

Draft Emigration Bill 2021

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The Ministry of External Affairs invited public inputs to the Emigration Bill 2021 . The Bill could be introduced in Parliament soon and presents a long overdue opportunity to reform the recruitment process for nationals seeking employment abroad.

In news: An emigration Bill that does not go far enough

Placing it in syllabus: Law & Policy

Dimensions

- Background of Emigration Act 1983
- Current challenges faced by emigrant labour
- Key features of Emigration Bill 2021
- Issues with the Bill

Content:

Background of Emigration Act 1983

- Labour migration is governed by the Emigration Act, 1983 which sets up a mechanism for hiring through government-certified recruiting agents – individuals or public or private agencies.
- The Act outlines **obligations for agents to conduct due diligence** of prospective employers.
- It also sets up a **cap on service fees and establishes a government review** of worker travel and employment documents (known as emigration clearances) to 18 countries.
- These include mainly in West Asian states and South-East Asian countries.

Background:

- Indians emigrated, both temporarily and permanently, to

a number of countries, including the United States, United Kingdom, Germany, Canada, Australia, and the economies of south-east Asia.

- The bulk of emigration from the 1970s onward was to the Arab states of the Persian Gulf.
- **Recruiting agents played a role in connecting workers to foreign jobs and charged the workers or the employers some share of the revenue.**
- The Emigration Act, 1983 was passed to address concerns related to defrauding and exploitation of workers by the recruiting agents and other problems they might face upon going abroad
- The Act had its genesis in a judgement of the Supreme Court Judgement (**Kanga and Others vs. Union of India**, 1979)
- The Apex Court **ruled that emigration should be regulated on the basis of guidelines** enumerated in its aforesaid order.
- Since the Act was enacted, the protection of emigrants and their interest has become the duty of the Office of the Protector General of Emigrants (PGE), now in the Ministry of Overseas Indian Affairs, Government of India.

What is Emigration ?

Emigration means the **departure** of any person **from India for employment** (whether or not under an agreement, with or without the assistance of a registered Recruiting Agent or employer) in any country or place outside India.

Current challenges faced by emigrant labour:

- Independent investigations into migrant worker conditions have underlined serious exploitative practices which include large recruitment charges, contract substitution, deception, retention of

passports, non-payment or underpayment of wages, poor living conditions, discrimination and other forms of ill-treatment.

- In recent months, media reports have highlighted how the majority of migrant worker deaths in the Arab Gulf States/West Asia are attributed to heart attacks and respiratory failures, whose causes are unexplained and poorly understood.

Exorbitant Recruitment Charges:

- Large-scale surveys by the ILO and the World Bank show that Indian workers pay exorbitant charges for their jobs and that poorer workers pay progressively larger fees.
- Indians in Saudi Arabia paid on average \$1,507 in recruitment charges; their counterparts in Qatar paid \$1,156
- When low wage migrants pick up the tab it makes them vulnerable to indebtedness and exploitation.
- Worker-paid recruitment fees eat into their savings, force them to take high-interest loans, live on shoe-string budgets, and in the worst cases of abuse, leave workers in situations of debt bondage – a form of forced labour.

Poor Quality Jobs:

- Labor migration within Asia is usually a temporary arrangement.
- Laborers often perform “3D” jobs—dirty, dangerous, and difficult—that are shunned by the local population.

Serious exploitative practices:

- For years, independent investigations into migrant worker conditions have underlined serious exploitative practices.
- Such as large recruitment charges, contract

substitution, retention of passports, non-payment or underpayment of wages, poor living conditions and ill-treatment, etc.

Social, and psychological challenges:

- The migrant workers also face stigma associated with menial labor, social exclusion, and xenophobia.
- As gender, ethnicity, and class intersect, male migrant workers from certain nations have been **stereotyped to be “dangerous.”**
- These assumptions can exacerbate fear among the local population and cause them to **exclude these workers from their everyday spaces**—such as Qatar, Singapore’s Little India, or Abu Dhabi.
- **Being away from their families for prolonged periods** and being excluded in a host country also affects the psychosocial wellbeing of these migrant workers, leading to stress and depression.

Inaccessible primary health care:

- As male migrants are involved in labor intensive work such as construction and manufacturing, significant occupational risks exist that could affect their health and wellbeing.
- Most of the workers in these countries do not have equal access to affordable primary health care, as migrants are often assumed to be a burden on the host country’s health system.
- Language and culture create significant barriers to accessing health care, as migrant workers are often unaware of such health provisions.

Risky Behaviours:

- Another growing concern is the spread of HIV, which has been highlighted as a principle health challenge facing migrant workers.

- Being in foreign lands and separated from their families for extended periods of time, and feeling lonely and isolated, some of these men participate in risky behavior such as visiting brothels.
- If they test positive for HIV in host countries, most of them face summary deportation.

Key features of Emigration Bill 2021:

- The proposed bill will replace the Emigration act 1983.
- It **launches a new emigration policy division**, establishes help desks and welfare committees.
- It **requires manpower agencies to conduct pre-departure briefings** for migrants.
- It **increases accountability of brokers and other intermediaries** who are also involved in labour hiring.
- The provisions of the bill cover labour migration and exploitation, remittances, student mobility and human trafficking.
- There is a **plan to set up emigration check post** with an officer of the Centre or State government under the control and supervision of the Chief Emigration Officer.
- The proposed legislation will also **maintain registration of human resources agencies**, validity and renewal and cancellation of a certificate.
- It **permits government authorities to punish workers by cancelling or suspending their passports** and imposing fines up to Rs.50,000 for violating any of the Bill's provisions.
- Once enforced, it can be used as a tool to crack down on workers who migrate through unregistered brokers or via irregular arrangements such as on tourist visas.
- Besides, authorities will be empowered to have certain powers of the civil court.

Bureau

- As per the Bill, the Centre will establish a Bureau of

Emigration Policy and Planning with a Chief of Emigration Policy and Planning and

- It also sets up the Bureau of Emigration Administration with a Chief Emigration Officer to ensure the welfare and protection of the emigrants.
- The Bureau of Emigration Administration will maintain a digitised record of all Indian emigrants sourced from the Bureau of Immigration and Human Resources organisations as well as black listed foreign employers and fraudulent manpower recruitment agencies.

Committees

- The Centre plans to establish nodal committees in States and Union Territories with a Principal Secretary as chairperson.
- The committees will have representatives from the Labour, Non Resident Indians and Skill departments.
- The bill also proposes the establishment of a labour and welfare wing and emigrants welfare committee at the Indian Embassies and Consulates and establishment of Sahayata Kendras by Indian Mission and Post to cater to all issues concerning overseas employment and immigration of Indian emigrants.

Issues with the Bill:

Ignores Human Rights Framework:

- The bill lacks a human rights framework aimed at securing the rights of migrants and their families. Progressive labour regimes do so.
- For example, the Philippines explicitly recognises “the dignity and fundamental human rights and freedoms of the Filipino citizens”.

Loopholes in Manpower Agency Regulation:

- Another significant drawback is that the Bill permits

manpower agencies to charge workers' service fees, and even allows agents to set their own limits.

- International labour standards such as International Labour Organization (ILO) Private Employment Agencies Convention No. 181 and the ILO general principles and operational guidelines for fair recruitment recognises employers to pay the fees.
- According to ILO, it is employers, not workers, who should bear recruitment payments including the costs of their visas, air travel, medical exams, and service charges to recruiters.

Penal Provisions run contradictory to the purpose of protecting migrants:

- When enforced, the penal provisions can be used as a tool to crackdown on workers who migrate through unregistered brokers or via irregular arrangements such as on tourist visas.
- Criminalising the choices migrant workers make either because they are unaware of the law, under the influence of their recruiters, or simply desperate to find a decent job is deplorable, runs contradictory to the purpose of protecting migrants and their families, and violates international human rights standards.
- Recruiters and public officials could misuse the law to instil fear among workers and report or threaten to report them.
- Migrants in an irregular situation who fear that they could be fined or have their passports revoked, are also less likely to make complaints or pursue remedies for abuses faced.

Inadequate Gender Dimensions:

- This Bill does not also adequately reflect the gender dimensions of labour migration.
- Women have limited agency in recruitment compared to

their counterparts and are more likely to be employed in marginalised and informal sectors and/or isolated occupations in which labour, physical, psychological, and sexual abuse are common.

Limited Worker Representation:

- The Bill also provides limited space for worker representation or civil society engagement in the policy and welfare bodies that it sets up.

Mould your thought: Critically evaluate the provisions of Draft Emigration Bill 2021.

Approach to the answer:

- Introduction
- Discuss the challenges faced by migrant labour abroad
- Mention the provisions of the bill
- Discuss the limitations of the bill
- Conclusion