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PROTECTING INDIAN EMIGRANT WORKERS: AN EVALUATION OF THE EMIGRATION ACT, 1983 IN LIGHT OF PROPOSED REFORMS AND INTERNATIONAL LABOUR STANDARDS

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Abstract

Migration for overseas employment has become an important socio-economic phenomenon in India, particularly for workers seeking better opportunities in Gulf countries and other foreign destinations. Indian emigrant workers contribute significantly to the national economy through remittances; however, they frequently face exploitation, unsafe working conditions, wage discrimination, human trafficking, and lack of legal protection abroad. The Emigration Act, 1983 was enacted to regulate overseas recruitment and safeguard emigrant workers, especially those requiring emigration clearance. Over time, however, the legislation has been criticized for becoming outdated and inadequate in addressing contemporary migration challenges. This paper critically examines the effectiveness of the Emigration Act, 1983 in protecting Indian emigrant workers and analyses the proposed reforms in light of international labour standards established by the International Labour Organization and international human rights instruments. The paper argues that the existing legal framework suffers from implementation gaps, excessive bureaucratic procedures, and insufficient worker-centric protections. It concludes that comprehensive reforms aligned with international labour standards are essential to ensure safe, transparent, and rights-based labour migration from India.

Keywords: Emigrant Workers, Labour Migration, Human Rights, Overseas Employment.

I. Introduction

International labour migration has emerged as a defining feature of globalization, enabling millions of workers from developing countries to seek employment opportunities abroad. India is one of the largest labour-sending nations in the world, with a substantial number of Indian workers migrating annually to countries in the Gulf region, Southeast Asia, Europe, and North America. Economic disparities, unemployment, poverty, and the aspiration for improved living standards have significantly contributed to this migration trend. Indian emigrant workers, particularly semi-skilled and unskilled labourers, form the backbone of several foreign economies and contribute enormously to India's foreign exchange reserves through remittances.¹

Despite their economic contribution, Indian emigrant workers often remain vulnerable to exploitation and abuse. Instances of contract substitution, withholding of passports, unsafe working conditions, wage exploitation, arbitrary detention, and denial of legal remedies have repeatedly exposed the precarious position of migrant workers abroad.² The dependence of workers on private recruitment agencies and middlemen further aggravates the risk of fraud and trafficking. These concerns highlight the necessity of a strong legal framework to regulate emigration and protect migrant workers from exploitation.

The Emigration Act, 1983 was enacted with the objective of regulating overseas recruitment and safeguarding Indian emigrants, especially those belonging to economically weaker sections. The legislation established mechanisms for registration of recruiting agents, emigration clearance procedures, and governmental oversight of migration processes. However, with changing migration patterns and technological developments, the Act has increasingly been viewed as outdated and inadequate in addressing modern migration realities.³

¹ Ministry of External Affairs, *Annual Report 2022-23* 115 (Government of India, 2023), available at: <http://www.mea.gov.in/annual-reports.htm> (last visited on May 25, 2026).

² International Labour Organization, *Review of Labour Migration Policy in India* 14-18 (ILO, Geneva, 2018), available at: http://www.ilo.org/global/topics/labour-migration/publications/WCMS_632537/lang--en/index.htm (last visited on May 25, 2026).

³ S. Irudaya Rajan, *India Migration Report 2020: Governance and Labour Migration* 22-26 (Routledge, New Delhi, 2020).



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The Government of India has therefore proposed reforms through the Draft Emigration Bill, which seeks to introduce a more comprehensive and technology-driven migration governance framework. At the same time, international labour standards developed by the International Labour Organization (ILO) and international human rights instruments emphasize the protection of migrant workers, fair recruitment practices, and access to justice. These standards provide important benchmarks against which India's emigration laws can be evaluated.

This research paper critically examines the effectiveness of the Emigration Act, 1983 in protecting Indian emigrant workers. It evaluates the limitations of the existing legal framework, analyses the proposed reforms, and assesses their compatibility with international labour standards. The paper argues that meaningful reform requires a rights-based approach that prioritizes worker protection, transparency, accountability, and international cooperation.

II. Evolution of Labour Migration and the Need for Legal Regulation

Labour migration from India has historically been linked to economic necessity and global demand for low-cost labour. During the colonial period, Indian labourers were transported to different parts of the British Empire under indentured labour systems. In the post-independence era, migration patterns changed significantly, particularly after the oil boom in Gulf countries during the 1970s, which created large-scale demand for construction and service sector workers. India subsequently emerged as a major supplier of migrant labour to the Middle East.⁴

The rapid increase in overseas migration exposed workers to several risks, including exploitation by recruitment agents, deceptive employment contracts, and inhuman working conditions. In many cases, workers migrated without proper documentation or legal awareness, making them vulnerable to trafficking and forced labour. The absence of effective regulation also enabled unregistered recruiting agents to operate without accountability. These developments highlighted the urgent need for a statutory framework governing emigration processes and migrant worker protection.

Prior to the enactment of the Emigration Act, 1983, migration regulation in India was governed by the Emigration Act, 1922, which was primarily designed to control migration rather than protect workers' rights. *Kanga and Others v. Union of India*⁵ is the most foundational case for the topic. The Supreme Court issued detailed guidelines to regulate emigration and prevent exploitation of Indian workers going abroad for employment. These guidelines directly led to the enactment of the Emigration Act, 1983, replacing the outdated 1922 Act.

The 1922 legislation lacked adequate safeguards against exploitation and failed to address emerging migration realities. Recognizing these deficiencies, the Parliament enacted the Emigration Act, 1983 to establish a regulatory mechanism aimed at ensuring safe and orderly migration.

The Emigration Act, 1983 introduced a system of emigration clearance for workers migrating to notified countries and mandated registration of recruiting agents. The legislation sought to regulate recruitment practices, prevent fraudulent migration, and protect vulnerable workers from exploitation.⁶ The Act also empowered the Protector General of Emigrants and Protectors of Emigrants to oversee recruitment activities and ensure compliance with statutory requirements.⁷ In *Union of India v. C.N. Vasudevan*⁸ the Supreme Court clarified the role and powers of Protectors of Emigrants (PoEs) and Regional Passport Officers in determining whether a person is an "emigrant" under the 1983 Act.

However, migration patterns have evolved considerably since the enactment of the legislation. Modern migration involves digital recruitment platforms, transnational employment networks, and increasing participation of women workers in

⁴ Binod Khadria, *The Migration of Knowledge Workers: Second-Generation Effects of India's Brain Drain* 48-52 (Sage Publications, New Delhi, 1999).

⁵ Writ Petition No. 2632 of 1978.

⁶ The Emigration Act, 1922, s.22.

⁷ *Id.*, s.4.

⁸ (2008) 7 SCR 1027.



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overseas employment. The existing framework has struggled to keep pace with these developments. Consequently, concerns regarding trafficking, exploitation, and inadequate grievance redressal mechanisms continue to persist.

III. Salient Features of the Emigration Act, 1983

The Emigration Act, 1983 was enacted to consolidate and amend the law to regulate emigration for overseas employment and protect Indian workers migrating abroad.⁹ The legislation primarily applies to workers requiring emigration clearance for employment in notified countries, particularly in the Gulf region. The Act attempts to create institutional safeguards against exploitation by regulating recruitment agencies and migration procedures.¹⁰

One of the most significant features of the Act is the establishment of the office of the Protector General of Emigrants. The Protector General supervises emigration activities and grants registration certificates to recruiting agents. The Act requires recruiting agents to obtain registration before engaging in overseas recruitment activities.¹¹ This provision seeks to ensure accountability and prevent fraudulent recruitment practices.

Another important mechanism introduced under the Act is the Emigration Check Required (ECR) category. Workers belonging to specified educational or economic backgrounds are required to obtain emigration clearance before departure to notified countries. The objective of this mechanism is to ensure that vulnerable workers are migrating through lawful and verified channels.¹²

The Act also contains provisions relating to suspension or cancellation of registration of recruiting agents in cases of misconduct or violation of statutory obligations. Penalties are prescribed for illegal recruitment activities, unauthorized emigration, and fraudulent practices. Additionally, the Act empowers authorities to inspect recruitment operations and investigate complaints against agents.

Despite these safeguards, the implementation of the legislation has faced several challenges. Many workers continue to migrate through informal channels, bypassing statutory procedures. The limited enforcement capacity of authorities and the persistence of unregistered sub-agents have weakened the effectiveness of the regulatory framework. Furthermore, the legislation focuses heavily on emigration control rather than comprehensive worker welfare and rights protection.

IV. Challenges Faced by Indian Emigrant Workers

Indian emigrant workers continue to face numerous challenges despite the existence of regulatory mechanisms under the Emigration Act, 1983. One of the most persistent issues is exploitation by recruitment agents and intermediaries. Workers are often charged exorbitant recruitment fees, misled regarding wages and working conditions, or subjected to contract substitution after reaching the destination country.¹³

Another major concern relates to poor working and living conditions abroad. Many migrant workers, particularly in Gulf countries, work in hazardous environments with inadequate safety measures. Reports of wage theft, confiscation of passports, forced overtime, and denial of medical facilities have repeatedly highlighted the vulnerability of migrant labourers.¹⁴

Women migrant workers face additional risks, including sexual harassment, trafficking, and domestic servitude. Domestic workers employed in private households are particularly vulnerable because labour protections in host countries are often

⁹ *Id.*, Preamble.

¹⁰ *Id.*, ss.3-8.

¹¹ *Id.*, s. 10.

¹² Ministry of Overseas Indian Affairs, *Emigration Policy Division Report 12-14* (Government of India, 2015), available at: <http://www.moia.gov.in> (last visited on May 25, 2026).

¹³ International Labour Organization, *Fair Recruitment Initiative in India 25-28* (ILO, Geneva, 2019), available at: <http://www.ilo.org/global/topics/fair-recruitment/lang--en/index.htm> (last visited on May 25, 2026).

¹⁴ Human Rights Watch, *Building Towers, Cheating Workers: Exploitation of Migrant Construction Workers in the UAE 41-45* (2006), available at: <http://www.hrw.org/report/2006/11/12/building-towers-cheating-workers/exploitation-migrant-construction-workers> (last visited on May 25, 2026).



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weak or inadequately enforced. The absence of effective grievance redressal mechanisms further exacerbates their vulnerability.

Access to justice also remains a significant challenge. Migrant workers frequently encounter language barriers, lack of legal awareness, and fear of retaliation by employers. Indian diplomatic missions abroad often face limitations in providing timely assistance due to resource constraints.¹⁵ Consequently, workers who suffer abuse may remain without effective remedies.

These challenges demonstrate that migration governance cannot be limited to pre-departure regulation alone. Comprehensive protection requires continuous support mechanisms, bilateral cooperation, and rights-based policies extending beyond national borders.

V. Proposed Reforms and the Draft Emigration Bill

Recognizing the limitations of the Emigration Act, 1983, the Government of India proposed reforms through the Draft Emigration Bill. The proposed legislation seeks to modernize migration governance and introduce a more transparent and technology-driven framework.¹⁶

One of the notable features of the Draft Bill is the establishment of emigration management authorities at national and state levels. These institutions are intended to improve coordination, data collection, and monitoring of migration processes. The Bill also proposes the creation of welfare committees and labour welfare officers to support emigrant workers abroad.

The Draft Bill emphasizes digital registration systems and skill-based migration frameworks. It seeks to regulate recruitment agencies more effectively and penalize illegal recruitment practices. Additionally, the proposed legislation introduces grievance redressal mechanisms and provisions aimed at enhancing accountability of recruiting agencies.

However, the Draft Bill has also faced criticism. Scholars and civil society organizations have argued that certain provisions impose excessive penalties on migrant workers themselves rather than focusing primarily on exploitative recruiters.¹⁷ Concerns have also been raised regarding surveillance measures and restrictions on freedom of movement. Critics contend that migration governance should prioritize worker welfare and rights protection rather than excessive administrative control.

The proposed reforms nevertheless represent an important attempt to modernize India's emigration framework. If implemented in a rights-oriented manner, they may strengthen institutional accountability and improve protection mechanisms for migrant workers.

VI. Role of Judiciary

In *Kanga and Others v. Union of India*¹⁸, the Supreme Court emphasized the need for state regulation of recruitment, protection of emigrants from fraudulent agents, standardized contracts, and welfare measures. The Court treated emigration regulation as a reasonable restriction in the interest of vulnerable workers.

In *People's Union for Democratic Rights v. Union of India*,¹⁹ the Supreme Court expanded Article 21 (Right to Life) to include right to fair working conditions and applied to migrant labourers in construction. The Court held that paying labourers less than the minimum wage constitutes a violation of Article 23 (Right against Exploitation) of the Indian Constitution, deeming it a form of forced labour.

In *Bandhua Mukti Morcha v. Union of India*,²⁰ the Supreme Court reinforced state duty to protect vulnerable migrant workers from exploitation. This Public Interest Litigation (PIL) expanded the scope of Article 21 (Right to Life) and Article

¹⁵ S. Irudaya Rajan and Ginu Zacharia Oommen, *Asianization of Migrant Workers in the Gulf Countries* 66-70 (Springer, Singapore, 2020).

¹⁶ Ministry of External Affairs, "Draft Emigration Bill, 2021" available at: <https://mea.gov.in/> (last visited on May 25, 2026).

¹⁷ Amnesty International India, "Comments on the Draft Emigration Bill, 2021" available at: <https://www.amnesty.org/> (last visited on May 25, 2026).

¹⁸ *Supra* note 5.

¹⁹ (1982) 3 SCC 235.

²⁰ AIR 1984 SC 802.



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23 (Right against Forced/Bonded Labour), establishing that the State is constitutionally obligated to identify, release, and rehabilitate bonded labourers.

In *Re: Problems and Miseries of Migrant Labourers (Suo Motu Writ Petition)*²¹, the Supreme Court addressed distress of migrant workers during COVID-19 lockdown. The Court further directed registration, transport, food security, and welfare schemes. Highlights gaps in post-departure protection.

The case of *M/s Tabish Airways v. Protector General of Emigrants*²², involved a recruiting agent whose license was cancelled for submitting fraudulent documentation and dealing with unregistered foreign companies. The High Court upheld the cancellation, stating it would not act as an appellate authority under Article 226 unless the government's decision was arbitrary.

VII. International Labour Standards and Migrant Worker Protection

International labour standards play a crucial role in shaping migration governance and protecting migrant workers from exploitation. The International Labour Organization (ILO) has adopted several conventions emphasizing fair recruitment, equality of treatment, decent working conditions, and protection against forced labour.²³

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 recognizes migrant workers as rights-bearing individuals entitled to dignity, equality, and legal protection. Similarly, ILO conventions relating to forced labour, discrimination, and occupational safety establish important standards applicable to migrant workers.²⁴

India has not ratified certain key international instruments relating specifically to migrant workers, which has attracted criticism from labour rights advocates. Nevertheless, international standards continue to provide persuasive guidance for evaluating domestic laws and policies. Principles such as fair recruitment, transparency, access to justice, and non-discrimination should form the basis of migration governance frameworks.

The proposed reforms to India's emigration laws must therefore be assessed against these standards. A rights-based migration framework requires protection not only during recruitment but throughout the migration cycle, including pre-departure orientation, employment abroad, and reintegration upon return.

VII. Conclusion and Suggestions

The migration of Indian workers abroad remains an important economic and social phenomenon with far-reaching implications for individuals, families, and the national economy. While the Emigration Act, 1983 represented a significant step towards regulating overseas employment and protecting migrant workers, the legislation has increasingly become inadequate in addressing contemporary migration challenges. Changing migration patterns, technological developments, and persistent exploitation of workers reveal substantial gaps in the existing legal framework.

This paper has demonstrated that Indian emigrant workers continue to face serious vulnerabilities, including exploitation by recruitment agents, unsafe working conditions, wage theft, trafficking, and limited access to justice. Although the proposed reforms under the Draft Emigration Bill seek to modernize migration governance, concerns remain regarding implementation, accountability, and protection of workers' rights.

International labour standards emphasize that migration governance must be rooted in human dignity, fairness, and protection of fundamental rights. India's emigration framework must therefore move beyond a regulatory and control-

²¹ *Suo Motu Writ Petition (Civil) No(s). 6/2020.*

²² 2024 SCC OnLine Del 141.

²³ International Labour Organization, *General Principles and Operational Guidelines for Fair Recruitment* (ILO, Geneva, 2016), available at: http://www.ilo.org/global/topics/fair-recruitment/WCMS_536755/lang--en/index.htm (last visited on May 25, 2026).

²⁴ The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, available at: <http://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers-and-members> (last visited on May 25, 2026).



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oriented approach towards a worker-centric and rights-based model. Stronger regulation of recruitment agencies, improved grievance redressal mechanisms, bilateral cooperation with destination countries, and alignment with international labour standards are essential for ensuring safe and dignified migration.

Suggestions

- Legislative: Align with ILO standards, expand protections to all categories, stronger penalties for recruiters.
- Institutional: Better coordination (MEA + Labour Ministry), skill development pre-departure, mandatory insurance enhancements.
- Diplomatic: Stronger bilateral labour agreements, Kafala reform advocacy.
- Technology & Data: Centralized database, AI for complaint tracking.
- Policy: Shift from "protection" to "rights-based and promotion" framework.

Hence, meaningful reform of India's emigration laws is necessary not only to protect emigrant workers from exploitation but also to uphold constitutional values of dignity, equality, and social justice. A comprehensive and humane migration framework will strengthen India's commitment to labour rights while ensuring that economic mobility does not come at the cost of human dignity.

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