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## The Registration of Foreigners Act, 1939 read with the Registration of Foreigners Rules, 1992 as Amended in 1999

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**When an expatriate joins a company, he has to get the registration done under the Foreigners Act of 1939 and observe the rules of The Registration of Foreigners Rules 1992 and has to get the residence permit. The expatriate has also to fulfill various obligations. Upon expiry of resident permit/Visa, the same is required to be renewed in case of his continuation in India. This article sets out the procedure relating to these compliances.**

### INTRODUCTION

Multinational companies in India are marching towards globalization and bringing the best global practices and benchmarking their products and services to the best standards of the world in order to do business and compete in international market. To achieve this, most of the multinational companies search for the best talented executives from the international market, group companies, parent companies and they bring the expatriate in India to run the business/manage the business. Whenever, an expatriate is appointed as a managerial person in a company, his appointment would also call for approval from the Central Government since he is not a citizen of India. Schedule XIII of the Companies Act, 1956 (Part I of Schedule XIII on appointments spells out that the managerial person has to be resident in India as per serial number (e)). Hence the appointment is subject to the approval of the Government of India under Section 269 of the Companies Act, 1956. However, if an expatriate joins the company as an executive and not in the capacity of a managerial person, then the Government approval is not required for such appointment. Once such expatriate completes one year stay in India, he becomes eligible for the appointment as managerial personnel since one year stay in India would be treated at par with citizenship of India under Schedule XIII of the Companies Act, 1956 for this restricted purpose only. (refer explanation in Schedule XIII – Part I under appointments below serial no. (e) which reads “for the purpose of this schedule, resident in India includes a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of

his appointment as a managerial person and who has come to stay in India: - (i) for taking up employment in India, or (ii) for carrying on a business or vocation in India”).

It may also be noted that the subsequent para states that non-resident taking up employment in India should enter India only after obtaining proper employment Visa. The relevant provision is given below for the benefit of the readers : -

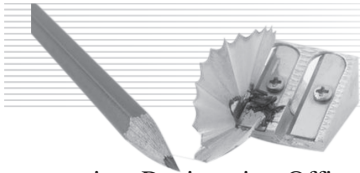
“Provided that a person, being non-resident in India shall enter India only after obtaining a proper employment Visa from the concerned Indian mission abroad. For this purpose, such person shall be required to furnish, along with the Visa application form, profile of the company, the principal employer and terms and conditions of such person’s appointment”.

In both the cases, whether the expatriate is appointed as managerial personnel or not, they need to get themselves registered in India under the Registration of Foreigners Act of 1939 read with the Registration of Foreigners Rules, 1992 amended from time to time.

They also need to get the “Resident Permit” in India during their stay providing the necessary details. This article examines the procedure involved in getting the foreign national registered, obtaining the resident permit and renewal procedure in India upon expiry and other related matters.

### REGISTRATION PROCEDURE

As per Rule 6 of the Registration of Foreigners Act, 1992, every foreigner entering into India shall be required to present in person or through an authorized representative to the



appropriate Registration Officer specified in Rule 7, a report which is known as Registration report within the time specified in that rule.

### **Time Limit within which Registration Report required to be Presented**

In the case of a foreigner who enters into India on a valid VISA of employment (known as X VISA) he is required to submit the registration report within two weeks from the date of arrival in India.

### **Mode of Presenting the Registration Report**

As per rule 6.2 every registration report shall be made in writing in English or in Hindi language and in quadruplicate and shall contain a true statement of the foreigner's address in India and of the other particulars specified in item 2 to 10 in Para IV of Form A specified for this purpose and also such of the particulars specified in items 12 to 16 thereof, as may be appropriate.

### **Foreigner's Address in India**

For the purpose of the above referred rule 6.2 a foreigner's address in India shall be, the place of his residence in India or if he has no residence, the place at which, at the time of making his registration report, he is for the time being living or at which he first intends to live after his arrival in India.

### **Registration Offices/Registration Officers**

The Central Government may appoint Registration officers for the purposes of these rules as specified in rule 3 of the Registration of Foreigners Rules, 1992 for such areas the Government thinks fit. In most places - Metropolitan cities - state capital and other important cities, there is an office known as office of the Foreigner's Registration officer's established as a Special Branch at the Deputy Commissioner of Police office.

In Mumbai, the office is of Common Wealth Branch, SB II, CID, Mumbai where the Foreigners Regional Registration officer is functioning. (F.R.R.O as known). Similarly at Pune city, the office is at the Office of Deputy Commissioner of Police as a special branch known as officer of the Foreigner's Registration Officer's. Similarly in other cities, such officers would be there in appropriate places.

### **Submission of form of Registration of Foreigners**

Form No. A under Rules 5,6,7 and 8 is specified for the purpose of registration which is a one page simple form which could be obtained from the Foreign Registration Office (FRO)

which is generally attached to the Commissioner of Police office.

The "Registration of Foreigners" form is required to be filled up and submitted with the following enclosures to the Foreigners Registration Office (FRO) for the purpose of registration.

- (a) Application form in the same format i.e. in Form A under Rules 5,6,7 and for each of the family member also required to be filled and submitted (who would be dependent on the applicant)
- (b) Two photographs of each applicant
- (c) Agreement of employment/company letter etc. along with details of transfer of skill
- (d) Indemnity bond executed on Rs. 100/- stamp paper in the name of President of India along with witness by an Indian person as specified.
- (e) Copy of Passport
- (f) Copy of VISA

### **ISSUE OF RESIDENTIAL PERMIT**

Once the application for registration of foreigners is submitted to the FRO at the concerned location, the authorities would verify the details; they would call for the original documents such as Passport, VISA and residential proof etc. After the verification of documents, the concerned FRO would issue the Residential permit pursuant to paragraph 7 of the Foreigners order, 1948.

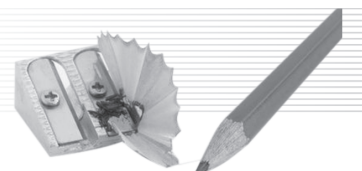
The Residential permit, is also known as certificate of registration. In Mumbai, the same is issued in the form of a booklet (a booklet of 32 pages which is also known as the Blue book; an amount of Rs. 100/- payable towards the blue book and the receipt is issued by the FRO). The cover of the Blue book states "Registration Report and Residential Permit" - issued by Foreigners Regional Registration Officer, Mumbai.

In Pune, the residential permit is issued in a A4 Sheet along with a copy of the application form submitted to them, duly authenticated by the FRO office. The content of the residential permit is the same - in the blue book, issued at Mumbai it is printed in the middle of the book and at Pune, it is in the form of a letter. Similarly, in other cities also, the practice may differ. However, the content is the same as specified under paragraph 7 of the Foreigners Order, 1948.

The practice of issuing the permit may differ from State to State and place to place as per the practice followed by the FRO office. However the content of the residential permit which is issued under paragraph 7 of the Foreigners Order,

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1948 would basically contain the Registration Number allotted along with the date, specifying the name of the application, nationality and the details passport and VISA. The permit also would state the purpose of the applicant's visit such as Student/Tourist/Business/Social/Employment Visa etc., and the period of permitted stay in India which is in any case could not be beyond his/her VISA period.

Generally, the FRO office would permit the applicant to stay in India for the validity period of the VISA, held by the foreigner which would vary from one year to three years. The resident permit is granted on the strength of the VISA issued to the foreigner. If the VISA is for one year, the resident permit also would be issued for the same period.

## Conditions to be Fulfilled upon Issue of Resident Permit

The following rules must be observed by the foreigner upon registration (this is also printed in the blue book issued by Mumbai - provided separately at Pune - In other cities also, the similar practice would be prevalent) as given below:-

1. This permit must be surrendered at the time of final departure from India to the Registration Officer of the place from which he/she leaves India.
2. In the event of he/she not departing from India before..... he/she will, unless he/she obtains the permission of the Central Government to remain for a longer period, be liable to prosecution for contravention of the provision of Foreigners Act, 1946 punishable with imprisonment for a period of FIVE years and with fine and will also be liable to expulsion from India.
3. Application for an extension of period must be made at least sixty days before expiry and must be addressed to the Government of India through the State Government. The Government has discretion to reject any application which does not disclose the adequate grounds for extension.
4. Change Of Visa Purpose Not Permitted.

## Rules to be Observed by the Foreigner

The following rules are required to be observed by the foreigner which is a condition of the registration permit, upon its issue to him/her permitting him/her to stay in India.

1. Every registered foreigner is required: -
  - (i) On demand of any Registration Officer or Magistrate or any police Officer not below the

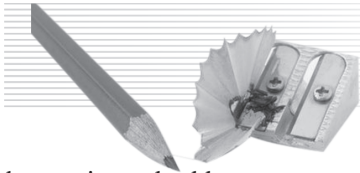
rank of Head Constable to produce this certificate and his passport or such other proof of identity as may be required of him by such Magistrate or Officer.

- (ii) To surrender his/her certificate of registration if he/she is about to depart finally from India either to the Registration Officer of the place where he/she is registered or of the place from where he/she intends to depart or to the immigration office at the port/check post of exit from India.
- (iii) To intimate in person or through an authorized representative or by post under certificate of posting the Registration Officer of the district in which his/her registered address is situated:
  - (a) before he/she leaves his/her registered address, if he/she proposes to be absent from his registered address for a continuous period of eight weeks or more, the address or addresses at which he/she proposes to stay and the date on which he/she expects to return to his/her registered address.
  - (b) if he/she proposes to change his/her registered address or to leave India, the particulars of his/her new address and the date of the proposed change or departure and
  - (c) any circumstances which in any way affect the accuracy of any of the particulars set out in his/her certificate of registration.
- (iv) If he/she stays for more than eight weeks at any place (other than a hotel or other premises where travelers are accommodated) in any district other than the district in which his/her registered address is situated to report his/her presence in that other district to the Registration Officer thereof within seven days of his/her arrival.

2. Failure to comply with the foregoing provisions will render the holder of this certificate liable to be punishable with imprisonment or fine or both, under section 5 of the Registration of Foreigners Act, 1939 (XVI of 1939).

## Duplicate Certificate of Registration

Registration of Foreigner's Rules 1992, vide rule 17 provides that if any certificate of registration, issued under these Rules is lost or destroyed, the foreigner to whom it was issued, shall make or send to the Registration Officer of the district of his/



her registered address a report of circumstances in which it was so lost or destroyed together with an application in writing for the issue of a duplicate copy of the certificate of registration. The concerned FRO, would then issue a duplicate certificate of registration.

### **Extension/Renewal of Residential Permit**

Upon the expiry of the VISA, the foreigner needs to get a new VISA, in which case an application for the extension of stay in India needs to be made. Once again all the documents referred above at the time of making an application would be required and in addition, the original resident permit needs to be given back to the FRO office.

The FRO office, upon verification of the documents would grant the permission to stay in India on the same resident permit for the further period of the VISA validity and the endorsement would be made on the backside of the earlier resident permit which may read

“The said foreigner entered India on ..... On the strength of new X Visa No ..... I/O ..... I/A ..... V/T ..... and he/she reregistered old registration no ..... Hence as per Visa terms, Permitted to stay in India till .....

### **Surrender of the Residential Permit**

The residential permit must be surrendered at the time of departure from India to the Registration Officer of the Place (Port) from which He/She leaves India.

### **Consequences of not leaving the Country upon Expiry Date of Permit**

In the event of He/She not departing from India on or before the expiry date of the residential permit, he/she would, unless has obtained the permission from Central Government to remain in India for a longer period, be liable for prosecution for contravention of the foreigner Act, 1946 punishable with imprisonment for a period of five years and/or with fine and also liable for expulsion from India.

### **VISA APPLICATION**

If the VISA is required to be obtained from the VISA department of the High Commission of India from the country to which the foreigner belongs, then the foreigner needs to be in his country and present the VISA application along with the required documents plus the passport. The VISA department of High Commission of India would then, upon satisfactory documentary evidence for the grant of VISA

would issue a VISA for a further period, which again may vary from one year to three years. (by and large, nowadays, the VISAs are being issued for a year).

VISA application form could be obtained in each country with the High Commission of India, in the respective countries.

The application form is required to be filled up giving all the details and accompany the required documents such as employment agreement with the company in India, A letter from the company secretary stating that the respective foreigner is working in India stating the designation and also stating that he is holding resident permit as required. The letter may further state that the foreigner be granted multiple entry business visa for the period of contract stating that the current visa of the foreigner is expiring on what date.

### **CAN THE VISA BE EXTENDED IN INDIA ITSELF?**

The answer to this question is yes. One of the conditions mentioned in the resident permit is that the foreigner can make an application for an extension of period and such application must be made at least sixty days before expiry and must be addressed to the Government of India through the State Government.

### **VISA EXTENSION APPLICATION**

There is a specified form of application which is required to be filled up and submitted to the FRO's office where the resident permit is issued along with the following supporting documents. (for employment Visa - i.e., Visa type is X Visa)

1. Photo - 1
2. Company letter and agreement copy along with Indemnity Bond
3. Copy of passport and Visa Page & Copy of residential permit
4. New file
5. I T Clearance
6. Transfer of skill

### **THE INDEMNITY BOND**

There is a specimen format of indemnity bond which needs to be accompanied with the VISA extension form which is executed in the name of the President of India stating that the person executing the indemnity bond – generally it is done by the company secretary on behalf of the company in which the foreigner is employed – that the company agree to

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pay to the Government of India the cost and expenses of maintaining the said applicant so long as he/she shall be resident in India and in event of the applicant dying in India agreeing to pay to the Government of India such costs and expenses that may be incurred in his/her burial. Further, in the event of the applicant being required by the Government of India to leave India, the company agreeing to pay to the Government of India the cost of passage and other traveling expenses of the applicant.

## **PROCEDURE FOR MAKING VISA EXTENSION APPLICATION**

The prescribed form discussed above is required to be filled up and the application for extension form is then required to be submitted to the FRO office. This form is more or less similar to the one, which is made for the purpose of residential permit except, this form states that the foreigner would like to stay in India for a longer period giving the reason for his stay and seeking extension. While making extension application, in addition to the document cited earlier, the application form also needs to be accompanied with IT clearance certificate / or assessment order of Income Tax and proof for the residence - this could be the telephone bill / driving licence if obtained / house lease agreement and such other documents. Otherwise, the rest of the enclosures are the same.

When the form is submitted either by the applicant himself or through the company officials where the foreign national is working under a covering letter, the FRO office would acknowledge receipt of the same. Then, the FRO office would send the particulars to the Police station of the jurisdiction in which the foreigner is staying.

### **Police verification**

Upon receipt of the intimation from the FRO office, the concerned police officials would verify the details for the foreigner / his family members with reference to their passport, Visa, residence and other relevant details. Once the police found that the details furnished are accurate, they would send a report to the FRO office stating the same and also saying nothing found adverse.

### **Report from the FRO to Home Department of the State Government and Government of India - Ministry of Foreign Affairs**

The FRO office would then make out their own report stating all the facts, justification for extending the Visa of the foreigner along with the copies of documents submitted with

the application, stating that the application be considered for extending the Visa since nothing adverse is found against the foreign national during the verification process. Letter is sent by the FRO office to the following departments for processing.

1. The Deputy Secretary to the respective State Government.  
(for example, the application from the FRO office of Pune, the letter would be sent to The Deputy Secretary to the Government of Maharashtra, Home Department, New Administrative Building, 9th Floor, Opp. Mantralaya, Mumbai) and to the
2. The Principal Secretary, Ministry of Home Affairs Foreign Division Government of India, 26 Jaisal Mehr House, Mansingh Road, New Delhi.

### **Intimation to the Applicant**

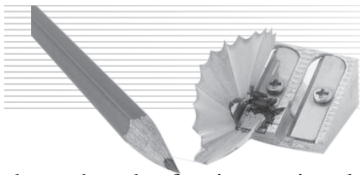
The FRO office also would issue a letter to the applicant upon submitting their letter to the above departments as stated and generally with a copy to the applicant which would state that the application for grant of extension of stay in India, for a period of one year beyond..... has been forwarded to "the Deputy Secretary to the Government of the ..... respective state/address along with the Phone number of the department 22220688.

The letter would also further state that the applicant could approach the Government for extension of his/her Visa and inform to the FRO office about the same. Till the sanction from the Government is received, the FRO could advise the applicant to get provisional Visa extension granted from the above address, to avoid inconvenience and/or embarrassment to you. (this is done in cases where the VISA is likely to expire shortly – if the extension application is made in time, this does not apply.

### **PROCESSING OF VISA EXTENSION**

The Deputy Secretary of the respective State Government would then forward the application duly endorsed from their end based on the report received from the FRO office to the Principal Secretary of Ministry of Home Affairs - Foreign Division of Government of India at New Delhi.

The Foreign Division of Ministry of Home Affairs, after being satisfied with the application with the required supporting document supported by the report submitted by the FRO and the respective State Government would grant the extension of the VISA for a further period of a year. The Ministry of Home Affairs would then write a letter to the concerned FRO/Deputy Commissioner of Police, intimating



them that the foreign national has been given extension of VISA for a further period of one year and permitted to stay in India till the period of VISA extension. The letter also would direct the FRO office, to stamp the VISA on the passport of the foreigner and also renew the residential permit if issued earlier to the foreigner.

### **VISA Extension with Specific Condition at Times**

The regulator, depending upon the documents submitted by the applicant, may issue instructions to the FRO that the VISA extension be granted; however the extension stamp on passport could be stamped after calling for the income tax clearance in respect of the applicant's taxability. If clearance is one of the enclosures to be submitted while applying for the Visa extension, (refer serial no. 8 above). In case of latest income clearance certificate not being available, the regulator may like to ensure that the applicant has paid the taxes to the Government of India and hence the above direction.

In such a case, the applicant may have to produce the income-tax clearance certificate of the latest period and in case the tax is not yet assessed, then acknowledge receipted copy from the income-tax department for the tax return submitted in Form No.3. Return of Income pursuant to rule 12(1)(b) of Income-Tax Rules 1962. Once this is shown to the concerned FRO/ copy of the document is submitted for their record, the FRO would get the renewal of Visa stamped on the passport.

The above may not be required if the income clearance or the latest copy of tax return is enclosed along with the application form submitted for seeking extension of Visa at the first time itself.

### **Provisional VISA Extension**

Depending upon the validity of the current VISA and the processing time, it may take to get the extension of VISA from the Ministry of Home Affairs, Government of India, New Delhi, the respective Deputy Secretary/Secretary of Home Department to the state could grant provisional Visa extension to avoid inconvenience and/or embarrassment to the foreign national. The letter addressed to the applicant/foreign national by the respective FRO also states this in the letter (refer 9.3. Intimation to the applicant). If the applicant feels that the extension would take sometime, in his/her own interest, he/she could obtain provisional extension from the State Government which is normally for a period not exceeding three months as understood.

### **VISA Extension Fees – Mode of Payment**

The FRO office would prepare a challan, giving reference of

the registration certificate number of the applicant and hand over the challan to the applicant for making the payment towards the VISA Extension fees.

Currently the VISA extension fee is \$ 65 per VISA and the same is payable at the designated branch of State Bank of India through the challan handed over by the FRO. The challan is handed over to the applicant in triplicate duly filled by the FRO along with their seal stamped on the challan. Once the money is remitted at the State Bank of India, the bank would return one copy of the challan back to the candidate duly acknowledge the fees received by them with their stamp along with the date of payment. (The FRO would indicate the Visa extension fees as US dollar 65 on the face of the challan).

The challan would be issued by the FRO office duly countersigned by them with their stamp stating the registration number and required amount (Major head 070 – other administrative services – c – passport and Visa fees-117) in the name of the applicant.

### **Payment Remittance through the State Bank of India**

The Challan is required to be taken to the designated officer of the State Bank of India and presented to him at its Foreign Exchange department. The designated officer at the State Bank, based on the exchange rate chart released daily by State Bank of India based on the exchange rate prevailing on that day, would write the equal amount of the foreign currency in Indian rupees and authorize the bank to collect the same. Then the challan is required to be presented to the receiving cashier at the counter, who would collect the equivalent Indian rupees of sixty-five dollars as authorized by the designated officer. Once the fees paid into the State Bank of India, the State Bank of India, evidencing the payment to the applicant, gives one copy of the receipted challan back.

### **Copy of Challan Passport and Resident Permit to be submitted to FRO**

The challan copy received from the State Bank of India, evidencing payment and the passport plus the resident permit are required to be given to the concerned FRO so that the FRO could stamp the VISA extension on the passport, as granted by the Ministry of Foreign Affairs, Government of India and also endorse renewal of the resident permit for the same period of the Visa, to continue the stay of the foreign national in India.

### **STAMPING OF VISA EXTENSION ON THE PASSPORT**

When VISA obtained from the VISA Department of High

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Commission of India in the respective countries, the VISA, bearing a serial number is affixed to the passport and stamped by the respective High Commission indicating the name of the person to whom the VISA is issued, type of VISA, Date of issue, date of expiry along with the passport number. In case of extension of VISA, the concerned FRO office put a stamp in the passport of the applicant (foreign national) stating that the VISA has been extended upto the period granted to him indicating the same terms and condition of the original VISA giving all the particulars which are appearing in the VISA, issued to the applicant earlier, indicating the extension of time. Then the extension of VISA is stamped by the FRO office mentioning the Government letter reference by which the VISA is extended, VISA type, date of issue, validity of VISA, authorized period of stay in India indicating whether the VISA is single entry or multiple entry. (by and large the VISA is with multiple entries).

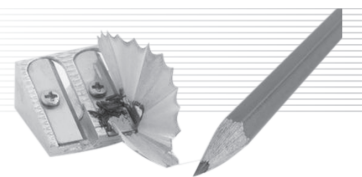
## **EXTENSION OF RESIDENTIAL PERMIT**

Once the VISA extension is stamped on the passport, then the residential permit would also be extended for the extension of stay in India, which would be till the validity of the period of VISA. For this purpose the original resident permit needs to be given back to the FRO office for doing the needful. As said in the earlier para five (5) titled as "Renewal of Resident Permit" the FRO office would grant the permission to stay in India on the same resident permit for the further period of the VISA validity and the endorsement would be made on the backside which was also discussed under para 5.

The FRO would put the extension period as per the VISA terms and sign the same. However, while stamping it, they would also give the reference of the Government letter issued by the Ministry of Foreign Affairs, extending the VISA, stating "As per Government letter no ..... dated ..... Permitted to stay in India till ..... date/month/year .....

## **OBLIGATION ON THE PART OF THE FOREIGNERS**

The onus of Visa renewal lay squarely on foreigners and India is not an exception as other countries too are following the same practice. The foreign national who is applying for the extension of Visa in India would also to understand that a Visa has to be for a meaningful purpose and simply applying for extension and waiting for approval does not give any right to extend their stay in India since the foreign national should not stay in India in anticipation of something of which they are not guaranteed.



## **PENAL PROVISIONS**

### **The Foreigners Act, 1946**

Section 14 of the Foreigners Act, 1946 says that if any person contravenes the provisions of this Act or any order made there under, or any direction given in pursuance of this Act or such order, he shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine; and if such person has entered into a bond in pursuance of clause (f) of subsection (2) of Section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting Court why such penalty should not be paid.

### **The Registration of Foreigners Act, 1939**

Section 5 of the Registration of Foreigners Act, 1939 provides for penalties stating that any person who contravenes, or attempts to contravene or fails to comply with any provision of any rule made under this Act shall be punishable, if a foreigner, with imprisonment for a term which may extend to one year or with fine which may extent to one thousand rupees or with both, or if not a foreigner, with fine which may extent to five hundred rupees.

## **CONCLUSION**

Expatriates taking up employment in India need to get the resident permit with the concerned FRO and abide by the Act and Rules made under the Foreigners Act, 1946 read with the Registration of Foreigners Act, 1939 and the Registration of Foreigners Rules 1992. The foreign national is also required to get the new Visa issued from the High Commission from their country or get the Visa extended in India duly supported by documents for their continued stay, if the terms of employment/other valid reasons demand that way. (students pursuing studies, researchers continuing their research etc.). The above Acts and Rules are made to take adequate measure to regulate for the foreigners entry in India, being present in and departing from India.

Prior to these Acts and Rules, there was The Foreigners Act, 1864 that was the one governing foreigners and this Act provided for the expulsion of foreigners and their apprehension and detention pending removal and for a ban on their entry into India after removal. The current Acts and Rules have been introduced for better monitoring foreigners' entry, their presence and departure from India. □