and NCR were analyzed in the survey.

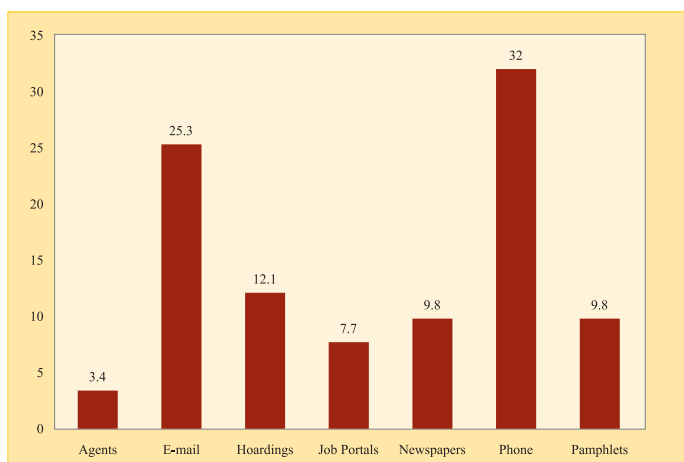
**Table 3.7**  
**Modes of Advertisement**

Mode of Advertisement	No. of responses	Percent
Agents in the market	10	3.4
E-mail	75	25.3
Hoardings	36	12.1
Job Portals	23	7.7
Newspapers	29	9.8
Phone	95	32.0
Pamphlets	29	9.8
Total	297	100.0

Source: Primary Survey, 2013

The survey data revealed that 32 percent of the placement agencies (Table 3.7) used telephones to advertise about their agency, 25.3 percent used emails, 12.1 percent used hoardings, 9.8 percent used newspapers, 9.8 percent used pamphlets, 7.7 percent used job portals, while the remaining 3.4 percent had appointed people as agents to do the advertising. A detailed description about the modes of advertisement adopted by the placement agencies is given in figure below (Fig 3.12)

**Figure 3.12**  
**Modes of Advertisement**



Source: Primary Survey, 2013

There are different modes of advertisement which are used by the placement agencies for the purpose of attracting jobseekers. These can be broadly classified as follows:

- **Agents:** They are the people who loiter in the market areas or the areas where the placement agencies are located. They convince the jobseekers and take them to the office of the placement agency. Often, they mislead the jobseekers by giving false information about the brand value and the placement records of the agencies.
- **Phone:** These are basically tele-marketing calls that jobseekers receive from placement agencies regarding the jobs available with them. They ask jobseekers to come to their office for the purpose of registration and interview. They get the contact number of jobseekers from various sources like the job portals, placement cell of the colleges etc.
- **E-mail:** Advertisement about the placement agency is also done through e-mails. These e-mails ask the ask jobseekers to come to their office for the purpose of registration and interview. Sometimes they also mention the companies for which the hiring is conducted.
- **Job portals:** There are various job portals through which the placement agencies advertise for the available jobs. These include naukri.com, monster.com, timesjobs.com, shine.com and many more. Along with these websites like Quickr.com also advertises about jobs.
- **Newspapers:** These placement agencies publish advertisements in the newspapers like Times Ascent, Noida Bazaar and various other newspapers in Delhi/NCR region.
- **Hoardings:** The hoardings are also one of the modes of advertisement used by the placement agencies for the advertisement. These are clearly visible in the form of banners, posters etc near the streets all across Delhi and NCR.



Figure 3.13  
Varieties of Advertisements



In addition to this, while doing the primary survey the research team gathered information about books or directories available in the market providing details of the placement agencies like:

- Name
- Address
- Contact numbers
- E-mail
- Website
- Job focus
- Contact person

These books are published by local publishing houses and are available in the market. Two such books are published by Student Aid Publications. One of the books lists number of placement agencies in Delhi and NCR while the other one has details of agencies all over India.

### 3.5 Perception of Job seekers about Placement Agencies

With the demographic transition and increasing youth population in India, it becomes imperative to explore the experiences of youth with the private placement agencies. As discussed earlier, the private placement agencies have contributed immensely to the European job market by providing plethora of

employment opportunities to young working population. The growth of flexi-staffing industry is an important breakthrough in this direction. The role of private placements agencies in the placement of the unemployed has led to a series of conflicting discourses. On one hand, they have been seen as offering particularly exploitative conditions to jobseekers that have few alternatives while on the other some argue that some job is better than no job (Gray,2002). The discourse of temporary work as a 'stepping stone' to a long-term job is implicit in the encouragement give to the unemployed by UK job centres to use employment agencies as a job search channel (Philpott,1999).

The Indian scenario, however, provides a different reality as flexi staffing is a nascent industry recently pointed out in the Indian Staffing Federation Research Report 2012<sup>29</sup>. Various reports published by the NSSO (National Sample Survey organization) have reflected on the employment and unemployment situation in India. The recent NSSO 66<sup>th</sup> Round 2009-2010 recorded the working age population as 743.793,577 million as working age population which is about 61.5 percent of the total population. Though the unemployment rate in India is 2.3 percent (NSSO 2009-2010) yet there has been existence of underemployment due to seasonality of work and many other reasons. The question which arises here is what kind of jobs placement agencies can provide to overcome such a situation and its impact on long-term prospects of the unemployed? How far these agencies have been successful in acting as a stepping stone to long-term jobs and what are the perceptions of the jobseekers about them?

The ILO Report on Global Employment Trends for Youth expressed serious concern over global unemployment situation. The report says, even though some regions have overcome or made progress in mitigating the impact of the global economic crisis, all regions face major youth employment challenges... In order to design appropriate labour market and macroeconomic policies to promote better labour market outcomes for youth, it is necessary to understand the specific situation of young people in labour markets (2012). The growing prevalence of agency work or popularly known as agency-temp jobs (temporary workers who are contracted to the agency rather than organization which uses their labour) Agency temp jobs are especially entry route for the unemployed, but the insecurity of such work makes it also important a route into unemployment, representing a portion of the short term work which features frequently in the job histories of the unemployed (Gray,2002).

<sup>29</sup> This is a comprehensive research, first of its kind on the Indian Staffing Industry titled as "*Indian Staffing industry Research 2012 Turning Available Work Into Jobs*", Indian Staffing Federation.

Against this backdrop, an understanding about the situation of Indian youth and the role of private placement agencies in the placement of the unemployed can contribute a lot in terms of designing effective labour market policies. India's vision 2020 document released by the Planning Commission emphasised on the abundant opportunities and ample means available to the nation to achieve the objective of creating additional employment opportunities. The largest number of new jobs will be created by small and medium enterprises (SMEs), which contribute the vast majority of private sector jobs in more advanced economies such as the USA, Japan and Korea. International experience confirms that SMEs are better insulated from the external shocks, more resistant to the stresses, and more responsive to the demands of the fast-changing technology adoption, globalisation and entrepreneurial development (Planning Commission, 2002). The present section is an attempt to understand the situation of jobseekers who have experienced the recruitment practices of these placement agencies and many a times been victimized by them.

### 3.5.1 Educational Profile of Jobseekers

The survey revealed that a majority of the jobseekers (72 percent) were graduates, 14 percent were post graduates, 7 percent were intermediates, and 5 percent were diploma holders while only one percent was matriculates and remaining one percent below 10<sup>th</sup> standard. This clearly shows that the Indian job market is frequented more by the unskilled jobseekers that lack professional training. The large number of graduates in search of job raises an important question of how far the placement agencies would be able to address their issues.

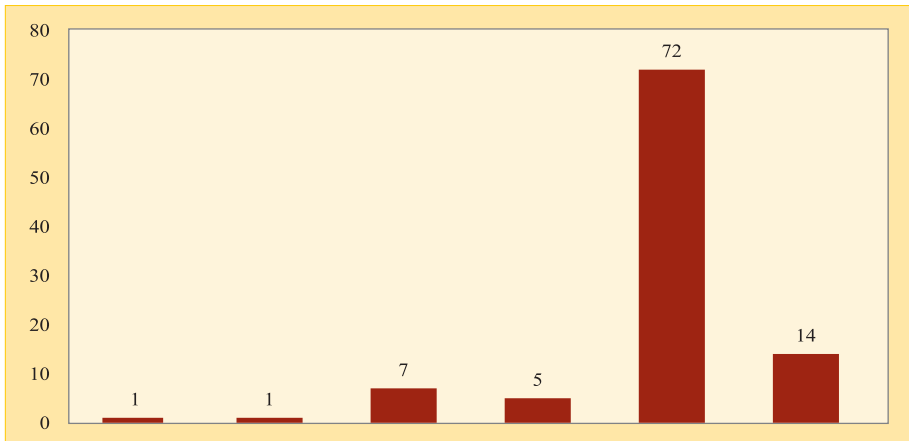
**Table 3.8**  
**Distribution of Jobseekers on the basis of Education Qualification**

<b>Educational qualification of jobseekers</b>	<b>Number of jobseekers</b>	<b>Percentage</b>
Below 10th	1	1
Matriculation	1	1
Intermediate	7	7
Diploma	5	5
Graduation	72	72
Post Graduation	14	14
<b>Total</b>	<b>100</b>	<b>100</b>

Source: Primary Survey, 2013

Though India’s education system has expanded exponentially yet there is a question about the quality of jobs created by the education system.

**Figure 3.14**  
**Educational Qualification of jobseekers**



Source: Primary Survey, 2013

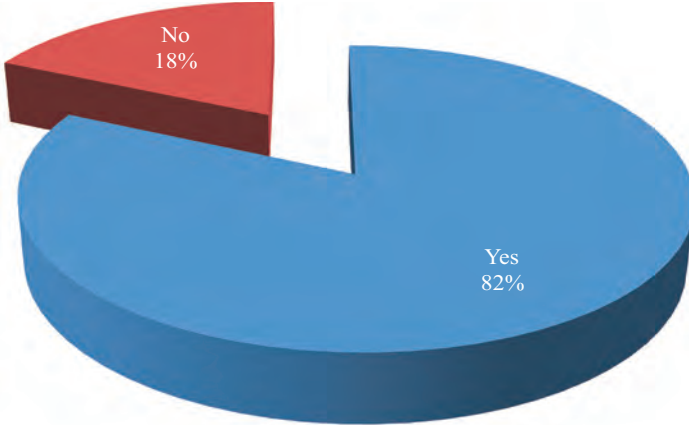
### 3.5.2 Enrollment in Placement Agencies

The recent growth in placement agencies in India clearly reveals that more and more jobseekers get registered with them to find a suitable job for themselves. Employment agencies, like job centres are an important search channel for the unemployed. Many unemployed people seek agency work in unskilled categories for which agencies find no shortage of applicants. It is not surprising; therefore, that London office jobs, where demand for labour is buoyant and agency temps are paid relatively well, constituted the exception to the general view of unemployed people that agency work is an inferior opportunity (Gray, 2002). The international experience has no doubt shown diverse viewpoints on the operation of placement agencies. The Indian situation is quite different when compared to other countries since the unemployed youth resort to placement agencies with a faith that these agencies would be instrumental in giving a kick start to their careers. The contradiction however is their experience with the placement agencies after registering themselves has been quite different than what they had expected.

The survey data revealed that a large majority (82 percent) of the respondents were enrolled with placement agencies while only 18 percent

were not enrolled with any placement agency. It was also found that at least 64.6 percent of the jobseekers were enrolled in at least one agency and the rest (35.4 percent) were enrolled in more than one agency.

**Figure 3.15**  
**Enrollment in Placement Agency**



Source: Primary Survey, 2013

**Table 3.9**  
**Number of Agencies in which Jobseekers were Enrolled**

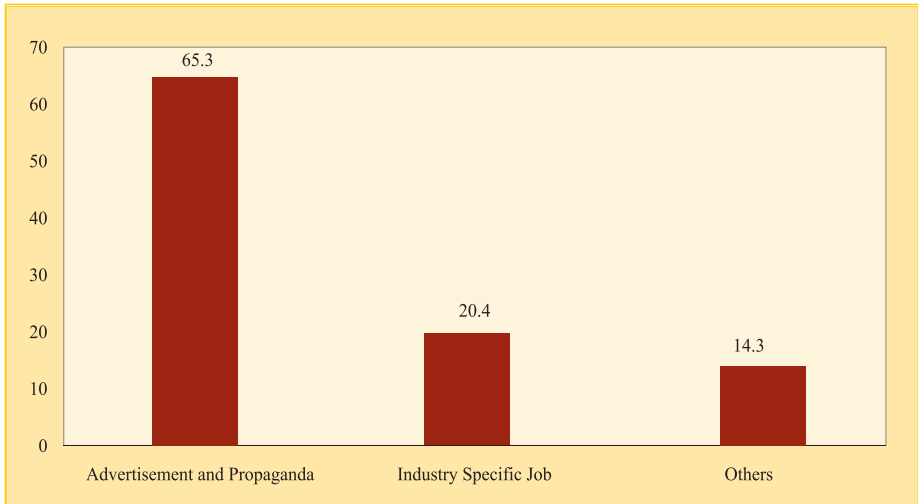
Number of agencies with which one jobseeker is registered	Number of jobseekers	Percentage of jobseekers registered with number of agencies
One	53	64.6
More than one	29	35.4
<b>Total</b>	<b>82</b>	<b>100</b>

Source: Primary Survey, 2013

Jobseekers had selected placement agencies from the numerous agencies available in the market. While selecting any particular agency for enrolment various factors were considered by them.

Interestingly, advertisements and propaganda have been the most popular reason among the jobseekers for choosing a particular agency (Figure 3.16). 65.3 percent of the jobseekers were influenced by advertisements and propaganda through various mediums of communication. Advertisements and propaganda include:

**Figure 3.16**  
**Reasons for Choosing a Particular Agency**



Source: Primary Survey, 2013

- Advertisement via Phone: People from placement agencies call the jobseekers and inform them about the available jobs with them. They get their numbers from job portals like naukri.com, monster.com from where the information is easily accessible.
- Referral by friends and family about good brand value and market survey
- Online Advertisement
- E-mails received by a particular agency
- Pamphlets/Sign boards/Hoardings/Banners

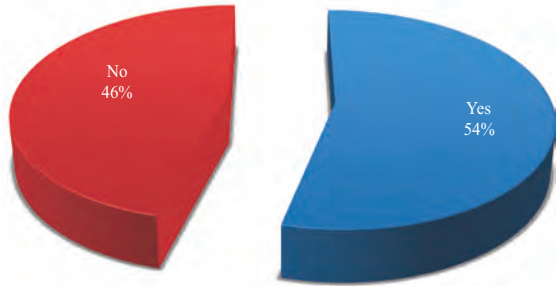
The second highest reason for selecting a placement agency is Industry specific job.20.4 percent of the Jobseekers had mentioned that they searched for an agency that provided job in their desired field and then enrolled with them. They selected the agency through internet and market survey. The fields where placement was provided, as responded by the jobseekers includes retail, electronics, hospitality etc

Apart from this 14.3 percent of the jobseekers had various other reasons for choosing any particular placement agency in order to get themselves enrolled. These reasons are multifarious like names of the agencies suggested by the placement officer of the educational institutions where the

candidates were pursuing their education. Some of the jobseekers were lured by agents hired by placement agencies who convinced them about the advantages of choosing their agency. Some of the lucrative offers suggested by these agents include no registration fees, 100 percent job assurance, better job opportunities, part time or night shift jobs in hotels etc. But a question which arises here is how far the placement agencies have been successful in addressing various concerns of the jobseekers? However some of the jobseekers did not give any reason for having chosen any placement agency. In fact these jobseekers just wanted to get a job for themselves without any information on the job which they wanted to do as per their qualification.

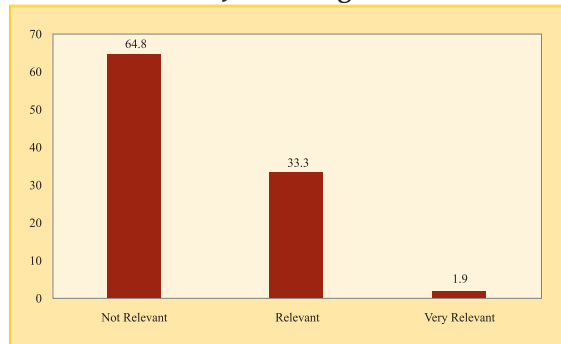
Though 54 percent of the jobseekers have said that the placement agencies have provided them job but the above the figure (3.18) clearly shows that the job offered to them was not relevant. 64.8 percent

**Figure 3.17**  
**Job offered by Placement Agency**



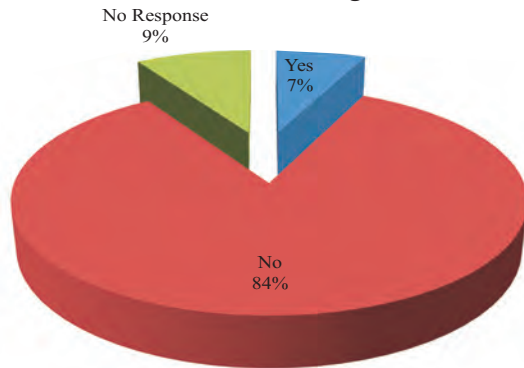
Source: Primary Survey, 2013

**Figure 3.18**  
**Job Rating**



Source: Primary Survey, 2013

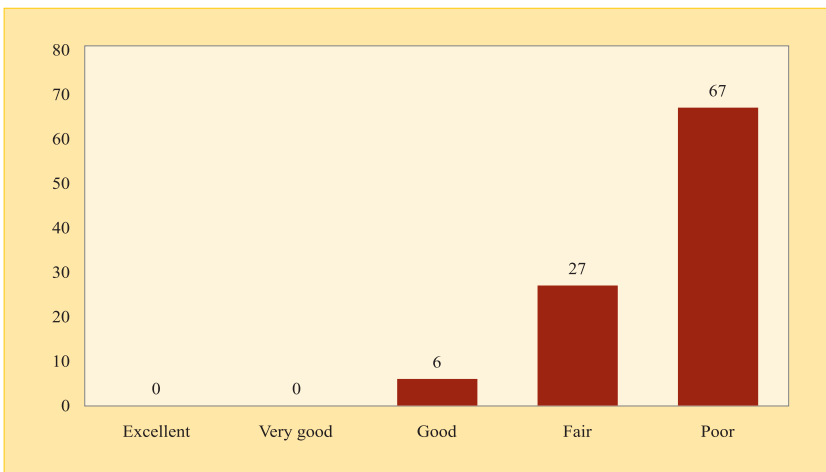
**Figure 3.19**  
**Percentage of the Jobseekers satisfied by the work of Placement Agencies**



Source: Primary Survey, 2013

felt that the jobs provided by placement agencies were not relevant. The jobs offered did not match their qualifications and expectation levels. The jobs offered were in huge disparity with what was promised to them. For Example: B.Tech graduates were offered the job of marketing or BPO sector. Also the nature of job provided was temporary. It provided them employment for a very short period of time.

**Figure 3.20**  
**Performance of Placement Agencies**



Source: Primary Survey, 2013

Nearly 84 percent of the jobseekers said that they were not satisfied with the work of placement agencies and the recruitment practices adopted by them. (Figure 3.19). On the other hand, it was revealed that only 7 percent of the jobseekers were satisfied with the placement agencies. 9 Percent of the jobseekers did not give any response regarding their experience with the placement agencies. This clearly reflects situation of skill mismatch as discussed earlier in this chapter in the section on training and skills.

It is clearly evident that the jobseekers did not have a good experience with the placement agencies. An analysis about the performance of the placement agencies clearly revealed that a vast majority of the jobseekers (67 percent) considered placement agencies to be poorly performing, 27 percent believed that these agencies had a fair performance level, 6 percent

- Fake promises made by agencies
- Playing with the future of the students
- No extra efforts made by the agencies besides conducting interviews (jobseeker, survey data)



believed that they were good. However, it was also found that none of the jobseekers rated the placement agencies to be performing excellently or even none of them rated them as very good. Majority of jobseekers who were not satisfied with the work of placement agencies had various grievances against them. One of the jobseekers said “*These agencies make fake promises and are wasting the valuable time of youngsters. This precious time could have been saved had we searched for jobs ourselves without any help of agencies*”. (Primary Survey, 2013)

#### *Six minors rescued from job agencies*

*Six teenagers, including four girls were rescued from two placement agencies here which had forced them to work as domestic helps, police said on Saturday. Two persons were arrested. Four girls and two boys, all below 16 years and hailing from Bihar and Uttar Pradesh were rescued on Friday in a raid at Geeta Enterprises and Jeevan Jyoti Enterprises in East Delhi, a police officer said. Geeta Sahni, 40, owner of Geeta Enterprises and Shyam Kumar Yadav, 33, owner of Jeevan Jyoti Enterprises, were arrested he said. Police said the accused used to collect salaries of juveniles from their employers and when the children expressed a desire to go back to their native places they refused to allow them to return. (The Hindu, January 20 2013).*

It was quite evident that the jobseekers were victimized by many of the placement agencies and were cheated by them. Many of the cases of fraud agencies have been reported in local newspapers. Recently two placement agencies in Delhi were exposed for fraudulent means as reported by The Hindu (as mentioned in the previous Text Box).

Moreover, many cases of Fraud by these placement agencies have been registered online in a portal called **Indian consumer complaints forum**. These cases clearly show the kind of exploitation by these placement agencies who

*The company named Meko placement agency is a fraud. they say they will provide job and visa for canada and denmark and the payment has to be done after visa however in between they ask candidate to go for medical examination. and the medical expense is rs 7000, however they only give the receipt of inr 1250.*

*there is two person involved in it “deepak mehta and jagdish nagda”*

*both of them never pick up the call after medical.*

*<http://www.consumercomplaints.in/complaints/meko-placement-services-udaipur-rajasthan-c474195.html>*

charge exorbitant fees from jobseekers in the name of training and Job. The Indian Consumer Complaints Forum is an online complaint forum which has thousands of complaints lodged against fraudulent placement agencies.

### **3.6 Summary**

This chapter has analyzed the recruitment practices of the private placement agencies operating in Delhi and NCR. The placement agencies covered included the four categories of agencies as outlined by Directorate General of Employment and Training (DGE&T). Though the agencies concerning manpower export, labour contractors, private security agencies are covered under Emigration Act 1983, Contract Labour (Abolition and Regulation) Act 1970, Inter-state Migrant Workmen (Regulation and Employment Conditions of Service) Act 1979 and Private Security Agencies (Regulation) Act 2005, the fourth category of agencies Private Placement Agencies are not covered under any Legislation. The chapter tried to explore about the various practices adopted by these placement agencies to operate in the market. It was clearly evident from the foregoing analysis that the fourth category of placement agencies was highly unregulated and had adopted unfair practices to exploit young jobseekers. The two viewpoints (Placement Agencies and Jobseekers) analyzed in the chapter provided insight into the actual operational mechanism of these placement agencies.

Lack of regulation, monitoring and enforcement of stringent labour laws had encouraged the small and medium placement agencies to resort to unfair practices and not keeping up to the expectations of the jobseekers. As a result of this, the jobseekers had lost all hope from these placement agencies and only wanted these agencies to be stopped from functioning. There is no denying the fact that these placement agencies have become very popular among the jobseekers due to their attractive advertisements and propaganda which is clearly reflected in their information on registration with placement agencies. Most of them register with these agencies with the hope of getting a suitable job and these agencies can provide suitable jobs to them provided they are properly regulated. Like the European Federation of Private Employment Agencies (Euro CIETT) these agencies can also act as engines of job creation. Private employment agencies can act as an entry-point to the labour market, especially for disadvantaged jobseekers, and can enhance workers' employability by facilitating access to training and offering opportunities for professional experience in different working environments. (ILO, 2009)

It can be argued that in some cases the placement agencies covered under any specific legislation did provide employment services to people. But in a majority of cases, the unregulated ones adhered to unscrupulous practices and operated illegally. In such a situation their role as potential job providers can be thoroughly questioned. Since the jobseekers were not satisfied with their performance and complained about the irregularities prevailing in the sector, it becomes a matter of serious concern to probe into their operational mechanism. It can be further reiterated that issues related to licensing, registration and fee charging emerge as grey areas in the operation of these placement agencies. Moreover, some of the agencies which were registered under any legislation also exploited jobseekers with exorbitant fees. Lack of proper mechanism for inspection, monitoring and regulation has encouraged them to operate in the market without any fear of being caught. The policy makers, legislators and social partners need to interact for promoting *flexicurity* based on various combinations of the different components of the employment and social protection systems which need to be identified in order to enhance flexibility and security for both workers and employers. The viability of such choices is largely dependent on the willingness and ability of social partners to become actively involved in defining the right balance of the various components of employment policy through tripartite and bipartite dialogue. It is therefore important to provide the partners with meaningful role which engages them in the setting up of national employment policies but also to constantly adjust such policies to the dynamics of the market through dialogue and negotiations at various levels. Lessons may be learnt from various cross country experiences about the proper functioning of private placement agencies so that they contribute effectively to the dynamic labour market. The legal recognition of these agencies through appropriate legislation and their linkages with large federation like Indian Staffing Federation can contribute tremendously to tackle the problem of unemployment.

## Chapter 4

# Regulation of Private Placement Agencies: Existing Legislative Framework in India

The growing trend of private employment agencies throughout the world has raised a concern over a risk of labour market segmentation with an undesirable gap in working conditions of permanent and temporary employees, particularly in terms of wages and working rights. Such a situation has led to wide ranging academic debates on the dynamic relationship between labour market performances and employment protection. Public opinion and policy makers have stressed the importance of finding 'an appropriate balance between flexibility and security' (European Commission, 2003). There are various theoretical positions which explain the relevance of temporary jobs. Some arguments claim that more able workers may use temporary jobs to signal their skills by making themselves available for screening. Some believe that temporary jobs may provide an occasion to acquire additional human capital, social contacts and information about vacancies (Ichino et al,2008). In spite of the plethora of opportunities provided by the private employment agencies, there are instances of exploitation of job-seekers by profit seeking employment agencies which then represents a *trap of endless precariousness* as rightly pointed out by Ichino et al.

### 4.1 The Context

In this context there was a movement towards regulation of private employment agencies in various countries throughout the world in the past many decades. In many nations there were restrictions and complete suppression of private employment agencies .By 1926 Finland, Romania and Bulgaria had provided for complete abolition of private employment agencies .But between 1910 and 1930 there seemed to emerge a general consensus among the nations dealing with private employment agency industry that this industry should be strictly controlled, if not entirely prohibited (Martinez 1976).However, there were diverse viewpoints on the operation of these employment agencies like complaints about the irregularities and illegal mechanisms followed by the agencies to operate in the market. Some other viewpoints report of illegal fee charging by such agencies which remains largely unregulated and at times encouraged unemployment within the labour market.

A reaction from a Labour Department agent in Washington in a Certificate Program as quoted by Thomas Martinez is as follows:

*The complaint against the private office is almost universal. The experience of this office is that private agencies charge all that the traffic will bear and that in hard times, when work is scarce and the worker poverty-stricken, the fee is placed so high as to be almost prohibitive, and the agencies take longer chances, sometimes sending men on only a rumor, depending on their financial straits to make it impossible to return. (1979)*

Such practices were regarded as highly exploitative in nature and also devices to restrict labour mobility in times of serious unemployment. The need for regulation was enhanced not only by the profound effect of these agencies upon the labour market and the economy in general but also by the very nature of the business, which provided a very fertile ground for unscrupulous business practices (Martinez 1979). During 1970s such agencies were discouraged and the funding for such agencies was discontinued. With the onset of liberalization and globalization, these private employment agencies were seen as contributing a lot towards effective functioning of the labour markets. The 85<sup>th</sup> session of the International Labour Conference overcame the initial opposition to private employment agencies and supported the Convention 181 as a regulatory mechanism to reduce unfair competition from recruitment agents who were resorting to malpractice and abuse.

Against this backdrop, the ILO Convention 181 recognizes the positive role of private employment agencies and their contribution to the labour market. It also sets of general parameters for the regulation, placement and employment of workers recruited by private placement agencies and in particular, temporary work agencies. At the same time, the Convention promotes cooperation between the Public Employment Services (PES) and Private Employment Agencies (PrEAs) to ensure the most efficient functioning of the labour market, with the PES still maintaining the authority in formulating labour market policies.<sup>30</sup> The Private Employment Agencies Recommendation No. 188 relates to Convention No. 181 and specifies provisions for this cooperation and also provides guidelines to national legislators in drafting legal frameworks in line with Convention.<sup>31</sup>

<sup>30</sup> See Guide to Private Employment Agencies: Regulation, Monitoring and Enforcement, 2007, International Labour Organisation.

<sup>31</sup> For details on Recommendation see annexure on Private Employment Agencies Recommendation No. 188

Good practice in regulation and effective national legislation includes clearly defining the term “private employment agency”, determining basic requirements for the legitimate operation of agencies, and ensuring governments’ capacity to enforce such provisions. It sets general parameters for the regulation, placement and employment of workers by these agencies, and assists member States to establish clear policies, legislation and mechanisms for effective registration and licensing of agencies, thereby helping them play a constructive role in contributing to labour markets free from exploitative conditions.<sup>32</sup>

#### **4.2 Convention 181 and the Existing Indian Legislations:**

There is no denying the fact that private placement agencies play an important role generating employment and contributing to the expansion of the labour market. In a country like India where there is a growing youth population it becomes imperative to understand the functioning of private placement agencies in generating gainful employment for the youth and also analyze their regulation as per Convention 181. There are many existing labour legislations in India which are in line with most of the provisions of Convention 181. These legislations are in the field of contract labour, migrant workers, private security agencies, shops and establishments etc. With regard to regulation of placement agencies recruiting domestic workers the Delhi Government has passed a Draft Bill termed as Delhi Private Placement Agencies (Regulation) Bill 2012 which is still in the midst of various criticisms from social activists. However there has not been any legislation on private employment agencies not falling into above categories. The question of bringing a legislation to regulate private placement agencies not covered under any of the above categories has been considered at various forums. Such agencies are working in large numbers in sporadic locations and there is no authentic data source available in the country about the number of these agencies.

With regard to Convention 181 concerning private placement agencies, India has not been able to ratify the convention so far due to many reasons. Some of the often quoted reasons are the peculiar labour market situation in the country with large unorganised sector, lack of reliable data on the existence of these agencies and various existing laws concerning some of

<sup>32</sup> See Private employment agencies, promotion of decent work and improving the functioning of labour markets in private services sectors; Issues paper for discussion at the Global Dialogue Forum on the Role of Private Employment Agencies in Promoting Decent Work and Improving the Functioning of Labour Markets in Private Services Sectors (18–19 October 2011: International Labour Office Geneva.

these agencies which are not in tune with Convention 181 like Article 7 (1) of the Convention regarding fee charging is not in line with provisions of Emigration Act and Article 1(b) of the Convention is overlapping with the provisions of Contract Labour Act.

Against this backdrop, there is a need to understand the existing legal provisions in the country and their compliance with Convention 181. It is also important to address the various loopholes in our legal provisions and explore the possibility of formulation of a legislation to regulate the private placement agencies in line with Convention 181.

#### **4.2.1 The Private Security Agencies (Regulation) Act 2005**

This act adheres to lot of important provisions mentioned in ILO convention 181. Article 3 of the Convention mentions about a legal status of the private employment agencies to be determined in accordance with national law and practice. The article also makes a provision for a system of licensing for their proper regulation as per national practice. In the context of India, the Private Security Agencies Regulation Act 2005 has provisions related to licensing as it is mentioned in clause No.4 of the act.<sup>33</sup> The persons or Private Security Agency cannot commence the business of private security agency unless they hold a license. The license is granted under certain conditions and the duration is initially for five years which can be renewed later under a controlling authority.

With regard to power to issue licenses assigned to controlling authority appointed under the act, there has been criticism on the selection criteria of the person to be appointed as the controlling authority who should not be below the rank of Joint Secretary in a State. The major limitation of this act is that unless and until the rules under the act are framed by the respective State governments, this act cannot be implemented. Another limitation is that since the power to implement this act has been given to the police department one can hardly hope that the provisions of the act relating to labour would really be implemented (Upadhyaya, 2011)

#### **4.2.2 The Delhi Shops and Establishment Act 1954**

The Shops and Establishment Act is a state legislation act and each state has framed its own rules for the Act. The object of this Act is to provide statutory obligation and rights to employees and employers in the unauthorized sector of employment, i.e., shops and establishments.

<sup>33</sup> For details see Private Security Agencies (Regulation) Act, 2005

This Act is applicable to all persons employed in an establishment with or without wages, except the members of the employer's family. The provisions of the Act will apply to the shops and establishments located in Delhi and not to any establishment working outside Delhi under the authority of Chief Commissioner, Delhi. The act in its Section no 5 refers to registration of shops or establishments<sup>34</sup>. The act also provides provisions of special power to inspectors who would be responsible to collect information on closure and opening of any commercial units. Such provisions are in line with ILO convention 181. However, the survey data revealed that many of the placement agencies were registered under Shops and Establishment Act which caused serious doubt about the provisions of the act itself. The act does not mention any provision on fee charging from employees but the placement agencies registered under the act still charged fees from jobseekers. Since there is no provision on licensing and cancellation of license when found guilty of any irregular practice, the scope for exploitation increases. This was also reported in the primary survey conducted in Delhi and NCR. Therefore, there is a need for more stringent regulation mechanism since the placement agencies registered under this act as establishments were indulging a lot of exploitative practices.

#### 4.2.3 Emigration Act 1983

The Emigration act includes special rules for registration of recruiting agents and certificate provided to them for three years which can be renewed later. The registration process is facilitated by Protector General of Emigrants appointed as registering authority by the Government. This provision is in line with Convention 181. The Emigration act does not apply to certain immigrants under

*There is a need to emphasize on aspects like monitoring of the labour markets and assessing the emerging skill requirements in major labour importing countries". It states that adequate emphasis has not been provided for assessing the skill sets within the country in relation to the emerging skill requirements at the global level. (Sasikumar and Husain,2008)*

two clauses (a) the recruitment or emigration of any person who is not a citizen of India and (b) the control of recruiting in India for service of foreign states to which the Foreign Recruiting Act,1874 (4 of 1974) applies.<sup>35</sup> However with regard to the Convention's stand on fee charging there is

<sup>34</sup> For details see Delhi Shops and Establishment Act 1954

<sup>35</sup> Paragraph 4 of foreign recruiting Act 1874 mentions about Power to impose conditions.- The Central Government may from time to time, by general order notified in the Official Gazette, either prohibit recruiting for the service of any Foreign State, or impose upon such recruiting any conditions which it thinks fit.



flexibility as mentioned in article 7 “Paragraph 1, Private employment agencies shall not charge directly or indirectly, in whole or in part any fees or costs to the workers. *Paragraph 2* in the interest of the workers concerned and after consulting the most representative organizations of employers and workers, the competent authority may authorize exceptions to the provisions of paragraph 1 above in respect of certain categories of workers, as well as specified types of services provided by private employment agencies. (ILO Convention 181)<sup>36</sup>.

In this context the Emigration Act in India under paragraph 15 A has certain provisions on fee charging

*All applications from the persons, individually or through recruiting agents or through other permitted agents, who intend to go abroad on short term non-employment visit and requiring suspension of emigration check requirements for a limited period (emigration suspension), shall be accompanied by a demand draft of rupees one hundred drawn in favour of the Protector General of Emigrants as fee in respect of each applicant.*

#### Paragraph 25

*The charges which the recruiting agent may recover from an emigrant in respect of services rendered shall not exceed rupees five thousand in the case of skilled workers, rupees three thousand in the case of semi skilled workers, rupees two thousand in the case of unskilled workers and other than the above categories rupees ten thousand for which the recruiting agent shall give a receipt to the emigrant.*<sup>37</sup>

These are the exceptions which ILO Convention 181 reaffirms thereby providing instructions to countries to provide information on categories of workers with subsequent justifications for fee charging. But here a question arises whether the flexibility on fee charging in ILO Convention would result to unscrupulous practices by recruiting agents in the name of fee charging thereby charging of exorbitant fees not permissible under a country’s legal practice. However there have been reports on recruiting agencies in India dealing with immigration charging heavy fees from the workers in the name of visa and processing fees. Such practices fall beyond the flexibilities on paragraph 15 B and paragraph 25 of the Emigration Act 1983. The existing recruitment fee ceilings are not in conformity with

<sup>36</sup> For details see Convention 181 in Annexure I.

<sup>37</sup> For details see Emigration Act 1983

the market realities. It is a known fact that the expenditure incurred by recruiting agents has risen significantly over the last two decades. In most of the labour receiving countries, especially in the Gulf, the market for expatriate labour have transformed from a seller's to a buyer's market and the recruiting agents are required to make payments to the employers for obtaining placement orders. The amount demanded could vary according to the number of labourers demanded, salary offered and relative supply conditions. It is obvious that such increases in the expenditure of the recruiting agents are directly transferred to the intending migrants. In spite of such a rise of expenditure, the limit set on recruitment fees, especially for unskilled labour, has not been revised ever since 1983. (Sasikumar and Husain, 2008). In fact such situations have compelled recruiting agents to charge heavy fees. The existing loopholes within the Emigration Act has led to the formulation of a new proposed bill on management of Emigration but it is far from being implemented.

#### **4.2.4 The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979**

An act to regulate the employment of Inter-state migrant workmen and to provide for their conditions of service and for matters connected therewith. There are provisions on registration of establishments under the guidance of a registering officer appointed by the Government. Under this act, no principal employer of an establishment to which the act applies shall employ inter-state migrant workmen in the establishment unless a certificate of registration in respect to such establishment is issued. The act also has provisions for licensing of contractors through licensing officers appointed by the government.

*Subject to the provisions of the act, a license may contain such conditions including in particular, terms and conditions of the agreement or other arrangement under which the workman will be recruited, the remuneration payable, hours of work, fixation of wages and other essential amenities in respect to inter-state migrant workmen, as the appropriate Government may deem fit to impose in accordance with the rules, if any under Sec 35 and shall be issued on payment of such fees as prescribed.<sup>38</sup>*

<sup>38</sup> Here "workman" means any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment. Sec 35 is a section on Power to make rules under the act. For details please see Inter-state Migrant workmen (regulation of Employment and Conditions of Service) Act 1979

These regulatory provisions are very much in accordance with Article 3 of the convention 181 which mentions about a system of licensing of certification for the employment agencies. Article 3, Paragraph 2 of the Convention says:

*A member shall determine the conditions governing the operation of private employment agencies in accordance with a system of licensing or certification, except where they are otherwise regulated or determined by appropriate national law and practice.*<sup>39</sup>

The Inter-State Migrant workmen act is quite comprehensive as it has got enough provisions for social protection and social security of workers. The act prescribes for the fixation of Minimum wages under Minimum wages Act 1948 and no worker shall be denied payment of minimum wages. The act also has provisions like displacement allowance, journey allowance and other facilities like equal pay for equal work, ensuring of suitable conditions of work, medical facilities, protective clothing, and compensation to next of kin in case of fatal accident or injury to any workman in the place of work. All these provisions are much in line with Article 11 and Article 12 of ILO Convention 181. The act also has provisions for appointing inspecting staff with certain powers exercised by them under local limits which is again prescribed in Article 14 of C.181. Section 23 of the Act has an important provision of collection of data of the migrant workers through maintenance of registers and records with particulars which is also mentioned in Article 6 of ILO convention 181.<sup>40</sup> However the act is not extended to domestic workers who are exploited and made victims of trafficking by placement agencies.

#### **4.2.5 The Contract Labour (Regulation and Abolition) Act 1970**

The act applies to twenty or workmen employed on any day of the proceeding twelve months as contract labour. The act has many provisions which overlap with ILO Convention 181. According to Article 1(b) of the Convention “*services consisting of employing workers with a view to making them available to a third party, who may be natural or legal person (referred to as user enterprise) which assigns their tasks and supervises the execution of these tasks*”. Such a definition is in line with Paragraph 2 (b) of the Contract Labour Act which says: *a workman shall be deemed to be employed as “contract*

<sup>39</sup> See annexure on C181

<sup>40</sup> See details in The Inter-state Migrant Workmen (Regulation of Employment and conditions of service) Act, 1979 and C181.

labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. The other provisions with regard to registration, licensing and social protection covered under the act are much in line with Convention 181.<sup>42</sup>

#### Section 10 of the act

*Notwithstanding anything contained in this act, the appropriate government (central or state as the case may be) after consultation with the appropriate board (central or state as the case may be) can prohibit the employment of contract labour in any process, operation or other work in any establishment by notification in the Official Gazette.*

But, this section has been subsequently amended by various State governments. For instance the government of Maharashtra and Andhra Pradesh have amended the provisions of this section government. In this context, it can be argued provisions of the act needs to be redefined in accordance with the changing trends of the labour market and the world of work. The process of globalization has led to creation of new forms of employment like temporary work and flexi-work etc whose relevance cannot be undermined in employment generation for the unemployed. Such a situation demands the role and responsibilities of the employers' hiring contract labour to be re-defined.

#### **4.2.6 Employment Exchanges (Compulsory Notification of Vacancies Act) 1959**

The Employment Exchanges (Compulsory Notification of Vacancies Act) 1959 regulates the notification of vacancies in India. Under the act, in any State or area, the employer in every establishment in public sector and in the private sector engaged in non-agricultural activities and employing 25 or more workers. Section 4, sub section 2 of the act states *that the appropriate government may, by notification in the official gazette, require that from such date as may be specified in the notification, the employer in every establishment in private sector or every establishment pertaining to any class or category of establishments in private sector shall, before filling up any vacancy in any employment in that establishment, notify that vacancy to such employment exchanges and the particulars as may be prescribed, and the employer shall thereupon comply with such requisition.*

<sup>42</sup> For details see Contract Labour (Regulation and Abolition) Act 1970

Since the act includes the employers, the involvement of third party i.e placement agency is not covered under the provisions of the act.

Section 5 of the act also makes it obligatory for the employers to furnish information and returns in prescribed form. But a question which arises here is how far the employers have adhered to the provisions of the act. Even the regulatory mechanism of the act is not very stringent. Section 7 of the act regarding penalties states that *if any employer fails to notify to the employment exchanges prescribed for the purpose any vacancy in contravention to sub-section (1) or sub-section (2) of section 4<sup>43</sup>, he shall be punishable for the first offence with fine which may extend to five hundred rupees and for every subsequent offence with fine which may extend to one thousand rupees.*

The act has many loopholes with regard to its regulation as the penalty mentioned for non compliance is quite low which leaves room for many employers for non compliance. Employers generally consider the services provided by the employment exchanges as being far from satisfactory. The candidates supplied by the employment exchanges are often not of the standard expected by them. There are delays in submitting the names of candidates to employers and the approach adopted is not business like. Section (iv) of the CNV act gives the option to employers to fill up notified vacancies from the open market .The private sector invokes this provision and frequently meets its manpower requirements from the open market. Penalties fixed for non-compliance with the provisions of the Act are not so stringent. Severe penalties may have deterred employers from committing violations, such as not sending their returns on time or not responding at all. For example Rs 500 is the amount of penalty for not responding to EMI returns. (Chandra et al, 2006)

Against this backdrop it may be argued that the purview of the act needs to be expanded to private placement agencies so that the irregularities in advertisements are curbed. Moreover, the act needs to be amended with the current labour market requirements and the nature of advertisements to be made. Since the candidates provided by the employment exchanges do not match the skill requirements of private placement agencies they often do not comply with the act. The procedure of notification needs to be re worked in consultation with various stakeholders.

<sup>43</sup> Subsection 1 and sub section 2 of section 4 are regarding notification of vacancies to employment exchanges.

### 4.3 Proposed Legislations:

The existing legislations in India have protected rights of workers involved in many occupations but a lot more needs to be done with regard to certain kinds of workers or job seekers who are victims of exploitative practices by many placement agencies. The lack of regulation and monitoring of certain kinds of employment agencies have led to increasing exploitation of workers and specifically many women, migrant workers, young jobseekers, domestic workers etc. Many placement agencies are practicing human trafficking due to lack of regulation and also resorting to many unfair practices to generate profits. The Delhi Government has recently introduced a bill termed as The Delhi Private Placement Agencies (Regulation) Bill 2012 the status of which is pending. Recently, there was mention of the Bill in the media with regard to the issue of human trafficking.

*The death of two girls allegedly trafficked from Jharkhand for domestic work in Delhi only underlines the harsh truth that there are no laws that govern domestic work. While the demand for a national legislation gets louder, the fact remains that Delhi government's draft bill limited to placement agencies - that was put up for objections and suggestions last August - is nowhere close to becoming a law. The much announced and often cited panacea for the many ills surrounding domestic work, the draft bill may not become a law if it's not finalized for approval of Delhi assembly before the monsoon session. The tenure of the current Congress-led government is coming to a close with the assembly polls scheduled for later this year. The final contours of the draft which has drawn a lot of criticism from human rights and activist groups working with domestic workers are yet to be fixed. Top sources in the labour department pointed out that the latest delay was due to a debate over whether the ambit of the proposed legislation should be expanded to include workers beyond domestic workers engaged by placement agencies. A consensus has been arrived at for now that the bill may be restricted to placement agencies for domestic workers. A meeting next month will take a final decision and put up the final draft for approval of the cabinet. Based on the objections and suggestions, some changes have been made to the final draft. For instance, it is now proposed to also register the link person who introduces the domestic worker to a placement agency to guard against trafficking and take measures against miscreants. (Times of India 29th April 2013)*

The Ministry of Overseas Indian Affairs proposed the introduction of the *Emigration Management Bill (EMBI)*, 2011 in Parliament and the

repeal of the existing Emigration Act, 1983. The proposed Bill embodies a paradigm shift in the management of emigration. The proposed bill will help modernize the legislative framework governing emigration, facilitate legal emigration; discourage irregular migration; enhance protection and welfare of emigrants; encourage ethical recruitment practices; enable market friendly regulation of recruiters; and provide for more deterrent penalties against crimes such as human smuggling.

#### 4.4 New Guidelines Concerning Operation of Private Placement Agencies

The Director General of Training and Employment (DGET), Ministry of Labour and Employment, Government of India, provided certain guidelines on operation of private placement agencies to be followed by various State Governments /UTs Administration in India. The guidelines excluded those agencies covered under Contract Labour (Regulation and Abolition) Act 1970 and Inter-State Migrant Workmen (Regulation of Employment and Condition of Services) Act 1979. These guidelines provided for registration of Private Placement Agencies under a designated authority of State/UT, provision of regular job seekers and monitoring of illegal practices. The provision for fee charging was restricted to a maximum of Rs 100/ towards registration charges from job seekers in order to meet initial service charges. There is also a provision for service charges to be paid by the employer to the Private Placement agencies in mutual interest of each other.

*9. While regulating the Private Placement Agencies, the respective State/ UTs will devise their mechanism of interaction between Public and Private Placement agencies.*

*11. It should be obligatory on the part of the Private Placement Agencies to share the statistical information connected with the registration and placement of jobseekers as prescribed by the State/UT Govt. Authorised persons of the State/UT will have right to ascertain, the names of the employers to whom the services are provided by the Private Placement Agency. (DGE&T 2004)<sup>44</sup>*

The guidelines were circulated to the State/UT governments but there has not been any substantial progress in this regard. The parameters of developing a regulatory framework are not clear as per interaction of

<sup>44</sup> These guidelines were circulated to the Labour Secretaries of all State and UTs vide letter no. DGE&T-M-27014/1/2004-EE.I, Government of India, Ministry of Labour and Employment. The guidelines included 15 points. See Annexure No. 2 (for details)

private and public employment agencies have not been clear. There have not been instructions regarding the interaction of public and private employment agencies.

In fact the guidelines seem to be incomplete as there has not been any clear cut procedure mentioned in the guidelines to be adhered to by various States and UTs. Many of the provisions of the guidelines do not refer to any legal provisions as supplementing the guidelines. Moreover there has not been any clarity regarding the mechanisms of regulations mentioned in the guidelines. It can be further reiterated that these are some of the initiatives undertaken by the government to regulate private placement agencies but these initiatives have not been producing desired results due to many reasons. For instance, these guidelines are instructions to State governments to formulate a mechanism for legislation which may lead to lot of complexities arising due to multiple regulatory mechanisms. The guidelines may not be operational due to the absence of a national legislation on regulation of Private Placement Agencies.

#### 4.5 Conclusion

There is no denying the fact that an analysis of existing legislative provisions concerning private placement agencies in India and the new proposed legislations reveals that many of the legislations are in line with the provisions of ILO Convention 181. For example the legislation concerning Private Security Agencies 2005 has been successful in protecting the rights of workers. In spite of the coverage there have been criticisms with regard to the provisions of the legislations from many scholars in the academia. Some of the legislations have not been amended with the changing demands of the labour market due to corresponding changes in the world economic order. Though the country has many labour legislations pertaining to various kinds of workers yet many of them have not been amended with changing times. The legislation on contract labour has serious loopholes since there has been growing prevalence of contract labour in the present day economy post globalization. The flexible and dynamic labour market scenario in India has made *contract work* or *temporary work* as a regular phenomenon instrumental in creating employment opportunities for the masses. Therefore there is a need to contextualize the provisions of the law with the changing labour market trends and subsequently make amendments wherever necessary. However, it can be argued that many of the existing



laws address some of the articles of the ILO Convention 181 but none of them fulfill the needs and concerns of placement industry completely. Therefore there is a need for a new legislation that defines the private placement agencies, caters to the specific needs of this industry, takes into account its operating mechanism and various related issues like the charging of fee, registration, licensing etc. At the same time, the existing legislations need to be amended with the present day market situation followed with more stringent regulatory mechanism to combat any kind of exploitation of workers or jobseekers.

## Chapter 5

# Regulating International Labour Migration: Problems and Prospects

### 5.1 Introduction

The movement of people from India to other countries is an age old phenomenon. Globalization has been a major factor influencing the international movement of people and for the growth of transnational communities. It is estimated that 215 million people, constituting about 3 percent of the world's population, live outside their native countries (International Organization for Migration, 2010). The top 20 countries of migrant origin accounted for over half of all international migration flows in 2008, with China, Poland, India and Mexico at the top of the list (OECD, 2010). The issue of international migration and development has been hotly debated in international forums and efforts are sincerely made to acknowledge the contribution of migration to both countries of origin and destination.

It is an undeniable fact that migration can contribute immensely to both the countries of origin and destination. A recent report of the Institute of Human Rights and Business (IHRB) and verite titled *Migrant Workers: Responsible Recruitment and Fair Hiring Practices to Combat Trafficking in South Asia* clearly stated that recorded remittances received by developing countries, estimated to be US\$325 billion in 2010, far exceed the volume of official aid flows and constitute more than 10 percent of gross domestic product (GDP) in many developing countries. (2012)<sup>45</sup> On one hand, there is a growing recognition of opportunities offered by migration. On the other hand, from the point of view of recruitment and placement the migrants have become a vulnerable group of people. Issues of trafficking of women, children, irregular migration, exploitation of migrant workers, excessive fee charging and cases of cheating by placement agencies have been reported by these workers. Unfortunately, migration does not bring about the expected level of development in such situations. Such issues have caused serious concern for government officials and policy makers.

<sup>45</sup> Migrant Workers: Responsible Recruitment and Fair Hiring Practices to Combat Trafficking in South Asia 2012, Roundtable 4 Meeting report, Delhi, Institute for Human rights and Business and Verite

There are no precise figures on the number of registered PrEAs operating along the Asia/ Africa-Middle East migration corridors, but ILO research suggests that there are many thousands, in addition to informal brokers and criminal traffickers<sup>46</sup>. Some agencies have affiliates in source or transit countries; others work in partnership. PrEAs are involved in assessing demand, negotiating employment conditions, selecting and transferring workers. By default, they may also act as intermediaries in employment disputes. Due to the lack of data, it is difficult to assess the size of the industry in terms of profits. Statistics of the International Federation of Private Employment Agencies (CIETT) show that 34 per cent of the world's 72,000 private employment agencies are based in the Asia-Pacific and 8 per cent in Africa but most of these agencies are temporary staffing agencies that are not involved in cross-border migration.<sup>47</sup>

The Ministry of Overseas Indian Affairs, (MOIA) Government of India which is responsible for the protection and welfare of these emigrants has taken a lot of initiatives in the regulation of migration but still a lot more needs to be done. The Emigration Act 1983 is an important legislation in this regard which regulates the process of emigration. But inspite of all this, many recruiting agents or placement agencies involved in facilitating migration are exploiting millions of migrants in various stages of migration. Against this backdrop, the present chapter tries to explore the problems of migrant workers exploited through placement agencies and the nature of exploitation and atrocities perpetrated on them. It also tries to understand the role of MOIA in playing an important role in migration management and regulation and how far they have succeeded in the endeavour. On the whole the chapter would contextualize international migration and the role played by placement agencies vis a vis ILO Convention 181.

## 5.2 Trends in Emigration

Contemporary migratory flows from India are of two kinds. The first is the emigration of the highly skilled professionals, workers and students with tertiary and higher educational qualifications migrating to the most advanced OECD countries, particularly to the USA, UK, Canada, Australia and New Zealand. This flow started after Indian independence in pursuit

<sup>46</sup> Afsar, R. (2009): *Unravelling the Vicious Cycle of Recruitment. Labour Migration from Bangladesh to the Gulf States*, ILO Geneva; Rajan, S.I.M. et al. (2008): *Overseas Recruitment Practices in India*, ILO Bangkok; Arif, G.M.

<sup>47</sup> CIETT (2011): *The Agency Industry Around the World*, Brussels. CIETT has no data for Arab States.

of better career prospects and living and gathered momentum with the emigration of IT professional in the 1990s. The second was the flow of unskilled and semi-skilled workers going mostly to the Gulf countries and Malaysia – following the oil boom in the Gulf countries, mainly from Kerala and other south Indian states. Of late, northern states in India like Uttar Pradesh and Bihar have emerged as the leading states of origin. (MOIA, 2012)

There are about 5 million overseas Indian workers all over the world. More than 90 percent of these workers are in the Gulf countries and South East Asia. The GCC countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates, UAE) have the highest share of migrants in the total among the countries of the world and rely heavily on migrant workers. (Rajan & Prakash 2012) During 2011, about 626,565 workers emigrated from India with emigration clearance. Out of this, about 289,297 went to Saudi Arabia, 138,861 to UAE, 73,819 to Oman, 41,710 to Qatar, and 17,947 to Malaysia. Uttar Pradesh, Kerala, Tamil Nadu, Andhra Pradesh and Bihar were the leading sourcing states. (MOIA, 2012). The number of workers given emigration clearance for contractual employment abroad during the last six years and the data thereof on distribution of labour outflows are given below:

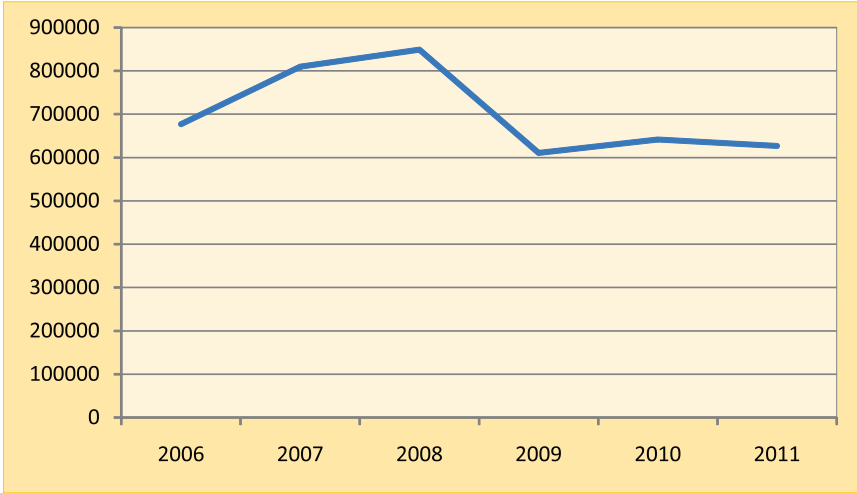
**Table 5.1**  
**Emigration For Employment During The Last Six Years**

<b>Year</b>	<b>No. of workers</b>
2006	6,76,912
2007	8,09,453
2008	8,48,601
2009	6,10,272
2010	6,41,356
2011	6,26,565

Source: Emigration Services Division, MOIA

There has been a consistent and steady increase in the number of people emigrating for employment abroad from the year 2004 onwards till 2008. The year 2009, however, registered a downtrend in the number of emigrants by about 28 percent as compared to the previous year. In the year 2010, there was a slight increase at 641,356, which again fell to 626,565 in 2011.

**Figure 5.1**  
**Emigration for Employment During the Last Six Years**



Source: MOIA

The number of emigration clearances granted by the eight offices of the Protector of Emigrants stood at 848,601 in 2008 and 610,272 in 2009. The Kingdom of Saudi Arabia is the main destination for Indian workers, followed by the UAE. Outside the Gulf region, the intake of Indian manpower by Malaysia recorded a significant and consistent increase till 2005. However, this has considerably declined from 2006 onwards. However many Indian workers look upto employment opportunities in the above mentioned countries.

**Table 5.2**  
**Distribution of Annual Labour Outflows From India**  
**(Destination-wise from 2006-2011)**

Sl.No.	Country	2006	2007	2008	2009	2010	2011
1.	Afghanistan	0	0	405	395	256	487
2.	Bahrain	37,688	29,966	31,924	17,541	15,101	14,323
3.	Brunei	0	0	607	2	1	0
4.	Indonesia	0	0	33	9	3	22
5.	Iraq					390	1177
6.	Jordan	1,485	1,254	1,377	847	2,562	1,413
7.	Kuwait	47,449	48,467	35,562	42,091	37,667	45,149

8.	Lebanon	0	0	75	250	765	534
9.	Libya	....	3,223	5,040	3,991	5,221	477
10.	Malaysia	36,500	30,916	21,123	11,345	20,577	17,947
11.	Maldives	4,671	ECNR	ECNR	ECNR	0	0
12.	Mauritius	1,795	ECNR	ECNR	ECNR	0	0
13.	Oman	67,992	95,462	89,659	74,963	10,5807	73,819
14.	Qatar	76,324	88,483	82,937	46,292	45,752	41,710
15.	S.Arabia	1,34,059	1,95,437	2,28,406	2,81,110	2,75,172	2,89,297
16.	Sudan	0	0	1,045	708	957	1,175
17.	Syria	0	0	74	0	2	118
18.	Thailand	0	0	15	5	05	27
19.	U.A.E	2,54,774	3,12,695	3,49,827	1,30,302	1,30,910	1,38,861
20.	Yemen	0	0	492	421	208	29
21.	Others	14,175	3,550	0	0	0	0
	<b>TOTAL</b>	<b>6,76,912</b>	<b>8,09,453</b>	<b>8,48,601</b>	<b>6,10,272</b>	<b>6,41,356</b>	<b>6,26,565</b>

Source: Emigration Services Division, MOIA

The above table (5.2) clearly shows that the major outflow of emigrant workers in the last few years from India has been in the Gulf countries where 4 million workers are estimated to be employed. A vast majority of the migrants to the Middle East, including gulf countries, are semi-skilled and unskilled workers and most of them are temporary migrants who return to India after the expiry of their contractual employment (MOIA, 2012). Although temporary migration may not promise as high expected returns as permanent migration, given the high level of unemployment or underemployment in most developing countries, it allows the migrants to avert most of the risks of permanent relocation (Yang, 1994)

**Table 5.3**  
**State-wise Figures of Workers Granted Emigration Clearance/ ECNR Endorsement**

Sl. No.	State	2006	2007	2008	2009	2010	2011
1.	A&N Island	190	87	89	75	80	93
2.	Andhra Pradesh	97,680	1,05,044	97,530	69,233	72,220	71,589
3.	Arunachal Pradesh	0	25	244	181	188	175
4.	Assam	1,075	1,905	1,517	1,788	2,133	2,459

Sl. No.	State	2006	2007	2008	2009	2010	2011
5.	Bihar	36,493	51,805	60,642	50,227	60,531	
6.	Chandigarh	4,735	310	80	51	81	114
7.	Chhattisgarh	4,735	310	80	51	81	114
8.	Daman & Diu	0	0	27	8	11	13
9.	Delhi	9,098	5,327	4,512	2,501	2,583	2,425
10.	DNH/UT	11	12	17	3	11	53
11.	Goa	4,063	3,102	2,210	1,659	1,380	1,112
12.	Gujarat	13,274	20,066	15,716	9,185	8,245	8,369
13.	Haryana	193	1,852	1,779	1,052	958	1,058
14.	Himachal Pradesh	1,180	1,119	1,345	776	743	739
15.	Jammu & Kashmir	1,661	3,276	3,588	4,307	4,080	4,137
16.	Jharkhand	1,427	3,651	3,561	3,545	3,922	4,287
17.	Karnataka	24,362	27,014	22,413	18,565	17,295	15,394
18.	Kerala	1,20,083	1,50,475	1,80,703	1,19,384	1,04,101	
19.	Lakshadweep	0	0	23	19	18	11
20.	Madhya Pradesh	7,047	3,616	2,321	1,897	1,564	1,378
21.	Maharashtra	15,356	21,496	24,786	19,128	18,123	16,698
22.	Manipur	0	1	30	18	22	11
23.	Meghalaya	0	7	24	21	11	16
24.	Mizoram	0	-	8	2	4	0
25.	Nagaland	0	7	10	5	2	39
26.	Odisha	4,114	6,696	8,919	6,551	7,344	7,255
27.	Pondicherry	2	45	397	320	223	211
28.	Port Blair	1	2	0		0	0
29.	Punjab	39,311	53,942	54,469	2,72,91	30,974	31,866
30.	Rajasthan	50,236	70,896	64,601	44,744	47,803	42,239
31.	Sikkim	10	2	18	12	8	8
32.	Tamil Nadu	1,55,631	1,50,842	1,28,791	78,841	84,510	68,732
33.	Tripura	1	121	592	324	454	465
34.	Uttar Pradesh	66,131	91,613	1,39,254	1,25,783	1,40,826	
35.	Uttarakhand	93	179	523	623	1,177	1,441
36.	West Bengal	14,929	24,817	26,094	21,187	28,900	29,795
37.	Others	1909	924	0		0	0
	<b>TOTAL</b>	<b>6,76,912</b>	<b>8,09,453</b>	<b>8,48,601</b>	<b>6,10,272</b>	<b>6,41,356</b>	<b>6,26,565</b>

During the years 2006-2011

Source: Emigration Services Division, MOIA

The Statewise figures of workers (Table 5.3) granted emigration clearance revealed that Uttar Pradesh (1,55,301) had the highest rate of emigrants followed by Kerala (86,783), Andhra Pradesh (71,589) and Bihar (71,438).

### 5.3 Fee Charging : Exploitation by Placement Agencies

Migrants are highly-represented in temporary jobs, whether they are in the country of destination for short or extended periods. Agencies often facilitate migrant workers finding jobs and accommodation in more developed countries, in the US, Europe, the Gulf States or elsewhere. The role of PrEA once the worker has arrived differs from that of agencies facilitating the movement of workers across national borders, which involves documentation, travel, immigration, work and residence permits, accommodation and employment in the receiving country. Some PrEA facilitate the migration of workers from one country to another and help to ensure decent work; but some provide poor services to their clients for exorbitant fees and give the industry a bad name.<sup>48</sup>

Article 8, paragraph.1 of ILO Convention 181 clearly states that *the member shall after consulting the most representative organizations of employers and workers adopt all necessary and appropriate measures, both within its jurisdiction and, where appropriate, in collaboration with other members, to provide adequate protection for and prevent abuses for migrant workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses.*

Paragraph 2 of the Convention states *where workers are recruited in one country for work in another, the members concerned shall consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment.* (ILO,1997)

Recommendation no 188 of C 181 II. Protection of workers paragraph 8 (b) *inform migrant workers, as far as possible in their own language or in a language with which they are familiar, of the nature of the position offered and the applicable terms and conditions of employment.*

The Emigration Act 1983 has clear cut provisions on fee charging and protection of migrants which has an important role in regulating placement

<sup>48</sup> Labour migration in a globalizing world - in ILO's International labour migration A rights-based approach 2010, pp.12 retrieved from ([http://www.ilo.org/public/english/protection/migrant/download/rights\\_based\\_approach.pdf](http://www.ilo.org/public/english/protection/migrant/download/rights_based_approach.pdf))



agencies providing overseas placement. Though the Convention 181 is not ratified yet a lot of similar provisions of the Convention are in line in Emigration Act. But a pertinent question which arises here is how far the operational matters related to emigration and enforcement of Emigration Act under the Protector General of Emigrants has been successful in migration management? The growing rate of grievances and media attention on the exploitive practices of placement agencies has caused a serious concern for the governmental authorities concerned with the issue of migration. Day to day complaints about exploitation and the issue of migrant's rights have been important themes of the larger discourse on human rights. Migrant workers not only pay onerous sums of money to sometimes unscrupulous recruitment agencies but accept less than ideal work and living conditions once at destination. Indeed, the numerous accounts of agencies taking advantage of the migrants that purport to serve (e.g. by charging excessive placement fees and offering expensive pre-departure loans) suggest the need for more government intervention in recruitment operations (Agunias, 2012). In fact, workers face innumerable problems from recruitment abuses, exploitation, social issues, difficulty in reintegrating when they return from overseas employment to human trafficking and sexual exploitation.

In this context, the situation in India is quite different with regard to monitoring and regulation of fee charging by the authorities. Due to lack of existence of legislation, the fee charging aspect has not received much attention by the authorities. Though private placement agencies covered under Emigration Act 1983 do collect some fees in the name of visa and processing fee yet a question which arises here is whether the recruiting agents are adhering to the legal provisions while charging recruitment fees? The Report of the Protector General of Emigrants titled "Emigration and You" states the following provisions:

*Recognizing that the Recruiting Agents are providing a service to prospective emigrants, the Government has allowed them to levy service charges. However, in a bid to prevent any misuse or exorbitant levies, the Government has limited the maximum service charges that such agents can charge each worker. The following are the rates of service charges category-wise in force at present. These service charges are subject to change from time to time:*

*Unskilled Workers Rs. 2,000*

*Semi-Skilled Workers Rs. 3,000*

*Skilled Workers Rs. 5,000*

*Others Rs. 10,000*

*Source: Emigration and You (Office of the Protector General of Emigrants)*

In this regard, it can be argued that the above mentioned provisions about fee charging are made in accordance with national law and practice which is in similar line with Article 7 of ILO Convention 181.

#### **5.4 Problems of Migrant Workers: Cases of Exploitation**

The Private Placement Agencies recruit and guide migrants through the shoals of immigration policies and the difficulties of transit, match employers with workers and provide information about living and working conditions in distant locations. However, their services come at a cost. Numerous accounts of agencies taking advantage of the migrants they purport to serve suggest the need for more government intervention in their operations (Agunias,2012). There have been lot of irregularities reported in the media ,complaints received in local police stations and organizations dealing with welfare of migrant workers. Migrants Rights Council (MRC), an organization based in Hyderabad has been working immensely for the rights of migrant workers. Migrants Rights Council is a migrant labour rights group which advocates with and provides support for migrant workers to access legal aid, redress mechanism and dispute resolution. It is part of the umbrella organization Migrant Forum in Asia which is a regional network of non-governmental organizations, associations and trade unions of migrant workers and individual advocates in Asia who are committed to protect and promote the rights and welfare of migrant workers. The forum believes that migrant rights are human rights; documented or undocumented, irrespective of race, gender, class, age and religious belief. Migrant workers rights are guaranteed by the UN Declaration of Human Rights, the UN Convention on the Protection of Rights of all Migrant workers and members of their families and other international conventions.

The information on grievances against recruiting agents or private placement agencies was provided by MRC to the research team. Some the cases discussed below are letters of complaint written by the victims to MRC and later on published in local newspapers in Andhra Pradesh.

##### **5.4.1 Cases**

There are many cases registered against recruiting agents as reported in local newspapers in Andhra Pradesh which are discussed below:

Mrs Patan Aniz begum of Hyderabad, Andhra Pradesh went to Saudi Arabia on 15 June 2012 from Hyderabad to Riyadh via Dubai. She was promised to work as a domestic worker in Saudi Arabia. Her male sponsor allegedly tortures and harasses her. Her male sponsor takes her every day in his car to different places and hands her over to other men for prostitution. Sometimes that male sponsor invites 'customers' to his house. He beats Mrs Begum and refuses to give her food when she refuses to have sex. She cried and begged with one customer for help and the customer allowed her to call her family members in India. She wants to come to India. Mrs Begum lost her parents and was raised by her aunt. She has four kids. Her husband left her three years ago. She sought work in Saudi Arabia as a domestic worker to provide for her family. Her uncle is requesting authorities to rescue his niece from the clutches of the male sponsor. The relatives of Mrs Begum approached migrants rights council and Union of Domestic workers in Andhra Pradesh for help. They said that the recruiting agent in Hyderabad and New Delhi should take the responsibility for this incident. The recruiting agent from Delhi is demanding inr 100000 for deportation fees of Mrs. Begum. Finally she escaped from the clutches of the sponsor along with a Mrs.Amitha a Srilankan Migrant Domestic Worker. They approached Saudi Police, the sponsor sent her back. She was sent India by Air Arabia Flight. Dammam - Sharjah - New Delhi route and she was landed in New Delhi Airport on 23rd July 2012. Now she is reunited with her family with the help of Migrants Rights Council and Saudi Govt. She requested the Government to rescue hundreds poor women who were stranded in Saudi Arabia like her. (Complaint received at Migrant Rights Council)

#### Domestic Worker from AP stranded in Saudi Arabia

Mrs.Guthala Dhanalaxmi W/o. (Late) Guthala Appa Rao, Village: Kothalanka, Mandal: Thallarevu, District; East Godavari, Andhra Pradesh, India a Domestic Worker stranded in Saudi Arabia. She went to Kuwait two months back with the help of Mr.Salman Raju, a Gulf Recruiting Agent and she was shifted to Saudi Arabia two weeks back. She was working early morning to midnight restlessly, she was not provided proper food, sponsor was beating her mercilessly, she escaped from the house on the midnight of Monday, 24th September 2012 and was roaming on the streets, Saudi Police rescued her on the early morning of Tuesday.

She can speak only Telugu language, She don't know her Sponsors name, Phone Number & Address. Police are trying to trace her sponsors details with the help of immigration data, tallying with finger prints.

Her husband had died, she is having two daughters. Elder daughter studying under graduation and younger daughter studying Intermediate (10+2 Standard).

She is crying for come back to India

("Andhra Jyothi" Telugu Daily, Published a News Story on 26th September 2012 in East Godavari District Tabloid, regarding a Domestic Worker who stranded in Saudi Arabia

\*News collected and translated by M.Bheem Reddy, Journalist and Analyst ,Gulf Affairs)

# It's hell for Telugu workers in Gabon

MAHESH AVADHUTHA

**Hyderabad:** Close on the heels of deportation of hundreds of migrants from United Arab Emirates last month, a similar sorry saga of unskilled labourers from the state came to light in Gabon, a small nation tucked between Cameroon and Congo Republic on Africa's Atlantic coast.

Around 200 construction workers from the country, presently in Gabon, are seeking government's intervention to return home. Some 95 of them are from the state. They all boarded flight to this African nation during the past four months least expecting the woeful conditions that they would encounter. The recruiters

- 95 from AP, 100 from other states in miserable conditions
- A Hyderabad engineer and a Bihar worker already lost lives
- Others want to come home, company that hired them refuses to help
- Govt agency that recruited them claims it only facilitated it
- Kiran directs officials to look into the issue



here promised them a fat pay besides top class facilities until the completion of the project. However, it turned out to be a grueling experience for them. And the high hopes they had pinned on the prospects in the tiny country were shattered.

Besides terrible working conditions, the place was highly infested with mosquitoes. Incessant rains and unhygienic surroundings played havoc. As a result, workers were falling ill very often and in certain cases it proved to be fatal. The startling aspect of their experience in Gabon is

that a Bihar worker named Ramesh and an engineer from Hyderabad- Kumaraswamy (who went earlier) had died after prolonged ailment. Both the deaths were attributed to poor medical facilities. The workers from the Andhra Pradesh are in for a trying time thanks to the poor

working conditions. They all are eager to return home, at any cost.

Gangamani, wife of Teddu Babu Rao (a native of Nizamabad district) who went to Gabon is very worried about the plight of her husband. She is praying for his safe return. Every time she gets an opportunity to talk to her husband, she heard of bizarre tales of many workers who had left for the west African nation along with him in hope making good money in a short span of time. The place where the labourers were put up is a thick forest pocket with no basic amenities like power and drinking water and devoid of transport facilities.

*Continued on P4*

*"The Hans India" English Daily, 2<sup>nd</sup> March 2013 Part-1*

*Eenadu, Karimnagar 14<sup>th</sup> Jan 2012*

## Case Registered on Recruiting Agent

*Ellanthakunta Mandal, Karimnagar District. The Agent belongs to East Godavari District Mr.Kadakuntla Balaiah an intending emigrant wants to go to Israel Country, he paid Rs.3.5 Lakhs to Mr.Chitti Babu a Recruiting Agent. The agent failed to send him to Israel. Intending emigrant's brother Mr.Kadakuntla Aadimallu filed a complaint, then Police registered a cheating case on agent. Intending emigrant belongs to Repaka Village, Ellanthakunta Mandal, Karimnagar District. The Agent belongs to East Godavari District. The details told by Mr.Ravinder, Sub Inspector of Police, Ellanthakunta.*

*\*News collected and translated by M.Bheem Reddy, Journalist and Analyst ,Gulf Affairs*

## It's hell for Telugu workers in Gabon

*Continued from P 1*

"I live in a small hut along with my mother-in-law and a two-year-old son. My husband and several others had stopped doing work for the past few days in the hope of returning home. I was told the company representatives asked the labourers vexed with the working conditions to leave for India, if they really intend to do so by making their own arrangements for flying home. They made it clear that the company would not bear the cost of the travel by flight (which would be costing little over Rs 40,000.) Since all of them are from poor family backgrounds, the government should intervene and ensure the safe return of its citizens," she stated.

According to sources, in all 42 of those facing hardships in the tiny nation were from West Godavari while another 15 belonged to East Godavari. Break up of those from other districts is Nizamabad-15, Mahabubnagar-5, Karimnagar-4, Ranga Reddy, Medak and Prakasam 2 each and 1 each from Guntur, Adilabad, Nalgonda, Srikakulam and Kurnool.

K Narsimham Naidu, president of Indian Migrants Rights and Welfare Forum, who was contacted by The Hans India, said that the OMCAP (Overseas Manpower Company AP), a state government undertaking, reportedly recruited these laborers for Ramky, a noted



*Family of T Babu Rao - wife, two-year-old son and mother in front of his hut at Dichpally in Nizamabad district (File Photo)*

Hyderabad based infrastructure company, which was said to have secured a big project in the West African nation.

Narsimham played a crucial role in bringing the sorry plight of illegal migrants in the UAE to the notice of Chief Minister Kiran Kumar Reddy, who immediately responded, and ensured their safe return as part of amnesty scheme.

"This issue was brought to my notice a few days ago after which I took it up with Chief Minister. A representation was submitted to him two days ago and we were told that he immediately directed authorities to look into the issue. I am even planning to approach the State Human

Rights Commission (SHRC) along with the family members of the victims in the coming days, the migrants' forum leader said.

On the other hand, OMCAP authorities claimed that they just acted as facilitators for the infrastructure company with a proven track record in successful implementation of different projects in India and overseas, hoping that it would benefit the construction workers.

"The group had in fact approached us for filling of job vacancies in construction sector for their Special Economic Zone (SEZ) project in Gabon. They showed us video clippings and photos of the site, and only after we were completely satisfied the

selection process went ahead.

Interviews were conducted during the months of November and December after which 95 people from our state were selected. Agreement for a two-year contract period was signed between the workers and the employers. The selected workers left in batches to the African nation in the last two months," they claimed.

When questioned about the fresh controversy, OMCAP officials pointed out that it had come off as a big shock for them. This incident is an eye-opener for us, and it reflects the need for thorough screening of the companies, either big or small, before involving ourselves to play any facilitator role, they said.

*"The Hans India" English Daily, 2<sup>nd</sup> March 2013 Part-2*

*A is a Staff Nurse in Fortis Escorts Hospital in Fortis Escorts Hospital, Okhla Road, New Delhi. She applied for immigration to Canada from Real Services on 11th June, 2010 with a cash amount of INR Rs. 50,000/-. Initially it was agreed by both the parties that an amount of INR Rs. 2,95,000/- will be required for the processing of the emigration procedure. So A agreed to pay this amount and paid the first installment of Rs. 50,000/- in cash (receipt attached) and thereafter sometimes by cheque while at other times by cash. But this amount rose to INR Rs. 4,27,000/- and the enticing words of the owner of the Placement agencies compelled A to pay this amount. There is no progress in the emigration process of A and no answer has been provided to the victim by the Agency. The agency staff and its owner did not replied to her emails or phone calls and when she visited the agency office, she was abused which has caused a lot of mental harassment to her and her family. There is no result for the amount of money she has paid. After going through all this A has lodged FIR against the agency and its owner in various police stations of Delhi. Yet no concrete action has been taken on this FIR.*

In this context, it can be clearly stated that the migrant workers are engulfed in many risks and are a highly vulnerable group. Moreover, as discussed above, the condition of women workers mostly going for domestic work is all the more precarious. Their vulnerability stems in part from their skill levels, the type of work they do and the sectors they work in. A study from International Organization for Migration (IOM) suggests that half of migrant workers in the Gulf are either illiterate or can just barely read or write, while another quarter have low levels of education. Women migrants also constitute a significant proportion of the labour force in a number of countries: one-third of the foreign labour force in Oman and one-fifth in Bahrain and Kuwait. (2010)<sup>49</sup>. These women, who are mostly unskilled and illiterate, migrate for domestic work which is one of the least protected sectors in the region. Prospective migrants need not know their rights at home and abroad; safe recruitment, travel and employment procedures; risks associated with unauthorised movement; available options for legal migration; labour and migration regulations at origin and destination; and what constitutes illegal recruitment.<sup>50</sup> For example it is important for domestic workers to understand how the legal system works in the GCC Countries.

*Women's migration can be positive as increased earnings may enhance their role in decision-making and reduce the poverty of their families in their home countries. At the same time, women tend to be restricted to jobs associated with their traditional "female roles", such as caregivers, nurses and domestics.<sup>1</sup> Similarly, migrant women are more vulnerable to particular forms of gender-specific violence and sexual abuse, especially when working as domestics and sex workers.<sup>2</sup> Furthermore, gender-blind migration policies of destination countries can have disproportionately negative impacts on women and leave them at a higher risk of irregular forms of employment and deportation.<sup>3</sup>*

1.M. Chen et al.: *Progress of the world's women 2005: Women, work and poverty* (New York, UNIFEM,2005). 2 G. Chammartin: "The feminization of international migration", in *Labour Education* 2002/4, No. 129 (Geneva, 2002).3 I. Omelaniuk: *Gender, poverty reduction and migration* (Washington, DC,World Bank, 2005).

<sup>49</sup> IOM, Intra-Regional Mobility in Arab World, 2010, IOM, Cairo.

<sup>50</sup> Nilim Baruah "The Regulation of Recruitment Agencies: Experience and Good Practices in Countries of origin in Asia", in *Merchants of Labour* ed Christiane Kuptsch (ILO 2006)

## 5.5 Protection and Welfare of Migrants: Initiatives by MOIA

Keeping in view, the various exploitative practices adopted by recruiting agents, the Ministry of Overseas Indian Affairs, Government of India has undertaken various initiatives to regulate migration under Emigration Act 1983. The act mandates duties of emigrants, recruiters and the Protector General of Emigrants<sup>51</sup>. In order to facilitate movement of people certain categories of people are exempted from the requirement of obtaining emigration clearance and they are placed under ECNR (Emigration check not required) category. Emigration clearance is required only when a person travelling for employment has an ECR passport and he/she is travelling to an ECR (Emigration Check Required) countries.<sup>52</sup> But in spite of the efforts a lot of illegal migration and malpractices continue to victimize migrant workers lead to massive human rights violation. Some of the recent initiatives undertaken by Ministry of Overseas Indian Affairs are for the welfare of all emigrant workers, housemaids and other unskilled workers who constitute the most vulnerable category are as follows:

- The age restriction of 30 years has been made mandatory in respect of all women emigrants emigrating on ECR passports to ECR countries irrespective of the nature/category of employment;
- The foreign employer has to make a security deposit of US\$2,500 if he recruits the female worker directly.
- Embassy attestation has been made mandatory in respect of all women and unskilled category workers for all ECR countries;
- Under the Emigration (Amendment) Rules, recruiting agents have been entrusted with specific duties and responsibilities with a view to safeguarding the interests of the emigrant worker. They will also have been enjoined to maintain certain basic facilities.
- Specific duties of the foreign employers have been laid down under the Rules with a view to safeguarding the interests of the emigrants.
- After Malaysia and Kuwait declared an amnesty scheme for illegal workers, many Indians availed of the scheme and returned to India.
- Joint Working Group (JWG) meetings for the welfare and protection of the interests of emigrants with Qatar was held on January 17-18, 2011 at Doha; with Oman on May 24-25, 2011 at Muscat; with UAE on

<sup>51</sup> Protector General of Emigrants Statutory authority responsible for enforcing the Emigration Act, 1983

<sup>52</sup> As discussed in MOIA's new e-governance project to transform emigration into a simple, transparent, orderly and humane economic process.

September 13, 2011 at New Delhi; and, with Kuwait on January 23-24, 2012 at New Delhi.

- New initiatives like the 'Open House' meeting with Recruiting Agents, electronic filing of applications for registration and a POE conference were also taken up during the year
- With help from Indian Missions, Indian citizens in Egypt, Libya and Yemen returned home in the wake of internal disturbances in those countries. The details are as under:

Country	No. of Persons (approx.)
Egypt	750
Libya	17,927
Yemen	846

These Indian evacuees were provided various services by the Ministry, such as evacuation by air, food, medical assistance, shelter and emergency exit certificates. On arrival in India, they were provided free transit accommodation as well as free domestic travel facilities.

- During the year 2011, three POE offices of Chennai, Delhi and Mumbai were declared ISO certified. Moreover, all POE offices have been fully computerized. In order to cater to intending emigrants from Rajasthan, a new POE office at Jaipur was opened on January 7, 2012 by Hon'ble Minister of Overseas Indian Affairs. (MOIA, 2012)
- Apart from this the Ministry of Overseas Indian Affairs simplified its procedures required for emigration. Some of the provisions include:
  - ❖ The number of ECR countries was reduced to 18 from the earlier 153 countries in December 2006. The number has been further reduced to 17 with effect from August 12, 2008.
  - ❖ Earlier, powers granted to POEs for bulk worker permissions were very limited. This was liberalized in May 2007. Now the Deputy Secretary-level POEs in Delhi, Mumbai and Chennai have been delegated full powers without limits to grant worker permissions. Under Secretary-level POEs in Hyderabad and Trivandrum have been delegated powers up to 500 permissions and Section Officer-level POEs in Chandigarh, Kolkata and Cochin up to 300.
  - ❖ From January 2008, Migration Clearance Books (EC Books) are being issued to recruiting agents through the Offices of the Protector of Emigrants.



- ❖ From January 2008, under the Emigration Act, recruiting agents have also been submitting applications for opening branch offices, change/shifting offices or letters notifying change of Managing Director/ Managing Partner to the respective offices of the POE with complete documentation and information.
- ❖ The existing Emigration Rules 1983 have been amended through the Emigration (Amendment) Rules, 2009 which have come into force with effect from July 9, 2009. Copies of the Emigration Act and Rules thereof have been uploaded on the Ministry's website for the information of the general public and recruiting agents/intending recruiting agents.(MOIA,2012)

MOIA has also proposed the introduction of the Emigration Management Bill (EMB) 2011, in Parliament and the repeal of the existing Emigration Act 1983. The proposed Bill embodies a paradigm shift in the management of emigration. The proposed bill will help modernize the legislative framework governing emigration; facilitate legal emigration, discourage irregular migration; enhance protection and welfare of emigrants; encourage ethical recruitment practices; enable market friendly regulation of recruiters; and provide for more deterrent penalties against crimes such as human smuggling.(MOIA 2012)

In spite of these new arrangements for emigration management, many cases are reported against the recruiting agents for exploitation and cheating. The increasing number of unlicensed and unregistered placement agencies has caused serious doubt on the regulatory framework of the government. But, the sad reality is that many such agencies have been operating without any permission granted from the authorities'. Even if the registered placement agencies have also resorted to various forms of exploitation. Unless there has been enough initiatives to protect the basic minimum rights of the migrant workers ethical recruitment cannot be ensured. The ILO Convention 181 also mentioned some basic rights to be protected which was also reiterated in *ILO Guide to Private Employment Agencies* as follows;

Freedom of association and collective bargaining

Adequate protection in terms of minimum wages, working time and other working conditions, statutory social security benefits, access to training, occupational safety and health, compensation in case of occupational accidents and diseases and insolvency and maternity protection. (2007).

However, all this needs to be addressed with proper consultations among both countries of origin and destination and work out for effective policy formulations to ensure ethical recruitment practices.

## 5.6 Conclusion

There is no denying the fact that the private placement agencies play an important role in facilitating labour migration. Their role cannot be undermined in the context of increasing the flow of migrant workers from countries with limited economic opportunities to fill the gaps in countries with a dwindling labour supply. But, at the same time the governments of origin and destination also realize that non regulation and lack of monitoring of the private placement agencies give rise of exploitative practices for the sake of increasing their profits in business. Under the existing provisions of the Emigration Act 1983 sub-agents/commission agents are prohibited within the migration system. However, it is very common to find that an agent or a set of sub agents are involved in connecting an intending emigrant from his/her destination to the registered recruiting agents. In fact, most of the recruitment offences are reported in India is committed by these local sub-agents (Sasikumar and Husain, 2008). These sub agents or brokers are neither formally connected to the placement agencies nor are accountable to them. In this context, effective regulations need to be made to restrict the subagents operating illegally in the market. Since some of the governments believe that restricting the operations of sub agents might have negative impact on the deployment of workers hence they have made subsequent efforts to include the sub agents into the formal sector of regulation.

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*Sri Lanka has taken this approach – Sri Lanka Bureau of Foreign Employment (SLBFE) will start registering subagents as business promotion assistants of licensed agencies. The new system would require Sri Lankan agencies to provide SLBFE with information on their assistants and to maintain records of transactions with them, records that should be available for review when requested. An assistant can work for only one licensed agency at a time and is prohibited from placing notice boards, maintaining offices, and keeping or collecting passports from prospective migrants.<sup>93</sup> After a registration period, SLBFE plans to conduct an island-wide campaign to conduct raids and file legal actions against noncomplying subagents, whose offense is subject to a fine of not less than 100,000 SLR (\$900) and imprisonment of not less than four years. (Augunias 2011)*

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Though Sri Lanka has made considerable efforts in this direction, yet it is difficult to judge how far the approach has been successful. In fact, there is a need to understand the recruitment market and motivate the informal recruiters towards legitimate business operations. An important role can be played by government authorities through consultations with the various stakeholders like workers, employers, civil society organizations, and recruiters etc to facilitate ethical recruitment practices.

However it can be stated that policies need to be designed not only for regulation or recruitment agencies but also efforts should be undertaken to enhance the skill set of workers so that international migration is carried out effectively. Labour law is much more of a national prerogative and is more deeply enshrined in domestic policy than trade. It is therefore important to develop a bilateral and multi lateral integrity system that addresses the existing jurisdictional issues of today's model national regulations banning payment of recruitment fees, for instance, would be more effective if there is a means to monitor or enforce the regulation across borders. (Agunias, 2012). Apart from this there should be proper dissemination of information about the nature of their job, social security, legal provisions etc at the country of destination. Moreover the role of sub agents need to be carefully examined, monitored and regulated.

*Verité and Manpower Group have recently launched 'An Ethical Framework for Cross-Border Recruitment: an industry stakeholder collaboration to reduce the risks of forced labour and human trafficking'. This framework comprises a series of specific measures to improve the ability of responsible firms in different countries, at different stages of the recruitment pipeline, to recognize and selectively partner with one another in upholding ethical standards in cross-border movement of workers. The solutions are specifically designed to mobilize cooperation among ethical and responsible firms and between those firms and engaged stakeholders in order to reinforce good practices while marginalizing and excluding "bad actors" (2012)*

## Chapter 6

# Private Employment Agencies and Convention 181: A Cross Country Perspective

### 6.1 Introduction:

The present chapter tries to analyze various cross country experiences with regard to various employment agencies and their regulation. Private employment agencies, agency work, temporary staffing industry, flexi staffing industry are various nomenclatures used to understand private employment agencies throughout the globe. Though this industry has received widespread acclamation in many European countries for its overwhelming contribution to labour markets, its role is not recognized in India. This is perhaps due to the complex labour market scenario in India and lack of available data on the number and role of private placement agencies operating in India. In this context, the present chapter would analyze the importance of private placement agencies across countries and also highlight the best practices adopted in their countries to regulate these agencies so that they can contribute effectively to the dynamic labour market scenario in a post globalized era. International experience is believed to enable an understanding of other world perspectives and also help in exploring the possibilities of changes and reforms in one's own country. The global experiences definitely enriches one's understanding about various socio-political and legal contexts and also helps one to contribute in terms of analyzing one's own country situation thereby making subsequent reforms.

### 6.2 Private Employment Agencies: Definition

However a thorough analysis of temporary agency or agency work around the world starts with its penetration rate and tries to locate the importance of these agencies in catering to the needs of modern job seekers. But before analyzing the penetration rate, it is imperative to understand the terminology of temporary work as used across countries. According to Eurostat's definition 'temporary work is a heterogeneous variable: it includes employees working for a temporary work agency but also consists mainly of fixed term contract workers, hired directly by the employer.'(Eurostat, 2010).The Randstad Socio-Economic Research report differentiates between temporary workers and temporary agency

work which the European data systems have not measured separately. The report states that temporary agency work as defined by Eurostat are not caused by differences in temporary agency work but by differences in fixed term contracts. The most obvious difference between the two is employer does not hire the employee directly on a fixed term contract, but through a private employment agency (PrEA). Typically the employee is hired directly by the employment agency, mostly on a temporary basis but sometimes even on a permanent contract. (Berkhout et al, 2012).

It is believed that the temporary work agencies have contributed immensely to the European labour market scenario. Mostly, all placement agencies, irrespective of the kinds of placement services they provide have in common placement as their main activity. Temporary employment, according to the Organisation for Economic Co-operation and Development (OECD), typically includes the following: fixed-term contracts; temporary workers placed by private employment agencies to perform work at third-party user enterprises; contracts for specific tasks, lasting only until completion of the specified task; replacement contracts, for example replacing workers on family-related leave; seasonal work, for example harvesting, tourism, retail; on-call work, performed only on an as-needed basis; daily workers, hired day by day; trainees, including apprentices and other workers with paid training contracts but without guaranteed permanent jobs at the end of training; and persons in job-creation schemes, hired for a limited duration under public programmes to stimulate employment. The OECD further notes that: "In some countries, temporary agency workers can have permanent contracts with the agency (e.g. Austria, Finland, Germany, Netherlands and Sweden) and arguably should not be included among temporary workers". Similarly, there may be expectations that employers will provide permanent positions to trainees and probationary workers who perform well. However, workers organizations also contend that temporary work is becoming an increasingly permanent status for many (agency and non-agency) workers. (ILO, 2011)

Private Employment Agencies can be termed as an intermediary that is providing services intended to match supply and demand without being a party to the employment relationship. The temporary employment agencies can recruit workers and then immediately assign them to enterprises that have signed an assignment contract with them. Thus there is a triangular relationship involving two types of contract; one between temporary employment agency and the worker and the other between the temporary employment agency and the user enterprise.

Supplying workers to most sectors of the economy, the agency industry's fortunes are bound up with those of many other industries and occupations. Over the past 30 years, employment agencies have become large-scale labour market intermediaries, acquiring the status of brokers of flexibility at both the micro level (meeting the preferred needs of individuals and enterprises) and the macro level (managing economic uncertainty and risk across labour markets).<sup>53</sup>

**Table No. 6.1**  
**Evolution of Agency Work Around the World**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
<b>Argentina</b>	0.3%	0.3%	0.2%	0.3%	0.4%	0.4%	0.4%	0.4%	0.4%	0.3%	0.4%	0.4%
<b>Australia</b>	-	-	-	-	-	-	-	-	-	2.8%	2.7%	2.8%
<b>Brazil</b>	-	-	-	-	-	-	0.9%	1.0%	0.9%	1.0%	1.0%	1.1%
<b>Canada</b>	-	-	-	-	-	-	-	-	-	-	0.6%	-
<b>Chile</b>	-	-	-	-	-	-	1.3%	0.5%	0.4%	0.4%	0.4%	-
<b>Colombia</b>	-	-	-	-	-	-	-	-	-	3.3%	2.7%	-
<b>India</b>	-	-	-	-	-	-	-	-	-	-	-	0.3%
<b>Japan</b>	0.8%	1.0%	1.1%	1.2%	1.4%	1.7%	1.9%	2.1%	2.2%	1.8%	1.5%	1.5%
<b>Mexico</b>	-	-	-	-	-	-	-	-	-	0.1%	0.3%	0.3%
<b>New Zealand</b>	-	-	-	-	-	0.5%	0.5%	0.4%	0.6%	0.6%	0.3%	0.3%
<b>Peru</b>	-	-	-	-	-	-	-	-	-	0.3%	0.6%	-
<b>South Africa</b>	-	-	-	-	-	2.3%	2.2%	2.1%	3.4%	6.4%	7.1%	7.2%
<b>South Korea</b>	-	-	-	-	0.2%	0.3%	0.3%	0.3%	0.3%	0.4%	0.4%	0.5%
<b>USA</b>	2.3%	1.9%	1.8%	2.0%	2.1%	2.2%	2.2%	2.1%	1.9%	1.5%	1.8%	1.9%
<b>Europe</b>	1.5%	1.4%	1.4%	1.5%	1.6%	1.6%	1.8%	1.9%	1.7%	1.4%	1.6%	1.6%

Source: CIETT National Federations 2011 and CIETT Economic Report 2013

It is apparent that agency work had evolved gradually in many countries across the globe. South Africa, USA and Australia showed a gradual increase in agency work in the past years. The data calculated for India shows 0.3 % increase in agency work.

<sup>53</sup> J. Peck and N. Theodore: "Flexible recession: The temporary staffing industry and mediated work in the United States", in Cambridge Journal of Economics (2007, Vol. 31, No. 2), pp. 171-192.

**6.3 Ratification of ILO Convention 181**

Ratification is a formal procedure where a state accepts the convention as a legally binding instrument. The Convention came into force in 2000 i.e one year after being ratified by two states. The pace of ratification and the progress in ratification has been fairly reasonable. The Convention came into force in May 2000; by May 2011, 23 countries had ratified it, 10-12 of which were European Union Member States.(ILO,2011)So far, 25 countries have ratified the convention. The name and the dates of the countries are as given below:

**Table 6.2  
List of Countries which have Ratified ILO Convention 181**

COUNTRIES	RATIFICATION DATE
Albania	30:06:1999
Algeria	06:06:2006
Belgium	28:09:2004
Bosnia and Herzegovina	10:01:2010
Bulgaria	24:03:2005
Czech Republic	09:10:2000
Ethiopia	24:03:1999
Finland	25:05:1999
Georgia	27:08:2002
Hungary	19:09:2003
Italy	01:02:2000
Japan	28:07:1999
Lithuania	19:03:2004
Morocco	10:05:1999
Moldova republic	19:12:2001
Netherlands	15:09:1999
Panama	10:08:1999
Poland	15:09:2008
Portugal	25:03:2002
Spain	15:06:1999
Surinam	12:04:2006
Uruguay	14:06:2004
Israel	
Former Yugoslav Republic of Macedonia	

Labour force data (Eurostat)

The International Labour Organization listed some more countries having prospects of ratification. Those countries are:

**Table 6.3**  
**List of Countries which have Prospects of Ratifying ILO Convention 181**

PROSPECTS OF RATIFICATION	
Bangladesh	Montenegro
Belize	Mozambique
Benin	Myanmar
Bolivia	Nepal
Botswana	Nigeria
Brazil	Peru
Cameroon	Rwanda
Central African republic	Saint Vincent and the Grenadines
Chile	Serbia
Cote d'Ivoire	Sudan
Egypt	Syrian Arab republic
Eritrea	Tunisia
France	Ukraine
Honduras	United Arab Emirates
Jordan	Bolivarian Republic of Venezuela
Lebanon	Yemen
Madagascar	Zimbabwe
Malawi	Seychelles
Mongolia	

In this context, it can be argued that the pace of ratification has been fairly reasonable across the world. The ILO workshop to promote ratification of the Private Employment Agencies Convention, 1997 (No.181) held at Geneva from 20-21 October 2009 recognized the contribution of employment agencies to the labour market and reiterated the role of Convention 181 in improved functioning of private

*“Private Employment Agencies were the most regulated form of flexible employment, thanks to a mix of international frameworks-including Convention No.181-EU frameworks, collective agreements, as well as industry self-regulation. Within the EU, a full set of conditions, such as licensing requirements and working time limitations were implemented”*

*(Employer representative at the workshop to Promote ratification of ILO Convention 181, 2009)*



employment agencies and promotion of decent work. With regard to ratification of the Convention many viewpoints emerged in the tripartite forum. The General Survey concerning Employment Instruments in the light of 2008 Declaration on Social Justice for a Fair Globalization concluded that the most recent instrument of ratification was registered on 15<sup>th</sup> September 2008 (Poland)<sup>54</sup>.

Many countries had ratified the Convention because their national legislation was in line with the provisions of the convention. Some of the countries which expressed their inability for ratification had existing national legislations for protecting worker's rights. Divergence from national legislation was cited by 16 member States (Austria, Canada, Cuba, Ecuador, Germany, Greece, Republic of Korea, Kuwait, Mali, Mauritius, Mexico, Romania, San Marino, Singapore, Switzerland and United States) as an obstacle to the ratification of Convention No. 181. The Government of Canada indicates that all jurisdictions provide similar protections to workers in their general labour legislation as those in the Convention, but reports that not all provinces and territories have specific legislation governing private employment agencies and that, where such legislation exists, it may not be as detailed as the Convention requires. The Governments of Austria and Ecuador report that they will not ratify the Convention based on other national priorities or opposition to intermediary employment operations. Similarly, the Government of Cuba reports that employment is regulated by the State, and not private entities. Germany, Republic of Korea, Mauritius, Romania and the United States report that they cannot ratify Convention No. 181 based on the requirement in Article 7 that is incompatible with their national employment policies, to prohibit private employment agencies from charging, directly or indirectly, in whole or in part, fees or costs to workers.<sup>55</sup>

Other non-ratifying countries, particularly those with a significant number of overseas placement agencies, have opted for either restricting the collection of fees and the charging of costs to certain categories of workers or, in the same way as in Nepal and India, ceilings have been

<sup>54</sup> The General Survey concerning Employment Instruments in the light of 2008 Declaration on Social Justice for a Fair Globalization 2010, Report III Part I(B)99th Session International Labour Conference Labour, International Labour Office: Geneva

<sup>55</sup> For details see annexure on Conventions. This information was gathered in The General Survey concerning Employment Instruments as discussed in 99th session of International Labour Conference.

fixed for fees and costs. India has set the ceiling for mediation charges to an amount equivalent to the first month's salary of the jobseeker and has limited the maximum service charge. It also establishes the requirement that the charges to be paid by the employer to private employment agencies do not affect the jobseeker's monthly wages.<sup>56</sup> Keeping in view, this consideration the process of ratification in India has been a difficult one. Honduras, India and Iraq report that there currently are no (or poor) prospects for ratification, either because their national legislation does not satisfy the Convention's provisions, or because the social partners have not agreed to its ratification.<sup>57</sup> But, these justifications need to be thoroughly examined in the context of current labour market scenario in India.

However, it can be argued that India provides a very complex situation due to a highly segmented and dynamic labour market scenario. The concern is not whether India should ratify the Convention or not but rather to probe seriously into the issue of regulation of small medium placement agencies which also deal with unskilled workers who fall into the category of informal sector. Though ratification is an important step towards effective regulation yet it depends upon the socio-economic context of any particular country and the nature of labour market prevalent in that country.

*The Member States of the European Union also have to take into consideration Directive 2008/104/EC on temporary agency work. The Directive was initiated in 2000 by the Union of Industrial and Employers' Confederations of Europe (UNICE), the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP) as well as the European Trade Union Confederation (ETUC). Applying to workers with a contract of employment or employment relationship with a temporary work agency who are assigned to user enterprises, Directive 2008/104/EC recognizes the legitimate contribution of the temporary work sector in creating jobs as well as the responsibilities of agencies as employers. (ILO 2010)*

#### **6.4 Legislative Provisions Across Countries**

The experience of other countries that have formulated legislation or ratified the Convention 181 may provide important insights to understand the existing regulatory mechanisms for proper functioning of PrEAs across the world. In India various legislations are drafted for placement agencies

<sup>56</sup> *ibid*

<sup>57</sup> *ibid*

Typology of Legislation		
Topic of legislation		scope of application of legislation
Country	Types of PrEA	
Austria	Temporary work agencies	
Belgium	Temporary work agencies	
China	Overseas employment	
France	Temporary work agencies	
Germany	Temporary work agencies	
Indonesia	Overseas employment	
Italy	Temporary work agencies	
Phillipines	Philippines Overseas employment	
Poland	Poland Temporary work agencies	
Portugal	Portugal emporary work agencies	
Spain	Spain Temporary work agencies	
UK	UK Labour providers in agriculture	

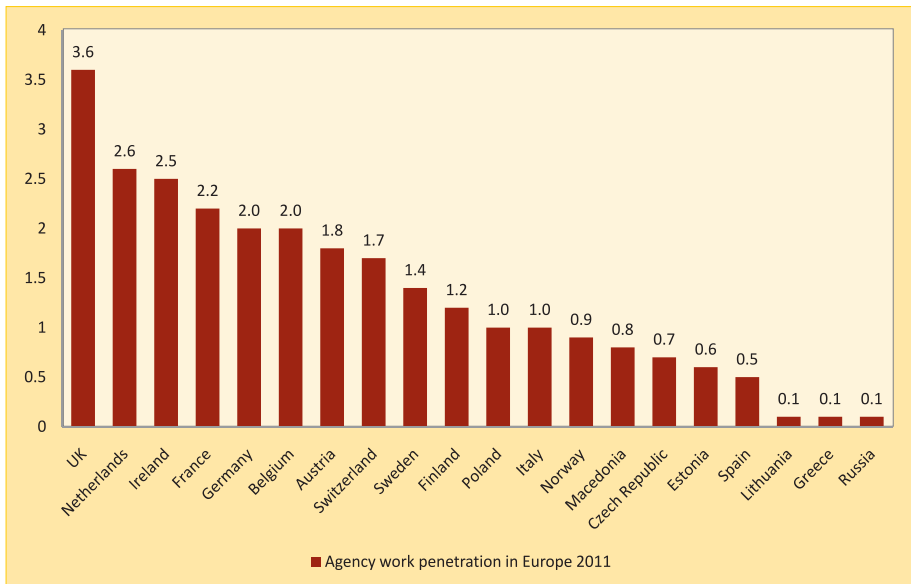
Source: [www.ilo.org](http://www.ilo.org)

catering to different kinds of workers. As already discussed in the previous chapters these legislations cover migrant workers, security guards etc. For example there has been the Emigration Act, Security Agencies act etc and among the new legislations (proposed), Delhi Government Private Placement Bill 2012 for domestic workers is still pending. Unfortunately there has been no legislation to regulate the private placement agencies in general covering all kinds of workers. The flexi staffing industry as termed by CIETT and ISF does not have any industry specific laws. The industry currently follows the Indian labour laws. (ISF, 2012 ). Further it can be stated that though some of the agency are regulated through one or other legislation but the small and medium placement agencies are highly unregulated in India and hence have been resorting to all forms of exploitation from exorbitant fee charging to immoral trafficking to abuse etc. In this context, the present section tries to analyses some examples drawn from various country perspectives about regulation of Private Placement Agencies. It has been witnessed that while some countries have drafted legislations after ratifying the Convention 181, some have formulated legislation even without ratifying the Convention. The International Labour Organisation clearly recognizes that specific legislation to guide particular types of recruitment services is absolutely necessary as in cases dealing with domestic workers or placement of workers abroad

as well as in the national market.<sup>58</sup> In most countries specific legislation, for particular types of agencies, is set up to address specific kinds of practices connected to the activity carried out. In relation to temporary work agencies, for example, questions of equal treatment compared to regular staff are frequently asked; in a number of countries legislation on temporary work agencies, therefore, contains specific provisions on the protection of working conditions of agency workers. A similar picture evolves concerning overseas recruitment agencies.

With regard to legislative initiatives undertaken by countries across the world, the European Union had been playing a prominent role. Mostly the member countries of the European Union have the highest number of ratification of the ILO Convention 181. The Eurociett (European Confederation of Private Employment Agency) has been a highly regulated platform for promoting common interests of agency work industry in Europe.

**Figure 6.1**  
**Agency Work Penetration in Europe in 2011**



Source: CIETT Economic Report, 2013

<sup>58</sup> This was reflected in ILO Guide to Private Employment Agencies: Regulation, Monitoring and Enforcement 2007, Geneva: International Labour Office

The figure (6.1) clearly reveals that agency work had penetrated in many countries of the European Union. The ratification of ILO Convention 181 and separate legislative frameworks have paved the way for successful operation of agency work. The United Kingdom has a provision of sharing all employment related obligations between hosts (employers) and agencies. Such a provision offers the potential for greater compliance than existing arrangements, particularly if it discourages hosts from partnering with agencies that they believe are breaching their own obligations. This may work best when hosts are also made accountable for the actions of agency employers who breach their obligations. The approach towards ‘gangmasters’ in the United Kingdom, where hosts are penalized for using unlicensed gangmasters, is one example (ILO,2007).

Some of the countries which have incorporated the articles of **Convention 181** in their legal framework are listed below:

#### **6.4.1 Countries that have ratified Convention 181:**

- **Ethiopia**

Established the 1998 Private Employment Agency Proclamation (No.104) enacted in response to abuses of Ethiopian migrant workers, particularly domestic workers & victims of trafficking, requiring licensing of recruitment agencies.

- **Italy**

The government envisaged the establishment of public-private network to match labour supply and demand. The government of Italy, in its report to the committee of experts on the application of Conventions stated that in order to ensure effective employment policies and improve the employability of jobseekers, close partnerships between the public employment service and private employment agencies are necessary .In the Italian province of Genoa, a specific form of collaboration between public employment centres and private employment agencies, the Provini Project has been launched, which is aimed at the placement of workers registered with public employment service centres. It involves workers undertaking a vocational course in provincial employment centres. Feedback from the private employment agencies to the worker and the public employment centre is one of the priority objectives of the project and communication is facilitated by bespoke software for the management and monitoring of the experiment.<sup>59</sup>

<sup>59</sup> As shared in Report on General Survey Concerning Employment Instruments 2010,Geneva:International Labour Office

- Netherlands

In the Netherlands, the legal position of temporary agency workers is regulated by the Flexicurity Act and by the law on allocation of labour forces through intermediaries (WAADI). The two Acts have modified Dutch labour law on many counts, including the following:

- companies can use temporary employment contracts more than they could in the past;
- a series of consecutive temporary employment contracts will, under certain conditions, lead to a permanent employment contract;
- agreements between employees and temporary employment agencies will now be considered as employment contracts;
- notice periods are shortened and simplified;
- procedures for dismissal on economic, technical and organisational grounds are shortened; and
- Unemployment benefits are reduced if the employer awards severance pay.

The Flexibility and Security Act offers temporary employees prospects for permanent employment. The conditions for this are that they have worked at a temporary employment agency fairly continuously for a long period of time. Temporary employees who have not worked for a particular agency for very long will after an initial period have a right to training and then to a right to continued payment if - through no fault of their own - no work is available.

### *Flexibility and Security*

In the Netherlands, Flexibility and Security legislation (Flexicurity Act) came into force on January 1st, 1999. The objective of this Act is to adequately match employers' demand for flexibility and employees' demand for working-life security and income. The Act governs various types of flex-labour. In the first place, the Act places temporary agency work under the regular labour law. This means that flexible workers, besides two exemptions, have the same rights as employees with a regular employment contract. Second, the Act governs Temporary Agency Work (TAW). A temporary work agreement between a temporary agency worker and a temporary agency work agency is by this act considered as an employment agreement. After 6 months, all regulations regarding an employment agreement fully apply.

**Law on allocation of labour force through intermediates (WAADI)**

Preceding the adoption of the Flexicurity Act on July 1st, 1998, the law on allocation of labour force through intermediates (WAADI) was adopted. The WAADI forms an important liberalization of the TAW system compared to the previous licence system under the so called ARBVO Law. Nevertheless, the legislation also sets norm for the use of TAW. In the WAADI the prohibition to use temporary agency workers to replace workers on strike is maintained. Furthermore, standards are set relating to social security by using a system that guarantees that social security and tax obligations are met by temporary work agencies. The

*There were about 5,000–6,000 fraudulent or illegal temporary agencies in the Netherlands (especially catering for migrant workers), a serious problem that was being tackled in various ways. First, the EU Directive on temporary agencies was currently being implemented in all EU Member States. Secondly, the position of temporary agency workers had to be strengthened, partly by making proposals to hold user enterprises responsible for choosing the wrong agencies and also by obliging user enterprises to work only with temporary work agencies registered with the Chamber of Commerce. Fines for non-compliance were very high, for example if ten infringements were identified in a user enterprise, then there would be a fine of €80,000 and for repeated offences the fines would double. Unregistered temporary agencies also faced very high fines – the goal was to eliminate the 5,000 illegal agencies, which could be achieved only in cooperation with employers and workers.*

The main points of the WAADI are in the first place that temporary workers in principle should earn the same pay and remuneration as workers in the client enterprise in the same or similar positions. Furthermore, the agencies are no longer obliged to have a licence, which also implies that the restriction of a maximum duration of a temp-contract of 6 months is neutralized. Concerning working conditions, the temporary work agency should provide the temporary worker within information relating to safety regulations in the client enterprise and information concerning the prerequisite professional qualifications. In case of a work-floor accident, both the client enterprise and the temporary work agency are responsible. The WAADI leaves room to deviate from the general requirements if agreed upon in Collective Agreements.

In the Netherlands, the requirement for employment agencies to hold a license has been abolished and the temporary employment sector has since opted for a form of self-regulation by introducing a private system of certification supervised by the sector itself. Now, temporary work

agencies are registered by the Dutch Labour Standards Foundation (SNA), but operate in accordance with a national code of conduct that is based partly on collective bargaining agreements. The compliance of these codes with national requirements is mainly controlled by the Foundation for Compliance with Collective Agreements in the Temporary Employment Sector (SNCU), a private organization of the social partners in the private employment agencies sector. These standards relate mainly to the payment of taxes, social insurance contributions and the minimum wage. To ensure compliance with these standards, certificate holders are inspected twice a year by certifying institutions that have been designated by the Council for Accreditation. The Dutch Labour Inspectorate concentrates on the inspection of uncertified temporary agencies, especially in sectors with a high risk of non-compliance. The Netherlands Trade Union Confederation (FNV) observes that the high number of mala fide private employment agencies in the Netherlands can only be effectively eliminated through a system of permits. (ILO,2010)

- **Albania**

The Committee draws attention to the fact that the aspect of supervision, as outlined in Articles 10 and 14 of Convention No. 181, is especially important in countries where a significant number of the requirements of Convention No. 181 are implemented through national or international codes of conduct or other means. The Committee highlighted this in 2007 in regard to Albania, where the main instrument regulating the operation of private placement agencies, Resolution No. 708 of 16 October 2003, is significantly elaborated in a code of conduct. Assisted by the Office, this code was compiled by the Albanian Union of Private Employment Agencies (UPEA), a voluntary association of employment agencies.

- **Czech Republic**

The Ministry of Labour and Social Affairs, Czech Republic keeps information on PrEAs such as a description of their activity. This information is published on the internet and updated on a monthly basis.

- **Uruguay**

Uruguay adopted the Convention 181 on June 14 2005. The law of Accountability 18.362 (2007) Article 343, designated the control and regulation of the registration and licensing of PrEAs to the National Employment Bureau with the labour Inspectorate Unit attached to the Ministry of Labour responsible for enforcement. The National



Collective Bargaining Agreement (Decree 707/008) prevents PrEAs from charging fees to workers for recruiting services. It also protects the personal data of workers and guarantees the rights of workers recruited by PrEAs to be informed of their salary and working conditions. The Agreement considers PrEAs as the main employer of workers recruited for a third party; PrEAs are responsible for the payment of contributions to social security and other mandatory benefits. Other provisions included minimum wage, leave for union business and special leave and joint -liability between contractor and PrEA to ensure that workers benefits and mandatory entitlements under the agreement are covered.

#### 6.4.2 Non Ratifying Countries

There are many countries which have not ratified the Convention 181 but have separate legislative provisions on regulation of Private Employment Agencies.

#### Malaysia

##### *Private Employment Agencies Act 1981*

The Malaysian Act has clearly defined *private employment agency as an employment agency conducted with a view to profit, that is to say any person, company, institution, agency or other organization which acts as intermediary for the purpose of procuring employment for a worker or supplying a worker for an employer with a view to deriving either directly or indirectly any pecuniary or other material advantage from either employer or worker; the expression does not include newspapers or other publications unless they are published wholly or mainly for the purpose of acting as intermediaries between employers and workers; (b) an employment agency not conducted with a view to profit, that is to say, the placing services of any company, institution, agency or other organization which, though not conducted with a view to derive any pecuniary or other material advantage, levies from either employer or worker from the above service an entrance fee, a periodical contribution or any other charge.*<sup>60</sup>

The above definition is quite comprehensive and provides a clear understanding about the meaning of employment agency. The act also has rules on obtaining a license .With regard to fee charging the act clearly states that *No private employment agency shall charge for any service rendered*

<sup>60</sup> Private Employment Agencies Act 1981, Malaysia

*a fee other than or in excess of that prescribed in the Schedule and for every fee received a receipt shall be issued.* The schedule mentioned that fee charged for local placement should not exceed more than 20 percent of initial month's pay and in case of overseas placement it should not more than 25 percent of initial month's pay. In case of non-compliance with the provisions of the act strict penalties are imposed on violators. The act also has provisions for advertisements and requires the placement agency to indicate the license number and correct information relating to vacancies in order to advertise for vacancies. These provisions are in line with ILO Convention 181.

## **United Kingdom**

The United Kingdom has two specific legislations that apply to employment agencies and employment businesses. These include The Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 which was later amended in 2010.

**The Employment Agencies Act 1973** is a United Kingdom Act of Parliament and part of a wider body of UK agency worker law. It regulates the conduct of employment agencies which recruit and manage temporary and permanent labour. It applies to approximately 17,000 employment agencies operating in the UK.. In its original form, the Act provided for a system of licensing. It prohibits most agencies charging upfront fees, makes it an offence to put out misleading advertising for jobs which do not exist, sets standards for assessing an employee's experience, and more. Each business which wanted to set up an employment agency was required to have a license which would be denied or revoked if set standards on fee-charging, advertising, and information.

In 2003 *The Conduct of Employment Agencies and Employment Businesses Regulations* were introduced which prohibit the charging of fees, except in a small number of mostly arts related professions (e.g. modeling). The additions made in 2003 were few, primarily relating to confidentiality of information and candidate qualification checks. This was later on amended and termed as *The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2010*. Regulation 12 amends regulation 27(1) of 2003 regulations to provide that advertisements for jobs must state whether a position is permanent or temporary rather than whether the services they were offering are those of an agency or an employment business.<sup>61</sup>

<sup>61</sup> For details see the *The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2010*, United kingdom

## The Gangmasters (Licensing Act) 2004

The Gangmasters Licensing Act is an act of Parliament of the United Kingdom that regulates the agencies that place vulnerable workers in agricultural work, shellfish gathering and food processing and packaging. The act has a provision of establishing the Gangmasters Licensing Authority which requires that all such agencies have a license before they operate and also adhere to existing labour standards. The term 'gangmaster' is defined in Section 4 of the act. The act includes number of criminal offences that apply to both labour providers and labour users. It is illegal to operate as a gangmaster without a license and use an unlicensed gangmaster. Labour users must only use workers supplied by a licensed labour provider. In England and Wales the maximum penalty for using an unlicensed gangmaster is imprisonment for a term not exceeding 12 months, or to a fine not exceeding statutory maximum, or to both. In Scotland and Northern Ireland it is six months in prison and a fine.

*EAS received two complaints from work-seekers who had registered with an employment business for temporary retail work over the Christmas period. Both work-seekers were sent for initial one day induction training at a large department store in London. Following this induction the store contacted the work-seekers directly to book shifts and following the work the employment business would receive a completed timesheet for each work-seeker and they would issue payments to the work-seekers. The work-seekers complained that after the one day induction some work seekers were given shifts by the hirer and were paid for that work but not for the initial induction day. During the EAS investigation it was found that this hirer (the department store) did not agree with the employment business to pay for the induction day. In addition there were a number of other temporary work-seekers who had been supplied to this hirer by the employment business under similar circumstances. The conclusion of the EAS investigation was that compliance was sought and a total of 24 workers were paid a combined total of £1080. This recovery related to the non-payment for each workers induction day. The employment business was advised to keep better records and compliance with their obligations regarding payment to temporary workers. (EAS, 2013)*

Apart from these regulations UK has a *Employment Agency Standards Inspectorate, (EAS)* which is a division of the Employment Relations Directorate, part of the Department for Business, Enterprise and Regulatory Reform, which is meant to oversee employment agencies operating in the United Kingdom. The main role of EAS is to ensure compliance

with the Employment Agencies Act 1973 as amended (the Act), and the associated Conduct of Employment Agencies and Employment Businesses Regulations 2003 as amended (the Conduct Regulations), across Great Britain. It takes complaints and investigates breaches of the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Businesses Regulations 2003. One of the case studies cited in the Annual Report of EAS is discussed above in the text box. In this context it can be stated that agency work is thoroughly regulated in the United Kingdom.

### **Ireland**

Currently, employment agencies in Ireland are regulated by the Employment Agency Act 1971. The Employment Agency Regulation Bill 2009 was intended to replace the 1971 Act and strengthen the regulation of employment agencies. It proposed that employment agencies established in Ireland must have a licence granted by the Minister for Jobs, Enterprise and Innovation to operate in Ireland. Employment agencies based outside Ireland would also be required to have such a licence unless they were already licensed in another European Economic Area (EEA) country.

The Bill's proposals included:

- A code of practice to set out standards and practices for employment agencies to follow
- Prosecution of employment agencies from outside Ireland who fail to appear in court for offences under employment rights legislation
- Protection of whistleblowers

### **Turkey**

In 2003 the Turkish Government revised policies that prevented private employment agencies from operating in the labour market by the enactment of the new Labour Law numbered 4857. Although Turkey has not ratified the ILO Convention 181, Turkey has sought guidance from this Convention, and drafted its legislation in accordance with the international standards that is set forth. Parallel to the provisions of ILO Convention 181, the newly enacted Labour Law and the secondary legislation on private employment agencies that came into force with it, has promoted co-operation between public employment services and private employment agencies to ensure the most efficient functioning of the labour market, with the public employment services (namely TLO) maintaining authority in formulating labour market policies. The Turkish Labour Organization

(TLO) is a designated institution within the Ministry of Labour and Social Security, is responsible for enforcing legislation on private employment agencies. The relevant legislations on private employment agencies are as follows:

- The law on Regulation of the Private Employment Agencies published in the official gazette dated February 19 2004 and numbered 25378
- The Communiqué on the Private Employment Agencies published in the official gazette dated August 2 2004 and numbered 25541.

The TLO which is a competent employment authority is empowered to determine the number of private employment agencies that shall perform the permitted employment services taking into account needs of the labour market and the current legislation requirements. Under the current legislations private employment agencies that are authorized by the TLO can undertake the task of acting as an intermediary in providing workers with jobs suitable for their qualifications (procuring employment for a worker) and in supplying employers with workers qualified for different kinds of jobs (Article 90 of the labour law and article 17/I of the law on the TLO).

Under the current legislation regulating the operation of private employment agencies in Turkey, save for the exceptional cases described below, private employment agencies cannot charge directly or indirectly any fees or costs to jobseekers for their intermediary services. Private employment agencies may also operate through the internet on the condition that they have informed the TLO and have fulfilled the requirements set forth in the legislation. In this case the agencies shall declare on their website the date and number of their license and shall state that no charge will be sought from job seekers. The agencies may publish advertisements in their websites as well.<sup>62</sup>

Some other examples of non ratifying countries are as follows:

**Sweden and Germany:** Legislation treats Private Employment agencies as any other business and employers and workers are covered under general labour legislation through collective labour agreements.

<sup>62</sup> For details see [www.iflr.com](http://www.iflr.com) on Better Conditions for Temporary Workers as discussed by eminent lawyers of Turkey, Dr Melek Onaron Yuksel and Kubra Sirvgin and published in IFLR may 2008.

**U.S.A. (Arizona):** If jobseeker is sent out and fails to find employment, the employment agency shall refund any fee the jobseeker paid

**Zimbabwe:** No fee to be charged for registering with an employment agency, but up to a maximum of 5% of first month's salary for placement into a job.

Models of public registers with licensed Private Employment agencies are found in **Singapore & the Philippines** where list of all currently licensed agencies are made available in the internet: to allow potential jobseekers to cross-check in advance.

**Philippines** list includes Private Employment agencies which have been delisted, suspended, revoked, cancelled or banned

## **6.5 Self Regulation: Good Practices of CIETT and CIETT Code of Conduct**

*The International Confederation of Private Employment Agencies (CIETT)* based in Belgium, an international institution composed of representatives of national industry organizations, as well as large multinational enterprises has developed its own Code of Practice which serves as a model for national organizations. CIETT was founded in 1967, consists of 37 national federations of private employment agencies and six of the largest staffing companies worldwide.

Code of practice can be put in place by individual companies or by an association. They are not legally binding, but should be based on international standards and national law. These standards address issues of business ethics and promote quality in service delivery. This is important in order to ensure the credibility of the code of practice and to facilitate a reputable management of the company/association.(ILO 2007)

An example for an international code of conduct is the "Ciett members" commitment towards a well-functioning international labour market". In this code of conduct, Ciett members have established a charter in which they recognize that:

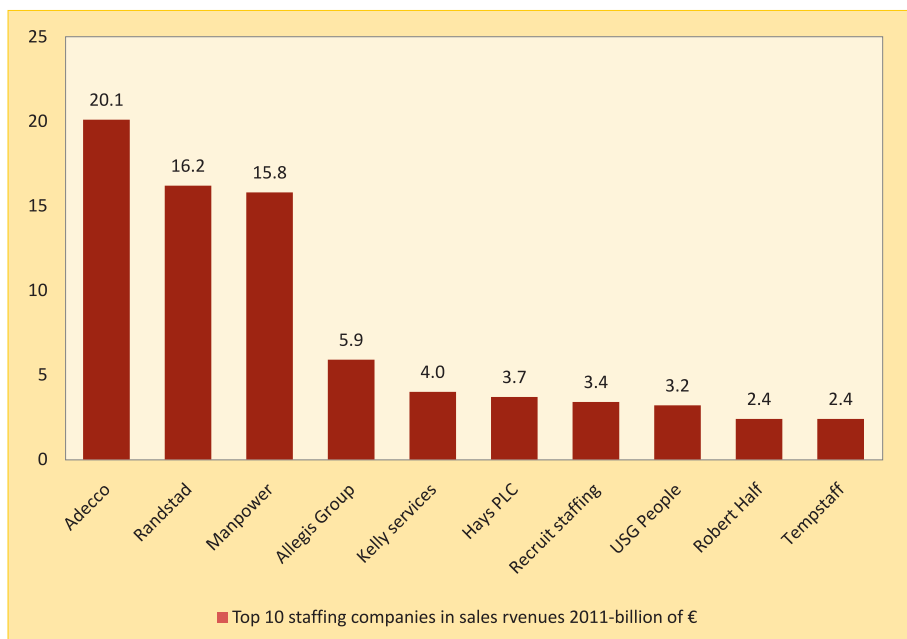
employment through private agencies should respect the international and national principles of non-discrimination on all issues linked to working conditions;

- private employment agencies should not charge directly or indirectly any fees or costs to workers for job-finding services;
- private employment agencies should not make workers available to a user enterprise to replace workers of that enterprise who are on strike;

- private employment agencies should facilitate access to training for the agency workers;
- social dialogue and collective labour bargaining should be seen as an appropriate means to organize the private employment agency industry, when relevant and fitting.

Ciett further expresses its members’ commitment to cooperation with the public employment services. In the code of conduct, Ciett also fully endorses Convention No. 181 and “supports its members in encouraging their respective countries to ratify this ILO instrument, in case they have not done so”. In many respects, work of PES & PrEA can also be complementary. For example *In France*, the ANPE (French PES) also provides jobseekers with the offers of temporary work agencies (TWA); *Lithuania’s* PES & PrEA focuses on information exchange; *Poland* jointly organize job fairs& exchange hard-to-fill vacancies; *Slovakia* publishes a list of PrEA on the website & on all PES offices.

**Figure 6.2**  
**Top 10 Staffing Companies in Sales Revenue 2011-Billion of €**



Source: Staffing Industry Analysis 2012-www.staffingindustry.com

## 6.6 Emerging Flexi Staffing Industry in India: Indian Staffing Federation (ISF)

The Indian Staffing Federation was established in 2011 by leading staffing companies in the country with one common goal of staffing India's growth. Staffing, an established form of outsourcing globally, is yet to be recognized and adopted as an effective means of running a business in India. The Staffing industry provides a platform for recognized employment, work choice, even compensation, annual benefits and health benefits for the temporary workforce. The purpose of ISF is to enhance long term growth of the staffing industry and to ensure its continued ability to make positive contributions to the economy and society. The principal focus of the Federation's activities is to strengthen triangular employment relationship in which the staffing company is the employer of the temporary worker, who works under the supervision of the user company. ISF today comprises of 26 members companies who collectively provide employment to over 3.5 lakh people throughout the country.<sup>63</sup>

The federation is believed to provide flexi staffing solutions to the jobseekers. The concept of flexi staffing is comparatively new to India which can fulfill the occupational requirements of almost all the segments of population. It is increasingly becoming popular in a range of demographic segments including retired professionals, housewives, students, recent graduates and freelancers. People looking for short term options, experienced people looking for specific experience, top notch professionals looking for interim position are all benefitting from this new and emerging space. (ISF, 2012). International comparisons clearly show that India is a growing flexi staffing market. The ratio of total flexi staff to total workforce in 2010 was highest in China (11.9%), South Africa (7.1%) and Australia and Cambodia (2.7%) each. Penetration was just 0.32% in India though it has the largest base for flexi workers.<sup>64</sup>

*With all eyes on India, it is crucial that steps are taken to fine tune its labour regulations in line with the changing demands of India's rapidly evolving economy. Labour sits at the heart of India's future growth potential. It is therefore critical that the India refreshes its regulations to unlock the full potential of the private employment*

*Fred Van Haasteren, CIETT President March 6 2013, International colloquium, New Delhi PTI*

<sup>63</sup> The ISF report Indian Staffing Industry Research 2012: Turning available work into jobs worked out the scaling of flexi staffing in India and came out with numbers about their reach to millions of people.

<sup>64</sup> The figures were worked out by ISF in their report Indian Staffing Industry Research 2012: Turning available work into job



In this context, it can be pointed out that flexi staffing industry a relatively new phenomenon can contribute a lot to the changing labour market scenario in India. Flexi workers or temporary workers or temporary staffing may have different terminologies to be addressed their role in job creation cannot be undermined. An important question which arises here is how can the flexi staffing industry be promoted so that they can contribute to India's growth? Keeping in view, the existing regulatory mechanisms it becomes difficult for the flexi staff industry to operate formally. Moreover, the larger companies have their own regulatory mechanisms but the small and medium placement agencies are mostly unregulated. Though, some small and medium placement agencies cater to the employment needs of people genuinely, there are many others who resort to unscrupulous practices due to lack of any strict regulatory mechanism. Therefore, it becomes imperative to bring about legislation to cover all kinds of placement agencies big or small. Another important aspect is to remove the unwanted fake agencies from the market and encourage the genuine ones by bringing them under the umbrella organization ISF. Such a practice will not only remove the bad players from the market but also encourage the genuine agencies to contribute to employment generating activities and flexi work solutions to all kinds of population.

*"If the Indian government creates an inclusive and conducive regulatory framework as prescribed in the ILO Convention 181, private staffing companies will assist India's humongous labour market transition from the informal to the formal sector, by providing the youth of India a platform that enables them to become more employable and secure a decent job,"*

*ISF Vice President Rituparna Chakraborty, March 6, 2013 PTI*

## 6.7 Lessons Learnt

Against this backdrop, it can be reiterated that Indian labour market needs provide a complex picture where on one hand the unemployment rate has decreased but at the same time there is a concern for the expanding informal sector. The recent initiatives and discussions held by international agencies like ILO on formalizing the informal economy through various academic forums clearly focuses on the urgent necessity to address the problems of the vast informal sector prevailing in India with limited access to social security provisions. The cross country experiences discussed in the chapter provided fresh impetus to understand and analyse the importance of flexi staffing industry and its contribution to labour market scenario. The country

examples discussed in the chapter whether ratifying or non ratifying countries had a highly regulated agency work scenario as a result of which private placement agencies have been successful in delivering appropriate services keep at pace with the existing labour market requirements.

On the contrary, inspite of having a large base for flexi work or agency work, Indian markets are least protected. In the a recent International Colloquim organized by ISF and CIETT in New Delhi, the ISF President K Pandia Rajan said *"it is pertinent to note that India is among the top five nations in flexi staffing industry but it stands out as the only one where the flexi staffing industry does not have a regulatory recognition as yet. Going by the Economic Survoey Report, it becomes more viable to make necessary provisions, set up guidelines to encourage contract staffing in areas, roles, industries where it can add utmost value. Ratification of ILO Convention can be a positive step in that direction in order to fully reap the benefits"*. However, the recognition of flexi staffing industry with due regulation can contribute immensely legalizing the small and medium segments of private placement agencies which are genuinely contributing to the existing labour market needs. Effective procedure for national licensing and certification requirement for private placement agencies can constitute as a means of ensuring the proper performance of private agencies and also increase the transparency of the labour market. A system of licenses or certification also allows government authorities to pre-screen applicant's capabilities and professional experience in job placement activities. The information obtained, such as who the actors are the types of services offered by private agencies and the number of jobseekers employed by them or placed in employment, can assist the competent authority to determine the functioning of the private placement industry. As mentioned above, this information can encourage national authorities to direct their employment policies and thus improve the functioning of their labour markets.

Against this backdrop, it can be clearly stated that the good practices of countries like European Union and others have no doubt been instrumental in curbing labour market irregularities by providing appropriate employment opportunities to people. The Boston Consulting Group Research for CIETT in 2011 demonstrated that countries with high levels of agency work have less illegal economic activity and that appropriate regulation allows agency work to positively contribute to labour markets.<sup>65</sup> However, the Indian context provides a very different

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<sup>65</sup> CIETT Adapting to Change: How private Employment Services facilitate Adaptation to change, Better Labour Markets and Decent Work. 2011 .Brussels: Boston Consulting Group

picture about regulating employment agencies. When it comes to placement agencies related to security guards or overseas placements there are separate legislations as already discussed in previous chapters but there is no legislation on private placement agencies providing various kinds of employment from BPOs to automobiles, manufacturing, retail, domestic workers etc. Such agencies are well regulated in the international context both in countries where Convention 181 is ratified and also in non ratifying countries.

The complexities which India faces in ratification are manifold. On one hand, there is dearth of database on these agencies as most of them operate illegally without registration. While on the other hand, there is a large section of informal sector which needs special attention. The lack of skills to match the demands of evolving economy is a serious problem before policy makers in India. The National Skill Development Mission of the government of India is an important initiative to skill 150 million people by 2022 .With the changing labour market scenario the need for appropriate skills remains the top priority for effective employment generation. In this context, the role of Private Placement Agencies cannot be undermined in understanding the skill needs of the workforce. The CIETT has been successful in providing training and matching the skill requirements with job opportunities .The Euro CIETT has developed a public private partnership model which is praiseworthy.

Similarly, The National Skill Development Corporation (NSDC) of India is an important initiative to promote public private partnership. This venture aims to promote skill development by catalyzing creation

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*The EU initiative “PARES – Partnerships between Employment Services” was launched by the European Commission as a priority action of the “New Skills and Jobs Communication” in 2011. It forms part of the Europe 2020 Strategy for smart, sustainable and inclusive growth and more specifically the European Employment Strategy to promote labour market reforms. The PARES program will continue throughout 2013 with an annual PARES Stakeholder Conference, to be held in September 2013 and two “PARES goes national” events to deepen and develop cooperation between employment services at national level. 2013 will also see the development of WEESP, a web tool for showcasing employment services best practices through an online data base of case studies (Eurociett ,News) @ [http://www.eurociett.eu/index.php?id=113&tx\\_ttnews%5Btt\\_news%5D=289&cHash=5c3c2455dc8053610ae6c59c21ccb8f7](http://www.eurociett.eu/index.php?id=113&tx_ttnews%5Btt_news%5D=289&cHash=5c3c2455dc8053610ae6c59c21ccb8f7)*

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of large, quality for profit, vocational institutions. It was initiated as a part of national skill development mission to fulfil the growing need in India for skilled manpower across sectors and narrow the existing gap between the demand and supply of skills. Recently the NSDC carried out a mission to train Kashmir youth under the scheme *Udaan* in which 31 companies including six state owned firms have committed themselves to train 45,557 youth in J& K over the next five years under the scheme which was overhauled two months ago to include PSUs and link top their obligations under corporate social responsibility (The Economic Times, April 11, 2013). Such initiatives are important success stories of Public Private Partnership (PPP).

Article 13 Paragraph 1 of the ILO Convention 181 has provisions for Public Private Partnership and states that a *member shall in accordance with national law and practice and after consulting the most representative organizations of employees and workers, formulate, establish and periodically review conditions to promote co-operation between public employment service and private employment services.*<sup>66</sup> It can be pointed out that, the above mentioned provision of the Convention is in line with the existing Public Private Partnership model in India.

However, it can be argued that licensing, regulation and certification of private placement agencies and subsequent promotion of PPP models can lead to effective job creation and reduce labour market segmentation. As an alternative to systems of certification or licensing, Article 3, paragraph 2, of Convention No. 181 allows for appropriate national law and practice to regulate or determine the conditions governing the operations of private employment agencies. Through this alternative, the Convention provides discretion to governments on how to regulate private employment agencies. This allows countries that already had a regulatory system other than licensing and certification in place prior to ratifying Convention No. 181 to retain these systems. Nevertheless, it remains crucial that legal provisions or national practices governing private agencies are properly and permanently enforced. For this, the legal provisions must be impartial, transparent and able to assist private agencies to deliver their services appropriately and adequately.

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<sup>66</sup> As mentioned in Article 13 of Private Employment Agencies Convention 1997, No.181. For details see Annexure I.

There is no denying the fact that many countries have regulated placement agencies as per their national law and practice and also ratified the ILO convention. It can be further pointed out that in India it is important to analyse the nature of labour market needs and formulate legislation accordingly. The cross country examples can provide important insights to develop an appropriate regulatory framework though one cannot emulate them completely due to the differential socio-cultural and legal environments of different countries. Therefore the issue of ratification needs to be addressed after a thorough analysis of country specific situation and existing legal environment of India.

## Chapter 7

# Summary and Recommendations

The ILO report on Global Employment Trends 2012 states *The world enters the year 2012 facing a serious jobs challenge and widespread decent work deficits. After three years of continuous crisis conditions in global labour markets and against the prospect of a further deterioration of economic activity, there is a backlog of global unemployment of 200 million – an increase of 27 million since the start of the crisis. In addition, more than 400 million new jobs will be needed over the next decade to avoid a further increase in unemployment.* (ILO 2012).

The Global Dialogue Forum of ILO on the Role of Private Employment Agencies in Promoting Decent Work and Improving the Functioning of Labour Markets in Private Services Sectors in October 2011 also emphasized on the consistency between the ILO's Decent Work Agenda, the Declaration on Fundamental Principles and Rights at Work, temporary agency work standards, regulations aimed at fighting illegal practices and abuses of jobseekers and commitment to ensuring decent work to working population.

In the context of growing need for more job creation, the positive contribution of Private Placement Agencies can hardly be denied as these agencies have been able to adjust to structural and cyclical changes of the economy. The CIETT Report provided an estimate about the contribution of Private employment services globally. The global private employment services industry employs over 25 million workers annually –equivalent to a daily average of 9.5 million workers on a full time basis. It comprises 72,000 companies around the world with 169,000 branch outlets. The majority of Private Employment Agencies are small and medium size companies, with only a limited amount of large, international groups which operate worldwide. (CIETT, 2011)

Although the role of private placement agencies is widely acknowledged, still the fear of illegal practices and abuses due to their non regulation cannot be disregarded. With the changing labour market scenario in India, new concepts like *flexi work* and *temporary work* seem to be quite alluring for possible solutions to overcome the problem of job crisis. Therefore there is a need to promote the regulation of private placement agencies in order to enable them to contribute appropriately to skill requirements and labour market demands of the people. Lack of regulation shall not

only encourage them to adhere to malpractices but disrupt the functioning of the labour market. Against this backdrop, the present work tried to explore the modus operandi of private placement industry in India and the recruitment practices adopted by them. There was also an attempt to study the existing regulatory framework in India and identify the gaps in them so that effective regulatory mechanisms are devised. For this purpose, the good practices from cross country experiences were studied to develop an effective regulatory framework of private placement agencies so that they can contribute more effectively to the changing labour market requirements. The legislations for regulation of private placement agencies were analyzed amongst both ratifying and non ratifying countries of ILO Convention 181. Other legislative provisions across countries in line with ILO Convention 181 provided necessary insights for understanding country specific situations for smooth operation of PrEAs. In this regard, the study was divided into seven chapters which may be summarized as follows:

- The first chapter tried to contextualize the study within the global crisis and the labour market challenges vis a vis the growth of private placement agencies in contributing to job creation. It was revealed that though private placement agencies acted as labour market intermediaries and had immense potential in employment generation yet, if left unregulated can lead to irregularities and exploitation. The ILO Convention 181 on Private Employment agencies had enough scope to provide for regulation of placement agencies and some countries had formulated legislations for effective regulation of private placement agencies with ratification of the convention. The chapter discussed the different types of placement agencies operating in India with an analysis about their legal status. It was revealed that though some of the agencies dealing with contract labour, migration and security guards were regulated through specific legislations, some others who provided different placement services from automobiles, manufacturing, and BPO, KPO etc were highly unregulated since they did not fall within the purview of any legislation.
- The second chapter on labour market scenario in India provides an overview about the labour market in India. The chapter highlighted on the recent trends in employment and unemployment and attempts to understand the gender differentials in employment. There was also an attempt to understand the linkages between education and labour market through an analysis of educational achievements of

the working age population (15-59), types of training received by the working age population and the need of vocational training in generating employment opportunities for the working population.

- The historical background about the developments leading to movement towards regulation of private placement agencies throughout the world was analysed in the third chapter. Though temporary agency work were abolished in many countries in the past ,yet their importance started gaining visibility among many policy makers throughout the world. Subsequently, the formulation of the ILO Convention 181 recognized the positive role of private employment agencies and their contribution to the labour market and also set general parameters for the regulation, placement and employment of workers recruited by private placement agencies and in particular, temporary work agencies. Gradually, there started a trend towards ratification of the Convention in many countries of the world. The chapter highlighted on the existing legislations in India pertaining to various kinds of workers like migrants, contract workers, security guards etc. However, it was revealed that many of the legislations have not been amended with new changes in the labour market post globalization. For example the contract labour act seems completely obsolete in the contemporary era as the demand for contract workers has increased in the new economic order. Therefore the definition, roles and responsibilities of contract workers need to be redefined. The Emigration Act also needs to be amended and the provision on fee charging needs to be reconsidered as per international markets. It was also revealed that the provisions of EECNV Act 1959 needs to be amended in lieu of current labour market requirements.

An analysis of the proposed new legislations like Delhi Private Placement Agencies Bill 2012 and Emigration Management Bill 2012, clearly reveals that such legislations need to be carefully drafted after necessary suggestions from employers, workers, policy makers, civil society, unions etc. so that they contribute effectively to the smooth functioning of private placement agencies.

- The chapter on Recruitment practices was analyzed through the results from primary survey conducted in Delhi and NCR Region. The main findings of the chapter can be summarized as follows:
  - ❖ The chapter revealed that private placement agencies witnessed phenomenal growth in the last few years. The forces of globalisation have no doubt been contributing in terms of creation of varied job



opportunities for the working population. Global employment has not yet recovered from the global crisis that erupted in 2008. The global employment rate, at 60.3 per cent in 2011, is 0.9 percentage points lower than before the crisis. This means that around 50 million jobs are missing relative to the pre-crisis situation. There are marked cross-country differences in recent employment trends. Employment rates have recovered much faster in emerging and developing economies, especially the latter where as a group they have surpassed the pre crisis levels. (ILO,2012).The growth of these small and medium placement agencies reflects on the growing business opportunities for this industry and also makes their role significant in terms of job creation.

- ❖ It was analysed that registration process of these placement agencies had various pitfalls. Most of the agencies were operating without any registration or licensing. It was further pointed out that those agencies which claimed to have registered themselves failed to provide any documentary evidence justifying their registration which causes doubt about their functioning.
- ❖ With regard to the fee charging aspect it was emphasized that 73 percent of the placement agencies were charging fees in the name of registration and placement. However the fee charging aspect was reported to have various anomalies since there was no universal rate with regard to fee charging.Exorbitant fees were charged by various agencies without any uniformity being maintained to determine the maximum amount to be charged from the jobseekers. Such discrepancies had resulted in sheer exploitation of the jobseekers.
- ❖ It was also revealed that majority (90%)of the placement agencies were not involved in any training for the jobseekers in order to assist them find a suitable job according to their skill levels or provision of additional skill sets to prepare them for the transitions in the labour market scenario. This is further explained in the context of limited role played by the placement agencies who have been acting as labour market intermediaries. However BPOs and automobiles were the dominating sectors where placements were provided.
- ❖ With regard to strategies to promote the placement agencies, advertisements played a prominent role. However telephone and internet were stated to be the most important mode of

advertising. Some other modes included newspapers, pamphlets, hoardings and others in the market.

- ❖ The chapter also analyzed the viewpoints of the jobseekers in order to achieve an indepth understanding about the recruitment practices. It was revealed that most of the jobseekers who were graduates were enrolled in placement agencies.82 percent of the jobseekers were enrolled with placement agencies and advertisements had played a prominent role in their selecting a particular placement agency. It was further analyzed that the placement agencies were attracting many jobseekers by promising lucrative options but failed to fulfill the expectations of the jobseekers.84 percent of the jobseekers were not satisfied with the functioning of the placement agencies.
- With regard to international migration, it was revealed that migration has contributed immensely to the gross domestic product of many developing countries. But it is also an undeniable fact that migrants have become victims of abuse and illegal operations of PrEAs who indulge in labour illegal brokering, trafficking etc. The migration of unskilled, semi skilled workers had been a serious issue of concern among government officials as cases of abuse were reported mainly from these migrants going to GCC Countries from India. The consistent and steady increase in number of people emigrating for employment abroad propels the government to facilitate migration more effectively in order to maintain the trend. An analysis of the problems of migrant workers clearly revealed that mostly migrants held temporary jobs and mostly complain about abuse and exploitation by recruitment /placement agencies. Migrants complained about being humiliated on the basis of race, gender, class, age and religious belief. Domestic workers were the most vulnerable group and were victimized by both the placement agencies and also their employers. Illiteracy, general backwardness; poverty and ignorance make them silent victims before placement agencies and their employers. Lack of awareness about the policies and the legal environment of the destination countries which make them all the more vulnerable. Moreover there is no mechanism in the host countries for dissemination of information and lodging of complaints, they remain helpless in the hands of their employers as discussed in the cases mentioned in the chapter.

Inspite of the efforts undertaken by the Ministry of Overseas Indian Affairs for protection of migrants there have been reported cases of

malpractice and abuse by the placement agencies. The Emigration Act needs to be amended in order to be more sensitive to women workers and also in line with recent requirements of the international market. The chapter highlighted that there is a need for incorporation of ethical recruitment practices so that migration is facilitated smoothly. Moreover, the role of sub agents need to be reconsidered and their activities need to be thoroughly monitored and effective legislations made to restrict them from operating illegally.

- The cross country analysis highlighted on the regulatory mechanisms adopted by various countries for successful operation of agency work. It was revealed that only 25 countries have ratified the convention till date. The highest number of ratification is amongst the European countries perhaps due to the presence of a large Private Employment Agencies federation like CIETT, EU Frameworks and provisions of self-regulation. The European Federation is an example of a highly regulated structure with due recognition to the positive contribution of agency work. Such arrangements have facilitated towards the ratification of ILO Convention 181. It can also be argued that other non ratifying countries had also separate legislative provisions for regulation of private placement industry. Some of the good practices like CIETT code of practice reflect on the complementary roles played by Private Employment Agencies and Public Employment Services. This has been an important example of Public Private Partnership which is reiterated in ILO Convention 181. The chapter also emphasized on the emerging Flexi staffing industry in India vis a vis acknowledging the positive contribution of Indian Staffing Federation. Though the federation was comparatively new and at its nascent stage, yet it had tremendous potential in addressing the present labour market needs. ISF is believed to play an important role in meeting the flexi work needs of the recent labour market practices. It was also realized that though the government of India had already initiated a public private partnership model through the National Skill Development Corporation, yet a lot more needs to be done in this regard. The existence of large informal sector in India clearly reveals a situation of mass scale skill gap in the country. Though the ISF is currently working in the area of the formal sector to provide training and address the issue of skill mismatch. However it can be further argued that the ISF can play an important role in addressing the skill needs of the large informal sector in India provided the government provides an inclusive environment

to them for operating and contributing in formalizing the informal economy. Such an initiative is possible through effective PPP models develop through consultations with various stakeholders within the socio-cultural context of the country.

Against this backdrop, the issue of regulating private placement agencies and the encouragement for *flexi work* are prominent issues to be debated and subsequent action need to be taken. An important step in this direction would be formulating legislation on the regulation of private placement agencies. Since the existing legislations in India do not provide complete coverage to all kind of placement agencies, there is a need to have a national legislation to regulate placement agencies.

The study analyzed that private placement agencies is a service sector on its own catering to the employment needs of various people with different educational backgrounds and skill trainings. However the existing legislations are not comprehensive enough to cover the entire placement industry. Though some of the legislations do have specific provisions for some facets of the sector but there have been lot of discrepancies due to the lack of appropriate definition for private placement industry as a whole. Such issues of multiple legislations may lead to unnecessary confusion and misinterpretation. For instance, the recent Delhi government draft bill 2012 on placement agencies have been in the midst of controversies and opposition from various civil society organizations due to issues such as its coverage beyond domestic workers, registration of employers and the registration of the link person (who introduces the domestic worker to a placement agency) to guard against trafficking and take measures against miscreants. *“Just implementing an Act in Delhi will not help as the problem is national. Domestic workers are being brought from states like West Bengal and Jharkhand. It’s important to put in place a national plan of action for placement agencies to ensure coordination between states,”*<sup>67</sup>

In this context, it can be stated that instead of having separate legislations for state governments there is a need, for a central legislation with the provision of co-ordination between various state governments. While the existing legislations need to be amended

<sup>67</sup> This statement was made by representative of Shkati Vahini NGO operating in Delhi through an interview with Times of India April 29, 2013.

as per the current labour market requirements, there is an urgent necessity for formulation of a separate national legislation covering private placement industry as a whole. Such legislation should be drafted with an appropriate definition of private placement agencies after taking into account their operational mechanism and the existing recruitment practices.

### **Policy Recommendations**

After analyzing the main findings of the study, the major recommendations for smooth functioning of the private placement agencies are as under:

#### *Defining Placement Agencies*

There is a need to define the private placement agency catering to various labour market perspectives. The definition should be comprehensive enough to define the meaning, role, services provided by them, including a proper definition of jobseekers. The segregation of Private Placements Agencies falling under the first three categories and the fourth category as proposed in various meetings of the Ministry of Labour and Employment is the first step to understand the kinds of agencies operating in India. Good practice in regulation and effective national legislation includes clearly defining the term “private employment agency”, determining basic requirements for the legitimate operation of agencies, and ensuring governments capacity to enforce such provisions. It sets general parameters for the regulation, placement and employment of workers by these agencies, and assists member States to establish clear policies, legislation and mechanisms for effective registration and licensing of agencies, thereby helping them play a constructive role in contributing to labour markets free from exploitative conditions<sup>68</sup>

#### *Legislations and Amendments*

- The existing legislations are quite archaic in nature which are not in line with the recent labour market trends, hence need to be amended. Some of the legislations cover specific placement agencies like security agencies, migrant workers etc; but there are no legislations in India covering the small and medium private placement agencies providing

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<sup>68</sup> Private Employment Agencies, Temporary Agency Workers and their Contribution to Labour Market, Issues paper for discussion at the Workshop to promote ratification of the Private Employment Agencies Convention, 1997 (No. 181) (20–21 October 2009), International Labour Organisation 2011.

all kinds of employment. Though the Delhi Private Placement agency Bill 2012 is tabled in the Parliament it has limitations on coverage and covers only domestic workers. It can be suggested that the legislative framework may be simplified by defining the term; 'placement agency' more comprehensively. The definition may include all kinds of placement agencies including security guards, domestic workers, migrants and small and medium agencies which have mushroomed recently.

- The new legislation needs to be designed with due regard given to specific national circumstances and capacities. The law on private employment agencies should address shortcomings and gaps regarding their current role in the national labour market and take into account the main activities and services they carry out. Moreover the regulation should be adapted to the enforcement capacities that are available to the government. The financial and technical resources available in the country should be taken into consideration before drafting the new law and it would be advisable to keep the regulations simple and emphasize provisions that can be enforced effectively.
- The legislation may be drafted after a thorough analysis of the private placement industry in India and the recruitment practices adopted by them. Since the present study has analyzed the recruitment practices in Delhi/NCR, there is a need to understand the recruitment practices prevailing in every state of India. There is also an urgent necessity to establish a databank on the number of placement agencies operating in India and also an understanding about their operating mechanism and malpractices resorted by them. State Governments/Union Territory Administrations may be addressed to develop a mechanism for maintaining reliable data about number of agencies and the extent of the problems posed by these agencies. Since there are many challenges while considering ratification of the Convention; it becomes imperative to have a thorough understanding about the services provided by the placement industry, their contribution ,performance, recruitment practices in order to formulate a legislation for their smooth functioning and preventing malpractices.
- The legislation should provide scope for Public Private Partnership for promoting effective labour market services. It should also be able to restrict the small and medium placement agencies which operate

illegally and the mechanism of *benchmarking* of placement agencies can be employed in the new legislation as it will facilitate the growth of genuine placement agencies. Ranks can be awarded to agencies based on certain criteria. It will promote those who had developed good practices and provided placement services legally. This will also help the jobseekers in making an informed choice about the genuineness of the placement agency.

### *Flexicurity*

- The new legislation should incorporate provisions on flexibility and security covering the employer's demands for flexibility and employees demand for social security and income. It may also offer prospects to temporary employees for permanent employment.
- The new legislation may acknowledge the importance of flexi work provisions for vulnerable sections like the women and elderly and encourage private placement industries in providing flexi work opportunities to them.

### *Code of Practice*

- The cross country experience clearly reveals that lot of legislations are formulated keeping in mind the socio-cultural context of the country. Encouragement of Temporary staffing and flexi staffing through PREA's can contribute a lot to improve employment situation. There are also voluntary means, using professional codes and industry standards, where self-regulation is practiced as seen in European countries. Such good practices need to be analyzed in the light of one's own country specific situation and formulate effective policies to develop one's own professional standards and code of practice. The lessons drawn from cross country experiences like Turkey can be an important intervention in any proposed new legislation on private employment agencies. The recommendation is as follows: private employment agencies may also operate through the internet on the condition that they have informed the Turkish Labour Organisation and have fulfilled the requirements set forth in the legislation. In this case, the agencies shall declare on their website the date and number of the licenses and shall state that no charge will be sought from the jobseekers. The agencies may publish advertisements in their websites as well. Such examples need to be thoroughly probed and possibilities need to be explored in the current socio-legal environment of India.

### ***International Labour Migration***

- With regard to Placement for migrants, effective policy interventions would also depend upon launching parallel initiatives that empower migrants. In this endeavour, the respective governments should choose to disseminate information widely to give migrants access to core set of rights and meaningful forms of representation. Many migrants have incomplete and incorrect information about the job opportunities and living conditions in destination countries; domestic workers are the most ill informed. Recruitment agencies provide migrants with a wider range of choices than they could access without assistance. In this exchange the migrants typically have a little ability to bargain, which often leads to fraud and abuse. Governments along with other stakeholders should focus on distributing accurate information, granting migrants equal treatment and basic rights and create mechanisms for migrant representation. Such actions would contribute in the empowerment of migrants and enable recruitment to be based on ethical standards. The ILO convention 181 also mentioned some basic rights to be protected which was also reiterated in ILO Guide to Private Employment Agencies.
- Agencies that provide orientation and training which includes both pre-departure and post- arrival training may be identified as agencies with good practices. The pre-departure training may include information about the living conditions, skills required for the job, legal rights and grievance redressal mechanism. The post-arrival training may include relevant information about the cultural practices of the receiving country, basic skills required for the job including language skills, occupational health and safety benefits, social security provisions available for them and grievance redressal mechanism.

### ***Role of Employment Exchanges***

- There is a need for revival of Employment Exchanges existing in the country and subsequent amendment of Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 and expand its scope in accordance with the current labour market situation in the country.
- The employment exchanges need to have an updated database of jobseekers should be made more accessible to Private Agencies.



### ***Fee Charging***

- Fee charging is an important aspect to be considered while formulating a regulatory mechanism for control and regulation of placement agencies. The study uncovered the exploitative practices and charging of exorbitant fees from the jobseekers by the placement agencies. Therefore it becomes imperative to regulate the fee charging aspect in order to avoid malpractices and exploitation of jobseekers. For example, the placement fee and registration fees covered under two separate heads leads to sheer exploitation of jobseekers. Fee charged for writing CVs etc are not regulated anywhere which often leads to charging of exorbitant fees by online placement agencies. The new legislation should have specific provision for regulation of fee charging. The flexibility with regard to fee charging can be determined by specifying certain limits to the amount of fee charged for different categories of jobseekers.
- The study also revealed that the placement agencies were charging fees both from the employers as well as the jobseekers and also charged both registration and placement fees from the jobseekers. Since the fee charged by the placement agencies from the employers include a sizeable amount for the smooth functioning and profit making in their business, they should be discouraged to charge fees from jobseekers under various heads. Moreover, the legislation should have strict penal measures for non-compliance.

### ***Skill Development: Public Private Partnership***

- For the purpose of skilling the labour force, public private partnership model can be devised linking it with the National Skill Development Mission. It can be further reiterated that such initiatives can contribute immensely to the evolving labour market needs and also has the potentiality of exploring avenues for skilling the unorganized sector workers. The accommodation of ISF under the PPP initiative can further accelerate the growth of the economy through proper employment creation.

### ***Enforcement Mechanism***

- There can be strict procedures on licensing so that it is not easier to set up a placement agency without the consent of the government. Monitoring and regulation also includes effective grievance redressal mechanism. One of the important grievance redressal mechanisms was online consumer complaints. Such forums may be promoted

and strict instructions issued to them to pass on the grievances to the concerned authorities so that action can be taken against the perpetrator.

- It is important to establish a functioning and effective complaint and grievance mechanism and to investigate and resolve cases of non-compliance. This includes a specific procedure for jobseekers, who have suffered in the recruitment and placement process, to seek redress. Complaint mechanisms should be based on a differentiated approach, allowing for settlement among the different parties before choosing adjudication.

### *Tripartite Consultations*

- The new legislation should be formulated with proper consultation with various stakeholders through tripartite meetings. Various perspectives from employers, workers organizations, civil society etc. need to be taken into consideration for understanding specific labour market issues from different perspectives. Such an endeavour would help in overcoming the gaps in existing legislations and also provide insights to formulate an appropriate legislation.
- In order to develop an appropriate strategy to draft a national legislation on regulating placement industry technical assistance and support may be taken from ILO and hence a balance can be established to recognize the role of private placement agencies and their contribution to labour market functions. At the same time, regulations may be formulated to prevent workers from abuse and exploitation.

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# Annexure I

## ILO Convention 181 and Recommendation No. 88

### *Article 1*

1. For the purpose of this Convention the term “private employment agency” means any natural or legal person, independent of the public authorities, which provides one or more of the following labour market services:
  - (a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom;
  - (b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to below as a “user enterprise”) which assigns their tasks and supervises the execution of these tasks;
  - (c) other services relating to jobseeking, determined by the competent authority after consulting the most representative employers and workers organizations, such as the provision of information, that do not set out to match specific offers of and applications for employment.
2. For the purpose of this Convention, the term “workers” includes jobseekers.
3. For the purpose of this Convention, the term “processing of personal data of workers” means the collection, storage, combination, communication or any other use of information related to an identified or identifiable worker.

*Paragraph 1(c). Please indicate, where applicable, the other services determined by the competent authority and which employers’ and workers’ organizations were consulted.*

### *Article 2*

1. This Convention applies to all private employment agencies.
2. This Convention applies to all categories of workers and all branches of economic activity. It does not apply to the recruitment and placement of seafarers.
3. One purpose of this Convention is to allow the operation of private employment agencies as well as the protection of the workers using their services, within the framework of its provisions.

4. After consulting the most representative organizations of employers and workers concerned, a Member may:
  - (a) prohibit, under specific circumstances, private employment agencies from operating in respect of certain categories of workers or branches of economic activity in the provision of one or more of the services referred to in Article 1, paragraph 1;
  - (b) exclude, under specific circumstances, workers in certain branches of economic activity, or parts thereof, from the scope of the Convention or from certain of its provisions, provided that adequate protection is otherwise assured for the workers concerned.
5. A Member which ratifies this Convention shall specify, in its reports under article 22 of the Constitution of the International Labour Organization, any prohibition or exclusion of which it avails itself under paragraph 4 above, and give the reasons therefor.

*Paragraph 4. If recourse has been made to the provisions of this paragraph, please indicate which employers' and workers' organizations were consulted and what actions have been undertaken to consult these organizations.*

#### *Article 3*

1. The legal status of private employment agencies shall be determined in accordance with national law and practice, and after consulting the most representative organizations of employers and workers.
2. A Member shall determine the conditions governing the operation of private employment agencies in accordance with a system of licensing or certification, except where they are otherwise regulated or determined by appropriate national law and practice.

Please provide information on the legal status of private employment agencies and on the conditions governing their operation.

#### *Article 4*

Measures shall be taken to ensure that the workers recruited by private employment agencies providing the services referred to in Article 1 are not denied the right to freedom of association and the right to bargain collectively.

*Please indicate the measures taken to give effect to this Article.*

#### *Article 5*

1. In order to promote equality of opportunity and treatment in access to employment and to particular occupations, a Member shall ensure that



private employment agencies treat workers without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, or any other form of discrimination covered by national law and practice, such as age or disability.

2. Paragraph 1 of this Article shall not be implemented in such a way as to prevent private employment agencies from providing special services or targeted programmes designed to assist the most disadvantaged workers in their jobseeking activities.

Paragraph 1. Please indicate the measures taken to give effect to the provisions of this paragraph.

Paragraph 2. Please describe, where applicable, the special services or targeted programmes designed to assist the most disadvantaged workers in their jobseeking activities.

#### *Article 6*

The processing of personal data of workers by private employment agencies shall be:

- (a) done in a manner that protects this data and ensures respect for workers privacy in accordance with national law and practice;
- (b) limited to matters related to the qualifications and professional experience of the workers concerned and any other directly relevant information.

*Please indicate the manner in which workers' personal data is protected.*

#### *Article 7*

1. Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.
2. In the interest of the workers concerned, and after consulting the most representative organizations of employers and workers, the competent authority may authorize exceptions to the provisions of paragraph 1 above in respect of certain categories of workers, as well as specified types of services provided by private employment agencies.
3. A Member which has authorized exceptions under paragraph 2 above shall, in its reports under article 22 of the Constitution of the International Labour Organization, provide information on such exceptions and give the reasons therefor.

*Paragraph 2. Please indicate the categories of workers and the types of services for which exceptions are authorized and which employers' and workers' organizations were consulted.*

### **Article 8**

1. A Member shall, after consulting the most representative organizations of employers and workers, adopt all necessary and appropriate measures, both within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses.
2. Where workers are recruited in one country for work in another, the Members concerned shall consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment.

*Paragraph 1. Please indicate the measures taken to give effect to this paragraph and which employers' and workers' organizations were consulted.*

*Paragraph 2. Please indicate, where applicable, the bilateral agreements concluded to prevent abuses and fraudulent practices in the recruitment, placement and employment of migrant workers.*

### **Article 9**

A Member shall take measures to ensure that child labour is not used or supplied by private employment agencies.

*Please indicate the measures taken to give effect to this Article.*

### **Article 10**

The competent authority shall ensure that adequate machinery and procedures, involving as appropriate the most representative employers' and workers' organizations, exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies.

*Please describe the machinery and procedures for the investigation of complaints concerning the activities of private employment agencies.*

### **Article 11**

A Member shall, in accordance with national law and practice, take the necessary measures to ensure adequate protection for the workers

employed by private employment agencies as described in Article 1, paragraph 1(b) above, in relation to:

- (a) freedom of association;
- (b) collective bargaining;
- (c) minimum wages;
- (d) working time and other working conditions;
- (e) statutory social security benefits;
- (f) access to training;
- (g) occupational safety and health;
- (h) compensation in case of occupational accidents or diseases;
- (i) compensation in case of insolvency and protection of workers claims;
- (j) maternity protection and benefits, and parental protection and benefits.

Please indicate the measures taken to ensure protection for workers in the areas described in this Article.

### *Article 12*

A Member shall determine and allocate, in accordance with national law and practice, the respective responsibilities of private employment agencies providing the services referred to in paragraph 1(b) of Article 1 and of user enterprises in relation to:

- (a) collective bargaining;
- (b) minimum wages;
- (c) working time and other working conditions;
- (d) statutory social security benefits;
- (e) access to training;
- (f) protection in the field of occupational safety and health;
- (g) compensation in case of occupational accidents or diseases;
- (h) compensation in case of insolvency and protection of workers claims;
- (i) maternity protection and benefits, and parental protection and benefits.

*Please indicate the way in which responsibilities are allocated between the private employment agencies and the user enterprises in the areas described in this Article.*

### Article 13

1. A Member shall, in accordance with national law and practice and after consulting the most representative organizations of employers and workers, formulate, establish and periodically review conditions to promote cooperation between the public employment service and private employment agencies.
2. The conditions referred to in paragraph 1 above shall be based on the principle that the public authorities retain final authority for:
  - (a) formulating labour market policy;
  - (b) utilizing or controlling the use of public funds earmarked for the implementation of that policy.
3. Private employment agencies shall, at intervals to be determined by the competent authority, provide to that authority the information required by it, with due regard to the confidential nature of such information:
  - (a) to allow the competent authority to be aware of the structure and activities of private employment agencies in accordance with national conditions and practices;
  - (b) for statistical purposes.
4. The competent authority shall compile and, at regular intervals, make this information publicly available.

*Paragraph 1. Please indicate which employers' and workers' organizations were consulted and provide information on conditions to promote cooperation between the public employment service and private employment agencies.*

*Paragraph 3. Please indicate the competent authorities to which this provision refers and provide examples of the information provided to them by the private employment agencies.*

*Paragraph 4. Please specify the information that is made publicly available and the intervals at which this is done.*

### Article 14

1. The provisions of this Convention shall be applied by means of laws or regulations or by any other means consistent with national practice, such as court decisions, arbitration awards or collective agreements.
2. Supervision of the implementation of provisions to give effect to this Convention shall be ensured by the labour inspection service or other competent public authorities.

3. Adequate remedies, including penalties where appropriate, shall be provided for and effectively applied in case of violations of this Convention.

### *Article 15*

This Convention does not affect more favourable provisions applicable under other international labour Conventions to workers recruited, placed or employed by private employment agencies.

- III. Please state to what authority or authorities the application of the above-mentioned legislation, regulations, etc., is entrusted, and by what methods such application is supervised.
- IV. Please state whether courts of law or other tribunals have given decisions involving questions of principle relating to the application of the Convention. If so, please supply the text of these decisions.
- V. Please give a general appreciation of the manner in which the Convention is applied in your country and supply – in so far as the information in question has not already been supplied in connection with other questions in this form – extracts from inspection reports and, where such statistics exist, information on the number of workers covered by the measures giving effect to the Convention, the number and nature of infringements reported, etc.
- VI. Please indicate the representative organizations of employers and workers to which copies of the present report have been communicated in accordance with article 23, paragraph 2, of the Constitution of the International Labour Organization.' If copies of the report have not been communicated to representative organizations of employers and/or workers, or if they have been communicated to bodies other than such organizations, please supply information on any particular circumstances existing in your country which explain the procedure followed.
- VII. Please indicate whether you have received from the organizations of employers or workers concerned any observations, either of a general kind or in connection with the present or the previous report, regarding the practical application of the provisions of the Convention. If so, please communicate a copy of the observations received, together with any comments that you consider useful.

## **R188 Private Employment Agencies Recommendation, 1997**

Recommendation concerning

Private Employment Agencies

Recommendation: R188

Place: Geneva

Session of the Conference: 85

Date of adoption= 19:06:1997

Subject classification: Employment Services - Job Placement

Subject: Employment policy and Promotion

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-fifth Session on 3 June 1997, and

Having decided upon the adoption of certain proposals with regard to the revision of the Fee-Charging Employment Agencies Convention (Revised), 1949, which is the fourth item on the agenda of the session, and Having determined that these proposals shall take the form of a Recommendation supplementing the Private Employment Agencies Convention, 1997;

adopts, this nineteenth day of June of the year one thousand nine hundred and ninety-seven, the following Recommendation, which may be cited as the Private Employment Agencies Recommendation, 1997:

### **I. General provisions**

1. The provisions of this Recommendation supplement those of the Private Employment Agencies Convention, 1997, (referred to as "the Convention") and should be applied in conjunction with them.
2. (1) Tripartite bodies or organizations of employers and workers should be involved as far as possible in the formulation and implementation of provisions to give effect to the Convention.  
(2) Where appropriate, national laws and regulations applicable to private employment agencies should be supplemented by technical standards, guidelines, codes of ethics, self-regulatory mechanisms or other means consistent with national practice.
3. Members should, as may be appropriate and practicable, exchange information and experiences on the contributions of private

employment agencies to the functioning of the labour market and communicate this to the International Labour Office.

## **II. Protection of workers**

4. Members should adopt all necessary and appropriate measures to prevent and to eliminate unethical practices by private employment agencies. These measures may include laws or regulations which provide for penalties, including prohibition of private employment agencies engaging in unethical practices.
5. Workers employed by private employment agencies as defined in Article 1.1(b) of the Convention should, where appropriate, have a written contract of employment specifying their terms and conditions of employment. As a minimum requirement, these workers should be informed of their conditions of employment before the effective beginning of their assignment.
6. Private employment agencies should not make workers available to a user enterprise to replace workers of that enterprise who are on strike.
7. The competent authority should combat unfair advertising practices and misleading advertisements, including advertisements for non-existent jobs.
8. Private employment agencies should:
  - (a) not knowingly recruit, place or employ workers for jobs involving unacceptable hazards or risks or where they may be subjected to abuse or discriminatory treatment of any kind;
  - (b) inform migrant workers, as far as possible in their own language or in a language with which they are familiar, of the nature of the position offered and the applicable terms and conditions of employment.
9. Private employment agencies should be prohibited, or by other means prevented, from drawing up and publishing vacancy notices or offers of employment in ways that directly or indirectly result in discrimination on grounds such as race, colour, sex, age, religion, political opinion, national extraction, social origin, ethnic origin, disability, marital or family status, sexual orientation or membership of a workers organization.

10. Private employment agencies should be encouraged to promote equality in employment through affirmative action programmes.
11. Private employment agencies should be prohibited from recording, in files or registers, personal data which are not required for judging the aptitude of applicants for jobs for which they are being or could be considered.
12.
  - (1) Private employment agencies should store the personal data of a worker only for so long as it is justified by the specific purposes for which they have been collected, or so long as the worker wishes to remain on a list of potential job candidates.
  - (2) Measures should be taken to ensure that workers have access to all their personal data as processed by automated or electronic systems, or kept in a manual file. These measures should include the right of workers to obtain and examine a copy of any such data and the right to demand that incorrect or incomplete data be deleted or corrected.
  - (3) Unless directly relevant to the requirements of a particular occupation and with the express permission of the worker concerned, private employment agencies should not require, maintain or use information on the medical status of a worker, or use such information to determine the suitability of a worker for employment.
13. Private employment agencies and the competent authority should take measures to promote the utilization of proper, fair and efficient selection methods.
14. Private employment agencies should have properly qualified and trained staff.
15. Having due regard to the rights and duties laid down in national law concerning termination of contracts of employment, private employment agencies providing the services referred to in paragraph 1(b) of Article 1 of the Convention should not:
  - (a) prevent the user enterprise from hiring an employee of the agency assigned to it;

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*'Article 23, paragraph 2, of the Constitution reads as follows: "Each Member shall communicate to the representative organizations recognized for the purpose of article 3 copies of the information and reports communicated to the Director-General in pursuance of articles 19 and 22."*



- (b) restrict the occupational mobility of an employee;
- (c) impose penalties on an employee accepting employment in another enterprise.

### **III. Relationship between the public employment service and private employment agencies**

16. Cooperation between the public employment service and private employment agencies in relation to the implementation of a national policy on organizing the labour market should be encouraged; for this purpose, bodies may be established that include representatives of the public employment service and private employment agencies, as well as of the most representative organizations of employers and workers.
17. Measures to promote cooperation between the public employment service and private employment agencies could include:
  - (a) pooling of information and use of common terminology so as to improve transparency of labour market functioning;
  - (b) exchanging vacancy notices;
  - (c) launching of joint projects, for example in training;
  - (d) concluding agreements between the public employment service and private employment agencies regarding the execution of certain activities, such as projects for the integration of the long-term unemployed;
  - (e) training of staff;
  - (f) consulting regularly with a view to improving professional practices.

#### **Cross references**

- Conventions: C096 Fee-Charging Employment Agencies Convention (Revised), 1949
- Supplemented: C181 Complementary to the Private Employment Agencies Convention, 1997

## Annexure II

### Guidelines on Operation of Private Placement Agencies

- 1) The Private Placement Agencies are defined as those agencies, which cater to the specific placement requirement of the labour market within the country. It should not include such agencies, which are covered under the provisions of Contract Labour (Regulation and Abolition) Act, 1970 and Inter-state Migrant workmen (Regulation of Employment and condition of service) Act, 1979.
- 2) The Private Placement Agencies should be registered with the designed authority of State/UT. For registration of such agencies security deposit if considered necessary by the State/UT would be necessary to safeguard the interest of the job-seekers.
- 3) Such agencies should provide more or less regular jobs.
- 4) Private Placement Agencies will take adequate care to see that placement is not made for illegal activities.
- 5) The Private Placement Agencies for placement are required to provide the placement services through matching of employers requirement with the profile of the jobseekers registered with them. In such cases the Private Placement Agencies may, therefore, have to be allowed to take reasonable service charges from the job seekers, which should not exceed first monthly wage of the job seeker. However, the Private Placement Agencies may not be allowed to charge more than Rs.100/- as registration charges from job seekers to meet the initial service charges.
- 6) The service charges to be paid by the employer to the Private Placement Agencies may be left open because it is a mutual agreement between the Employer and the Private Placement Agencies. It should, however, be ensured that any amount of charges to be paid by the employer to the Private Placement Agencies for making placement services should not affect the rate of monthly wage of the jobseeker.
- 7) Private Placement Agencies shall maintain a job seekers database which should be made available to State/UT controlled Employment Exchanges and Vice Versa on mutually agreed term.
- 8) The Employment Department of the State/UT Government may be authorized to ensure the compliance of these guidelines on the functioning of Private Placement Agencies and both the agencies should work in harmony.

- 9) While regulating the Private Placement Agencies, the respective states/UTs will devise their mechanism of inter action between Public and Private Placement Agencies.
- 10) In case of violation made by the Private Placement Agencies the State/ UT Governments will have the right to forfeit his security deposit, besides cancellation of registration.
- 11) It should be obligatory the part of the Private Placement Agencies to share the statistical information connected with the registration and placement of jobseekers as prescribed by the State/UT Govt. Authorized persons of the State/Ut will have the right to ascertain, the names of the employers to whom the services are provided by the Private Placement Agency.
- 12) Redressal of grievances or disputes may be settled by some designated authority declared by the State/UT government.
- 13) Agreement between the designated authority by the State/UT Government and concerned placement agencies should be signed.
- 14) The Private Placement Agencies registered with the designated authority of Government shall display their registration number and other details as may be required in conspicuous manner.
- 15) If registered Private Placement Agencies have branches in other States, it will be required to enter into separate agreement(s) with the designated authority of the concerned State (s)/UT(s).

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ISBN 978-93-82902-01-0



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