



## Changing Realities of Migration and the Draft Emigration Bill 2019

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### **Abstract-**

*The draft Emigration Bill 2019 is a well-timed and well-intentioned Bill. It provides for a new structural framework, a pro-active role for states in emigrant management and expands its coverage to include students. However, the interests of white-collared workers and issue of illegal migrants continue to elude the purview of legislations.*

"Migration is an expression of the human aspiration for dignity, safety and a better future. It is part of the social fabric, part of our very make up as a human family...It is our collective responsibility to make migration work for the benefit of migrants and countries alike"

--Ban Ki-moon, Former UN Secretary General

Migration is a term that has gone on to define, characterise and shape the twenty-first century politics. The global importance accorded to well-managed migration is reflected in the adoption of Sustainable Development Goal (SDG) Target 10.7 that aims at facilitating "orderly, safe, regular and responsible migration and mobility of people through planned and well-managed migration policies".<sup>1</sup> India's draft Emigration Bill 2019 currently awaiting parliamentary approval takes India a step closer to this mandated target. It makes India stand out as one of the few countries in the world that explicitly seeks to facilitate emigration.

India's first emigration legislation goes back to 1922. Independent India legislated on the same only in 1983 with the enactment of The Emigration Act, 1983. Enacted in a specific context of large scale emigration of Indian workers to the Gulf region,<sup>2</sup> the 1983 Act strove to provide a regulatory framework and ensure their interests and welfare by institutionalising the position of the Protector General of Emigrants to be assisted by a cohort of Protector of Emigrants. Their responsibilities covered aiding and advising the intending and returnee

emigrants besides enquiring into the treatment meted out to the emigrants in the course of their migration cycle. The Act also provided for the issuance of certificates to register recruiting agents as well as valid permits to employers interested in recruiting Indians abroad to better streamline the process of emigration in India. However, the last three and a half decades have seen a paradigm shift in the nature, pattern, volume and composition of emigration flows.

The profile of Indian emigrants has witnessed a sea change, viz. increase in temporary migration, growing feminisation of migration, diversity of emigrants from various states, existence of illegal migration (though in decreased numbers) and greater migration of unskilled/low-skilled workers to the Gulf region and skilled workers to the Organization for Economic Cooperation (OECD) countries. To reflect these transformations and to accommodate the transitions for an effective 'management' and mainstreaming of emigrants, the draft Emigration Bill 2019 was formulated.



Prime Minister on his visit to Qatar with Indian emigrant workers. Courtesy: Prime Minister's Twitter account, 2016

### **New versus Old:**

**Structural framework:** The draft Emigration Bill provides for the constitution of new authorities with delineated responsibilities to comprehensively address the issue of migration. As opposed to the 1983 Act which established the Protector General of Emigrants and the confere of Protector of Emigrants to 'regulate migration', the draft proposes to constitute an Emigration Management Authority (EMA) as the overarching body to provide directions for comprehensive emigration management and to ensure the overall welfare and

protection of emigrants.<sup>3</sup> The Authority is to be led by the Secretary or its equivalent from the Ministry of External Affairs, while also having representation from the Ministries of Home Affairs and Human Resources Development. Under its superintendence, a Bureau of Emigration Policy and Planning (BEPP) and a Bureau of Emigration Administration (BEA) are to perform legislative and executive functions, respectively, for securing horizontal policy coherence in promoting and managing safe, legal and regular migration.

A novel element, however, is the pro-active role outlined for states in the new emigrant management framework, despite 'emigration' falling in the Union List.<sup>4</sup> This is reflected in the nomination of a representative to the EMA from major labour sending states and the establishment of Principal Secretary-led Nodal Authorities in the states and Union Territories. This augers well for a coherent migration policy reflecting increased cooperation between the Union and states for improving governance on migration.

**Coverage of the Bill:** The draft Bill has done well in striving to broaden the jurisdiction of the Act to include not just blue-collared workers but also extend its coverage to include the departure of students enrolled or seeking enrolment for study in an educational institution in a country or place outside India either directly or through an enrolment agency.<sup>5</sup> This new orientation is reflected in the allocation of a separate chapter in the draft Bill solely to migrant students titled "Emigration of Indian Nationals and Students".

However, there has also been a gradual shift in the occupational and skill profile of Indian migrants to the Gulf over the past few decades. From nearly 90 percent of Indian workforce comprising blue-collared workers in the 1970s to the proportion of white-collared Indian expatriates increasing to 30 percent,<sup>6</sup> there has been an increasing inclination towards employment of knowledge-based workers from India. The downward spiralling trend of crude oil prices and the resulting spending cuts on construction projects,<sup>7</sup> further serves to threaten the interests and employment opportunities of the low-skilled and semi-skilled Indian blue-collared workers mainly comprising labourers, masons and carpenters.<sup>8</sup> The new emigration legislation would thus do well in accommodating and promoting interests of white-collared workers, adjusting itself to the reality of the times rather than being threatened into superannuation.

**Institutional processes:** The draft legislation continues to make all the right noises with the provision for mandatory registration/intimation involving all categories of Indian nationals proceeding abroad for higher studies or employment purposes. It has also extended its jurisdiction to cover recruitment agencies, student enrolment agencies as well as foreign employers. Sub-agents working with recruitment agencies too have been brought under the ambit of the Bill<sup>9</sup> while also incorporating provisions for rating of such shareholders. By facilitating it through a technology driven platform, it makes it possible to maintain an authentic digital repository of migrants and their workplace related information. Absence of such a database in the past has only handicapped the ability of the government to formulate clearly-targeted policies and to act swiftly during distress in conflict zones. As has been rightly observed in the twenty-third report of the Parliamentary Committee on External Affairs, "without any authentic database regarding the number of

Indian migrant workers in different countries and their employment patterns, the Government may not be able to reach out to the emigrant workers and ensure their safe, legal and regular migration."<sup>10</sup>



Source: NDTV,2018

It is worth noting that the collected data pertains only to those Emigration Check Required (ECR) passport holders<sup>11</sup> migrating legally to one of the 18 ECR countries, an aspect even the 1983 Act provided for. Thus, the issue of illegal migrants and their interests continue to evade the ambit of the new draft legislation. Given that it is mainly the low-skilled and semi-skilled workers employed in the informal sectors that take the illegal route leaving them more susceptible to rights violations, it becomes mandatory to address the issue of recruitment by uncertified agents. It is a well demonstrated fact that the illegality of employment manifests its worst repercussions in the country of destination where Governmental interventions then remain constrained pertaining to the interplay of the host nations' domestic laws ( in the case of Gulf nations, it is with regards to the Kafala system and issues related to Iqma). Further, considering that law and order is a state subject, the complaints regarding illegal migration are referred to concerned State Police Authorities/Protector of Emigrants for investigation and prosecution for violation of the Emigration Act 1983.<sup>12</sup> It is here that the lackadaisical attitude of the state government is manifested in the time taken for investigating the charges, reflecting a small number of sanctions for prosecution vis-a-vis the number of complaints referred to the states.<sup>13</sup>

Year	Number of cases referred to State/UT Govt. for action	Number of cases in which request received for issue of prosecution sanction from various states	Number of prosecution sanction issued
2014	153	08	08
2015	101	11	11
2016	231	42	42
2017 (upto 30th September)	349	29	29

Source : Report of Committee on External Affairs (2018-2019), Sixteenth Lok Sabha

The provision in the draft for the establishment of the Nodal Authority<sup>14</sup> at the state level, assigned with the duty to 'initiate action to prosecute illegal recruitment agents', is a step in the right direction. This can be supplemented and enhanced by strengthening the structural framework for identification of illegal recruitment agents. Assam border police units<sup>15</sup> is a case in point wherein Superintendent of Police (SPs) heads concerned state border police units engaged in identifying illegal migrants. On failure to produce documentation to prove their citizenship, these cases are then referred by the SPs to the Foreigner Tribunals for adjudication. Perhaps setting up of special dedicated units along similar lines to identify illegal recruitment agents across police stations of the largest labour sending states,<sup>16</sup> can assist in redressing grievances pertaining to illegal agents. This will help states better their rates of prosecution and help in deterring potential emigrants from resorting to illegal mediums. The ongoing initiative by the Ministry of External Affairs of conducting workshops known as 'Videsh Sampark' with the state governments to sensitise officials on the issue will further amplify the effective authority of the State in this respect. The media awareness campaign of the Ministry towards ensuring safe and legal migration titled 'Surakshit Jaaye, Prashikshit Jaaye' (Go Safe, Go Trained) should be continued in regional languages and on platforms like radio stations, digital cinema theatres and Doordarshan channels in focus states.<sup>17</sup>



Source : Official website of Pradhan Mantri Kaushal Vikas Yojana

It is of significance to observe that while sufficient care and attention has been given to the accreditation of recruiting agents, the training of such stakeholders find no mention in the draft legislation. Government schemes like Pravasi Kaushal Vikas Yojana<sup>18</sup> provide for training of intending emigrants through the entire migration cycle of the pre-departure phase, country of destination and resettlement in the country of origin, but exclude recruiting agents from its purview. By providing for the training of agents, the legislation would further empower and educate the stakeholders about their rights in a foreign land. Workshops on training of recruiting agents should cover the operating procedure to be

followed in distress situation and in conflict zones, registration and rating of agents, cooperation with registered employers amongst others.

The draft Bill's half-hearted approach towards the resettlement of the returnees-the last phase of the migration cycle- is reflected in the absence of a clearly articulated rehabilitation policy. At the Union level, the Bureau of Emigration Administration (BEA) has been assigned the duty to 'aid and advice, emigrants who have returned to India'. Given that resettlement of the returnees is a state subject, the draft has provided for the setting up of a Nodal Authority that, amongst others, has been allocated the function of working in coordination with 'relevant State departments to devise and implement effective policies and programmes towards relief, rehabilitation and harnessing skills of returnee emigrants'. Shifting the burden of rehabilitation completely on the States will not help in accruing the fruits of successful migration through tapping into the acquired knowledge and skills. A comparative analysis of the states of Kerala and Tamil Nadu could help shed light on the same. While in Tamil Nadu returnee migrants form an invisible populace with hardly any familiarity with even friends and relatives, Kerala boasts about having some migrants as law makers in the state legislature.<sup>19</sup> While states like Kerala built upon a strong foundation of education and human capital, states like Uttar Pradesh emerging as a major labour sending state do not reflect strong human development trends. In such a scenario, a pro-active role required to be played by states needs to be preceded by a central legislation on the same.

### **Conclusion:**

It goes without saying that the draft Bill is well-timed and well-intentioned. Various government initiatives like e-migrate system, Pravasi Kaushal Vikas Yojana, Pre-Departure Orientation and Training (PDOT), Pravasi Bharatiya Sahayata Kendra (PBSK) amongst others, further fortify the protection of the emigrant interests and security. Plugging the loopholes in the current draft with well-defined and delineated roles and processes will only cement India's position as a responsible leader in the international migration discourse and help India in capitalising on the potential of its skilled manpower.

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*Disclaimer: The views expressed are that of the Researcher and not of the Council.*

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### **Endnotes :**

<sup>1</sup> Sustainable Development Goal (SDG) Target 10.7.

<sup>2</sup> Government of India, Ministry of External Affairs, "Salient aspects of Emigration Bill,2019", Accessed on 7th July,2019, URL : [https://mea.gov.in/Images/amb1/Salient\\_aspects\\_of\\_Emigration\\_Bill\\_2019.pdf](https://mea.gov.in/Images/amb1/Salient_aspects_of_Emigration_Bill_2019.pdf)

<sup>3</sup> Government of India, Ministry of External Affairs, Draft Emigration Bill 2019, p.7-8

<sup>4</sup> Item 19, Union List, Seventh Schedule of the Indian Constitution

<sup>5</sup> Government of India, Ministry of External Affairs, Draft Emigration Bill 2019, p.20

<sup>6</sup> Rupa Chanda, Pralok Gupta, *Indian Migration to the Gulf: Overview of Trends and Policy initiatives by India*, p. 182

<sup>7</sup>India Spend (2019), “As Indians become wealthier, more Indians leave its shores”, Accessed on 20<sup>th</sup> July,2019, URL : <https://www.indiaspend.com/as-india-becomes-wealthier-more-indians-leave-its-shores/>

<sup>8</sup>Increasing US shale oil production and weakening global demand could push the crude oil prices downwards. Accessed on 15th July,2019, URL : <https://economictimes.indiatimes.com/industry/energy/oil-gas/budget-2019-oil-could-come-to-the-rescue-of-modi-2-0-again-predicts-economic-survey/articleshow/70068800.cms>

<sup>9</sup>Government of India, Ministry of External Affairs, *Salient aspects of Emigration Bill 2019*, p.2

<sup>10</sup>Committee on External Affairs, Ministry of External Affairs, Twenty Third Report titled “*Issues relating to migrant workers including appropriate legislative framework and skill developing initiatives for prospective emigrants*”, January,2019, p.5

<sup>11</sup> As per the Emigration Act 1983, Emigration Check Required (ECR) categories of Indian passport holders are required to obtain "Emigrant Clearance" from the office of Protector of Emigrants(POE) , for going to 18 countries: United Arab Emirates (UAE), the Kingdom of Saudi Arabia (KSA), Qatar, Oman, Kuwait, Bahrain, Malaysia, Libya, Jordan, Yemen, Sudan, Afghanistan, Indonesia, Syria, Lebanon, Thailand, Iraq.

<sup>12</sup>Committee on External Affairs, Ministry of External Affairs, Twenty Third Report titled “*Issues relating to migrant workers including appropriate legislative framework and skill developing initiatives for prospective emigrants*”, January,2019, p.14

<sup>13</sup>Ibid.,

<sup>14</sup>The Nodal Authority shall consist of a chairperson from the home department, no less than the rank of a Principal Secretary or equivalent in State or Union Territory , as the case may be, and representatives drawn from departments of Labour, NRI and Skill.

<sup>15</sup>The first and only one of its kind in the country, the Assam border police units serve as the first point of contact with authorities mandated with identifying illegal migrants in the State.

<sup>16</sup> According to the latest data on the E-migrate portal, the top 5 labour sending states are Uttar Pradesh, Bihar, Tamil Nadu, Rajasthan and West Bengal

<sup>17</sup>India Centre for Migration, Ministry of External Affairs, *Surakshit Jaaye Prashikshit Jaaye, Welfare and Protection of Indians Abroad*, 2017, Accessed on 11<sup>th</sup> of July,2019, URL : [https://www.mea.gov.in/images/Revised\\_ICM\\_Booklet\\_17032017.pdf](https://www.mea.gov.in/images/Revised_ICM_Booklet_17032017.pdf)

<sup>18</sup>The aim of the scheme is to enhance the skills set of potential emigrant workers in select sectors and job roles, in line with international standards to facilitate overseas employment

<sup>19</sup>*Non-Resident Tamils and Remittances : Results from Tamil Nadu Migration Survey 2015*, funded by State Planning Commission, Government of Tamil Nadu, p.2