

"The draft emigration Bill is more about managing the export of human resources than being a humanitarian framework."

India has been home to one of the longest and largest episodes of emigration in the world, from the Second Century BC, when Alexander the Great took back Indians to Central Asia and Europe, to the present times where Indians, moving out on their own volition, form one of the world's largest populations of emigrants. This population is also diverse in every aspect, from its geographical presence and skill sets to their purposes for migration and migration strategies.

A large emigrant population has many benefits for India: the much-discussed international remittances (which touched \$80 billion in 2018), and also a positive impact on foreign direct investments, trade and foreign relations. The Indian diaspora also provides much needed philanthropic activities in health and education to help achieve the Sustainable Development Goals. Of course, they do fund political parties of their choice during the elections.

There is another side to the Indian emigration story, which is characterised by information and power asymmetries in the global labour markets to include exploitation, inhuman living conditions, violence and human rights violations.

Lost focus

Since Independence, a steadily increasing number of low-skilled emigrants moved to destinations in West Asia. In order to safeguard their rights and welfare, the government enacted the Emigration Act, 1983. Perhaps it was an Act that was 'formulated with the mindset of the 19th century, enacted in the 20th century and implemented in the 21st century'.

In the last 35 years, to cite the government, "the nature, pattern, directions, and volume of migration have undergone a paradigm shift". So, in an effort to update and upgrade this framework, a draft Emigration Bill, 2019 was released. Almost a decade in the making, it aims to move from the regulation of emigration to its management.

Unfortunately, its provisions fail to match the ambitions of its objectives. They continue the post-1983 ad hoc approach towards emigration, relying on the regulation of recruiting agents/employers and the discretion of the government. In fact, the bulk of it focusses on establishing new statutory bodies and giving them broad and vaguely defined duties.

Crucial exclusions

What is most positive about the draft Bill is the inclusion of all students and migrant workers within its purview and the abolishment of the two passports (emigration clearance required and emigration clearance not required, or ECR and ECNR) regime based on a person's educational qualifications. This will significantly improve the collection of migration flow data when compared to the current system, which excludes most migrants leaving India. Despite these developments, most trajectories of migration from India continue to be excluded.

For instance, Indians reuniting with family members abroad (who can be Indian emigrants, non-resident Indians and/or foreign nationals) constitute a major chunk of out-migration from India. Studies show that each member of emigrant families often contributes towards remittances sent back home. Many family migrants often convert their immigration status and become workers, which is a factor not given thought in the 2019 draft Bill.

In an increasingly hostile political environment for migrants globally, these “dependent migrants” have increasingly little economic or political freedom at their destinations, an example being the recent attempt by the Trump administration in the U.S. to repeal the employment eligibility of spouses of high-skilled H1B immigrants (a majority are from India). Also alarming are numerous instances of Indian spouses being ‘lured’ abroad in marriage and then stranded or exploited. Between January 2015 and November 2017, the government received 3,328 such complaints.

Another excluded category is that of undocumented migrants. The perception is that undocumented migrants are those persons who leave India through informal channels, but most migrants become irregular on account of expired visas/permits. In West Asia, when migrant workers flee their employers to escape exploitation, a single police complaint can make them ‘undocumented’ for no fault of theirs. Data from the U.S. and Europe reveal a dramatic rise in the number of Indians being apprehended for immigration-related crimes. These migrants live in incredibly precarious situations, with many living in poverty.

Family migrants and irregular migrants abroad are as vulnerable, if not more, as workers and students and warrant at least equivalent protection and promotion of their welfare.

Regulation of intermediaries

The draft Bill incorporates many already established ad hoc regulations and obligations for recruiting agents. It also includes subagents (often a relative or friend of the potential emigrant) and student enrolment agencies into its regulatory purview. These intermediaries play an instrumental role in minimising information asymmetries and migration costs. Thus, any regulatory framework needs to balance strong disincentives for migrant welfare-destroying practices with the efficient supply of affordable intermediary services for prospective workers and students.

However, in the past decade, while emigration from India to West Asia has been decreasing, emigration from Bangladesh to this region has increased in the same period, which is attributed to a more liberal emigration policy. This suggests that the prescribed regulatory process in India has inadvertently created barriers to migration — for instance, nurses can be recruited only through government recruitment agencies — and increased the cost of emigration.

Further, given that student enrolment agencies have a different business model and a completely different customer base, i.e. students applying overseas, it is unclear why they are prescribed the same regulations as recruitment agents.

What about return migrants? To effectively ensure their welfare, any emigration policy framework needs to be considerate of the complete migration cycle: the pre-departure, journey, destination and return. The 2019 draft Bill addresses only the first three parts of the cycle while completely ignoring return migration. Globally, one in four migrants today is a return migrant. In fact, most Indian migrants in West Asia return home — the current estimate of return migration in Kerala alone ranges between 1.2 and 1.5 million according to the Kerala Migration Surveys conducted by the Centre for Development Studies since 1998.

Rights-based approach for all

Many of the oversights in the draft Bill reiterate the government’s restricted understanding of migration from India; there is no complete database number of Indian migrants abroad. There is also an erroneous assumption that Indian migrants in a developed destination country have sufficient protection and welfare. The draft Bill personifies the government’s primary view of emigration policy as a means for managing the export of human resources rather than a humanitarian framework to safeguard Indian migrants overseas.



Migration is a complex and highly dynamic process with constantly evolving profiles of migrants and their destinations. Only an ex ante-migrant rights-based approach that is inclusive of all Indian migrants abroad can be considered of this and provide them adequate security and welfare. There are a whole host of multilateral migration-related treaties and conventions which can provide the necessary guidance for a truly visionary and future-proof Indian emigration policy framework.

Without drastic changes to the draft Bill's approach, we will miss the opportunity to fulfil the hard-fought shared objectives of the Global Compact for Safe, Orderly and Regular Migration.

GS World Team...

Draft Emigration Bill, 2019

Introduction

- The extant legislative framework for all matters related to emigration of Indian nationals is prescribed by the Emigration Act 1983.
- Over three-and-a-half-decades down the line; the nature, pattern, directions and volume of migration have undergone a paradigm shift. The large scale migration of our skilled professionals to developed countries, students pursuing higher studies abroad and increasing presence of our nationals in the Gulf for employment, are some of the salient developments.

Why the need?

- The Emigration Act, 1983 was enacted in a specific context of large scale emigration of Indian workers to the Gulf region. It has its intrinsic limitations while addressing the contemporary migration trends.
- The limitations of Emigration Act, 1983 are at times manifested in sub-optimal utilization of existing resources, delays in prosecution of illegal agents, lack of legislative provisions in working out effective framework for various programmes like pre-departure orientation, skill up gradation and other measures aimed at welfare and protection of migrant workers..
- The Bill proposes to constitute an Emigration Management Authority (EMA) by the Central Government to ensure the overall welfare and protection of emigrants..
- It will be the overarching authority to provide policy guidance, undertaking comprehensive review and stocktaking on emigration management related matters.

- EMA will be led by Secretary level Officer from Ministry of External Affairs.

Salient points

- Nodal authorities will be setup by respective States and Union Territories that will be chaired at Principal Secretary level and will have representation from Home, NRI, Labour and Skill Departments.
- The Bill makes mandatory registration/intimation of all categories of Indian nationals proceeding for overseas employment as well as students pursuing higher studies abroad.
- Necessary provisions have been incorporated to exempt certain categories in this regard on a need basis.
- The Bill has comprehensive provisions including insurance, pre-departure orientation, skill up gradation, legal assistance, Migrant Resource Centres, Help Desks, Migration and Mobility Partnerships, Labour and Manpower Cooperation Agreements/MoUs etc aimed at strengthened welfare and protection of Indian workforce abroad.

The objective

- The proposed Emigration Bill, 2019 is aimed at providing a progressive enabling legislative framework based on whole-of-cycle migration approach and empowerment of our workforce through informed choices.
- It caters to all aspects of migration. The Bill seeks to put in place a robust institutional framework that is responsive, easily accessible, technology driven and strengthens the welfare and protection of Indian nationals in distress abroad.



Expected Questions (Prelims Exams)

1. Consider the following statements-

1. The extant legislative framework for all matters related to emigration of Indian nationals is prescribed by the Emigration Act 1983.
2. The Draft Emigration Bill proposes to constitute an Emigration Management Authority (EMA) by the Central Government to ensure the overall welfare and protection of emigrants.

Which of the above statements is/are correct?

- (a) Only 1 (b) Only 2
(c) Both 1 and 2 (d) Neither 1 Nor 2

Expected Questions (Mains Exams)

- Q. Discussing the Draft Emigration Bill, 2019 explain to what extent will it be able to empower and provide security to Indian workers. (250 Words)**

Note: Answer of Prelims Expected Question given on 17 June. is 1(d).

