



# “I saw my dreams dying”

The plight of Indian migrant workers and policy recommendations for safe migration

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# Foreword

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Around the world, millions of migrant workers fill critical roles in low-wage and low-skilled industries, including domestic work, health care, construction, agriculture, fishing, manufacturing and service. The United Nations Department of Economic and Social Affairs estimates that in 2013, the total number of international migrants reached 232 million. Globally, migrant workers and their families account for 90 percent of all migrants, and women account for nearly half of all international migrants. In destination countries, migrant workers contribute to the host economy’s productivity and growth. In origin countries, they generate economic capital through remittances and savings, and they return with newly acquired skills.

**The World Bank estimates that in 2013, Indian labour migrants remitted US\$70 billion, making India the recipient of the largest total value in remittances in the world.**

According to India’s Ministry of Overseas Indian Affairs, about 25 million Indians reside in foreign countries and work in unskilled, semi-skilled and high-skilled professions. The World Bank estimates that in 2013, Indian labour migrants remitted US\$70 billion, making India the recipient of the largest total value in remittances in the world.

For migrant workers, temporary migration requires a trade-off between access to labour markets in destination countries and restrictions on their individual rights. To align migration with sector-specific needs, temporary migration programmes usually restrict migrant workers’ rights to move between employers in the host country. This restricted mobility leaves migrants particularly vulnerable to rights abuses.

Indian workers interviewed for this study experienced a range of difficulties during their migration journey. Prior to leaving India, many were misinformed—or even deceived—by recruiters. Recruiting agents promised avenues to employment, attractive wages and safe working conditions. Instead, upon arrival in the destination country, workers reported experiencing physical and verbal abuse, confinement and isolation imposed by their employers, excessive working hours, withheld wages, hazardous work and even forced and other forms of coercive working conditions.

This study analyses India’s legislation, policies and programmes pertaining to migrant workers, identifies gaps in these mechanisms or where they fall short of international standards and documents rights violations that migrant workers have encountered.

The International Labour Organization (ILO) commissioned this study as part of the Decent Work Across Borders (DWAB) and the South Asia Labour Migration Governance projects—two projects funded by the European Union. In particular, this initiative responds to a need for targeted research on migration that was identified by union representatives in May 2014 during a weeklong training on international migration for trade union representatives, facilitated by the ILO–DWAB Project with the support of the ILO International Training Centre in Turin. This report is timed to synchronize with the South Asian Regional Trade Union Council Plan of Action (2013); inform transnational dialogue among trade unions and guide drafting of bilateral agreements for organizing, representing and supporting migrant workers.

It is our hope that this report will also prove useful in enabling Indian migrants, civil society, trade unions and the international community to understand and use existing mechanisms to protect Indian workers who migrate for employment.

**Recruiting agents promised avenues to employment, attractive wages and safe working conditions. Instead, upon arrival in the destination country, workers reported experiencing physical and verbal abuse, confinement and isolation imposed by their employers, excessive working hours, withheld wages, hazardous work and even forced and other forms of coercive working conditions.**

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# Acronyms and Terminology

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## ACRONYMS

<b>AITUC</b>	All India Trade Union Council
<b>BMS</b>	Bharatiya Mazdoor Sangh
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CITU</b>	Centre of Indian Trade Unions
<b>DWAB</b>	Decent Work Across Borders
<b>ECR</b>	emigration check required
<b>ECNR</b>	emigration check not required
<b>HMS</b>	Hind Mazdoor Sabha
<b>ILO</b>	International Labour Organization
<b>INR</b>	Indian rupee
<b>MOIA</b>	Ministry of Overseas Indian Affairs
<b>MOU</b>	memorandum of understanding
<b>PBBY</b>	Pravasi Bharatiya Bima Yojna
<b>SLD</b>	Society for Labour and Development
<b>TUCC</b>	Trade Union Coordination Committee
<b>UK</b>	United Kingdom
<b>UN</b>	United Nations

## TERMINOLOGY

**Migrant worker:** As defined under Article 2(1) of the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Their Families, 1990, a migrant worker is “a person who is to be engaged or is engaged in a remunerative activity in a State of which he or she is not a national.”

**Private employment agency:** The International Labour Organization’s Private Employment Agencies Convention, 1997 (No. 181) defines a private employment agency as “any natural or legal person, independent of public authorities, which provides one or more of the following labour market services: matching offers and applications for employment without becoming a party to the employment relationships; employing workers in order to make them available to a third party to assign and supervise tasks; or any other services related to job-seeking.”

**Recruitment:** Under India’s Emigration Act, 1983, “recruitment” includes issuing any advertisement for the purpose of hiring a worker or offering to assist in securing any employment in any county or place outside India and “entering into any correspondence, negotiation, agreement or arrangement with any individual that relates to the employment of such individual in any country or place outside India.” This definition has two components: (i) advertisement of services to assist in securing employment and (ii) a follow-up action by correspondence, negotiation or agreement.

**Recruitment agent:** Under India’s Emigration Act, 1983, a “recruitment agent” means “a person engaged in India in the business of recruitment for an employer and representing such employer with respect to any matter in relation to recruitment.” Under the Emigration Rules, 1983, an employer may authorize a recruiting agent in India, registered under the Emigration Act, as the authorized agent to recruit on their behalf by power of attorney. This report considers the impact of both formal and informal recruitment practices on migrant workers’ rights.

**Trafficking in persons:** Defined by the United Nations Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” This definition has three significant elements: (i) trafficking is seen as intentional; (ii) the means of recruitment is considered to be exploitive; and (iii) the purpose for which a person is trafficked is relevant to its treatment as a crime.

# Executive Summary

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**“I had only one ambition during those days. At any cost, I had to reach the UK and find work as a nurse. I had many relatives and friends who became affluent on work visas in the UK. I didn’t think about the flip side or the challenges at that time.” Rohit Kacheripady, Ernakulam District, Kerala, 6 October 2014**

**“I felt very frustrated. I saw my dreams dying. I went there to earn money but ended up in bonded labour. It was shocking and terrifying.” S. Raju, Mehaboob Nagar, Telangana, 8 October 2014**

Dreams of affluence through employment overseas continue to drive Indian workers to migrate for employment. According to the Ministry of Overseas Indian Affairs, about 25 million Indians reside and work in foreign countries in unskilled, semi-skilled and high-skilled professions. Migrating for work can provide opportunities—but only if workers’ human rights are protected.

For some, dreams of improved economic status do materialize. Many workers have satisfactory working conditions, receive their wages in full and on time, and are able to remit money home to their families. According to a World Bank report, in 2013, Indian labour migrants remitted US\$70 billion, placing India at the top of the world list of total value in remittances received.

In pursuit of livelihoods, many, like Rohit Kacheripady, a nurse from Ernakulam District, do not consider the risks involved in migration for employment. Rising overseas employment rates have produced a robust, largely unregulated recruitment industry. Although some recruiting agencies and agents conduct their business fairly, too many Indian workers are exploited by recruiting agents and overseas employers. Indian labour migrants are even more vulnerable when they are unaware of the laws and procedures in place to protect them. Like S. Raju from Mehaboob Nagar in

Telangana State, some Indian labour migrants follow dreams of affluence and end up in forced or coerced labour situations, cut off from their family, community and state protection.

Workers interviewed by the Society for Labour and Development for this study described experiencing a range of problems. Prior to leaving India, many were misinformed—or even deceived—by recruiting agents. Recruiting agents promised avenues to employment, attractive wages and safe working conditions. Instead, workers reported experiencing physical and verbal abuse, confinement and isolation, excessive working hours, withheld wages, hazardous work and even forced and other forms of coercive working conditions after their arrival in the destination country.

Because India is a source, transit and destination country for South Asian workers who migrate for employment, the Government of India should take a critical role in protecting labour migrants by affording workers who migrate for employment enforceable legal rights at home and by ensuring safeguards against exploitation and abuse abroad. Given the difficulties that migrant workers experience when accessing compensation and other remedies in destination countries, India’s role in protecting labour migrants is particularly important.

This report documents the problems encountered by labour migrants from India who either intended to reach or who arrived at destination countries in the Persian Gulf region and in Europe. They experienced problems during the recruitment process, while employed overseas or when they returned to India. Taking a rights-based approach that recognizes migrant workers as rights-holders, this report examines problems with recruitment practices and lacunas in India’s laws, policies and enforcement mechanisms.

Based on this analysis, the report provides recommendations aimed at promoting safe migration and decent work for migrant workers at all stages of the migration process. The concluding chapter also provides detailed actions steps for implementing these recommendations.

# Recommendations

Rights protection objectives and relevant standards	Recommendation
<b>Through all stages of migration</b>	
1. Promote social dialogue and consult workers and employers to develop a migration policy that conforms to international standards protecting the rights of migrant workers.	<ul style="list-style-type: none"> <li>Develop a comprehensive policy on migration that is focused on migrants' rights in consultation with workers' and employers' organizations.</li> <li>Open the Emigration Management Bill for public comments.</li> <li>Include workers' and employers' representatives in policy decisions, including in bilateral and multilateral agreements and joint working committees.</li> <li>Ratify International Labour Organization and United Nations Conventions that pertain to protecting the rights of labour migrants.</li> <li>Coordinate action between all involved ministries and government stakeholders, including but not limited to the Ministries of Overseas Indian Affairs, External Affairs, Home Affairs, Labour and Employment, and Women and Child Development.</li> </ul>
2. Develop and use all possibilities of employment.	<ul style="list-style-type: none"> <li>Remove barriers to employment of working-age women.</li> <li>Lift prohibitions that restrict women's freedom of movement.</li> <li>Encourage migration through formal regulated and safe channels.</li> </ul>
3. Provide information on national policy, laws and regulations for emigration and immigration.	<ul style="list-style-type: none"> <li>Provide information to labour migrants on provisions in place to ensure safe migration.</li> </ul>
4. Ensure data is collected in relation to all migrant workers and shared publically.	<ul style="list-style-type: none"> <li>Collect data from returning migrants through the National Sample Survey Office or other surveys.</li> </ul>
<b>Pre-departure</b>	
1. Regulate and supervise the activities of private agencies.	<ul style="list-style-type: none"> <li>Ratify the ILO Private Employment Agencies Convention (No. 181) and establish regulations conforming to the Convention.</li> </ul>
2. Ensure that migrants receive employment contracts.	<ul style="list-style-type: none"> <li>Develop standard contracts as part of memoranda of understanding (MOUs) with other countries.</li> <li>Promote e-contracts that are filed in a government database to prevent contract substitution.</li> </ul>

Rights protection objectives and relevant standards	Recommendation
<b>Pre-departure</b>	
3. Prevent private employment agencies from charging fees or costs to workers.	<ul style="list-style-type: none"> <li>In consultation with organizations representing workers and employers, prepare a standard rate for the services provided by recruitment agencies and work towards a non-fee payment structure.</li> </ul>
4. Prohibit private employment agencies from engaging in fraudulent practices.	<p>Improve accountability in the regulation of recruitment.</p> <ul style="list-style-type: none"> <li>Register all recruitment agents and agencies.</li> <li>Bring sub-agents under the ambit of regulation. This should include clear terms of reference governing the relationship between visa brokers, travel agents and recruiting agents.</li> <li>Bring foreign education agents under regulation.</li> <li>Monitor and grade agencies according to performance and make this information accessible to migrants.</li> </ul>
5. Promote social dialogue and consult workers and employers to develop a migration policy that conforms to international standards protecting the rights of migrant workers.	<p>Increase information for labour migrants on provisions in place to ensure safe migration.</p> <ul style="list-style-type: none"> <li>Increase the Ministry of Overseas Indian Affairs' budget allocation for pre-departure orientation and awareness campaigns.</li> <li>Widely publicize all information and resources available to labour migrants, using print and multimedia strategies designed to reach labour migrants at various skill levels.</li> <li>Publicize the importance of contracts in protecting the rights of labour migrants.</li> <li>Make contract consultations accessible to labour migrants during pre-departure trainings and within migrant resource centres.</li> <li>Establish migrant resource centres in each state and every city that has a major international airport.</li> <li>Ensure that toll-free helplines are operative in regional languages.</li> <li>Make pre-departure orientation mandatory.</li> <li>Design information campaigns to reach labour migrants at various skill and literacy levels. Include resources available upon return and to support reintegration.</li> </ul> <p>Expand the outreach of pre-departure trainings.</p> <ul style="list-style-type: none"> <li>Build the capacity of trade unions and civil society organizations to conduct outreach and training in areas where there are high levels of overseas migration for employment.</li> <li>Conduct destination- and sector-specific training.</li> <li>Involve returned migrants in pre-departure trainings at the community level.</li> <li>Make pre-departure orientation modules accessible online for skilled workers as well as in workers centres.</li> </ul>

Rights protection objectives and relevant standards	Recommendation
Within the host country	
1. Ensure necessary assistance during the initial settlement period.	<p>Inform labour migrants about resources available to assist them in destination countries.</p> <ul style="list-style-type: none"> <li>Establish help desks for Indian labour migrants at the airports in destination countries. Help desks should be equipped to provide information on legal processes, social security benefits and other entitlements as well as the helpline numbers available in the destination country. Require migrant workers to report to the help desk before leaving the airport.</li> <li>Uphold the rights of migrant workers to join unions and engage in collective bargaining during MOU negotiations with destination countries. Register unions and associations with Indian embassies and provide this information to migrants upon arrival in the destination country and upon request.</li> </ul>
2. Protect labour migrants from excessive work and exploitation.	<ul style="list-style-type: none"> <li>Increase the capacity for Indian embassies to support labour migrants in distress. Ensure that each Indian embassy has expertise on labour migration by assigning a labour attaché.</li> <li>Establish more Indian Worker Resource Centres.</li> <li>Initiate collaboration with unions and civil society organizations in destination countries to secure the rights of labour migrants. Maintain updated information on unions and associations at embassies in destination countries.</li> <li>Establish toll-free helplines operated by embassies in major destination countries. Helplines should receive complaints, provide legal assistance, facilitate access to medical services and give information on visa renewal and exit visas.</li> </ul>
3. Ensure wage protection for labour migrants.	<ul style="list-style-type: none"> <li>Sign partnership agreements with host governments to establish minimum wages, in consultation with workers' and employers' representatives. Set minimum wages based on destination countries' minimum wage levels. Ensure wages are linked to skills and not based on nationality.</li> </ul>
4. Suppress the use of forced or compulsory labour.	<ul style="list-style-type: none"> <li>Ensure that each Indian embassy has expertise on intervening to end forced or compulsory labour.</li> </ul>
5. Protect the occupational health and safety of labour migrants and ensure compensation in case of occupational accidents or diseases.	<p>Provide humane and necessary assistance to labour migrants and their families in instances of injury or death.</p> <ul style="list-style-type: none"> <li>Assist labour migrants in accessing insurance policies. Track registration and assist migrants to make claims through the Pravasi Bharatiya Bima Yojna.</li> <li>Provide necessary support to injured workers and their families and families of deceased workers.</li> <li>Support families calling for an inquiry into the cause of injury or death in a destination country.</li> </ul>

Rights protection objectives and relevant standards	Recommendation
Within the host country	
6. Provide social security.	<p>Develop a minimum social security protection floor:</p> <ul style="list-style-type: none"> <li>Analyse the low subscription of the Mahatma Gandhi Pravasi Suraksha Yojna scheme.</li> <li>Link existing schemes or create new schemes to ensure the social security of workers overseas.</li> <li>Negotiate with host governments to provide portable social security benefits in collaboration with workers' and employers' representatives.</li> </ul>
7. Support the right to freedom of association and the right to organize.	<ul style="list-style-type: none"> <li>Encourage membership in unions. Inform migrants about unions upon arrival in destination countries.</li> <li>Negotiate to include the right to association during MOU negotiations with host governments.</li> </ul>
8. Take all necessary and appropriate measures to suppress clandestine movements of migrants for regular or irregular employment, and prevent and suppress trafficking in persons.	<ul style="list-style-type: none"> <li>Systematically train Protectors of Emigrants and all branches of the criminal justice system, including police, public prosecutors and judicial officers, to identify and prosecute human traffickers.</li> <li>Lift gender-based migration prohibitions that restrict women's freedom of movement. Encourage migration through formal, regulated and safe channels.</li> <li>Within redress mechanisms, protect the practical needs of vulnerable migrant workers, including women. Assess the impact of socio-economic position, sex and education level on migrant workers' ability to make claims for redress. Amend procedures to reduce disparities in access.</li> <li>Increase international, regional and bilateral cooperation to better address human trafficking and other crimes.</li> </ul>
Upon return	
1. Ensure that adequate machinery and procedures exist to investigate complaints and fraudulent practices by private employment agencies.	<ul style="list-style-type: none"> <li>Ensure that Protector of Emigrants offices efficiently and promptly intervene to resolve claims and disputes that arise at all stages of the migration journey.</li> <li>Centralize and aggregate data from Indian embassies regarding types of complaints filed against parties in destination countries, the services provided and the outcomes for migrant workers.</li> </ul>
2. Provide relevant information to migrants upon their return to India.	<ul style="list-style-type: none"> <li>Provide returning migrants information on employment opportunities in India.</li> <li>Establish schemes for reintegration for migrants who return in distress.</li> </ul>



# Introduction, Study Objectives and Methodology

## 1.1 Introduction

### 1.1.1 Global context of labour migration

According to United Nations estimates for 2013, the total number of international migrants reached 232 million.<sup>1</sup> Globally, labour migrants and their families comprised 90 per cent of all migrants in 2013,<sup>2</sup> and women accounted for nearly half of the total international migrants.<sup>3</sup>

For migrant workers, temporary migration programmes that allow them to reside and work in a host country without creating a permanent entitlement to residence involve a trade-off between the economic gains associated with access to labour markets in receiving countries and restrictions

on their individual rights. To align migration with sector-specific needs, temporary migration programmes usually restrict migrant workers' rights to mobility between employers in the destination country.

For instance, the *kafala*, a system of sponsorship governing migration in the Persian Gulf countries of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates, epitomizes restricted mobility. While varying from country to country, the *kafala* system in the Persian Gulf countries shares a general feature: every migrant worker must have a specific job and a sponsoring employer—neither of which can be easily changed.<sup>4</sup> This restricted mobility leaves labour migrants particularly vulnerable to other rights abuses.<sup>5</sup>

Rights commonly denied to labour migrants around the world include unexpected changes in the nature or conditions of work, non-payment of wages, confiscation of identity documents, unsafe working

conditions, inadequate rest and inhumane housing conditions. In more extreme cases, migrant workers are exposed to verbal, physical and sexual abuse and suffer severe health consequences or even death from work-related causes. In some cases, abuses amount to labour trafficking, forced labour and debt bondage. Additionally, it is common for migrant workers to be unable to access compensation and other remedies within either their destination or home country.

### 1.1.2 International standards protecting labour migrants

Several sets of international standards guarantee rights to migrant workers. Some are broad and general, applying to all human beings; others are narrower, applying variously to all workers, to all migrant workers or only to migrant workers with regular status. International standards are found in international instruments, including: International Labour Organization (ILO) standards for workers, United Nations conventions and instruments, and

**International standards are found in international instruments, including International Labour Organization (ILO) standards for workers, United Nations conventions and instruments and other international agreements between or among countries that pertain to migrant workers.**

other international agreements between or among countries that pertain to migrant workers. As the *lex specialis* in this area, this study uses ILO labour standards protecting migrant workers as a primary benchmark to evaluate the protection for labour migrants under Indian law.

### International instruments guaranteeing human rights

Migrant workers, whatever their status, are always entitled to a basic set of human rights that apply to all individuals and across all situations. There are three international instruments that together comprise the International Bill of Human Rights<sup>6</sup>—the Universal Declaration of Human Rights; the International Covenant of Economic, Social and Cultural Rights; and the International Covenant on Civil and Political Rights.

The 1990 United Nations International Convention on the Protection of All Migrant Workers and Members of Their Families, which entered into force in July 2003, establishes migrants are entitled to respect for their fundamental human rights regardless of their legal status in a country.<sup>7</sup> This includes the right to life (Article 9), to liberty (Article 16), to protection from collective expulsion (Article 22) and to adequate conditions of work (Article 25).

The UN Committee overseeing the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has addressed the human rights concerns of women migrants through General Recommendation 26 on Women Migrant Workers.<sup>8</sup> This recommendation recognizes that women experience human rights violations at all stages of

6. Fact Sheet No. 2 (rev 1), the International bill of Human Rights, [www.ohchr.org](http://www.ohchr.org).
7. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, 220 U.N.T.S. 3.
8. Committee on Elimination of All Forms of Discrimination Against Women, General Recommendation No. 26 on women migrant workers, U.N. Doc. CEDAW/C/2009/WP.1/R.

migration, including detention by recruiting agencies during training, exploitive fees and restrictions on women’s migration that contribute to abuse.<sup>9</sup> Recommendation 26 also establishes the role of CEDAW in addressing some of these violations. Under CEDAW, States are obligated to take all appropriate measures to suppress all forms of trafficking (Article 6).<sup>10</sup>

The UN Convention Against Transnational Organized Crime, including the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, articulates a state obligation to prevent and combat trafficking in persons, to protect and assist victims of trafficking and to enhance close international cooperation between member States to tackle these problems.<sup>11</sup> There are several other mechanisms within the United Nations system relevant to the protection of migrant workers, including the special procedures mandates of the UN Human Rights Council and, most notably, the UN Special Rapporteur on the human rights of migrants.

Although India is not a signatory to some of the conventions and human rights instruments used to develop the rights-based framework for this study, these standards are nonetheless useful in evaluating India’s existing laws and policies affecting migrant workers because they represent a growing international consensus on migrant workers’ rights. These instruments were used to analyse the range of rights violations reported by migrant workers who have returned to India.

## ILO Conventions and other instruments

Unless otherwise stated, all ILO Conventions apply to foreign migrant workers, who should not receive differential treatment because they are not nationals of the country in which they work. However, when discussing migrant workers’ rights, there are two groups of ILO instruments that are of specific relevance:

- » core labour standards or fundamental Conventions, which apply to all persons, including foreign migrant workers; and
- » instruments dealing specifically with migrant workers.

### Core labour standards: Declaration on Fundamental Principles and Rights at Work

The Declaration on Fundamental Principles and Rights at Work cites eight core Conventions that define human rights at work (Table 1).<sup>12</sup> All member States of the ILO have an obligation arising from their membership to comply with ILO core Conventions, regardless of whether they have ratified them. Apart from the Declaration’s Conventions applying to migrant workers, the Declaration specifically states: “The ILO should give special attention to the problems of persons with special social needs,

**All member States of the ILO have an obligation arising from their membership to comply with ILO core Conventions, regardless of whether they have ratified them.**

particularly the unemployed and migrant workers.”

According to ILO standards, migration policy should be developed through social dialogue with workers’ and employers’ representatives; cohere with employment and other national policies; and seek to promote decent, productive and freely chosen work for all within and outside India so that migration is a choice rather than an imperative for vulnerable workers. Within this framework, this report considers the problems that labour migrants face prior to departure from India, during transit and within destination countries.

### Table 1. ILO core Conventions and their key points

**Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87):** Guarantees the removal of acts of discrimination against trade unions and the protection of employers’ and workers’ organizations against mutual interference; and calls for measures to promote collective bargaining. Article 2 is particularly relevant to the mobility of migrant workers: workers and employers, shall have, without distinction whatsoever, the right to establish and join organizations of their own choosing without previous authorization, subject only to the rules of the organization concerned. At the time of writing, Convention No. 87 had been ratified by 153 countries.

**Right to Organize and Collective Bargaining Convention, 1949 (No. 98):** Protects workers who are exercising the right to organize; upholds the principle of non-interference between workers’ and employers’ organizations; and promotes voluntary collective bargaining. At the time of this study, Convention No. 98 had been ratified by 164 countries.

**Forced Labour Convention, 1930 (No. 29):** Aims at the immediate suppression of all forms of forced or compulsory labour, with exceptions including military service, convict labour and during emergencies (such as war, fires and earthquakes). At the time of this study, Convention No. 129 had been ratified by 177 countries.

**Abolition of Forced Labour Convention, 1957 (No. 105) and Protocol (P29):** Provides for the abolition of all forms of forced or compulsory labour as a means of political coercion or education; as sanctions against the free expressions of political and ideological opinions; as workforce mobilization; as labour discipline; as a punishment for taking part in strikes; and as a measure of discrimination. At the time of this study, Convention No. 105 had been ratified by 174 countries. P29, a 2014 Protocol, had not been ratified by any country at the time of writing.

9. Ibid., Paragraphs 10–11.

10. Convention on the Elimination of All forms of Discrimination Against Women, United Nations, Treaty Series, vol. 1249, p. 13.

11. Convention Against Transnational Organized Crime, 2000, 2225 U.N.T.S.

12. International Labour Organization, 1998. 209.

6. Fact Sheet No. 2 (rev 1), the International bill of Human Rights, www.ohchr.org.

7. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, 220 U.N.T.S. 3.

8. Committee on Elimination of All Forms of Discrimination Against Women, General Recommendation No. 26 on women migrant workers, U.N. Doc. CEDAW/C/2009/WP.1/R.

9. Ibid., Paragraphs 10–11.

**Equal Remuneration Convention, 1951 (No. 100):** Underscores the principle of equal remuneration between men and women for work of equal value. At the time of this study, Convention No. 100 has been ratified by 171 countries.

**Discrimination (Employment and Occupation) Convention, 1958 (No. 111):** Provides for a national policy designed to eliminate, in respect of employment and occupation, all direct and indirect discrimination based on race, colour, sex, religion, political opinion, national extraction or social origin. At the time of writing, Convention No. 111 has been ratified by 172 countries.

**Minimum Age Convention, 1973 (No. 138):** Applies to all sectors of economic activity; States are to declare a national minimum age for admission to employment, under which, all children are prohibited from working, whether or not they are employed for wages. States are to pursue a national policy to ensure the effective abolition of child labour; the minimum age for entry into work shall not be less than that for the completion of compulsory schooling (although an age lower than 14 years may be adopted for light work and for countries that are less developed); a minimum age level shall not be less than 18 for hazardous work. At the time of writing, Convention No. 138 had been ratified by 167 countries.

**Prohibition and Immediate Elimination of the Worst Forms of Child Labour Convention, 1999 (No. 182):** Member States are to draw up a time-bound programme for the elimination of the worst forms of child labour. While the Convention gives a list, member States, in consultation with social partners, are to draw up their own list of the worst forms of child labour. At the time of writing, Convention No. 182 had been ratified by 179 countries.

## ILO Conventions on migrant workers' rights

### Migrant worker Conventions

There are two ILO Conventions and two Recommendations specifically regarding migrant workers:

- » Migration for Employment Convention (Revised), 1949 (No. 97)
- » Migration for Employment Recommendation

(Revised), 1949 (No. 86)

- » Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
- » Migrant Workers Recommendation, 1975 (No. 151).

Conventions No. 97 and No. 143 both apply to persons who migrate from one country to another for employment and cover issues concerning the entire migration process: emigration, transit

and immigration. With a few exceptions, these Conventions do not distinguish between permanent and temporary migrant workers.

Convention No. 97 and Recommendation No. 86 were prompted by interest in facilitating the movement of surplus labour from Europe to other parts of the world in the aftermath of the Second World War. They focus on standards applicable to the recruitment of migrants for employment and their conditions of work. These instruments cover only migrant workers with regular status.

Convention No. 97 also includes provisions on facilitating the departure, journey and reception of migrant workers. It requires that migrant workers be treated no less favourably than nationals with respect to pay, working hours, holidays with pay, apprenticeship and training, trade union membership, collective bargaining and, with some limitations, social security. To protect labour migrants injured while working overseas, Convention No. 97 also requires ratifying States to maintain appropriate medical services for migrants upon their arrival in destination countries.<sup>13</sup>

Recommendation No. 86 supplements Convention No. 97, providing further details on such matters including: providing information to migrants; facilitating migration; access to schools and medical assistance for migrants and their families; selecting migrants for employment; family reunification and protection upon loss of employment.

Recommendation No. 86 also requires States to develop and use all possibilities of employment, including facilitating the international distribution of labour for this purpose. In particular, States are required to ease the movement of labour from

countries that have a surplus of labour to those countries with a deficiency.

By 1975, when Convention No. 143 and Recommendation No. 151 were developed, governments were shifting focus away from equalizing labour supply across borders. Instead, they were focused toward responding to concerns about unemployment and increased irregular migration by attempting to bring migration flows under control. The Convention and Recommendation represented the first multilateral attempt to manage concerns about migrant workers with irregular status. As a result, Convention No. 143 addresses migrant workers with either regular or irregular status and asserts that the basic human rights of all migrant workers must be respected.

Some provisions on Convention No. 143 cover all migrant workers, while others extend additional rights only to those with regular status. The Convention places a duty upon States to determine whether there are illegally employed migrant workers in their territory and to take all necessary and appropriate measures to suppress clandestine movements of migrants for regular or irregular employment. Measures include the imposition of sanctions against organizers of these movements and those who employ workers who have immigrated under irregular conditions. Those with irregular status are granted equality of treatment in respect to past employment regarding remuneration, social security and other benefits. They are also entitled to equality of treatment and working conditions with respect to regular workers.

Migrant workers with regular status are afforded both equality of treatment (as in Convention No. 97) and equality of opportunity with respect to employment and occupation, social security benefits, trade union rights, cultural rights and individual and collective freedoms.

13. Migration for Employment Convention, 1949 (No. 97), Article 5. India has not ratified Convention No. 97 and is thus not formally bound to uphold its provisions. See ILO Normlex, Ratifications for India, [www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_IBID:102691](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_IBID:102691) (accessed 6 Oct. 2014).

### Convention on private employment agencies and recruitment

The Private Employment Agencies Convention, 1997 (No. 181) is particularly relevant to Indian migrant workers because private agencies are heavily involved in the transfer of workers out of India. The Convention requires States to implement a system of licensing or certification of agencies. It prohibits the denial of workers' rights to freedom of association and collective bargaining; discrimination against workers; and charging fees to workers, directly or indirectly. States are required to ensure adequate protection for, and prevent abuses against, those recruited or placed in their territory by private recruitment agencies. States are encouraged to enter into bilateral agreements to prevent abuses and fraudulent practices against migrant workers who use private recruitment agencies and required to have procedures to investigate complaints by workers. In addition, there must be adequate protection for, among other things, minimum wages, working time and other working conditions, social security benefits and occupational safety and health.

Under the ILO Migration for Employment Convention, 1949 (No. 97), recruitment may be undertaken by a private agency if the agency has been given prior authorization from a competent state authority and under conditions prescribed by domestic law or relevant international instruments. Competent authorities are called upon to supervise the activities of private agencies that have been authorized to undertake recruitment.

### Convention on domestic workers

The Domestic Workers Convention, 2011 (No. 189)

and its accompanying Recommendation (No. 201) recognize the economic and social value of domestic work and call for action to address the exclusion of domestic workers from labour and social protection. Convention No. 189 lays down basic principles and measures regarding the promotion of decent work for domestic workers that can be used to include migrant domestic workers in labour protection schemes. These protections are based upon fundamental rights and not citizenship. It explicitly notes in the preamble that migrants are a significant part of the domestic labour force and also recognizes the need to protect rights at work for migrants.

### Convention on maintenance of social security rights

The Equality of Treatment (Social Security) Convention, 1962 (No. 118) and Maintenance of Social Security Rights Convention, 1982 (No. 157) address the specific problems encountered by migrant workers regarding social security benefits by creating reciprocal obligations between countries to allow workers to claim social security provisions afforded at home while working in a host country.<sup>14</sup>

Receiving countries that have ratified the Equality of Treatment (Social Security) Convention, 1962 are obligated to provide social security coverage and rights and benefits for labour migrants on par with those afforded to their own nationals, but members may accept the obligations of the Convention in any one or more of the branches of social security for which it has legislation covering its own nationals, including: medical care, sickness benefit, maternity benefit, disability benefit, old-age benefit, survivors' benefit, employment injury benefit, unemployment benefit and family benefit. The Maintenance of Social

Security Rights Convention, 1982 (No. 157) sets forth a system for determining how to apply applicable legislation to prevent conflict of laws. The applicable legislation is normally that of the State in which a person undertakes occupational labour. At the time of this study, 38 countries had ratified Convention No. 118 and 4 countries had ratified Convention No. 157.<sup>15</sup>

### Conventions on wages

The Protection of Wages Convention, 1949 (No. 95) aims to guarantee payment of wages in a full and timely manner, whether fixed by mutual agreement, national law or regulation or payable under a written or unwritten employment contract.<sup>16</sup> The Convention applies to all persons to whom wages are paid or payable.<sup>17</sup> In particular, workers have to be informed of the conditions of their employment with respect to wages and the conditions under which their wages are subject to change.<sup>18</sup> The Minimum Wage Fixing Convention, 1970 (No. 31) calls for a minimum sum payable to workers that is guaranteed

by law and fixed to cover the minimum needs of workers and their family.

### Conventions protecting freedom of association and collective bargaining

The Migrant Workers Convention No. 97 states in Article 6 that the State must confer equal treatment to immigrants as to nationals, with respect to membership of trade unions and enjoyment of the benefits of collective bargaining. Convention No. 97 is supported by Convention No. 87, which requires States to take appropriate measures to ensure that workers may freely exercise the right to organize and, more strongly in Article 98, protect workers against acts of anti-union discrimination. The Private Employment Agencies Convention (No. 181) calls for States to ensure that workers recruited by private agencies are not denied access to rights and entitlements, including rights to freedom of association and collective bargaining.<sup>19</sup>

15. The Maintenance of Social Security Rights Convention, 1982 (No. 157), Article 5.
16. Protection of Wages Convention, 1949 (No. 95), Article 1.
17. Ibid., Article 2.
18. Ibid., Articles 8, 14.
19. Private Employment Agencies Convention, 1997 (No. 181), Article 4. India has not ratified the Private Employment Agencies Convention, 1997 and is thus not formally bound to uphold its provisions. See ILO Normlex, C181- Private Employment Agencies Convention, 1997 (No. 181), [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310\\_INSTRUMENT\\_IBID:312326:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310_INSTRUMENT_IBID:312326:NO) (accessed 6 Oct. 2014).

**Table 2. ILO Conventions protecting migrant workers' rights**

Convention	Ratification by India
Forced Labour Convention, 1930 (No. 29) and Protocol, 2014	Ratified on 30 November 1954. In force.
Protection of Wages Convention, 1949 (No. 95)	Not ratified by India.
Migration for Employment Convention, 1949 (No. 97)	Not ratified by India.
Abolition of Forced Labour Convention, 1957 (No. 105)	Ratified on 18 May 2000. In force.
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	Ratified on 3 June 1960. In force.
Equality of Treatment (Social Security) Convention, 1962 (No. 118)	

14. ILO International Training Centre, 2014, p. 173.

**Table 2. ILO Conventions protecting migrant workers' rights (contd.)**

Convention	Ratification by India
Minimum Wage Fixing Convention, 1970 (No. 131)	Not ratified by India.
Minimum Wage-fixing Machinery Convention (No. 26)	Ratified on 10 January 1955. In force.
Migrant Workers Convention (Supplementary Provisions, 1975 (No. 143)	Not ratified by India.
Tripartite Consultation Convention, 1976 (No. 144)	Ratified on 27 February 1978. In force.
Maintenance of Social Security Rights Convention, 1982 (No. 157)	Not ratified by India.
Private Employment Agencies Convention, 1997 (No. 181)	Not ratified by India.

## 1.2 Study objectives

Combining legal and policy research with first-hand accounts from Indian labour migrants, this report provides a foundation for advocacy to protect Indian workers who emigrate for employment. Through analysis of India's legislation, policies and programmes pertaining to migration, it identifies gaps in these mechanisms that fall short of international standards. The analysis pays particular attention to the rights of women and vulnerable workers.

To understand how current mechanisms and their limitations impact workers' lives, this report documents problems that migrant workers have experienced, with a focus on construction workers,

domestic workers, livestock workers and nurses. The sample covers migrant profiles at the high-skilled, semi-skilled and low-skilled levels.

Recognizing that trade unions have the potential to take a critical role in protecting migrant workers, this report was designed to assist unions in understanding the contemporary landscape of migration policy in India. India's trade unions recently initiated lobbying on migration policy and have begun establishing links with international trade unions. To date, however, trade unions in India have not been actively involved in collectively evaluating and challenging existing policy frameworks governing migration. Bipartite and tripartite dialogue on migration is almost completely absent. This report is intended to inform trade unions and bipartite and tripartite dialogues to safeguard migrant workers' rights.

These objectives draw from recent ILO initiatives.

In May 2014, the ILO Decent Work Across Borders Project organized a weeklong training on international migration for trade union representatives. Union representatives involved in the May 2014 training agreed on a need for research on migration from India that they could use to initiate dialogue among trade unions and to generate bilateral agreements for organizing, representing and supporting migrant workers. The ILO European Union-funded Decent Work Across Borders and the South Asia Labour Migration Governance Projects subsequently commissioned this study.

The objectives of this study align with the South Asian Regional Trade Union Council Plan of Action (2013). Accordingly, this report provides information on social protection (action point 5) and the promotion of relevant ILO Conventions to support migrant workers before they depart from and after they return (action point 8).

## 1.3 Methodology

This report is based upon field research conducted by the Society for Labour and Development (SLD) between October and November 2014.

Field research was framed through extensive desk research on relevant ILO Conventions and other international human rights standards protecting migrant workers. Although India is not a signatory to all the Conventions and human rights instruments used to develop the rights-based framework for this study, the standards were used as a benchmark to evaluate India's existing laws and policies affecting migrant workers and to assess the violations that migrant workers who had returned to India from working abroad reported during the course of their migration journey.

Fieldwork was conducted in the Indian States of Andhra Pradesh/Telangana and Kerala. These states were chosen in consultation with trade unions in India because of their particularly high rates of migration. Significant numbers of labour migrants from Andhra Pradesh/Telangana migrate for employment as domestic workers and significant numbers of nurses migrate for employment from Kerala. Migrant workers from both states migrate for employment in construction.

To gain insight into the efficacy of protection mechanisms in India for migrant workers with distinct occupations and skill levels, the study documented experiences of migrants who had

worked at various levels of skills—low, semi and high. The study also covered a range of typically gendered occupations: migrant workers engaged in the construction and livestock sectors are predominantly male, whereas domestic workers are predominantly female. Nurses interviewed for this study were both male and female. This distribution of case studies provides insight into the efficacy of protection mechanisms for workers across the skill spectrum and facilitates comparison between sectors dominated by men and women migrant workers.

SLD conducted in-depth interviews and focus group discussions with 24 returned migrants, including 3 domestic workers, 13 construction workers and 8 nurses. Separate interview questionnaires were prepared for different stakeholders—returned migrants, government officials and union officers (see the Annex). Interviews with labour migrants were conducted in English, Hindi, Telugu and Malayalam. Telugu and Malayalam interviews were conducted with translation assistance. The individual interviews with migrants lasted for about 45 minutes to an hour. In addition to the individual interviews, the same interviewees also participated in three focus group discussions, each lasting for approximately an hour. To protect the identity of returned migrants interviewed for this study, all names have been changed.

To highlight gaps in India's laws and policies protecting migrant workers, this report focuses on difficulties that labour migrants have experienced. It does not include more successful migration narratives. All migrants interviewed for this study migrated for employment and returned to India and experienced rights violations either before departure, in transit or while abroad.

Returned labour migrants were located with help from local units of Indian national unions, including the Trade Union Coordination Committee, the Hind Mazdoor Sabha, the Bharatiya Mazdoor Sangh, the All India Trade Union Council and the Centre for Indian Trade Unions. These unions had a presence in the states selected for the study and could provide researchers with access to returned migrants. Other trade unions were also approached for assistance but they did not respond.

SLD also interviewed recruiting agents and doctors called upon to conduct the medical evaluations for migrant workers that are required for visa clearance. The three recruiting agents and two sub-agents interviewed for this study were located by information received from labour migrants in Kerala, interviews and online research. Two doctors were interviewed: one in Hyderabad and one in Kochi. These interviews lasted about 20 minutes each. The doctors and sub-agents interviewed in Kerala requested that their names be withheld. Interviews with recruiting agents were conducted either in person or by phone.

Finally, SLD interviewed union representatives from the Migrant Rights Council, the Trade Union Coordination Committee, the United Nurses Association, Hind Mazdoor Sabha, Bharatiya Mazdoor Sangh, Centre for Indian Trade Unions, the Building and Woods Workers' International and the New Trade Union Initiative. The Migrant Rights Council, United Nurses Association and Building and Woods Workers' International interviewees were chosen because

they work with labour migrants going to Gulf countries. Qualitative data, revealing common themes emerging from the experiences of the interviewees, was contextualized through extensive secondary research, including data from ministries and unions, reports from national and international organizations addressing labour migration, human rights reports, academic papers and Right to Information petitions.<sup>20</sup> All conversions from Indian rupees (INR) to US dollars were done based upon the average conversion rate for the year in question.

In formulating the recommendations for this report, SLD consulted migration experts from the Centre for Development Studies in Kerala, a leading institute researching international migration from India to Gulf countries.

Finally, recommendations were refined with input and feedback from trade union participants during a November 2014 workshop on Validation of Research and Strategy Setting on International Migration in Hyderabad, India. Thirty participants, including representatives from all 12 central unions, the United Nurses Association and the New Trade Union Initiative, attended. Sessions facilitated by ILO and Friedrich-Eber-Stiftung included presentation of findings and recommendations by SLD; review of findings from *Exploited Dreams: Dispatches from Indian Migrant Workers in Saudi Arabia* by Amnesty International; and discussion of strategies with global unions engaged in advancing migrant workers' rights.

## 1.4 Limitations

This study had five significant limitations. First, due to the focus on India's role in protecting Indian migrant workers, the primary research for this study was conducted within India. Thus, it does not include first-hand perspectives from employers in destination countries or from migrants still overseas.

Second, this study focused on central government policies in India and did not take into account state government policies or the interaction between central and state policies that impact labour migrants.

Third, the geographic and sector-specific selection of labour migrants to participate in this study was constrained. Due to the focus of ILO activities and current project geographies, this study centred on the experiences of Indian workers who migrate for employment to Gulf countries and Europe. Indian labour migrants also, however, routinely migrate to Australia, Canada, the United States and South-East Asian countries, including Singapore and Thailand. Gulf countries and Europe were chosen because of the continuity in migration to those regions within the past three decades, the migration of low-skilled, semi-skilled and high-skilled Indian workers to those regions and the heavy migration to those regions from other South Asian countries.

Fourth, interviews with returned labour migrants were conducted exclusively in Kerala and Andhra Pradesh/Telangana. Although these states were chosen based upon particular demographics of labour migrants, they do not represent the spectrum of labour migration from India to the Gulf countries and Europe. The Indian States of Punjab, Uttar Pradesh, Bihar, Rajasthan and Tamil Nadu

also have considerable populations of labour migrants but were not included in the study.

Finally, the study included workers who migrated for employment in the health care, domestic work, livestock and construction sectors. Indian migrants who worked in other common sectors, including teaching, driving, information technology and managerial and security positions, were not included. Although large numbers of labour migrants from India intentionally or unintentionally opt for irregular migration channels, the migrants interviewed for this study all migrated legally.

20. The Right to Information Act, 2005 allows any citizen to request information from a "public authority" via a petition.

# International migration from India

## 2.1 Migration through formal channels

India does not have comprehensive data on the number of migrants working overseas. Data published by the Ministry of Overseas Indian Affairs represents migrants who go through the emigration clearance system, which is limited to 17 destination countries, represents mostly first-time migrants and includes only migrants who require clearance on the basis of their education levels. This data reflects that from April 2014 to February 2015, a total of 738,327 workers emigrated from India through formal legal channels after obtaining their emigration clearance.<sup>21</sup>

The MOIA estimates that there are about 5 million Indians working overseas, with more than 90 per cent of them in a Gulf country or in South-East Asia. An estimated 4 million of these workers are employed in Gulf countries, the vast majority of whom are semi-skilled and low-skilled temporary workers. In 2009, the Gulf Research Centre estimated that low- and semi-skilled worker categories accounted for 65 percent of the Indian workers in member countries of the Gulf Cooperation Council,<sup>22</sup> with construction workers comprising the single largest category of Indian workers.

**The MOIA estimates that there are about 5 million Indians working overseas.**

According to MOIA figures, of the top-five destination countries, Saudi Arabia is the main destination for Indian labour migrants, followed by the United Arab Emirates and Oman (Table 3.1). The Indian States of Uttar Pradesh, Kerala, Andhra

Pradesh, Bihar, Tamil Nadu, Rajasthan and Punjab had the largest number of international labour migrants in 2012 (Table 3.2).

**Table 3.1. Migration figures from India for top-five destination countries, 2012**

Country	Number of migrants
Saudi Arabia	747 041
United Arab Emirates	357 503
Oman	141 138
Qatar	63 096
Malaysia	21 241

Source: Ministry of Overseas Indian Affairs, 2013, p. 33.

**Table 3.2. Number of Indian emigrants requiring an emigration check, by state, 2012**

State	Number of ECR category emigrants
Uttar Pradesh	191 341
Andhra Pradesh	92 803
Bihar	84 078

Kerala	98 178
Tamil Nadu	78 185
Rajasthan	50 295
Punjab	37 472

Note: ECR=emigration check required.

Source: Ministry of Overseas Indian Affairs, 2013.

## 2.2 Migration through individual contacts and social networks

India's regulations governing recruitment by agents and employers and prohibiting sub-agents from engaging in recruitment are limited in their ability to protect labour migrants because recruitment often takes place through informal social channels.

Even though some labour migrants interviewed by SLD reported learning about migration opportunities through newspapers and advertisements,<sup>23</sup> many also reported learning about opportunities informally.<sup>24</sup> As explained by labour migrants interviewed for this study, Indian workers overseas frequently manage to obtain or purchase visas from employers, sponsors

23. SLD interview with returned nurses in Kerala, 3–9 October 2014.

24. Ibid.

and agents for their friends and relatives in India. Migration through these informal channels is also encouraged by the significant cost differential between formal and informal channels. For instance, the average cost of migration through a recruiting agent in India in 2007 was around US\$1,145, while the average cost of migration through networks of friends and relatives was around US\$570.<sup>25</sup>

Unauthorized recruiting agencies and individual agents also manage to obtain visas from foreign employers, agents and recruiting companies.<sup>26</sup> These unauthorized sub-agents also function as middlemen between registered foreign employers or recruiting agencies and prospective labour migrants.<sup>27</sup> Since unauthorized agents exist outside the regulatory framework, as part of networks that often also includes authorized recruiting agents, they are almost entirely unaccountable for illegal conduct.<sup>28</sup> Moreover, officials working in Protector of Emigrants offices in India have been found forging travel documents in connivance with unscrupulous recruiting agents.<sup>29</sup>

Contact with recruiters initiated through kinship or other social networks can provide migrants with a false sense of security that their rights and interests will be protected. For instance, as Jose John, a returned migrant in Kerala explained: *“It was a Christian agency, so I trusted them.”*<sup>30</sup>

R. Rajan, who has no formal education and training, migrated for employment as a mason to Saudi Arabia after hearing about employment opportunities through a relative. He explained:

*“I was working in Mumbai. One of my wife’s relatives told me about going abroad. He said he knew the people who send people out for*

*work and he would arrange for me. He assured me that I was his responsibility and he would not let anything happen to me.”*<sup>31</sup>

Relying upon these informal channels, R. Rajan never came into contact with any government office, did not complete any pre-departure training and did not sign a contract or agreement letter before departure.<sup>32</sup> In fact, when asked by SLD if he had any information about the agency to which he paid INR 180,000 (US\$425)<sup>33</sup> for a visa in 2008, R. Rajan responded that he did not know the name of the agent or the recruiting agency.<sup>34</sup> Without a contract or even basic information on the recruiter or agent, R. Rajan has few avenues to pursue accountability for abuses he experienced either during recruitment and in the destination country.

R. Rajan’s experience is not unique. Of 654 prospective migrants who participated in a 2007 survey and reported that they were migrating through recruiting agents, 34.2 per cent said they used a registered recruitment agent, 46.8 per cent used an unregistered recruitment agent, and 19 per cent did not know whether the recruitment agent they used was registered or not.<sup>35</sup>

## 2.3 Gender and migration in India

Around the globe, gender-differentiated demands for labour migration affect migration for female workers.<sup>36</sup>

In India, while the majority of male migrant workers are engaged in production and construction, the majority of females work in the service sector, as nurses, domestic workers, babysitters and nursing aids.<sup>37</sup>

On recommendation of the National Commission for Women, the Indian Government restricted emigration of low-skilled women younger than 30 for overseas employment through a ban on migration for employment to any emigration check required (ECR) country.<sup>38</sup> Although the Government justifies this policy as a measure to ensure women’s security,<sup>39</sup> the reasoning thinly veils structural discrimination in India’s migration policy. As explained by Irudaya Rajan, Chair of the MOIA Research Unit on International Migration:

*“The current institution for emigration governance in India is discriminatory against low-skilled emigrants from the country in general and low-skilled women emigrants in particular. The promise of protection as extended by the institution is seen as an all-justifying explanation that elides fundamental questions of citizenship.”*<sup>40</sup>

Setting a minimum age for women to migrate for domestic work, although perhaps done with the intention of protecting women from abuse, is a discriminatory practice that often prompts women to resort to irregular migration, rendering them more vulnerable to abuse, including precarious working conditions, low pay and exposure to violence and forced labour.<sup>41</sup>

Women who migrate for employment through informal migration channels are particularly

**Women who migrate for employment through informal migration channels are particularly vulnerable to unprotected movement and human trafficking for the purpose of debt bondage, forced labour, sexual exploitation and forced marriage.**

vulnerable to unprotected movement and human trafficking for the purpose of debt bondage, forced labour, sexual exploitation and forced marriage.<sup>42</sup> Women from castes considered to be low are particularly at risk.<sup>43</sup> Between 2013 and 2014, MOIA received 1,033 cases of exploitation/harassment of women from the 17 ECR countries.<sup>44</sup> Domestic workers are particularly susceptible to economic, physical, sexual and emotional abuse—including confinement, underpayment or non-payment of wages and a range of other abuses—because their living and working conditions are typically entirely dependent upon the personal relationship between the worker and the employer.<sup>45</sup>

Despite these vulnerabilities, women who migrate for employment are having a significant impact across India. Increasing flows of remittances from women workers to rural and urban areas across India transform women’s lives and the lives of their families and communities. These contributions also affect subtle but important changes in the gender balance of power at the household and societal levels.<sup>46</sup>

25. Timothy and Sasikumar, 2012, citing Irudaya Rajan, Varghese and Jayakumar, 2011.
26. Irudaya Rajan, Varghese and Jayakumar, 2010, p. 24.
27. Ibid., p. 25.
28. Ibid., p. 26.
29. Arokkiaj (2015) citing Lok Sabha, Unstarred Question No. 1099, answered on 25 November 2009 by Shri Vyalar Ravi, MOIA).
30. SLD interview with returned nurse in Kozhikode District, Kerala, 9 October 2014.
31. SLD interview with returned worker in Mehaboob Nagar District, Telangana, 9 October 2014.
32. Ibid.
33. Calculated according to average Indian rupee–US dollar exchange rate in 2008.
34. SLD interview with returned worker in Mehaboob Nagar, Telangana, 9 October 2014.
35. Irudaya Rajan, Varghese and Jayakumar, 2010, p. 26.
36. Timothy and Sasikumar, 2012, p. 24.

37. Percot and Nair, in Irudaya Rajan, Varghese and Jayakumar, eds., 2011, p. 195.
38. Ministry of Overseas Indian Affairs, Documents Required for Unskilled/ Women Workers (Individuals), <http://moia.gov.in/services>
39. Percot, supra note 34, pp. 225–226.
40. Ibid.
41. UN Human Rights Council, 2014.
42. Ramaseshan, 2012, p. 3.
43. Ibid.
44. Ministry of Overseas Indian Affairs, Lok Sabha, Unstarred Question No: 2312, answered on 5 February 2014 by Shri Vyalavar Ravi, MOIA.
45. Timothy and Sasikumar, 2012, pp. 2, 5.
46. Ibid., p. 2.



# Systems and procedures governing documented migration

## 3.1 Institutions and actors involved in labour migration

### 3.1.1 Ministry of Overseas Indian Affairs

The Ministry of Overseas Indian Affairs was first established in May 2004 as the Ministry of Non-Resident Indians' Affairs and renamed in September 2004.<sup>47</sup>

In March 2006, the MOIA established an Emigration Policy Division to facilitate emigration.<sup>48</sup> The Division is charged with formulating policies for improving emigration management, proposing legislative changes and implementing emigration reforms and policies—including institutional changes in e-governance, welfare schemes for emigrants and bilateral and multilateral cooperation in international migration.<sup>49</sup>

Recognizing the vulnerability of Indian labour migrants, the MOIA articulates the importance of “a proactive policy to transform the emigration system

and empower the emigrants through systemic interventions at the bilateral as well as multilateral fronts.”<sup>50</sup> According to the MOIA website, proactive steps taken to achieve these policy objectives to date include:<sup>51</sup>

- » drafting new emigration legislation to replace the Emigration Act, 1983 and Emigration Rules (Amendment 2009);
- » proposing memoranda of understanding with Gulf countries;
- » initiating schemes for skill development and pre-departure orientation for potential emigrants;
- » building a framework for on-site welfare measures;
- » setting up Overseas Indian Centres to coordinate on-site welfare;
- » replicating good practices from other countries;
- » revamping the recruitment system to make it more accountable; and
- » establishing the Indian Council for Overseas Employment to advise the Government on overseas employment matters and develop strategies and good practices in migration management through research.

The Indian Council for Overseas Employment was later converted to the India Centre for Migration, which is mandated to promote overseas employment, better protect the welfare of overseas Indian workers and study emerging overseas employment opportunities.<sup>52</sup>

Objectives specifically targeted at protecting the rights of labour migrants emigrating from India include adapting training material developed by the ILO

and the International Organization for Migration, monitoring and analysing the problems that emigrant Indian workers and returned workers encountered, suggesting protective measures, and designing and providing specialized training facilities for emigrants in India and abroad.<sup>53</sup>

### 3.1.2 Protectors of Emigrants and emigration officers

Under the Emigration Act, the Protectors of Emigrants are to protect, aid and advise all emigrants and those who intend to emigrate; ensure compliance with the Act; inspect any conveyance suspected of transporting emigrants;<sup>54</sup> inquire into treatment received by emigrants during their journey, while residing in the destination country and while returning to India; and aid and advise emigrants who have returned to India.<sup>55</sup> Protectors of Emigrants also supervise officers in charge of emigration checkpoints within their jurisdiction.<sup>56</sup>

According to Chapter XIII of the Customs Act, 1962, the Protector General of Emigrants, Protectors of Emigrants, customs officers and officers in charge of emigration checkpoints have the power to conduct searches, seizures and arrests.<sup>57</sup> This authority allows them to search and detain persons, vessels, aircrafts or any other conveyances; seize documents; and arrest or apprehend any person suspected of committing any offence under the Emigration Act.<sup>58</sup>

The Protector General of Emigrants, Protectors of Emigrants and registering authorities are vested with

50. Ibid.
51. Ibid.
52. India Centre for Migration, <http://moia.gov.in/services.aspx?IBID1=77&Ibid=m1&Ibidp=75&mainIbid=73>.
53. Ibid.
54. Rule 4 of the Emigration Rules defines emigrant conveyance as, “Any conveyance, especially chartered, for conveyance of emigrants or employed generally for conveying emigrants exceeding two in number.” Rule 6 of the Emigration Rules authorizes inspection of immigrant conveyance to detect unauthorized emigrants or obtain evidence at any time. The Protector of Emigrants may also require production of the registration certificate of the conveyance, logbook, and list of passengers, and take such other evidence and examine any person he may deem necessary. The Emigration Rules, 1983, SO 941(E), (as amended vide GSR 511(E), 9-7-2009), Rules 4, 6.
55. Emigration Act, 1983, No. 31, Chapter II.
56. Ibid., Section 6(2). Section 6(1–3) also specifies that where necessary to prevent or check for contravention of the Emigration Act, the Central Government may, by notification, set up emigration checkpoints and appoint an officer of the Central Government or state government to be an officer in charge of an emigration checkpoint.
57. Emigration Act, supra note 21, Chapter VIII, Section 35.
58. Ibid., Chapter VIII, Section 35.

47. Ministry of Overseas Indian Affairs, “Overview”, <http://moia.gov.in/services.aspx?mainIbid=6> (accessed 10 Oct. 2014).

48. Ministry of Overseas Indian Affairs, “Emigration services: An overview”, <http://moia.gov.in/services.aspx?Ibid1=66&Ibidp=66&mainIbid=73> (accessed 10 Oct. 2014).

49. Ibid.

the same powers as a court under the Code of Civil Procedure, 1908.<sup>59</sup> They can summon and enforce witness attendance, require discovery and documents, request public records from any court or office, receive evidence on affidavits and issue commissions to examine witnesses and documents.<sup>60</sup> Every proceeding before the Protector General of Emigrants constitutes a judicial proceeding, according to sections 193 and 228 of the Indian Penal Code.

### 3.1.3 Resources to support labour migrants

#### Migrant Resource Centres

There are three Migrant Resource Centres in India, located in Kerala (at Kochi), Andhra Pradesh (at Hyderabad) and Haryana (at Panchkula). The primary objective of the centres is to disseminate information on legal and humane migration opportunities, the risks involved in irregular migration and job opportunities overseas, but it provides other important services as well (Table 4).<sup>61</sup>

**Table 4. Services provided by Migrant Resource Centres**

Walk-in counselling
Telephone helpline to disseminate information and redress grievances
Verification centre with information on recruiters, foreign employers, procedures and fees

Pre-departure visa and travel assistance, language training and cultural orientation

Referral centre to advise on where to go for documentation and certification

Network centre to coordinate outreach to migrants through NGOs and social partners

### Overseas Workers Resource Centre

Established by the MOIA, the Overseas Workers Resource Centre functions to disseminate information on matters related to emigration; register, respond to and monitor complaints received from emigrant workers or Protectors of Emigrants; and provide a mechanism to address grievances.<sup>62</sup>

Located in New Delhi, the Overseas Workers Resource Centre operates a walk-in counselling centre and a toll-free hotline with information available in 11 Indian languages.<sup>63</sup> According to the MOIA, the helpline numbers are publicized through multimedia awareness campaigns.<sup>64</sup> The MOIA has also established an Overseas Workers Resource Centre in the United Arab Emirates.<sup>65</sup>

**Located in New Delhi, the Overseas Workers Resource Centre operates a walk-in counselling centre and a toll-free hotline with information available in 11 Indian languages.**

### Indian Workers Resource Centre

Located in Dubai under the aegis of the Embassy of India, the Indian Workers Resource Centre responds to issues pertaining to the Indian workers residing in the United Arab Emirates. Its primary objective is to provide a 24-hour (seven days a week) helpline, conduct awareness classes and counselling programmes on legal, financial and social issues and to manage a shelter home for distressed migrants, including abandoned wives and domestic workers who flee their employers.<sup>66</sup>

The Indian Community Welfare Fund was set up in October 2009 to respond to Indian citizens in distress overseas, including Indian workers deceived by intermediaries in a host country, runaway domestic workers, victims of accidents, deserted spouses, detained Indian nationals and undocumented Indian workers.<sup>67</sup> The Welfare Fund scheme was extended to all Indian missions in March 2011 and, according to the MOIA, is currently administered in 45 countries.<sup>68</sup>

More than 22,798 emigrants have benefited from the scheme in the past three years, with a total budget of INR500 million (US\$802,930)<sup>69</sup> allocated.<sup>70</sup> Services under the scheme include boarding and lodging, emergency medical care, legal assistance and support to establish and run Overseas Indian Associations and Overseas Indian Community-based welfare centres. The Indian Community Welfare Fund also makes funds available to repatriate the bodies of Indians who die overseas, pay penalties levied against Indian nationals for irregular stays in a destination country where the worker is not at fault and secure the release of Indian nationals from jails or detention centres.<sup>71</sup>

### 3.1.4 E-Governance

Under the ILO Migration for Employment Convention, 1949, ratifying States are required to provide migrant workers with accurate information on national policies, laws and regulations relating to migration, including the provision of interpretation services when necessary.<sup>72</sup> Consistent with these aims, India's e-Governance scheme was launched in 2014 to increase efficiency, transparency and accountability in the emigration system, facilitate legal emigration and prevent illegal emigration.<sup>73</sup>

The E-Governance in Emigration (e-migrate) Project involves digitizing the functions of the Protector of Emigrants offices and the Protector General of Emigrants Office; and linking recruiting agents, employers, immigration counters, Indian Missions abroad, insurance companies and state governments. It is intended to automate emigration clearance, computerize registration of recruitment agents and employer permits, dispense with discretion, mitigate harassment of emigrants and remove opportunity for corruption.<sup>74</sup> After full implementation, this system is also expected to provide tools and data for policy analysis, information dissemination and speedy grievance redress.<sup>75</sup>

The Online Grievance Monitoring System - MADAD - was launched in February 2015. It connects all Indian Missions. Previously, the MOIA was not able to resolve issues of migrant workers because they needed to be resolved by the Missions working under the Ministry of External Affairs. This portal attempts to resolve that conflict and provide timely assistance for registered grievances.<sup>76</sup>

66. See [www.iwrcuae.in/Core-Objective.aspx](http://www.iwrcuae.in/Core-Objective.aspx) (accessed on 12 March 2015)

67. Government of India Ministry of Overseas Indian Affairs Emigration Policy Division, Revised Indian Community Welfare Fund (ICWF) Scheme in Indian Missions abroad, [http://moia.gov.in/writereaddata/pdf/revise\\_icwf.pdf](http://moia.gov.in/writereaddata/pdf/revise_icwf.pdf) (accessed October 13, 2014), 1.3.

68. Ibid., 1.1.

69. Conversion based on April 12, 2015 conversion rates.

70. Ministry of Overseas Indian Affairs, Lok Sabha, Unstarred question 2326

71. Government of India Ministry of Overseas Indian Affairs Emigration Policy Division, Revised Indian Community Welfare Fund (ICWF) Scheme in Indian Missions abroad, [http://moia.gov.in/writereaddata/pdf/revise\\_icwf.pdf](http://moia.gov.in/writereaddata/pdf/revise_icwf.pdf) (accessed 13 Oct 2014), 1.3

72. Migration for Employment Convention, 1949 (No. 97), Article 1(a) and Annex I, Article 6. Note: At the time of writing, India has not ratified Convention No. 97 and is therefore not formally bound to uphold its provisions. See ILO Normlex, Ratifications for India, [www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_IBID:102691](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_IBID:102691).

73. Government of India Ministry of Overseas Indian Affairs, e-Governance, <http://moia.gov.in/services.aspx?Ibid1=85&Ibid=m2&Ibidp=85&mainIbid=73> (accessed 13 Oct 2014).

74. Ibid.

75. Ibid.

76. Ibid.

77. Emigration Act, supra note 21, Chapter II.

78. Ibid., Chapter I, Section 1(2).

79. Ibid., Chapter VIII, Section 42.

80. Rajan, supra note 3 at 4. 24.

81. Ibid.

82. Ibid., at 24 (citing Sections 16-21 of the Emigration Act, 1983 and Sections 11-14 of the Emigration Rules, 1983).

83. Ibid., at 20. Rajan argues that the creation of ECR/ECNR categories brings the former category under a protective regime while allowing the latter to emigrate freely.

84. Ibid.

85. Ibid.

86. Emigration Act, supra note 21, Chapter V, Section 22(1).

87. Under Rule 15 of the Emigration Rules, 1983, an employment agreement must provide for the following matters: (i) period of employment/place of employment; (ii) wages and other conditions of service; (iii) free food or food allowance provision; (iv) free accommodation; (v) provision in regard to disposal, or transportation to India, of dead body of the emigrants; (vi) working hours, overtime allowance, other working conditions, leave and social security benefits as per local labour laws; (vii) to-and-fro air-passage at the employers' cost; and (viii) mode of settlement of disputes. The Emigration Rules, 1983, SO 941(E), 30-12-1983 (as amended vide GSR 511(E), 9-7-2009), Rule 15(2)(i)-(viii).

88. Emigration Act, supra note 21, Chapter V, Section 22(3)(a)-(d).

## 3.2 Laws governing labour migration from India

### 3.2.1 Emigration Act and Emigration Rules

India regulates overseas labour migration through the Emigration Act and the Emigration Rules, 1983. The Emigration Act and its Rules, most recently amended in 2009, establish regulatory frameworks for emigration clearances and recruitment by agents and employers and define the role of the Protectors of Emigrants—the institutional body set up to advise and protect all migrants.<sup>77</sup> The law extends to the whole of India and applies to Indian citizens outside the country.<sup>78</sup> It does not apply to emigrants who are not citizens of India.<sup>79</sup>

Under the Emigration Act and its Rules, recruitment from India to labour-receiving countries takes place through a multi-layer transnational network.<sup>80</sup>

Authorized recruitment is formally initiated when an overseas employer issues a Demand Letter specifying detailed labour requirements and a Power of Attorney authorizing a recruiting agent to recruit workers from India—both attested by the relevant Indian embassy.<sup>81</sup> With increasing frequency, however, this process is initiated informally by local recruiting agents or agencies. Upon inspection of these documents, the Protector of Emigrants grants a recruiting agent permission to carry out recruitment.<sup>82</sup>

After obtaining permission to recruit, a recruiting agent is required to follow different procedures for migrants designated as “emigration check required” (ECR) passport holders and “emigration check not required” (ECNR) passport holders.<sup>83</sup> These categories are distinguished by the higher education status of the passport holder: under this classification scheme, labour migrants who have not matriculated from secondary school—usually those applicants working in the low-skilled and semi-skilled sectors—are considered in need of additional protection and are designated as ECR.<sup>84</sup> In either instance, registered recruiting agents can submit applications for emigration clearance on behalf of their recruits.<sup>85</sup>

### Emigration clearance

Under the Emigration Act, no citizen of India can legally emigrate without authorization from the Protector of Emigrants.<sup>86</sup> An application for emigration clearance may be made through the recruiting agent or the employer and requires the following elements: an authenticated copy of the employment agreement,<sup>87</sup> a payment receipt and a statement specifying how the costs of repatriation will be met if the applicant must return to India.<sup>88</sup> The Protector of Emigrants may also call for additional

documentation.<sup>89</sup> If satisfied by the contents of the application, the Protector of Emigrants may authorize emigration or, alternately, require the recruiting agent or employer to correct the application.

The Protector of Emigrants may reject an application for emigration only on the following grounds:

- » the terms and conditions of employment proposed by the applicant are discriminatory or exploitative;
- » the employment involves work that is unlawful according to Indian laws, offends public policy interests or violates norms of human dignity and decency;
- » the applicant will have to live or work in substandard conditions;
- » the circumstances in the country where employment is proposed go against the interests of the applying person to migrate;<sup>90</sup> and/or
- » no provision or arrangement has been made for meeting the expenses of repatriation if the need arises.<sup>91</sup>

Under the Emigration Act, orders from the Protector of Emigrants—whether rejecting applications for registration, requiring compliance with particular terms or conditions, calling for additional security or renewal by recruiting agents or employers, or denying emigration clearance in particular instances - are all subject to appeal.<sup>92</sup>

The Emigration Act prescribes penalties for facilitating emigration for employment that does not conform to the processes stipulated by the Act. Recruitment without valid certification by recruiting agents or employers, provision of false information or suppression of material information to labour migrants, collection of fees from an emigrant in excess of the limits prescribed under the Act and any other form of cheating are all subject to sanction.<sup>93</sup> The Act also prescribes penalties for violating conditions governing emigration clearance set out by the Protector of Emigrants.<sup>94</sup>

### Registration requirements for recruiting agents

Consistent with the standards set forth by the ILO Migration for Employment Convention,<sup>95</sup> India's Emigration Act requires recruiting agents to hold a valid certificate.<sup>96</sup> To legally register

89. Ibid.

90. Under the Emigration Act, 1983, the central government has the authority to prohibit emigration to any country in the interests of the general public. Grounds include the sovereignty and integrity of India, the security of India, friendly relations with any other country, outbreak of epidemics, civil disturbances, outbreak of hostilities, civil war, civil commotion, environmental pollution, or circumstances in which due to the absence of diplomatic relations, India cannot protect emigrants from discrimination, maltreatment, and exploitation. Emigration Act, supra note 21, Chapter VIII, Section 30-31.

91. Ibid., Chapter V, Section 22(5).

92. Ibid., Chapter V, Section 23(1)(a)-(d).

93. Ibid., Chapter VII, Section 24(1)(a)-(g), 24(4).

94. Penalties include imprisonment for a term up to two years and a fine that may extend to two thousand rupees. Second or subsequent offences under the same provision are punishable with double the penalty. When an offense is committed by a company, in addition to the company, every person in charge or responsible at the time the offense was committed is liable for the offense. All offenses under the Emigration Act, 1983, moreover, are cognizable. Ibid., Chapter VII, Section 24(1)(a)-(g), 24(5), 25(1), 26.

95. Migration for Employment Convention, 1949 (No. 97), Annex I, Article 3(3)(b). Note: At the time of writing, India has not ratified Convention No. 97 and is therefore not formally bound to uphold its provisions. See ILO Normlex, Ratifications for India, [www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_IBID:102691](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_IBID:102691) (accessed 6 Oct 2014).

96. Emigration Act, supra note 21, Chapter III, Section 10. The terms and conditions of a registration certificate are set out in Rule 10 of the Emigration Rules, 1983. The Emigration Rules, 1983, SO 941(E), 30-12-1983 (as amended vide GSR 511(E), 9-7-2009), Rule 10.

97. The central government may appoint the Protector General of Emigrants, or any officer of a higher rank, to be the registering authority for the purpose of registering recruiting agents under the Emigration Act, 1983. *Ibid.*, Chapter III, Section 9.
98. The rules governing the nature of the office premises that must be maintained by a recruiting agent are set forth in Rule 10(xv)(a)-(f) of the Emigration Rules, 1983. The Emigration Rules, *supra* note 29, Rule 10(xv) (a)-(f).
99. Emigration Act, *supra* note 21, Chapter III, Section 11. The procedure governing application for registration as a recruiting agent is set forth in Rule 7 of the Emigration Rules, 1983. The Emigration Rules, *supra* note 29, Rule 7.
100. Emigration Act, 1983, *supra* note 21, Chapter III, Section 11. Provisions governing security and return of security are set forth in Chapter VIII, Section 33 and 34 of the Emigration Act, 1983.
101. Terms and conditions of the certificate are set forth in Rule 10 of the Emigration Rules, 1983. The Emigration Rules, *supra* note 29, Rule 9.
102. Emigration Act, *supra* note 21, Chapter III, Section 12(c). Details of the records required are set forth in Rule 10(ix)(a)-(k) of the Emigration Rules, 1983. The Emigration Rules, 1983, *supra* note 29, 10(ix)(a)-(k).
103. A recruitment certificate is subject to cancellation or suspension due to the manner in which the certificate holder carries on business, deterioration in financial position, change in the facilities for recruitment, or determination that the certificate holder is not fit to continue holding a certificate. A certificate can also be cancelled if it is used to recruit emigrants for purposes prejudicial to the interests of India or for purposes contrary to public policy, or for any offense involving moral turpitude, violations of the Emigration Act, 1983, or any other law relating to passports, foreign exchange, drugs, narcotics or smuggling. Certificates renewed on the basis of misrepresentation or suppression or any material fact, and violation of any of the terms and conditions of the certificate also constitute grounds for cancelling recruitment permits. Finally, certificates can be cancelled by the central government in the interest of foreign relations or in the interests of the general public. *Ibid.*, Chapter III, Section 14(1)(a)-(g).
104. *Ibid.*, p. 21-24 (citing the Constitution of India, Article 6 and the Immoral Traffic Prevention Act, 1956, Section 2(f))

and receive a certificate,<sup>97</sup> a recruitment agent must apply for registration by establishing financial soundness, trustworthiness, premises and facilities for recruitment<sup>98</sup> and previous recruitment experience.<sup>99</sup> A recruitment agent is also required to provide a security bond before receiving a certificate.<sup>100</sup> A certificate of registration is valid only for a prescribed period of time but can be renewed.<sup>101</sup>

Recruiting agents who hold recruitment certificates are also required, under the Act, to maintain detailed records of financial transactions regarding the individuals they recruit or assist to emigrate, employers, contracts and any other arrangements in connection with recruitment.<sup>102</sup> The registering authority is empowered to suspend or cancel the registration certificates of recruiting agents for violation of the terms or conditions of the certificate.<sup>103</sup>

The 2009 Amendment to the Emigration Act enhanced the regulation of recruiting agents by mandating that holders of recruitment certificates advertise employment terms accurately, refrain from inducement or misrepresentation and file copies of all advertisements for recruitment with the Protector General of Emigrants immediately after their publication or release. They must also provide details of employment, including contract conditions, to the prospective emigrant before recruitment. In the country of employment, the recruiting agent is required to ensure that migrants are properly received, that employers do not alter the contract of employment and that travel and employment documents are renewed in a timely fashion and remain in the custody of the migrant worker.

### 3.2.2 Immoral Traffic Prevention Act

India's Constitution prohibits trafficking and forced labour, and the Immoral Traffic Prevention Act, 1956 is intended to combat trafficking and child sexual abuse.<sup>104</sup> Section 370 of the recently enacted Criminal Law (Amendment) Act (in 2013) uses the same definition of trafficking as the United Nations Palermo Protocol. The provision on trafficking under the Indian Penal Code can be used to prosecute traffickers in a range of contexts beyond trafficking for sexual exploitation, including exploitation in brick kilns, rice mills, farms, embroidery factories, mines, stone quarries, homes and carpet factories.

## 3.3 Bilateral and regional policies and agreements

The MOIA has articulated a commitment to negotiating bilateral agreements with various countries to protect migrant workers' rights. This commitment is based on the principle that "protection of emigrants against exploitation and abuse is not possible in the absence of commitment of the government of the host country."<sup>105</sup> Accordingly, beginning in 2004, the MOIA has signed MOUs with major labour destination countries aimed at bilateral cooperation to protect and promote the welfare of Indian emigrants.<sup>106</sup>

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Social security agreements are designed to help workers by exempting them from social security contribution in the case of short-term contracts; establishing pension exportability in case of relocation to the home country or a third country; and totaling contribution periods.<sup>107</sup> At the time of writing, India had social security agreements

in force with the Republic of Korea, Hungary, France, Belgium, the Netherlands, Luxembourg and Switzerland.<sup>108</sup> India also has social security agreements that are not currently in force with Austria, Canada, Finland, Germany, Japan, Norway, Portugal and Sweden.<sup>109</sup>

India has also signed a Labour Mobility Partnership with Denmark (not in force)<sup>110</sup> and MOUs with Bahrain, Jordan, Kuwait, Malaysia, Oman, Qatar, Saudi Arabia and the United Arab Emirates.<sup>111</sup>

Despite these initiatives, however, a Migrant Forum in Asia study reviewing those MOUs failed to find any evidence that the MOUs and agreements on labour migration have contributed to improved governance of labour migration between India and the destination countries or have significantly improved the protection of low-skilled Indian workers in the Gulf countries or Malaysia.<sup>112</sup> The study attributes these findings to the substance of most MOUs, which contain only general provisions and leave out major issues of governance and protection. However, India signed a landmark MOU with Saudi Arabia in 2014 aimed specifically at protecting the rights of Indian domestic workers. The MOU is noteworthy in establishing a standard employment contract and a mechanism to provide 24-hour assistance to domestic workers in distress.

In addition to bilateral agreements, India engages in the Colombo Process, a regional multilateral initiative launched by Asian labour-sending countries in 2003.<sup>113</sup> The aim of the Colombo Process is to provide a forum to share experiences, lessons and good practices on overseas employment, consult on issues impacting labour migrants in origin and destination countries, propose practical solutions for the

105. Government of India Ministry of Overseas Indian Affairs, Bilateral Co-operation for Protection and Welfare of Emigrants, <http://moia.gov.in/services.aspx?Ibid1=92&Ibid=m3&Ibidp=92&mainIbid=73> (accessed 13 Oct 2014).
106. *Ibid.*
107. Government of India Ministry of Overseas Indian Affairs, Bilateral Agreements, <http://moia.gov.in/services.aspx?Ibid1=92&Ibid=m3&Ibidp=92&mainIbid=73> (accessed 13 Oct 2014).
108. Government of India Ministry of Overseas Indian Affairs, Social Security Agreements, <http://moia.gov.in/services.aspx?Ibid1=92&Ibid=m3&Ibidp=92&mainIbid=73> (accessed 13 Oct 2014).
109. *Ibid.*
110. *Ibid.*
111. *Ibid.*
112. Piyasri Wickramasekara, Something is better than nothing: Enhancing the Protection of Indian Migrant workers through Bilateral Agreements and Memoranda of Understanding, Migrant Forum in Asia, 2012.
113. The Colombo Process is the short name for the Ministerial Consultation on Overseas Employment and Contractual Labour for Countries of Origin in Asia.

well-being of vulnerable overseas workers and review and monitor implementation of recommendations.<sup>114</sup> The 11 member countries of origin are Afghanistan, Bangladesh, China, India, Indonesia, Nepal, Pakistan, the Philippines, Sri Lanka, Thailand and Viet Nam; and the eight member countries of destination are Bahrain, Italy, Kuwait, Malaysia, Qatar, Republic of Korea, Saudi Arabia and the United Arab Emirates.<sup>115</sup> In 2011, the Dhaka Declaration recommended addressing the needs and concerns of vulnerable groups of migrant workers, especially women, domestic workers and low-skilled and low-wage workers.

**In 2011, the Dhaka Declaration recommended addressing the needs and concerns of vulnerable groups of migrant workers, especially women, domestic workers and low-skilled and low-wage workers.**

In 2014, the eighteenth summit of the South Asian Association for Regional Cooperation included migration on the agenda. Member States agreed to collaborate and cooperate on safe, orderly and responsible management of labour migration from South Asia to ensure the safety, security and well-being of migrant workers in destination countries outside the region.<sup>116</sup>

India also participated in the Global Forum on Migration and Development, a state-led, voluntary, non-binding and informal consultative process open to all United Nations member States and observer States. The Global Forum aimed to address the multidimensional aspects, opportunities and challenges related to international migration

and its links to development. It brought together government representatives from across regions to promote dialogue, cooperation and partnership and generate practical, action-oriented outcomes.<sup>117</sup>

The Global Forum developed a Compendium of Good Practice Policy Elements in Bilateral Temporary Labour Agreements. Elements relevant to bilateral treaties on contract migration include:<sup>118</sup>

- » sharing information on work opportunities and meeting the demand for and supply of workers;
- » enabling equal access to women in employment;
- » addressing irregular migration with arrangements for legal migration opportunities as one option to discourage irregular migration;
- » integrating monitoring and evaluation of migration process by both countries;
- » providing pre-departure language training, integration and cultural orientation;
- » promoting cooperation among countries of origin and destination to protect migrant workers in countries of destination;
- » facilitating possibilities for repeat migration;
- » providing social security and health benefits;
- » promoting immigrant rights in the societies of destination countries;
- » providing easy access to financial systems and enhancing financial transfers;
- » guaranteeing fair work and wage conditions; and
- » informing workers of legal migration opportunities and their rights and obligations.

## Chapter

# 4

# Difficulties in the migration journey

From April 2014 to February 2015, the labour outflow from India in just the emigration check required category was 738,327 workers—an increase of 96,971 from 2011. With millions of people working overseas and as the country with the largest remittance value in the world, India should work towards establishing a migration policy for protecting Indian labour migrants that is based upon international human rights standards.

Although countries have the sovereign right to develop their own policies to manage labour migration, international labour standards, instruments and guidelines should inform these policies so that they are coherent, effective and fair. According to ILO standards, migration policy should be developed through social dialogue, in consultation with workers' and employers' representatives; and cohere with employment and other national policies. Migration policy should promote decent, productive and freely chosen work

for all, within and outside India, so that migration is a choice rather than an imperative for vulnerable workers. With reference to international standards, this chapter documents abuses that labour migrants have experienced prior to departure from India, during transit or within destination countries.

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119. Ministry of Overseas Indian Affairs, 2013, p. 10.

120. Migration for Employment Convention (Revised), 1949 (No. 97) Art 1(a); Migration for Employment Recommendation (Revised), 1949 (No. 86); Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); Migrant Workers Recommendation, 1975 (No. 151); Employment Policy Convention, 1964 (No. 122).

121. ILO Convention No. 143 (Arts. 2.2, 4, 7, 12(a), 12(e) and 14(b)); ILO Convention No. 144, Recommendation No. 86 (Paragraphs 4.2 and 19); Recommendation No. 151 (Paragraphs. 4, 6(b), 7(1), 9, 14, 25(2) and 29).

114. Ibid.

115. Ibid.

116. South Asian Association for Regional Cooperation, Press Releases, 18th SAARC Summit Declaration, Nov. 27, 2014, [www.saarc-sec.org/press-releases/18th-SAARC-Summit-Declaration/121/](http://www.saarc-sec.org/press-releases/18th-SAARC-Summit-Declaration/121/) (accessed 11 Apr 2015).

117. Global Forum on Migration and Development, The GFMD Process, <http://www.gfmd.org/process> (accessed 11 Apr 2015).

118. Timothy and Sasikumar, 2012, citing Global Forum on Migration and Development, 2008, p. 50.

## 4.1 Pre-departure

### International standard

Regulate and supervise the activities of private agencies. (ILO Conventions No. 97, Annex I, Article 5(1) and No. 181, Article 8(1))

For many Indian migrant workers, the conditions that give rise to exploitation begin in India. At the pre-departure phase of migration, Indian migrant workers who pursue employment through recruitment agents are at risk of deception and exploitation. They may be subjected to misrepresentation of the nature and terms of work available, overcharged on recruitment fees, face delayed or cancelled departures and receive incorrect pre-departure documents.<sup>122</sup> Labour migrants may also be misled about the wages, working conditions and hours of work they will be required to perform.

For example, P. Raju, a 35-year-old worker who migrated to Saudi Arabia for employment as a construction worker in 2012, told SLD that the recruiting agent promised INR40,000 (US\$715)<sup>123</sup> per month. But upon reaching Saudi Arabia, he was not paid for the entire first year.<sup>124</sup> Similarly, R. Keshav reported being misinformed by a recruiting agent about the nature of work he would perform. He migrated to Kuwait to work as an agricultural labourer but upon arrival was made to work as a cleaner.<sup>125</sup>

Recognizing that for many labour migrants the conditions that make them susceptible to abuses begin in their home countries, ILO Conventions set forth

standards governing the pre-departure phase of the migration process. These standards explicitly address the conduct of individual brokers and recruiting agents. Under the Migration for Employment Convention (No. 97), a private recruitment agency must be given prior authorization from a competent state authority and operate under conditions prescribed by domestic law or relevant international instruments. Competent authorities are called upon to supervise the activities of private agencies that

**Recognizing that for many labour migrants the conditions that make them susceptible to abuses begin in their home countries, ILO Conventions set forth standards governing the pre-departure phase of the migration process.**

have been authorized to undertake recruitment. The Private Employment Agencies Convention (No. 181) requires States to adopt all necessary and appropriate measures, both within their jurisdiction and in collaboration with other States, to protect migrant workers who are recruited or placed by private employment agencies.

In 2015, the Ministry of Overseas Indian Affairs reported that there were 1,208 registered recruiting agents in the country across 19 states.<sup>126</sup> Although India's Emigration Act requires certification and legal registration of recruiting agents, these provisions fall short in their enforcement. To improve accountability in the regulation of recruitment, India should ratify ILO Convention No. 181 and put in place compliant regulations. These regulations should bring sub-agents under the ambit of regulation through clear terms of reference governing the relationship between visa

brokers, travel agents and recruiting agents;<sup>127</sup> regulate foreign education agents; and require all labour migrants to pay fixed emigration clearance and mandatory medical testing fees directly to the Protector of Emigrants. In addition and in consultation with organizations representing workers and employers, the Government should prepare a standard rate for the services provided by recruitment agencies and work towards a non-fee payment structure.

### 4.1.1 Deception regarding job conditions and entitlements

#### International standard

Ensure that migrants receive employment contracts. (ILO Convention No. 97, Annex I, Article 5(1) and Recommendation No. 86, Paragraph 13)

Labour migrants interviewed by SLD recounted stories of exploitation by individual brokers and recruiting agents during the pre-departure phase of their migration journey. These included deception about the availability of work, the nature of employment, wages, working conditions and hours of work.

According to MOIA reports, these are not isolated incidents. The MOIA Annual Report, 2012–13 noted that recruitment agents forge attestations of employment documents.<sup>128</sup> The MOIA pre-departure

manual for Yemen warns that Indian workers have often been misled by unscrupulous recruiting agents in India and sent to Yemen on visit visas without any proper employment contracts.<sup>129</sup>

ILO Convention No. 97 requires States to ensure that migrants receive employment contracts.<sup>130</sup> Clear and agreed-upon expectations between labour migrants, recruiting agents and employers in the host country are integral to protecting the rights of migrant workers. Accordingly, the Government of India should supervise private agencies and employers to ensure that labour migrants receive employment contracts before their departure or in a reception centre upon arrival in a destination country. Contracts should contain conditions of work and remuneration information. Competent state authorities are required to ensure that these conditions are enforced and that penalties are applied for violations. Consistent with these standards, under India's Emigration Act, a certified recruiting agent is required to provide details of employment, including contract conditions, to all labour migrants.

**Contracts should contain conditions of work and remuneration information. Competent state authorities are required to ensure that these conditions are enforced and that penalties are applied for violations.**

Despite these legislative provisions, however, labour migrants often have no formal enforceable agreements with the agents or their employer. Of the 25 migrants interviewed for this study, 23 had not received any sort of formal contract. Without employment contracts, it is nearly impossible for

127. Emigration Act, supra note 21, Chapter III, Section 10. The terms and conditions of a registration certificate are set out in Rule 10. Emigration Rules, 1983, SO 941(E), 30-12-1983 (as amended vide GSR 511(E), 9-7-2009).

128. Ministry of Overseas Indian Affairs, 2013, p. 21.

129. Ministry of Overseas Indian Affairs, 2011.

130. Migration for Employment Convention, 1949 (No. 97), Annex I, Article 5(1) and Recommendation No. 86, Paragraph 13.

131. SLD interview with returned worker in Hyderabad, 10 October 2014.

132. Private Employment Agencies Convention, 1997 (No. 181), Article 8 (1). India has not ratified the Private Employment Agencies Convention and is thus not formally bound to uphold its provisions. See ILO Normlex, C181- Private Employment Agencies Convention, 1997 (No. 181), [http://www.ilo.org/dyn/normlex/en/f?p=NOR\\_MLEXPUB:11310:0::NO:11310:P11310\\_INSTRUMENT\\_IBID:312326:NO](http://www.ilo.org/dyn/normlex/en/f?p=NOR_MLEXPUB:11310:0::NO:11310:P11310_INSTRUMENT_IBID:312326:NO) (accessed 6 Oct. 2014).

133. Emigration Rules, SO 941(E), 30-12-1983 (as amended vide GSR 511(E), 9-7-2009), Rule 10(xiv)(a)-(h). Recruiting agents are also required to file copies of all advertisements to the Protector General of Emigrants immediately after their publication or release.

134. Emigration Act, No. 31 of 1983, 10-9-1983, Chapter III, Section 12(b), 13. The rules governing the period of validity for a certificate and the process for renewal are set forth in Rule 9. Emigration Rules, SO 941(E), 30-12-1983 (as amended vide GSR 511(E), 9-7-2009).

135. SLD interview with returned nurse in Kerala, 5 October 2014.

136. Conversion based on average conversion rate for 2012 (INR47.77=US\$1).

137. SLD interview with returned migrant in Ernakulam, Kerala, 3 October 2014.

138. Ibid.

139. Ibid.

migrant workers to seek redress in instances of rights violations. As one returned worker in Hyderabad pointed out: *“I did not sign a contract or agreement letter before departure”*.<sup>131</sup>

### International standard

Prohibit private employment agencies from engaging in fraudulent practices (ILO Convention No. 181, Article 8(1)) and take action against misleading propaganda (Recommendation No. 86, Annex, Article 2)

The Private Employment Agencies Convention (No. 181) requires states to penalize or prohibit agencies that engage in fraudulent practices.<sup>132</sup> Under India’s Emigration Act, registered agents are only permitted to issue advertisements that are genuine and factually correct and are required to refrain from any inducement or misrepresentation.<sup>133</sup> To prohibit unregistered recruitment, the Emigration Act also prohibits employment of sub-agents.<sup>134</sup> Despite the prohibition of fraudulent practices, labour migrants routinely pay hefty fees to recruiting agents without receiving the benefits they were promised.

Migrants interviewed by SLD reported that upon arrival in destination countries, they did not get the support they were promised by the recruiting agent or agency. For instance, Ajay, a 30-year-old nurse from Kerala who migrated to the United Kingdom for employment in 2010 with the assistance of a Kerala-based recruiting agency, explained:

*“I felt the agency had cheated me. They promised that they had representatives in the*

*UK that would assist me to find a job. But once I reached the UK, the agency didn’t contact me. I tried to contact them for two months. They said they didn’t have a representative in the UK and that their job ended once I reached the host country. I struggled for eight months to get a part-time job.”*<sup>135</sup>

Rohit, 30 years old, also migrated to the United Kingdom seeking employment as a nurse. He paid INR450,000 (US\$9,419)<sup>136</sup> to a recruiting agency in Ernakulam, Kerala to cover his visa processing, admission and subsequent employment placement.<sup>137</sup> But upon arrival, he was left to fend for himself:

*“I went to the UK in October 2010 to do a one-year diploma course in health and social care. After that I planned to stay back and work for two years. The agency promised me that during the stay-back period I could find a sponsor or work visa that would help me convert my stay-back period into a permanent residence. The agency didn’t help me to get my permanent residency. I got no assistance, not even for finding a part-time job.”*<sup>138</sup>

When asked by SLD what information he had on the registration status of the recruiting agency, Rohit responded that he knew surprisingly little:

*“I didn’t have any idea about the registration status of the agency. I never thought to check any government website about the registration status of the visa procedure. I just learned about this agency through some friends. I was cheated by the agency. The course fees only accounted for half the amount they charged me—and the agency received commission from the college for my admission.”*<sup>139</sup>

Like Rohit, Geeta received false promises from a Kerala-based recruiting agency that she learned about through a newspaper advertisement. Geeta paid INR450,000 (US\$9,419)<sup>140</sup> for the work visa, airfare and the cost of a three-month German language course in Georgia. Then in March 2008, she left for Georgia from the Cochin Airport with a group of 41 nurses from Kerala.<sup>141</sup> Two months passed and the interviews did not start as promised. At that point, half of the nurses demanded that they be given their visa to Germany or be returned to India.<sup>142</sup> In response, the agency paid for their flight home—none of them received a visa to Germany.<sup>143</sup> Geeta explained:

*“In order to get a work visa for Germany, I was told by the agency to spend one year in Georgia so I could take a “bridging” or adaptation course and learn German. The agency said it would be much easier for me to migrate from Georgia to Germany. They promised me that they would arrange interviews with hospitals in Germany beginning in the second month I was in Georgia.”*<sup>144</sup>

After three months, the nurses who remained in Georgia were given short-term work visas to Germany. But within three months, upon expiration of the short-term visa, they, too, returned to Kerala. Geeta and the group of nurses who returned from Kerala had no formal contract or avenue to recourse and therefore sought informal solutions:

*“The agency claimed that they only promised a work visa and not a visa extension—so they said they had fulfilled the agreement. We didn’t get any money back so we protested in front of the agency office and put pressure on them through political and religious leaders. We never approached the police because we had no contract.”*<sup>145</sup>

To prevent deception regarding job conditions and entitlements, India should develop standard contracts as a part of MOUs with other countries. Additionally, the Government should establish e-contracts that can be filed with the MOIA e-governance procedures (accessible online) to prevent contract substitution in cases of breach.

**To prevent deception regarding job conditions and entitlements, India should develop standard contracts as a part of MOUs with other countries. Additionally, the Government should establish e-contracts that can be filed with the MOIA e-governance procedures (accessible online) to prevent contract substitution in cases of breach.**

## 4.1.2 Fees and costs levied by private employment agencies

### International standard

Prevent private employment agencies from charging fees or costs to workers (ILO Convention No. 181, Article 7(1–2) and Recommendation No. 86, Article 6 (4))

The Private Employment Agencies Convention (No. 181) calls for States to prevent private employment

140. Calculated according to average Indian rupee–US dollar exchange rate in March 2008.

141. SLD interview with returned nurse in Kozhikode District, Kerala, 9 October 2014.

142. Ibid.

143. Ibid.

144. SLD interview with returned nurse in Kozhikode district, Kerala, 9 October 2014.

145. Paoletti et al., 2014, p. 18.

agencies from charging, directly or indirectly, in whole or in part, any fees or costs to workers, except when representatives or organizations of employers and workers authorize exceptions for particular services provided by agencies.<sup>146</sup>

Under India's Emigration Act and its Rules, however, recruiting agents are authorized to accept payments from emigrants as long as they issue receipts. To prevent exorbitant charges by recruitment agents, the Government has fixed an upper limit for services charged, at INR20,000 (US\$315),<sup>147</sup> while prescribing that the service charge from the recruitment agency should be less than the wages for a 45-day period, based on what is offered in an employment contract.<sup>148</sup> Despite these attempts to regulate recruitment fees by authorizing payment to recruiting agents, the Emigration Act and its Rules violate ILO Convention No. 181.

All 25 returned migrants who were interviewed for this study had paid recruitment fees higher than the stipulated amounts. The high-skilled interviewees—nurses, such as Rohit—paid INR 597,814 (US\$9,419)<sup>149</sup> the highest reported among the sample group. The lowest amount reported by low-skilled construction workers was INR 80,000 (US\$1,260).<sup>150</sup>

### 4.1.3 Inadequate support to prepare for migration

#### International standard

Facilitate the departure, journey and reception of migrants for employment (ILO Convention No. 97, Article 4 and Recommendation No. 86, Paragraph 5)

The ILO Migration for Employment Recommendation (No. 86) requires States to facilitate the departure journey and reception of migrants for employment.<sup>151</sup> As recognized by the MOIA, Indian labour migrants, with the likely exception of white-collar workers, are particularly vulnerable to exploitation, even more so because they are often unaware of laws and procedures in place to protect them.<sup>152</sup>

The three Migrant Resource Centres active under the MOIA at the time of writing, along with the Overseas Workers Resource Centre in Delhi, are required to disseminate information on legal and humane migration opportunities and the risks involved in irregular migration.

These four centres, however, are insufficient in number to meet the needs of more than 700,000 workers who migrate for employment each year from different parts of the country. In addition, support centres are not always located in the main sending states (Table 5). In recent years, for instance, although there has been a surge in migration from Uttar Pradesh and Bihar, Migrant Resource Centres have not been set up in either state. Although telephone helpline services are designed to provide access to information in 11 regional languages for labour migrants who may not be able to physically reach a centre, at the time of this study, the helpline services were only available in Hindi, English and Punjabi languages.<sup>153</sup>

To meet the need for support services for an increasing

**Four Migrant Resource Centres are insufficient in number to meet the needs of more than 700,000 workers who migrate for employment each year from different parts of the country.**

number of labour migrants, some states, such as Rajasthan, are considering establishing Migrant Resource Centres with state funds. To facilitate access to the information migrants need to safeguard their rights, the MOIA should establish Migrant Resource Centres in each state and every city that has a major international airport.

**Table 5. Availability of Migrant Resource Centres and Protector of Emigrants offices in the top-five labour sending states (by number of registered emigrants per state)**

State	2010	2011	2012	POE office	MRC
Uttar Pradesh	747 041	140 826	191 341	Yes	No
Kerala	357 503	86 783	98 178	Yes	Yes
Andhra Pradesh	141 138	71 589	92 803	Yes	Yes
Bihar	63 096	71 438	84 078	No	No
Tamil Nadu	21 241	68 732	78 185	Yes	No

Note: POE=Protector of Emigrants; MRC=Migrant Resource Centre.  
Source: Ministry of Overseas Indian Affairs, Annual Report 2012-2013, Table B, pp. 54–55.

Finally, although the MOIA has initiated awareness campaigns since 2007, the thematic focus and investment in these campaigns is insufficient to fill the information void that leaves labour migrants particularly vulnerable. As shown in Table 6, the amount allocated for pre-departure orientation and skill upgrading of emigrant workers in 2013–14 was an alarmingly low US\$10,000—the smallest budget allotment of all MOIA schemes and programmes.

MOIA budget allocation reveals the Ministry's priorities. In total, Centres, Labour Mobility Partnerships, Legal Assistance to Women Facing Problems in Marriages and the Pre-departure Orientation and Skill Upgrading of Emigrant Workers—programmes designed to help labour migrants—were allocated a combined budget of US\$4.85 million in 2013–14. By contrast, one Pravasi Bhartiya Divas event aimed at overseas citizens, diaspora communities and non-resident Indians received budgeting of US\$8 million.

**MOIA budget allocation reveals the Ministry's priorities.**



**Table 6. MOIA budget allocation, by scheme, 2013–14**

MOIA schemes	Actual 2013–14	Budget estimate 2013–14	Revised estimate 2013–14	Budget estimate 2014–15
Labour Mobility Partnerships	0.00	0.05	0.00	0.05
Pre-departure Orientation and Skill Upgrading of Emigrant Workers	0.00	0.05	0.00	1.00
Overseas Indian Centres	3.76	4.00	3.73	4.86
India Centre Migration	0	5.00	0	4.00
Legal Assistance to Women Facing Problems in Non-resident Indian marriages	0.06	0.75	0.53	1.00
Plan Scheme for Skill Development for Overseas Employment				20.00
Total other schemes	30.19	57.88	36.88	79.62
Celebration of Pravasi Bhartiya Divas	9.75	8.00	10.50	13.00

Note: Figures given in millions US dollars.  
Source: Ministry of Overseas Indian Affairs, 2013.

Although ongoing information dissemination is needed to reach the millions of Indian workers who migrate for employment, MOIA awareness campaigns currently run for only 45–60 days per year. Awareness programmes should inform migrants of their rights and entitlements in India and destination countries and should provide up-to-date information on national laws, policies and regulations relating to migration. The content of the awareness programmes, however, falls short of these objectives. Table 7 presents the current thematic focus of MOIA programmes and recommendations for future campaigns.

**Table 7. Thematic focus of MOIA awareness campaigns and recommendations for future campaigns**

Current thematic focus	Recommended future focus
Problems faced by emigrant workers in the legal emigration process	<ul style="list-style-type: none"> <li>Rules governing recruitment to ensure safe migration</li> <li>Importance of retaining receipts of service from recruiters and employment contracts</li> <li>Support for labour migrants available through Migrant Resource Centres and the Protector of Emigrants</li> <li>Provisions of the Pravasi Bharatiya Bima Yojna</li> </ul>
Sector-based focus <ul style="list-style-type: none"> <li>Migration for employment as housemaids</li> <li>Non-resident Indian marriages</li> </ul>	<ul style="list-style-type: none"> <li>Migration for employment as construction workers</li> <li>Nurses who enroll in study-abroad programmes based on false promises of employment</li> </ul>
Resources <ul style="list-style-type: none"> <li>Overseas Workers Resource Centres</li> <li>Helpline (1 800 11 3090)</li> </ul>	<ul style="list-style-type: none"> <li>Indian Embassy emergency contacts in destination countries</li> </ul>

Source: Ministry of Overseas Indian Affairs, 2013, p. 38.

To fill these critical gaps, the MOIA should increase its budget allocation for pre-departure orientation and awareness campaigns. Information campaigns should widely publicize all information and resources available to labour migrants, using print and multimedia strategies designed to reach labour migrants at various skill levels. In particular, these campaigns should widely publicize the importance of contracts in protecting the rights of labour migrants and make contract consultations accessible to labour migrants during pre-departure trainings and within Migrant Resource Centres. Pre-departure orientation should be mandatory, and orientation modules should be accessible online for skilled workers as well as in resource centres.

## 4.2 In destination countries

### International standard

Ensure necessary assistance during the initial settlement period (ILO Convention No. 97, Annex I, Article 6)

Under the Migration for Employment Convention (No. 97), migrants are to be provided assistance to safeguard their welfare during their journey to the destination country and initial settlement period.<sup>154</sup> Consistent with this standard, India's Emigration Act requires Protectors of Emigrants to inquire with migrants about the treatment they received during transit and in the destination country.<sup>155</sup>

**India's Emigration Act requires Protectors of Emigrants to inquire with migrants about the treatment they received during transit and in the destination country.**

To align labour migration with sector-specific needs in the destination country, employment arrangements usually restrict migrant workers' right to move between employers in the destination country. This restricted mobility increases the vulnerability of labour migrants to rights abuses, including

fundamental changes in the nature or conditions of promised work, non-payment of wages, confiscation of identity documents, unsafe working conditions, inadequate rest and inhumane housing conditions.<sup>156</sup> In more extreme cases, migrant workers are exposed to verbal, physical and sexual abuse and suffer severe health consequences and even death from work-related causes.<sup>157</sup> In some cases, abuses may amount to labour trafficking, forced labour and debt bondage.<sup>158</sup> It is also not uncommon for migrant workers to be unable to access compensation and other remedies.<sup>159</sup>

**In some cases, abuses may amount to labour trafficking, forced labour and debt bondage.**

SLD documented a range of problems that Indian labour migrants had experienced in destination countries, including physical and psychological abuse, labour exploitation, violations of their freedom of movement and denial of food, health care and adequate living conditions. In some cases, these abuses amounted to forced labour or trafficking. Although facing a potential range of problems, each labour migrant interviewed was particularly vulnerable because they were isolated from assistance or protection within the host country.

### 4.2.1 Wage related rights abuses

#### International standard

Protection of wages (ILO Conventions No. 97, Article 6 (1); No. 181, Articles 11–12; No. 111 Article 1 (a); No. 26, Article 4(1),(2) and No. 95)

Consistent with ILO standards requiring that workers are informed of the conditions of their employment with respect to wages and otherwise protected from wage abuse, as a condition of emigration clearance, the Emigration Act and its Rules require an employment contract that states the wages to be paid.<sup>160</sup>

**As a condition of emigration clearance, the Emigration Act and its Rules require an employment contract to states the wages to be paid.**

Despite these provisions, workers interviewed by SLD reported that they received less money than initially agreed upon with recruiting agents and, in some cases, reported not receiving wages at all. Migrant workers also reported routine arbitrary wage deduction and late payment.<sup>161</sup> The hardship of delayed and withheld wages is heightened for labour migrants (and their families) who, when they begin their jobs overseas, are often burdened with debt accumulated to pay recruiting agents and other fees.

**The hardship of delayed and withheld wages is heightened for labour migrants (and their families) who, when they begin their jobs overseas, are often burdened with debt accumulated to pay recruiting agents and other fees.**

As previously noted, P. Raju, who migrated from Kerala to Saudi Arabia to work in construction, was not paid for an entire year:

*"I did construction work. I worked from 3 in the morning until 9 in the evening. I worked six*

*days a week. Not only was I not paid for any overtime work, I wasn't paid for a full year. I was only given food. I was threatened that if I didn't work I would not even get daily food. Whenever I would ask for payment, the owner of the company, who was a Saudi, would hit me."*<sup>162</sup>

After one year, P. Raju was finally able to leave Saudi Arabia after his wife filed a complaint with the police in India. But he never received any compensation—from the recruiting agent, employer or the Indian or Saudi Arabian government.<sup>163</sup> In fact, P. Raju was only able to return after his wife collected funds for his return ticket.<sup>164</sup>

R. Manish, a 32-year-old worker from Telangana, also worked as a construction worker in Saudi Arabia for months at a stretch without receiving compensation:

*"I worked eight months without salary. They told me that the salary would be given to us every three months. Every time I went to them to ask for my salary they would say, "Next month." I worked like this for eight months. Then I decided to confront them, and for four or five days I didn't go to work. After that he gave me INR100,000. Then I worked for another nine months without payment. The next time, when I asked for my money, he didn't pay."*<sup>165</sup>

In total, R. Manish received INR100,000 (\$1,600) for 17 months of work. The minimum referral wage published by the Embassy of India in Saudi Arabia is 1,000 rial (\$265) per month. According to this rate, R. Manish was entitled to a total of \$4,530 for his 17 months of work. Instead, he received 41 percent of

160. Emigration Act, 1983, Section 22 and Emigration Rules, 1983, Rule 15.

161. See also Amnesty International, *Exploited Dreams: Dispatches from Indian Migrant Workers in Saudi Arabia*, July 2014, p. 44 ("Seventeen of the 51 migrants Amnesty International India interviewed reported facing problems with the payment of their wages—including wages being arbitrarily deducted, underpayment, late payment and even non-payment").

162. Society for Labor and Development's interview with returnee worker, Mehaboob Nagar, Telangana, 7 October 2014.

163. Ibid.

164. Ibid.

165. Ibid.

the wages to which he was entitled: “When I asked for my money,” he reported, “I was beaten and abused.”<sup>166</sup> The Government of India has made efforts to establish minimum wages in destination countries. Although there is no statutory system of minimum wages in the labour market of most Gulf countries, a few Indian missions have put in place a system of minimum referral wages for all categories of workers that takes into account working conditions, cost of living, inflation and local employment market conditions in a host country (Table 8).<sup>167</sup>

Although there is no statutory system of minimum wages in the labour market of most Gulf countries, a few Indian missions have put in place a system of minimum referral wages for all categories of workers that takes into account working conditions, cost of living, inflation and local employment market conditions in a host country.

**Table 8. Monthly minimum wages for construction, masonry/technical labour and agriculture in Kuwait, Saudi Arabia and the United Arab Emirates**

MOIA schemes	Kuwait	Saudi Arabia	United Arab Emirates
Construction	KD60 INR12 720	SAR1 000 INR16 500	AED1 200 INR 20 160
Masonry/technical labour	KD70 INR14 840	SAR1 000 INR 16 500	AED1 500 INR 25 200
Agriculture	KD70 INR14 840	SAR1 000 INR 16 500	AED950 INR 15 960
Domestic work	KD60 INR 12 720	SAR1 000 INR 16 500	AED1 100 INR 18 480

Note: KD=Kuwait dinar; INR=Indian rupee; SAR=Saudi Arabia rial; AED=United Arab Emirates dirham. Source: MOIA, 2014

Although the wage calculations given in Table 8 are available on the MOIA website, none of the workers interviewed by SLD reported knowing this information. Typically, given their passports just hours before their flights departed, they reported finding out the actual rate of their minimum wage contracts when they saw the stamp on their visas - usually a mere fraction of what they had been promised.

## 4.2.2 Excessive work

### International standard

Protect labour migrants from excessive work (ILO Conventions No. 1, No. 30 and No. 181, Articles 11–12).

Almost all the workers interviewed by SLD said they were required to work for excessively long periods—sometimes up to 18 hours a day. For instance, R. Manish, who migrated for employment to Saudi Arabia to work in construction, reported working from 5 in the morning to midnight.<sup>168</sup> P. Raju, the 35-year-old worker who also migrated to Saudi Arabia to work in construction, not only worked excessive hours but also suffered severe and lasting health consequences as a result:

*“We were made to work from 3 in the morning until 9 or even 10 or 11 at night. We worked six days a week. Now I cannot hear properly. Due to the long and continuous hours at the construction work site, I have nearly lost my hearing.”*<sup>169</sup>

Such extended working hours, commonly reported by workers who migrate for employment to Saudi

Arabia—across industries—far exceed the eight-hour maximum prescribed by Saudi Arabia’s labour law. These working hours also violate Saudi Arabia’s obligations under the ILO Weekly Rest (Industry) Convention (No. 14) and the ILO Weekly Rest (Commerce and Offices) Convention (No. 106).

## 4.2.3 Occupational hazards

### International standard

Protect the occupational health and safety of labour migrants and ensure compensation in case of occupational accidents or diseases (ILO Recommendation No. 151, Paragraphs 20–21).

The ILO Migrant Workers Recommendation (No. 151) requires States to take all appropriate measures to prevent any special health risks to which migrant workers may be exposed and ensure that migrant workers receive training and instruction in occupational safety and hygiene.<sup>170</sup>

Workers subjected to long working hours, with few breaks, in hazardous professions are at particular risk of injury. R. Manish, a labour migrant from Telangana who travelled to Saudi Arabia to work in construction, was crippled when he fell from the third story of a building where he was working:

*“I was working and I fell from the third floor. I begged for medical help. I called Khalif, the supervisor but he did not take me to a doctor.”*

168. Society for Labor and Development interview with returnee worker, Mehaboob Nagar, Telangana, 9 October 2014.

169. Society for Labor and Development’s interview with returnee worker, Mehaboob Nagar, Telangana, 8 October 2014.

170. Migrant Workers Recommendation, 1975 (No. 151). India has not ratified Recommendation No. 151 and is thus not formally bound to uphold its provisions. See ILO Normlex, Migrant Workers Recommendation, 1975 (No. 151), www.ilo.org/dyn/normlex/en/f?p=NORMLEX\_PUB:12100:0::NO:12100:P12100\_ILO\_CODE:R151 (accessed 6 Oct. 2014).

166. Ibid.

167. Business Standard, Problem of Salary for Indian Workers in Gulf Countries, Dec. 11, 2014, www.business-standard.com/article/government-press-release/problem-of-salary-for-indian-workers-in-gulf-countries-114121101190\_1.html (accessed January 13, 2015).

*He hit me with his black belt instead. Later, a man who worked with me took me to the hospital. But because of delay in care, the lower part of my body is now useless. I lost [the use of] my legs and my manhood.”<sup>171</sup>*

Abused and refused medical treatment by his employer and isolated from his family and community, R. Manish relied upon the support of the men he worked with to obtain medical attention and return to India.<sup>172</sup>

India has policies in place to insure migrant workers in cases of injury. The Pravasi Bharatiya Bima Yojna (PBBY) is a compulsory insurance scheme through the MOIA that is available to all documented migrant workers aged 18 to 60. The PBBY guidelines require insurance companies to cover hospitalization and reimburse medical expenses during the coverage period (Table 9), whether in India or in the country of employment.

**Table 9. Services covered under the Pravasi Bharatiya Bima Yojna insurance guidelines**

Minimum insurance in case of death or disability	INR1000 000 (\$15 750)
Hospitalization/medical expenses (covering injuries/sickness/ ailment/diseases)	INR75 000 (\$1 181)
Repatriation coverage for medically unfit	One-way economy class airfare
Family hospitalization in India	INR50 000 (\$788)
Attendant	INR25 000 (\$394)
Maternity	INR25 000 (\$394)
Legal expenses	INR30 000 (\$473)
Repatriation in case of death	Body transport and airfare for one attendant

Note: Conversion based on average conversion rate for 2014 (INR63.47=US\$1).  
Source: MOIA website. [http://moia.gov.in/pdf/p\\_b\\_ywef\\_%201\\_4\\_8.pdf](http://moia.gov.in/pdf/p_b_ywef_%201_4_8.pdf)

171. SLD interview with returned migrant in Mehaboob Nagar, Telangana, 9 October 2014.

172. Ibid.

Despite these provisions, none of the 25 workers interviewed by SLD—all covered by the mandatory PBBY enrolment—knew that they had paid a mandatory premium and were entitled to file insurance claims. Accordingly, none of the workers who reported incurring expenses due to injury or sickness had filed any claims.

In fact, beyond the sample of labour migrants interviewed by SLD, filing claims through the PBBY is extremely rare. In response to a Right to Information petition filed by SLD, the MOIA reported that between 2011 and 2014, less than 4 per cent of PBBY beneficiaries filed claims (Table 10). Even when claims are filed, the frequency with which compensation is awarded is low.

**Table 10. Monthly minimum wages for construction, masonry/technical labour and agriculture in Kuwait, Saudi Arabia and the United Arab Emirates**

Year	No. of policy holders	Claims filed	Amount disbursed
2011–12	689 057	242 (3.5% of beneficiaries)	INR148 690 032 (US\$2.34 million)
2012–13	842 687	221 (2.6% of beneficiaries)	INR167 331 762 (US\$2.63 million)
2013–14	836 054	247 (2.9% of beneficiaries)	INR181 445 500 (US\$2.85 million)

Note: Conversion based on average conversion rate for 2014 (INR63.47=US\$1).

Source: S.T. Selvi, First Appellate Authority/Protector General of Emigrants, MOIA, response to Right to Information application (of 15 November 2014), 19 December 2014.

## 4.2.4 Physical, psychological and verbal abuse

### International standard

Provide equal protection under the law for migrants facing physical, psychological and verbal abuse (ILO Convention No. 97, Article 6)

Labour migrants interviewed by SLD reported experiencing verbal, psychological and even physical abuse from employers overseas—criminal conduct in most if not all destination countries. Dependence upon an employer to remain in the country, they reported, heightened their susceptibility to abuse. For instance, Renu, a 40-year-old nurse from Kottayam, Kerala, who migrated for employment to the United Kingdom faced verbal abuse from her employer.

T. Rajanna migrated to Kuwait to work as an agricultural labourer but ended up working as a cleaner for 12 to 14 hours a day. He experienced physical, psychological and verbal abuse from his employer. When he complained, he was beaten:

*“I worked six days a week and received only money for food every month. When I complained, I was beaten. After two or three times, I stopped asking for my wages.”*<sup>173</sup>

Physical, verbal or psychological abuse, when combined with non-payment of wages, withholding of documents or threat of deportation, amounts to forced or other forms of coercive labour.

## 4.2.5 Forced and compulsory labour

### International standard

Suppress the use of forced or compulsory labour (ILO Conventions No. 29 and No. 105)

The ILO Forced Labour Convention (No. 29), ratified

by India in November 1954,<sup>174</sup> and the ILO Abolition of Forced Labour Convention (No. 105), ratified by India in May 2000,<sup>175</sup> (both currently in force) obligate ratifying States to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.<sup>176</sup> The Forced Labour Convention defines forced labour as “all work or service extracted from any person under the menace of penalty and for which the said person has not offered himself voluntarily”.<sup>177</sup> The Convention applies to forced or compulsory labour for the benefit of individuals, companies or associations. This definition has two components: involuntary entry and menace of penalty.

**The Forced Labour Convention defines forced labour as “all work or service extracted from any person under the menace of penalty and for which the said person has not offered himself voluntarily”.**

In the context of labour migrants, involuntary entry may include instances in which migrants are subjected to fundamental changes in the nature or conditions of work or made to work involuntarily through the confiscation of their identity documents.

As clarified by the ILO supervisory body, the penalty structure that binds migrant labourers in forced labour situations does not need to be in the form of penal sanction and may take the form of loss of rights or privileges.<sup>178</sup> Labour migrants may face various penalties, including non-payment of wages, verbal, physical and sexual abuse or threats of deportation. Forced labour cannot, however, be equated with low wages or particular working conditions.<sup>179</sup> Workers interviewed by SLD described a range of situations

in which they were under “menace of penalty”. This included threats, physical violence and physical confinement in the workplace.

P. Raju, the 35-year-old worker from Telangana who migrated to Saudi Arabia to work in construction, worked 19 to 20 hours a day for no remuneration. He learned about employment in Saudi Arabia through a broker who lived in his community. P. Raju’s nightmare began when he reached Riyadh. Working under a supervising contractor for an unknown employer, P. Raju worked around the clock without pay:

*“On the day I arrived, I was taken to a room. There were five people in the room who had arrived before me. They took us by van to the worksite each day. We would work from 3 in the morning until 10 or 11 in the night—every day. We were given meals twice a day, but that was it. We had no money to buy anything additional from the market. It was a prison we were living in. I saw my dreams dying. I went there to earn money but ended up as a bonded labourer. It was shocking and terrifying.”*<sup>180</sup>

Isolated by his employer, P. Raju did not know where to turn for help:

*“I had no idea what options were available to me. I didn’t know whom to contact. The agent cheated me. My wife saved my life.”*<sup>181</sup>

P. Raju was rescued when his wife appealed to the Migrants Rights Council. The union worked with her to report the recruiting agency to the police in India and raise INR50,000 (US\$800) for his return flight.

In 2014, C. Rajendra, an agricultural worker from Telangana, paid INR100,000 (US\$1,600) for his visa

to migrate to Iraq to work in construction. He arrived in Baghdad and was immediately confined:

*“When I reached Bagdad, I found no one had come to pick us up. We called the Mumbai recruitment office and they told us to wait until morning. We had no money to buy food or water. The bathroom doors at the airport were locked. There were 15 of us. Twenty-four hours later a man came to pick us up. We were taken to a room that was 10 feet by 12 feet. Twelve of us were kept in that room. We were given cow meat to eat even though it is forbidden for Hindus by our religion. We had to eat it. There was nothing else. I soon became ill.”*<sup>182</sup>

C. Rajendra didn’t know the name of his employer:

*“We worked for a contractor; I didn’t even know the contractor’s name. I did construction work for 14 hours each day. I was never paid for any overtime work. I worked all seven days. There was no rest day for us. We were not paid. They said they would pay us later. There was no one whom we could complain to.”*<sup>183</sup>

C. Rajendra also said he and the other workers were given little food, despite their long hours of work. Not even knowing where he was, C. Rajendra was unable to seek help:

*“Our employer gave us a very small portion of food twice a day. The food given to us was not adequate. The quality of food was not satisfactory. Some of us even fainted due to inadequate food. A worker from another country was seriously injured. He was beaten up for asking for more food. After that, we didn’t ask for it. We had no idea where we were. We had no freedom to move around. We didn’t know anything in that area.”*<sup>184</sup>

180. Ibid.

181. Ibid.

182. SLD interview with returned worker in Mehaboob Nagar, Telangana, 8 October 2014.

183. Ibid.

184. Ibid.

C. Rajendra and the other workers at the site where he was held were finally rescued, four months later, when Narayan Swamy from the Migrants Rights Council filed a petition in the Hyderabad High Court calling for the Indian Government to repatriate all labour migrants in Iraq due to military conflict taking place there.<sup>185</sup> As recounted by C. Rajendra, Indian embassy officials located him and other workers in remote areas of Iraq, evacuated them with the support of military protection and ensured their safe return to India.<sup>186</sup>

Patterns of unfavourable work conditions, frequently amounting to forced labour, led the Government of India to suspend emigration clearance to Iraq in June 2014. In a statement in the Lok Sabha in July 2014, Minister of External Affairs Sushma Swaraj said that most of the Indians deployed in Iraq were stranded due to the non-renewal of their visa by their employers, expiry of their residents permits and refusal by Iraqi company holders to return their passports.<sup>187</sup> Workers who lose their legal standing are often functionally stranded and thereby even more susceptible to abuse.

The illegal practice of employers taking away workers' passports is widespread in the Gulf countries and in Malaysia. From January 2011 to June 2014, the Indian Missions in Riyadh and Jeddah in Saudi Arabia received 16,297 complaints from migrants pertaining to confiscation of their passports by employers and non-possession of a valid employment contract.<sup>188</sup>

## 4.2.6 Denial of freedom of

## association and collective bargaining

### International standard

Confer equal treatment to immigrants as to nationals with respect to membership of trade unions and enjoyment of the benefits of collective bargaining (ILO Conventions No. 97, Article 6; No. 87 and No. 181 call for States to ensure that workers recruited by private agencies are not denied access to their rights and entitlements, including rights to freedom of association and collective bargaining)

Under Article 6 of the Migrant Workers Convention, States must confer equal treatment to immigrants as to nationals regarding membership in trade unions and enjoyment of the benefits of collective bargaining. The Migrant Workers Convention is supported by the Freedom of Association and Protection of the Right to Organize Convention, requiring States to take appropriate measures to ensure that workers can freely exercise their right to organize. Article 98, protect workers against acts of anti-union discrimination. Moreover, the Private Employment Agencies Convention calls for States to ensure that workers recruited by private agencies are not denied access to their rights and entitlements, including the rights to freedom of association and collective bargaining.<sup>189</sup>

Migrant workers who attempt to take collective action overseas may suffer severe consequences for exercising these rights. In November 2014, for instance, more than 100 migrant workers from

Bangladesh, India, Nepal and Sri Lanka were detained in Qatar after a three-day strike by 800 workers protesting in response to receiving half the wages they were promised in their employment contract—600 Qatari riyal (QR) (US\$165) per month as opposed to the QR1,200 (US\$330) stated in their contracts.<sup>190</sup>

Even though these violations of international standards take place in destination countries, India can safeguard workers' rights by negotiating with the governments of destination countries to protect workers' rights to freedom of association. Rather than encouraging workers to associate to protect their rights at work, however, the MOIA pre-departure training manual for Saudi Arabia currently warns

**India can safeguard workers' rights by negotiating with the governments of destination countries to protect workers' rights to freedom of association.**

against collective solidarity, instructing: "Do not strike at work or resort to agitations." These instructions are consistent across all pre-departure training manuals, even when migrants are preparing to travel to countries that allow unions.<sup>191</sup>

## 4.2.7 Limited social security protections for migrants

## in destination countries

### International standard

Migrants are to be given treatment by destination countries no less favourable than that which applies to their own nationals in respect of social security (subject to limitations) (ILO Convention No. 97, Article 6). States should address the specific problems encountered by migrant workers with regard to social security by creating reciprocal obligations between countries that allow workers to claim social security provisions afforded at home while working in a host country (ILO Conventions No. 118 and No. 157).

Under the Migration for Employment Convention, migrants are to receive treatment by destination countries no less favourable than that which applies to its own nationals regarding social security benefits, subject, however, to a few limitations.

The MOIA has signed 20 social security agreements with 18 countries (mostly European), 11 of which are in force.<sup>192</sup> Existing agreements safeguard migrants against paying double social security contributions, total contributions and ensure that benefits are exportable.

Additionally, the MOIA introduced the Mahatma Gandhi Pravasi Suraksha Yojna, a pilot pension and life insurance scheme, in May 2012. The scheme aimed to encourage overseas Indians to invest in

190. Middle East Eye, "More than 100 migrant workers may be deported after Qatar strike", 26 November 2014, [www.middleeasteye.net/news/over-100-migrant-workers-threatened-deportation-after-three-day-strike-qatar-2081152951](http://www.middleeasteye.net/news/over-100-migrant-workers-threatened-deportation-after-three-day-strike-qatar-2081152951) (accessed 13 Jan. 2015).

191. Ministry of Overseas Indian Affairs, [http://moia.gov.in/writereaddata/pdf/pr\\_dep\\_ksa.pdf](http://moia.gov.in/writereaddata/pdf/pr_dep_ksa.pdf) (accessed 12 April 2015), p. 9.

192. Ministry of Overseas Indian Affairs, "Social security agreements", <http://moia.gov.in/services.aspx?lbid1=92&lbid=m3&lbidp=92&mainlbid=73> (accessed 13 Oct. 2014); Press Information Bureau, 2015.

193. Ministry of Overseas Indian Affairs, 2013, p. 10.

194. Ministry of Overseas Indian Affairs, Lok Sabha, Unstarred Question No. 1627, answered on 3 December 2014 by Shetty Shri Gopal Chinayya, MOIA.

195. Migrant workers Convention, 1975 (No. 143) and Migrant Worker Recommendations, 1975 (No. 151); Private Employment Agencies Convention, 1997 (No. 181), Article 10. India has not ratified either Convention or the Recommendation and is thus not formally bound to uphold their provisions. See ILO Normlex, C181- Private Employment Agencies Convention, 1997 (No. 181), [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310\\_INSTRUMENT\\_IBID:312326:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310_INSTRUMENT_IBID:312326:NO) (accessed 6 Oct. 2014).

196. 197 A recruitment certificate, whether issued to a recruiting agent or an employer, is subject to cancellation or suspension due to the manner in which the certificate holder carries out the business, deterioration in financial position, change in the facilities for recruitment or determination that the certificate holder is not fit to continue holding a certificate; recruitment of emigrants for purposes prejudicial to the interests of India or for purposes contrary to public policy; conviction by the certificate holder for any offence involving moral turpitude, or under the Emigration Act, 1983, or any other law relating to passports, foreign exchange, drugs, narcotics or smuggling; renewal of the certificate on the basis of misrepresentation or suppression or any material fact; violation of any of the terms and conditions of the certificate; or the opinion of the central government that it is necessary in the interest of foreign relations or in the interests of the general public to cancel the certificate. With any of the above causes, the registering authority may suspend a certificate and require the certificate holder to show cause as why the suspension should be revoked pending a final decision on cancellation. Emigration Act, 1983, No. 31 of 1983, 10-9-1983, Chapter III, Section 14(d). Emigration Act, 1983, No. 31 of 1983, 10-9-1983, Chapter III, Section 14(1)(a-g), 14(2), 14(3).

old-age pensions, save for old age and obtain life insurance coverage against unnatural death.<sup>193</sup> In the first year (2012–13), however, enrolment was low: a total of 1,276 workers enrolled in the scheme—470 workers were enrolled from India and 806 workers were enrolled from overseas locations.<sup>194</sup>

## 4.3 Upon return to India

### 4.3.1 Prosecuting offenders

#### International standard

In case of a dispute, the worker shall have the possibility of presenting a case to a competent body, either on their own or through a representative (ILO Convention No. 143, Article 9(2)); Recommendation No. 151, Paragraph 341 and Convention No. 181, Article 10)

Under the Migrant Workers Convention and Recommendation (No. 151), a migrant worker must be granted equality of opportunity and treatment, including to access representation in case of a dispute. Under the Private Employment Agencies Convention (No. 181), the State must ensure adequate machinery and procedure to investigate complaints, abuses and fraudulent practices by

private employment agencies.<sup>195</sup>

To access justice in cases of rights violations, migrant workers must know their rights and the grievance redressal mechanisms in place to safeguard their rights. Workers interviewed by SLD were neither aware of their rights nor of the role of the Protector of Emigrants in safeguarding their rights.

**To access justice in cases of rights violations, migrant workers must know their rights and the grievance redressal mechanisms in place to safeguard their rights.**

Workers interviewed for this study who approached a Protector of Emigrants, with assistance from a trade union or civil society organization, did at times find supportive responses. Even when assisted, however, the common inability to show receipts of transactions with employment agencies or agents created a barrier to initiating legal proceedings.

Despite provisions under the Emigration Act for prosecuting recruiting agents,<sup>196</sup> of the 722 complaints registered against recruiting agents between 2012 and February 2015, only 96 had their licenses suspended and a mere 57 had their licenses revoked.<sup>197</sup> In 2013, prosecution sanctions against recruitment agencies were issued in just five cases.<sup>198</sup> The Emigration Act also contains provisions for cancelling recruitment by abusive employers,<sup>199</sup> but to date, only 511 employers have had their recruitment certificates cancelled.<sup>200</sup>

### 4.3.2 Failure to provide accurate information regarding return

#### International standard

Provide migrants and their families with accurate information and advise migrants on matters relating to return to the country of origin. Provide facilities for migrants and their families with regard to the fulfillment of administrative formalities and other steps to be taken in connection with the return to the country of origin, should the case arise (ILO Recommendation No 86, Paragraphs 5.2 and 5.3).

ILO Migration for Employment Recommendation (Revised) (No. 86) calls upon States to assist migrants and their families by providing them with accurate information on matters relating to all stages of the migration process, including upon their return to their country of origin and by fulfilling the necessary steps in connection with the return.

In India, the task of assisting returned migrants rests mainly with the state governments.<sup>201</sup> The MOIA has

**In India, the task of assisting returned migrants rests mainly with the state governments.**

advised state governments that the existing state and central sector schemes should be used for assistance. Currently, however, the MOIA does not have any scheme supporting state governments to assist workers returning from overseas.<sup>202</sup>

In 2014, the MOIA evacuated 6,977 workers from Iraq and 3,200 workers from Libya.<sup>203</sup> Upon their return to India, no further information or assistance was provided to them—although many of them, as recounted previously, had experienced rights violations ranging from withheld wages to physical abuse and forced labour.

197. Ministry of Overseas Indian Affairs, Lok Sabha, Starred Question No. 309, answered on 18 March 2015, Annex I, [http://164.100.47.132/Annexure\\_New/lsq16/4/as309.htm](http://164.100.47.132/Annexure_New/lsq16/4/as309.htm) (accessed 12 April 2015).

198. Ministry of Overseas Indian Affairs, 2013.

199. A court convicting a certificate holder for any offence under the Emigration Act, 1983 may also cancel the certificate. Chapter IV, Section 20 of the Emigration Act applies the conditions listed in Section 14, specifying grounds for cancelling a certificate issues to a recruiting agent or to an employer who holds a recruitment certificate. Suspension of a certificate for convictions under the Emigration Act or any other law relating to passports, foreign exchange, drugs, narcotics or smuggling requires the offence to carry a sentence of imprisonment for not less than six months. Emigration Act, 1983, No. 31, 10-9-1983, Chapter III, Section 14(d). Emigration Act, 1983, No. 31, 10-9-1983, Chapter III, Sections 14(1)(a-g), 14(2), 14(3).

200. Ministry of Overseas Indian Affairs, 2013.

201. Ministry of Overseas Indian Affairs, Lok Sabha, Unstarred Question No. 2035, answered on 23 July 2014 by Premachandran Shri N.K.

202. Ibid.

203. Press Information Bureau, 2015.

# Conclusion and recommendations

## 5.1 Conclusion

Labour migrants face significant difficulties at all stages of their migration journey due to gaps in legislation, insufficient enforcement of laws and lack of information about their rights. In destination countries, Indian embassies and consulates do not have the mandate or capacity to support migrants in distress.

The current legal framework governing migration in India does not regulate recruitment sub-agents, study-abroad programmes represented as employment opportunities or informal migration channels. Recruitment agencies are monitored loosely, if at all, and are rarely held responsible for failure to comply with policies designed to keep migrants safe. Well-drafted schemes, such as the Pravasi Bharatiya Bima Yojna and the Mahatma

Gandhi Pravasi Suraksha Yojna, are both under utilized and largely ineffective due to lack of enrollment, the small number of migrants who make claims and failure to process claims that do arise.

Charged with safeguarding the interests of labour migrants, the MOIA is still limited in its role of protecting migrants in destination countries. The funding allocations within the MOIA reveal a focus on programming for the diaspora community more than for labour migrants. It is not surprising, then, that information campaigns undertaken by the MOIA are insufficient to meet the needs of the millions of vulnerable workers who migrate for employment each year.

These deficits are exacerbated by insufficient involvement of workers' organizations, unions and employers' organizations in shaping safe migration policy. In spite of these harsh realities, international migration from India continues to grow.

## 5.2 Emigration Management Bill

In an attempt to remedy these deficits, the MOIA has introduced the Emigration Management Bill in Parliament. Table 11 highlights provisions of the proposed bill and their potential to address many of the challenges cited in this report.

**Table 11. Key provisions in the proposed Emigration Management Bill**

Challenges	Proposed legislative solutions
Ineffective enforcement of existing laws and policies	<p>Bolsters existing enforcement mechanisms that rely upon the Protector General and Protectors of Emigrants with the creation of the Emigration Management Authority—an institution headed by a chairman and managed by two full-time members and one part-time member (selected by the Cabinet Secretary).</p> <p>Appoints a grievance-redress authority that is tasked with hearing grievances arising out of recruitment, emigration and overseas employment under the Act. The grievance authority should hear and dispose of complaints within a specified time. Its orders should be binding.</p> <p>Strengthens penal provisions by regulating human smuggling and exploitation of labour migrants. Provisions criminalize the production and possession of fake and fraudulent travel and other documents to help curb illegal emigration and human smuggling. Maximum penalties have been enhanced from two to five years imprisonment and from INR2 000 to INR100 000. In cases in which women or minors have been exploited, imprisonment cannot be less than five years and fines cannot be less than INR100 000.</p>



**Table 11. Key provisions in the proposed Emigration Management Bill (contd.)**

Challenges	Proposed legislative solutions
Regulating sub-agents and study abroad programmes	<p>Brings sub-agents (currently illegal but prevalent) and travel agents under regulation by permitting recruiting agents to engage sub-agents subject to compliance with certain standards.</p> <p>Brings all recruiting agents, whether recruiting low- or high-skilled workers, under regulation.</p> <p>Requires agencies enrolling Indians for programmes of study at foreign education institutions or providing enrollment consulting services to register with the Emigration Management Authority.</p> <p>Establishes performance standards and a system for regularly monitoring and periodically rating recruitment agencies and employers. Poor ratings lead to cancellation of registration certificates and accreditation. Rating will be placed in the public domain to inform potential migrants.</p>
Provide pre-departure orientations and benefits of welfare schemes designed to safeguard labour migrants.	<p>Enables the formulation of welfare, insurance and skill development schemes.</p> <p>Enables expansion of pre-departure orientation programmes.</p>
Ensure international standards in protecting labour migrants	Enables implementation of bilateral agreements, MOUs and international treaties governing migration.

Source: Ministry of Overseas Indian Affairs discussion of the Emigration Management Bill, Ministry of Overseas Indian Affairs, Annual Report 2012–2015, p. 21.

## 5.3 Recommendations

The measures outlined in Table 13 do not address all of the challenges highlighted in this report. The following recommendations address additional gaps in existing migration policy and suggest solutions. These recommendations are designed to use in advocacy to strengthen the Emigration Management Bill when it is opened for comments.

### Develop a comprehensive policy on migration focused on migrant rights, in consultation with workers’ and employers’ organizations:

- » Draft new legislation based on a comprehensive policy.
- » Invite comments and recommendations from relevant government stakeholders, workers and civil society organizations, trade unions and employer representatives.
- » Remove barriers to employment of working-age women. Lift prohibitions that restrict women’s freedom of movement; encourage migration through formal regulated and safe channels.

### Ratify ILO and United Nations Conventions that pertain to protecting the rights of labour migrants, including but not limited to:

- » Migration for Employment Convention, 1949 (No. 97)
- » Migration for Employment Recommendation, 1949 (No. 86)
- » Migrant Workers Convention (Supplementary Provisions), 1975 (No. 143)
- » Recommendation for Migrant Workers Convention, 1975 (No. 151)
- » Private Employment Agencies Convention, 1997 (No. 181)
- » Protection of Wages Convention, 1949 (No. 95)
- » Minimum Wage Fixing Convention, 1970 (No. 131)
- » Maintenance of Social Security Rights Convention, 1982 (No. 157)

- » United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990

**Coordinate action between all concerned ministries and government stakeholders, including but not limited to the Ministries of Overseas Indian Affairs, External Affairs, Home Affairs and Labour and Employment, Women and Child Development.**

### Improve accountability in the regulation of recruitment:

- » Ratify ILO Private Employment Agencies Convention (No. 181) and establish compliant regulations.
- » Register all recruitment agents and agencies.
- » Bring sub-agents under the ambit of regulation. This should include clear terms of reference governing the relationship between visa brokers, travel agents and recruiting agents.
- » Bring foreign education agents under regulation.
- » In consultation with organizations representing workers and employers, prepare a standard rate for the services provided by recruitment agencies and work towards a non-fee payment structure.
- » Require all labour migrants to pay fixed emigration clearance and mandatory medical testing fees directly to the Protector of Emigrants.
- » Develop standard contracts as part of the MOUs with other countries.
- » Promote e-contracts to prevent contract substitution.
- » Monitor and grade agencies according to performance and make this information accessible to migrants.

### Provide information to labour migrants about provisions in place to ensure safe migration:

- » Increase the MOIA budget allocation for pre-departure orientation and awareness campaigns.
- » Widely publicize all information and resources available to labour migrants using print and multimedia strategies designed to reach

- labour migrants at various skill levels.
- » Publicize the importance of contracts in protecting the rights of labour migrants. Make contract consultations accessible to labour migrants during pre-departure trainings and within migrant resource centres.
- » Establish migrant resource centres in each state and every city that has a major international airport.
- » Ensure that toll-free helplines are operative in regional languages.
- » Make pre-departure orientation mandatory.
- » Design information campaigns to reach labour migrants at various skill and literacy levels.
- » Include resources available upon return and to support reintegration.

#### **Expand the outreach of pre-departure trainings:**

- » Build the capacity of trade unions and civil society organizations to conduct outreach and training in areas where there are high levels of overseas migration for employment.
- » Conduct destination and sector-specific training.
- » Involve returned migrants in pre-departure trainings at the community level.
- » Make pre-departure orientation modules accessible online for skilled workers as well as in workers centres.

#### **Inform labour migrants about resources available to assist them in destination countries:**

- » Establish help desks for Indian labour migrants at the airports in destination countries. Help desks should be equipped to provide information on legal processes, social security benefits and other entitlements and helpline numbers should be available in the destination country. Require migrant workers to report to the help desk before leaving the airport.
- » Uphold the rights of migrant workers to join unions and engage in collective bargaining during MOU negotiations with destination

countries. Register unions or associations with Indian embassies and provide this information to migrants upon arrival in the destination country and upon request.

#### **Efficiently and promptly intervene and resolve claims and disputes that arise at all stages of migration:**

- » Increase the capacity for Indian embassies to support labour migrants in distress. Ensure that each Indian embassy has expertise on labour migration by assigning a labour attaché.
- » Ensure that each Indian embassy has expertise on intervening to end forced and compulsory labour.
- » Establish toll-free helplines operated by embassies in major destination countries. Helplines should receive complaints, provide legal assistance, facilitate access to medical services and give information on visa renewal and exit visas.
- » Establish more Indian Worker Resource Centres.
- » Initiate collaboration with unions and civil society organizations in destination countries to secure the rights of labour migrants. Maintain updated information on unions and associations at embassies in destination countries.

#### **Support the right to freedom of association and the right to organize:**

- » Encourage membership in unions.
- » Inform migrants about unions upon arrival in destination countries.
- » Negotiate to include the fundamental right to freedom of association during MOU negotiations with destination countries.

#### **Collaborate with other sending countries at the bilateral, regional and international levels to confer greater rights for migrant workers in countries of destination:**

- » Sign partnership agreements with destination countries in consultation with workers' and employers' representatives protecting the rights of labour migrants.

- » Sign partnership agreements establishing minimum wages with destination countries in consultation with workers' and employers' representatives. Set minimum wages based on destination countries' minimum wage levels. Ensure wages are linked to skills and not based on nationality.
- » Participate in regional and international migration dialogues.

#### **Develop a minimum social security protection floor:**

- » Analyse the failure of the Mahatma Gandhi Pravasi Suraksha Yojna and take steps to establish a social security scheme for migrant workers.
- » Link existing schemes or create new schemes to ensure the social security benefits of workers overseas.
- » Negotiate with destination countries to provide portable social security benefits in collaboration with workers' and employers' representatives.

#### **Provide humane and necessary assistance to labour migrants and their families in instances of injury or death:**

- » Assist labour migrants in accessing insurance policies. Track registration and assist migrants to make claims under the Pravasi Bharatiya Bima Yojna scheme.
- » Provide necessary support to injured workers and their families and families of deceased workers.
- » Support families calling for an inquiry into the cause of injury or death in the destination country.
- » Maintain a public register of Indian workers who have been injured or killed in foreign countries, including the cause and circumstances of their death.

#### **Ensure efficient and prompt intervention to prevent, suppress and prosecute trafficking and other crimes against migrant workers:**

- » Systematically train Protectors of Emigrants and all branches of the criminal justice system, including police, public prosecutors and judicial

officers to identify and prosecute trafficking.

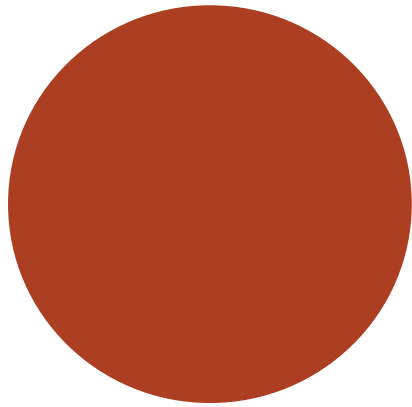
- » Lift restrictive gender-based migration prohibitions that restrict women's freedom of movement. Encourage migration through formal, regulated and safe channels.
- » Within redress mechanisms, address the practical needs of vulnerable migrant workers, including women. Assess the impact of socio-economic position, sex and education level on migrant workers' ability to make claims for redress. Amend procedures to reduce disparities in access.
- » Increase international, regional and bilateral cooperation to address trafficking and other crimes.
- » Ensure that each Indian embassy has expertise on intervening to end forced or compulsory labour.

#### **Provide relevant information to migrants upon their return to India:**

- » Provide returning migrants information on employment opportunities in India.
- » Establish schemes for reintegration for migrants who return in distress.

#### **Encourage data collection and analysis pertaining to the rights of labour migrants:**

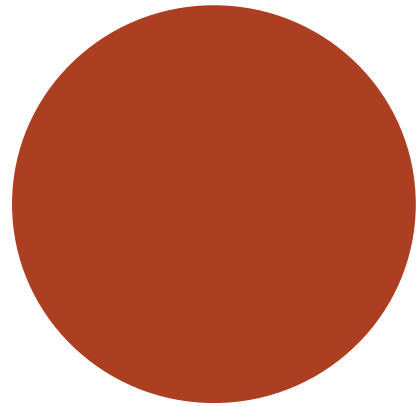
- » Collect data on migrants overseas in the national census.
- » Collect data from returning migrants through the National Sample Survey Office or other surveys.
- » Collect and centralize data from Indian embassies regarding types of complaints filed against parties in destination countries, services provided and outcomes for migrant workers.



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# Annex Questionnaires

Note to research team: Please use these questions as a guide to reveal key issues. Feel free to ask additional questions as needed.

## 1. Returned migrant worker questionnaire

### I. Basic information

- » Name:
- » Age:
- » Sex:
- » Location of interview:
- » Date of interview:
- » In what other countries have you worked?
- » What type of work did you do?
- » Where do you live?
- » What level of education have you completed?
- » Do you have any training or professional skills? What are they? What training have you undertaken?
- » Who are the earners in your family?

### Employment specifics

- » In each country overseas where you have worked, what type of work did you do?
- » What were the dates of employment/approximate dates of employment?

### Knowledge of Indian migration system

- » Have you heard of a Protector of Emigrants?
- » Have you ever interacted with a Protector of Emigrants in India?
- » Have you interacted with any other government officials?

## II. Pre-departure

- » Actors
- » How did you find out about possibilities to migrate for employment?
- » Did you ever work with an agent?
- » If so, how were you introduced to this agent?
- » What services did they provide?
- » What did they charge?
- » Did you seek employment overseas through a recruitment agency?
- » Have you engaged more than one agency?
- » If so, what was the name of the agency or agencies you worked with?
- » How did you learn about this agency?
- » Did you know whether the agency/agent is registered with the government?
- » If yes, how did you know whether or not they were registered?
- » Did their registration status inform your decision to work with them?

### Obtaining a visa

- » What type of visa did you hold?
- » What did you know about this visa?
- » Did you apply to work as a “free visa” worker?
- » Did you know this form of employment is illegal/irregular?

- » Did you enter into an agreement with the agency?
- » How much were you charged for a visa? Were you charged for anything else?
- » How did you get the money to pay this amount?
  
- » Did you take a loan? If so,
  - Who did you take a loan from?
  - What were the terms of the loan?
  - Have you repaid this loan? How much have you paid?
  
- » Did you apply to work with a particular sponsoring employer? If yes,
  - Were you informed of the type of job you would do?
  - Were you given the name of the employer?
  - Did you know the number of workers being recruited for this employer?
  - Were you told how much you would earn? If so, how much did the recruiter tell you that you would earn?
  - Were you told anything about the accommodation you would receive? What were you told?
  - Were you told anything about getting a food allowance? What were you told?
  - Were you shown a sample employment contract?
  - Were you informed that your insurance would be done as a part of the visa process? If yes, how much amount charged for insurance and what were the provisions of the insurance policy?

### **Government of India support or engagement**

- » Did you interact with any government officials or departments while applying for or obtaining a visa? If yes, whom did you interact with? What happened?
- » Do you know about any agreements between the Indian Government and destination governments that to protect the rights and safety of migrant workers?
- » Do you know about any agreements between the Indian Government and destination governments to provide social security?

### **Orientation or training programmes**

- » Did anyone give you any information about leaving India to work in another country?
- » Who informed you?
- » What information were you given?
- » How did you go about getting the necessary documents and permissions to migrate for employment?

- » Were you informed about the social norms, practices, beliefs in the destination country?
  - Who informed you?
  - What was the information?
  - Was this information proved helpful?
  
- » Were you informed of/advised not to join the union or any other organization in the destination country? If yes,
  - Who informed you?
  - Was this information helpful?
  - Were you member of any union in India before going to other country?

## **III. Transportation and entry**

- » How did you travel to the receiving country?
- » How did you pay for this travel?
- » Do you know if you entered the country legally?
- » Did anyone meet you when you first arrived?
  - Who met you?
  - Where did they take you?
  - Did you get work documents and residency documents?
  - How long were you in the country before you received work and residency documents?
  - Who gave them to you?
  - Did you have to pay for these?
  - Was the payment what you were told you would have to pay?
  - Was it more? Was it less?

## **IV. In the destination country**

### **Finding employment**

- » When you reached the destination country, where were you first employed?
- » What work did you do?
- » How did you find this employment?
- » Did a sponsor assist you in finding employment?
- » Did you have to pay rent or a fee to a sponsor?

- » If so, what was the amount of the fee? How frequently did you have to pay?

### Conditions of employment

- » What were the conditions of your employment?
- » What wages were you promised?
- » What wages were you paid?
- » How frequently were you paid?
- » Were you paid the wages you were promised?
- » How many hours did you work each day?
- » How many days a week did you work?
- » Did your working conditions have any impact on your health? If so, what impact did it have?
- » Were you ever engaged in any employment that you didn't agree to voluntarily? If so,
  - Why did you do this work?
  - Were you afraid not to do this work? Why?
  - Did you face any threats?
  - Did you face any penalties?

### Living conditions

- » Where did you live? How did you pay for this living arrangement?
- » What did you eat? How did you pay for food? Where did you purchase your food?
- » What expenses did you have?
- » Did you expect to have these expenses based upon your understanding of the employment agreement?
- » Did you send remittances home?
- » How did you send remittances?
- » What were the costs involved?

### Rights violations

- » What identity documents did you need in the host country? (Inquire about proof of identity, passport, and residence papers.)

- » Did you have your identity documents with you at all times?
- » Did anyone ever take your identity documents? If so,
  - Who took your identity documents?
  - Did you give them up voluntarily? Were they taken from you? What were the circumstances in which they were taken?
  - Where were they held?
  - How did not having documents affect the choices you could make in the host country?
  - Were you able to get your documents returned?
- » Were you ever threatened by your employer, or told that if you did not do something there would be a consequence? If so,
  - What was the threat?
  - Who threatened you?
  - How did this change your behaviour?
  - Were you ever threatened that you would be taken to the police or the immigration agencies?
- » Did you accumulate any debt?
- » How did you access food?
- » Were you able to access enough food?
- » Were you ever verbally abused? (called names, humiliated?)
- » Were you ever physically abused or beaten?
- » Were you ever sexually abused? If so,
  - Who was the perpetrator of the abuse?
  - What exactly happened? (If there is abuse identified, clearly identify the abuser and the timeline)
  - Where did this take place?
  - Was there any precipitating event?
  - Was this an isolated incident? Was this a recurring incident? If so, with what frequency were you abused?
  - Did you seek help?
    - ◊ If so, who did you seek help from? Were you able to get assistance?
    - ◊ If not, why didn't you seek help?

### Support overseas

Note to interviewer: here, we are interested in hearing a story of who if anyone played a role in supporting them overseas if they were in distress.

- » If you needed help overseas, whom did you go to for help?
- » Did anyone help you?

- » Did you have any interaction with the Indian embassy?
- » If so, was it accessible?
- » Did you receive any help?
- » Did you have any interaction with any civil society organization overseas? If yes,
  - How did you hear about this organization?
  - Did you reach out to them?
  - Why did you reach out to them?
  - Where they able to help you?
  - What type of help or services do they provide?
- » Did you have any interaction with any unions or workers' associations overseas?
  - How did you hear about this organization?
  - Did you reach out to them?
  - Why did you reach out to them?
  - Where they able to help you?
  - What type of help or services do they provide?

### **Detention and incarceration**

- » Were you ever detained?
- » Were you ever incarcerated? If so,
  - Who detained or incarcerated you?
  - What were the events leading up to your detention or incarceration?
  - Where were you detained or incarcerated?
  - On what grounds were you detained or incarcerated?
  - When you were you initially detained or incarcerated? For how long were you detained or incarcerated?
  - Were you able to access any legal support or other assistance? How were you able to get legal support or assistance?
  - How did you get out of detention or incarceration?

## **V. Return to India**

- » When did you return to India?

- » Why did you return to India?
- » If you returned in a crisis situation, did anyone assist you to return?
- » What documentation did you need to return to India?
- » Did you need an exit visa?
- » How did you secure this documentation?
- » If you returned in a crisis situation, did anyone assist you to return?
- » What documentation did you need to return to India?
- » Did you need an exit visa?
- » How did you secure this documentation?
- » Are you in debt or were you in debt when you first returned? If so,
  - Who are you indebted to?
  - How much do you owe?
- » Do you feel that your agent or broker upheld the agreement you made before leaving? If no,
  - What were the violations?
  - Did they take place in the host country or once you returned?
  - Have you considered seeking any legal remedy or recourse?

### **Remedies in India**

- » Do you know what remedies are available under the law?
- » Have you heard of the Protector of Emigrants?
- » Did you report any of the problems you faced abroad to the police in India?
- » Have you contacted any civil society organizations, workers associations or unions for support?
- » Have you contacted anyone else for support?
- » If you reached out for support,
  - How did you hear about this organization?
  - Did you reach out to them?
  - Why did you reach out to them?
  - Where they able to help you?
  - What type of help or services do they provide?



## 2. Government official questionnaire (Protectors of Emigrants, Ministry of Overseas Indian Affairs Officials, Indian Embassy Officials)

Note to research team: There are Protector of Emigrants offices in Chennai, Cochin, Hyderabad, Thiruvananthapuram, Chandigarh, Kolkata, Mumbai, New Delhi and Jaipur

- » Name:
- » Name of the department/ministry organization:
- » Position of the interviewee:
- » Location of interview:
- » Date of interview:
- » What services do you administer to protect migrant workers?
- » What training have you received on how to support migrant workers seeking remedy for rights violations?
- » What other government or administrative bodies do you work most closely with?

### Training programmes

- » Are there any pre-departure training programmes that run in your area?
- » Are you involved in these trainings?
- » Have you ever attended any of these programmes?
- » If yes to any of the above,
  - Which organization or department organized the training?
  - What did the training module cover?
  - Do you know how regularly trainings are conducted?
  - Where are trainings conducted? Is this a convenient location for labour migrants?
  - How many workers typically attend training?
  - What proportion of those who attend are men? What proportion of those who attend are women?
- » Do you think that such pre-departure training programmes are helpful for migrant workers?

- » What are the strengths of existing training programmes?
- » What can be done to improve existing training programmes?

### Strengths and challenges

- » What do you think is the greatest strength in your ability to support workers who report grievances?
- » What do you think is/are some of the greatest challenges you face in supporting workers who report grievances?
- » Can you give an example of the strongest intervention you have been able to make?
- » Can you give an example of a time when you were not able to intervene successfully? And why.
- » What would you recommend to ensure greater protection for labour migrants from India?

### Civil society engagement

- » Have you worked with any civil society organizations, unions or workers associations?
  - If yes, can you describe the ways in which you have worked together?
  - How did you initiate collaboration? Who reached out? In which context did they reach out?
  - Did you work together once pertaining to a particular issue or case? If so, what was the outcome? Alternately, is this an ongoing collaboration?
- » Are there roles for unions and civil society organizations in supporting migrant workers?
- » If not, why not?
- » If yes, do you have suggestions for ways that the government can engage unions and civil society organizations?

### 3. Union questionnaire (for Indian union officials)

Note to research team: Please also use this questionnaire to structure interviews with civil society organizations or other non-government actors working to support migrant workers.

- » Name:
- » Name of the organization:
- » Position:
- » Location of interview:

#### Introductory information

- » How long you have been associated with this organization?
- » What does your organization do?
- » What is your position in this organization?
- » Do you engage with migrant workers? If so, what is your engagement?
- » Do you have membership among the workers who have migrated to other countries?
- » Do you maintain contact with the workers who have migrated abroad? If yes, how?

#### » Set of Questions:

- Have you ever interacted with a Protector of Emigrants in India?
- Have you engaged with Indian embassy officials on behalf of labour migrants?
- Have you engaged with police on behalf of labour migrants? (Either in India or in destination countries?)
- Have you interacted with any other government officials on behalf of labour migrants?
- Have you or are you engaged in any legal processes to recover any losses faced by labour migrants?

If yes to any of the above

- What was the exact position of the official?
- Where did you meet them?
- Why did you interact with the Protectorate of Emigrants or any other government official? Was it regarding the case of a particular worker? If so, what are the basic facts of the case? Do you have any documents on file about this issue that you would be willing to share?

Please describe the interaction (how many times did you meet, what was the duration of the meeting, was the official interested in helping you).

- What was the outcome of this interaction?
- What were the strengths of this interaction?
- What were the challenges or room for improvement?

» Do you collaborate with any other unions or civil society organizations either in India or abroad? If so,

- Is this a formal or informal collaboration? What are the terms of the collaboration?
- How do you work together? Do you work together systematically or on a case-by-case basis?
- Have you had successes with this approach? Please describe.
- What challenges have you faced?

Note to research team: If it is determined from the opening questions that involvement with labour migrants is minimal, it may not be necessary to ask the following questions.

#### Training programmes

- » Do you know about any pre-departure training programmes that run in your area?
- » Have you ever attended any of these programmes?
  - If so, which organization or department designed and facilitated the training?
  - What did the training module cover?
- » Have you ever been asked to develop, give input or run pre-departure training programmes? If so,
  - Which organization or department approached you?
  - Why do you think they approached you?
  - Did you provide input? Were your suggestions incorporated into training?
  - Have you been contacted more than once by this department or others for input?
- » What are the strengths of the pre-departure programmes that you have attended or helped to develop?
- » Are there some training programmes that are stronger than other? What are key differences?
- » What are some of the challenges in delivering effective training?
- » What strategies do you employ to overcome these challenges?

#### Recruitment of migrant workers

- » Have you been approached by workers who are looking for employment overseas?

- » What are the forces that drive workers to migrate for employment in the area (geography and industry) where you work?
- » What are the primary sources of information on overseas employment for workers you come into contact with?
- » What factors influence their choice of where to migrate for employment?
- » In the area where you work, do workers typically migrate with the assistance of recruiting agents? If so,
  - Do workers engage directly with recruiting agents? Are there intermediaries involved?
  - Are recruiting agents in your area registered? Do you know how many registered agents there are? Do you have an estimate of the proportion of recruiting agents that are not registered? What is this estimate based upon?
  - How do recruiting agents operate in your area?
  - Are there other channels that they commonly use to secure jobs and visas?
  - Could you estimate the proportion of workers that migrate through these formal channels?

### Employment overseas

- » What are the primary destinations for workers from your area (consider industry and geography)?
- » What types of jobs are most common overseas? Are workers actually employed in the areas they are told they will be hired?
- » Do you know about the types of working conditions? If so, please describe.
- » Note to research team: If they have information in the following areas, please inquire about the following:
  - Payment of wages (timeliness, amount promised, etc.)
  - Working hours (number of hours a day, number of hours a week)
  - Health impact of particular types of employment
  - Living conditions
  - Ability to move between employers
  - Workplace accidents and access to medical care in such cases.
- » Do the workers you encounter frequently overstay the duration of their visa?

### Remedy in cases of rights denial

- » Have you been approached by migrant workers who have returned to India in distress? If so,
  - How many cases have you handled?
  - What are issues that you see? (Example: financial exploitation, deception by recruiters, physical, psychological, verbal or sexual abuse, uncompensated injury)
  - How have you been involved?

Note to research team: If they are involved in taking cases, please ask for particular case studies.

- » Request any documentation they have and collect basic facts of the case.
- » Inquire about the rights denied and the remedy sought.
- » Create a timeline of the abuse and the process of seeking a remedy that includes dates and locations.
- » Did they engage government officials or seek remedies through informal channels? Who did they work with?
- » What was the outcome?
- » What were the strengths in this process?
- » What were major challenges? How did they overcome these challenges?

### Advocacy and government engagement

- » Are you engaged in any advocacy around migration practices or policies?
- » If so, what issues do you focus on?

Note to research team: In particular, please ask about any advocacy initiatives in the following areas: bilateral social security agreements, insurance, protection overseas, right to association, engagement of Indian embassies in supporting workers, return for injured workers, repatriation when workers die overseas.

- » Have you advocated on individual cases?
- » What government agencies have you engaged? (Central agencies, state agencies, embassies?)
- » Have you advocated with more general demands?
- » With whom have you raised these issues? What has the response been?
- » What advocacy strategies have you used? (Example: MOUs, campaigns, government sensitization)

### Recommendations

- » Do you have any suggestions for improving India's migration policies and programmes to support migrant workers?

Note to research team: Please ask this as an open-ended question first. If they have no initial response, please move through the phases of migration and ask for specific suggestions (pre-departure, transit, destination, return).







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