

# AN EMIGRATION BILL THAT DOES NOT GO FAR ENOUGH

Relevant for: Developmental Issues | Topic: Government policies & interventions for development in various Sectors and issues arising out of their design & implementation incl. Housing

In early June 2021, the Ministry of External Affairs invited public inputs to the Emigration Bill 2021 (<https://bit.ly/2VerwzX> and <https://bit.ly/2ULrNdS>). The Bill could be introduced in Parliament soon and presents a long overdue opportunity to reform the recruitment process for nationals seeking employment abroad.

For years, independent investigations into migrant worker conditions have underlined serious exploitative practices which include large recruitment charges, contract substitution, deception, retention of passports, non-payment or underpayment of wages, poor living conditions, discrimination and other forms of ill-treatment. In recent months, media reports have highlighted how the majority of migrant worker deaths in the Arab Gulf States/West Asia are attributed to heart attacks and respiratory failures, whose causes are unexplained and poorly understood. Labour migration is governed by the Emigration Act, 1983 (<https://bit.ly/3i4gfvd> and <https://bit.ly/2VcJm6s>) which sets up a mechanism for hiring through government-certified recruiting agents — individuals or public or private agencies. It outlines obligations for agents to conduct due diligence of prospective employers, sets up a cap on service fees, and establishes a government review of worker travel and employment documents (known as emigration clearances) to 18 countries mainly in West Asian states and South-East Asian countries (<https://bit.ly/2WmmfHp>).

The Emigration Bill 2021 is an [improvement over the 1983 Act](#). It launches a new emigration policy division, establishes help desks and welfare committees, requires manpower agencies to conduct pre-departure briefings for migrants, and increases accountability of brokers and other intermediaries who are also involved in labour hiring. But the Bill does not go far enough.

First, the 2021 Bill's purpose “to consolidate and amend the law relating to emigration of citizens of India”, lacks a human rights framework aimed at securing the rights of migrants and their families. Progressive labour regimes do so. For example, in a country such as the Philippines, it explicitly recognises the contributions of Filipino workers and “the dignity and fundamental human rights and freedoms of the Filipino citizens”.

Another significant drawback is that the Bill permits manpower agencies to charge workers' service fees, and even allows agents to set their own limits. International labour standards such as International Labour Organization (ILO) Private Employment Agencies Convention No. 181 and the ILO general principles and operational guidelines for fair recruitment recognises that it is employers, not workers who should bear recruitment payments including the costs of their visas, air travel, medical exams, and service charges to recruiters. Large-scale surveys by the ILO and the World Bank show that Indian workers pay exorbitant charges for their jobs and that poorer workers pay progressively larger fees — Indians in Saudi Arabia paid on average \$1,507 in recruitment charges; their counterparts in Qatar paid \$1,156 (<https://bit.ly/3zzxLxh>).

To some, recruitment charges might appear like a justified service fee, but the tens of thousands of rupees that workers pay far exceed the real cost of recruitment. When low wage migrants pick up the tab it makes them vulnerable to indebtedness and exploitation. Worker-paid recruitment fees eat into their savings, force them to take high-interest loans, live on shoe-string budgets, and in the worst cases of abuse, leave workers in situations of debt bondage — a form of forced

labour.

But perhaps the Bill's most glaring inclusion is that it permits government authorities to punish workers by cancelling or suspending their passports and imposing fines up to 50,000 for violating any of the Bill's provisions. When enforced, it can be used as a tool to crackdown on workers who migrate through unregistered brokers or via irregular arrangements such as on tourist visas. Criminalising the choices migrant workers make either because they are unaware of the law, under the influence of their recruiters, or simply desperate to find a decent job is deplorable, runs contradictory to the purpose of protecting migrants and their families, and violates international human rights standards. Recruiters and public officials could misuse the law to instil fear among workers and report or threaten to report them. Migrants in an irregular situation who fear that they could be fined or have their passports revoked, are also less likely to make complaints or pursue remedies for abuses faced.

This Bill does not also adequately reflect the gender dimensions of labour migration where women have limited agency in recruitment compared to their counterparts and are more likely to be employed in marginalised and informal sectors and/or isolated occupations in which labour, physical, psychological, and sexual abuse are common. The Bill also provides limited space for worker representation or civil society engagement in the policy and welfare bodies that it sets up.

To ensure that labour recruitment works for the tens of thousands of Indian women and men who migrate outside our borders each year, the Ministry of External Affairs must start at the top, and draft a clearer purpose which explicitly recognises the contributions of Indian workers, the unique challenges they face, and uphold the dignity and human rights of migrants and their families. Then it must address the specific provisions that diverge from this purpose.

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To reassure Indian Muslims, the PM needs to state that the govt. will not conduct an exercise like NRC

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