

VITAL SIGNS

VITAL YET VULNERABLE: PROTECTING INDIAN WORKERS IN THE GULF

*Report of proceedings at the conference held
on 31 January - 1 February, 2023 in New Delhi, India*



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FOREWORD

The economies of the six oil-rich Gulf states of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates (UAE) are highly dependent on low-paid migrant workers from Asian states, and no country sends more workers to the Gulf than India. Workers from Indian states including Kerala, Telangana, Bihar and Uttar Pradesh, among others, sustain a wide range of sectors, from domestic service, to hospitality and construction. Although the serious abuses of these workers has generated intense criticism in recent years - notably in relation to Qatar's preparations to host the 2022 World Cup- that criticism has not resulted yet in a sustained, collective effort to redress structural wrongs. The perceived benefits of outward migration for origin states, and the Gulf states' effective use of their economic and political leverage, in large part explains why origin states have never collectively demanded better protection for their workers. Despite some stellar interventions, including by several participants in this event, on the whole civil society groups have not been able to mobilise collectively on this issue. The report provides some answers why. The dire labour market situation in the sending countries and a host of issues around the erosion of democratic rights have been crucial matters occupying civil society energies. The purpose of this event was to bring experts from a wide range of backgrounds and disciplines together with a view to discussing the issue and devising practical solutions that could create pressure on the Indian state to protect the fundamental rights of its most vulnerable overseas nationals.

The following proceedings, expertly summarised here by Sourya Majumder, provide a valuable and detailed record of the discussions that flowed from four distinct but inter-related sessions. The first session situated Indian migration to the Gulf in its political and historical context and provided a comparative perspective with labour migration within India. The second session addressed the specific issue of female domestic workers, an acutely vulnerable sub-set of the migrant worker population whose mistreatment has been extensively documented. The third session examined the recruitment of migrant workers and the capacity of India's draft emigration bill to serve as a protective mechanism, and the fourth and final session was a presentation of new and ground-breaking research on migrant worker deaths in the Gulf from the Vital Signs Partnership. The event was held in collaboration with the Centre for Education and Communication (CEC), a leading labour rights organisation in India.

Having been working on this issue since 2002, it is my hope that these proceedings do not just inform and enlighten readers on these issues but also that they might serve as the historical record of the start of a long and fruitful conversation.

Nicholas McGeehan

Founding Co-Director, FairSquare



Session 1: (L-R) Nicholas McGeehan, Prabhu Mahapatra, Atul Sood, J. John

1. UNDERSTANDING LABOUR MIGRATION: THE VIEW FROM INDIA

Panelists: Nicholas McGeehan, Atul Sood and Prabhu Mohapatra. Chaired by J. John

The introductory session contextualised the question of migration for work to the Gulf Cooperation Council (GCC) countries—Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates—within the wider patterns and challenges in the Indian labour market.

Posing the Problem

In his opening remarks, **J. John** noted that International Labour Organisation (ILO) statistics show that roughly 169 million people have migrated to the GCC countries for work, of whom 42% are women.¹ Over two-thirds of those living in this region today are migrant workers. The main tools from international law that regulate this massive migration have been formulated by the ILO and the United Nations (UN). The ILO Convention on Migration for Employment, 1949 was drafted after the Second World War, primarily to serve the demand for migrant labour in reconstructing devastated European countries. The situation changed over the course of the 20th century. Workers' mobility was increasingly deregulated during the 60s and 70s and new, transcontinental migration routes emerged to meet the demands of a globalising labour regime. The ILO

Convention on Migrant Workers (Supplementary Provisions), 1975 was the first to acknowledge this—it recognised the heretofore unspoken distinction between 'documented' and 'undocumented' or 'illegal' migrants, reifying this distinction. This was followed by the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990. These legal instruments have been shaped, primarily, by the reorganisation of capital and have been dominated by the interests of the Global North. They have looked at overseas migrant labour from a managerial perspective instead of safeguarding them via a rights-centric approach.

In India, an Emigration Bill, proposed in Parliament in 2019 and then again in 2021, is the latest attempt to manage this huge population going overseas for work. That the question of Indo-Gulf migration has been passed over to the Union Ministry of External Affairs from the Ministry of Labour and Employment shows that, once again, workers' basic rights are considered secondary to the concerns of securing foreign remittances, perceived threats to national security and 'skill development' as per the demands of the global labour regime.

1. See 'Global Estimates on International Migrant Workers' (ILO 2018), bit.ly/3KORKKF

Forced migration as slavery

Based on his personal journey and experiences in the Gulf, **Nicholas McGeehan** spoke about the need to frame the issue of forced migration to the Gulf as one of modern-day slavery and not merely as one of labour rights violation. From his time working on a Masters in Human Rights to undertaking his PhD dissertation on slavery, human trafficking and forced labour, McGeehan came to believe that a legal argument must be made that forced migration be treated at par with slavery.

McGeehan acknowledged that the GCC countries are not an exception to the global norm. What is distinctive about them is the scale at which they employ migrant labour—approximately 8.8 to 10 million Indians alone work in the Gulf and labour migration to the GCC countries increased after major oil discoveries in the region during the 1970s. The position of overseas migrant workers is made more precarious by debt bondage to recruiting agencies, the technical and financial hurdles faced during the passport and visa approval process and the *kafala* system of bondage.²

The lack of a free press and of a vibrant civil society and the near total absence of trade unionism in GCC countries are some of the reasons for these conditions proliferating unchecked. The FIFA Football World Cup 2022 in Qatar has brought attention to some of these issues, particularly, the case of migrant worker deaths, but longstanding patterns and challenges must be acknowledged and acted upon for lasting change.

Changing Role of the State

The intervention made by **Atul Sood** highlighted some macroeconomic features of the Indian labour market, specifically, in the post-Covid 19 period, which must be kept in mind when dealing with the problems of forced overseas migration. Sood pointed out that the relationship between capital and the State has been altered fundamentally in recent years. He emphasised the need to identify the structural position of labour in the changed economy and its discursive reconstitution under the paradigm of growth we now encounter, in order to find the right buttons to push for any type of progressive change.

Regulatory frameworks provide crucial interconnections between the State and capital which affects labour. Sood highlighted that regulatory mechanisms and institutions, both domestic and international, which were created to ostensibly

protect labour against the excesses of capital have come to have the opposite effect, that is, labour's submission to the dictates of international finance capital. This has been called 'supply side progressivism' in the North American context. Certain elements of progressive discourse have been incorporated within the neoliberal paradigm, what Sood called a 'mutation within neoliberalism'. The drive towards creating a situation of 'rights-lessness' continues today in the name of promoting a productivist ethic. Sood pointed out that we must remain attentive to the transformation in the methods of exploitation of labour when pushing for regulatory interventions aimed at winning dignity for working people's lives.

In the Indian context, we cannot understand migration for work overseas without looking at some of the factors propelling domestic intrastate or interstate migration. The economic life of rural India, which includes both the agrarian and the non-farm sectors, still employs almost three-fourths of the working population. It is the rural economy that people fall back on in times of crisis, such as during the nationwide Covid 19 lockdown—the rural economy absorbs the labour force made redundant by other sectors and provides the massive reserve army of labour to drive down wages in emerging labour markets. Migration for work is the unacknowledged link between this sector and the pulls of global finance. It is important to distinguish between the various types of migrants that a crisis in the rural economy creates. This includes seasonal or circular migrants who move out during periods of underemployment in the agrarian cycle and others from better-off, middle peasant classes who migrate driven by aspirations for higher standards of living. Instead of generating employment in the home state itself, policy decisions related to migration are institutionalising the dependence on periodic remittances from destination states (and from overseas) as a means of overcoming precariousness. The trend has been to make these contributions by migrant labour almost invisible, with workers' distress and powerless rage unable to hold the State to account any longer.

Sood pointed out that the academic literature on Indian labour migration can be classified into the following: that which sees the rapid increase in migration as an unwanted consequence which can be mitigated within neoliberalism, or that which posits it as an innate part of the neoliberal labour regime.

Even the latter is insufficient in diagnosing the problem as it is not attuned to how the language of neoliberal reforms is changing today. In the post-2014 period, after the incumbent Bharatiya Janata Party led union government came to power, the Indian state policy outlook has been reoriented, turning away from older forms of welfarism and macroeconomic

2. Kafala refers to the infamous 'sponsorship' system that operates in the majority of GCC countries wherein private individuals or organisations in the employer countries must act as sponsors for bringing in overseas migrant labour. The system has been criticised for binding workers to their employers in a foreign country where they suffer from major power asymmetries. Bahrain and Qatar have formally abolished this practice after facing international criticism but it is known to continue to operate in a clandestine manner.

demand management to a new regime of supply side policy interventions. This has also been attributed as a cause for the BJP's electoral successes. Of the 25 schemes announced after the new government came to power, only two may be said to have been tangentially linked with labour—the 'Skill India Mission', which claims to be focussed on generating self-employment, and the 'Make in India' scheme, which brought a limited expansion in defence production but has primarily been an image-makeover exercise. The remaining 23 schemes use targeted supply side tools instead of being aimed at demand generation. Only four out of the 22 schemes announced during the Covid 19 lockdown deal with the issues of labour. Simultaneously, during this period, there was an unprecedented deregulation of labour and trade relations alongside the privatisation of State-owned enterprises.

Reviewing these changes, Sood divided the post-1991 period of neoliberal reforms in India into two phases, (i.) from the opening of the economy to international finance in the 1990s up to 2008 and (ii.) from 2008 to the present. The second and ongoing phase is marked by the ascendancy of the Executive branch of the State. In terms of regulating labour, its discretionary power in policy-making has increased manifold, while the Legislature is reduced to simply formalising these new boundaries once they have been set. The Indian State now claims that archaic laws and regulations have let down the working class and only targeted welfare schemes brought by the paternalistic State can protect it. At the same time, the State ensures the wholesale exposure of labour to the predations of international finance capital. These parallel movements have reconstructed the relationship between the State and the poor and marginalised sections of the population. Struggling trade unions must take this into account when devising new, creative forms of demand-making.

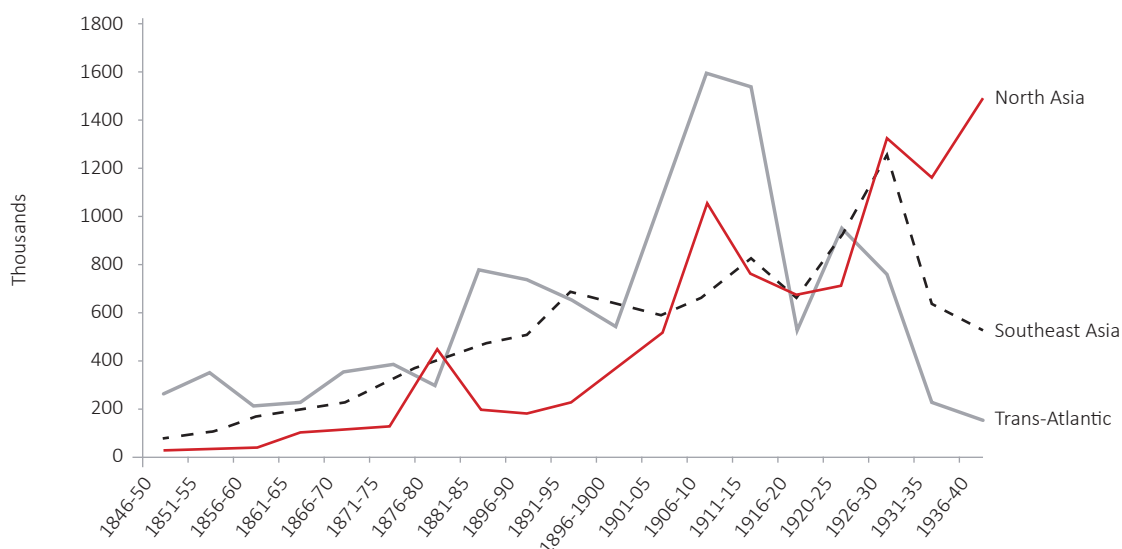
The Long View

To understand the specific features of labour migration from India in this period of mutating neoliberalism, **Prabhu Mohapatra** suggested situating it in a temporally-extended horizon and outside the dominant paradigm of the nation-state. This would highlight several continuities from the colonial past and break Eurocentric myths about migration, the role of regulation and workers' agency. Looking at the global history of migration, roughly in the period between 1840 and 1940, Mohapatra highlighted strong continuities today which arose in the 19th century.

For instance, the GCC countries' *kafala* system originated during the period of British colonialism in the region. *Kafala* itself was a mutation of an older system of indentured labour that originated in Europe's master and servant laws. These were laws regulating employment of a formally free and contractual nature but which were structurally loaded in favour of the masters.

Similarly, history shows that labour migration in modernity has always been regulated, either by the State or capital, and the distinction between free, voluntary movement and forced slavery and trafficking becomes hard to sustain.³ *Graph 1.1* shows that North Asian migration, originating from India and neighbours, and Southeast Asian migration, from China to Manchuria and Russia to Serbia, has quantitatively accounted for a much larger share than European Trans-Atlantic migration to North America and even chattel slavery from Africa. Of these, North Asian migration from the Indian subcontinent has historically been the most significant numerically, contrary to popular imagination, and Burma, Ceylon and British Malaya were the main centres of out-migration during the 18th century.

Graph 1: Aggregated global migration (five year totals)



3. For more on this and the source of the graphs reproduced below, see McKeown, A. (2004). Global Migration, 1846 – 1940. *Journal of World History*, 15:2, pp. 155-189.

Moreover, adopting a historical perspective outside the dominant strand of Eurocentrism displaces the myth about the distinctive nature of European migration to North America. Often, this stream of migration is seen as that of free labour, as opposed to the slave or indentured labour trade from Asia and Africa. Not only was much of European migration of a circular nature like in the Indian scenario, indicating that it was also driven by the force of circumstances rather than choice, data shows that only a minority of migration from the Indian subcontinent was of an indentured nature. Of the 30 million who migrated from British India, only two million were indentured labourers. The majority were taken through the *kangany* recruitment system instead—*kangany* is a Tamil word referring to overseers—or through the *maistry* system of short-term contracts. While indentured labour, generally for a five-year term, was backed by the State, the majority of *maistry* labour was entirely informal.

Regulation, therefore, has always existed. This may be formally done by the State, as in the case of indentured labour, or informally through capital, as in the case of *kangany* and *maistry* labour. In fact, regulation was first brought in to chalk out a legitimate sphere for indentured labour from that of slavery. This approach ties in with Sood's call to look more closely at the role of regulatory frameworks in facilitating new forms of exploitation.

The bases for demanding greater regulation were also significant. Moralistic claims to defend the patriarchal honour of women's bodies drew attention to sex-trafficking, although this was a relatively minor part of all overseas migration, but it made women's solo migration more difficult and this restriction on women's mobility continues even today. Similarly, incipient nationalism and disgust at the system of using Indian coolies drew attention to the problem of indentured labour which, as we have shown, was a relatively small part of all migration and the circumstances leading to overseas migration in many cases remains unchallenged post-Independence in India. The arguments used to demand regulation of overseas migration must be thought more closely, Mohapatra argued.

The period from 1930s to the 70s, coinciding with a spurt in living standards in the post-War decades, unsurprisingly brought a dip in overseas migration. The neoliberal turn in the 70s changed this once again, with Indo-Gulf migration emerging as the largest international migration corridor today. In India, while southern states like Kerala accounted for most overseas migrants earlier, the eastern states of Bihar, east Uttar Pradesh, Odisha and West Bengal, which also account for the largest number of domestic interstate migrants, make up the largest share today.



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Session 2: (L-R) Neha Wadhawan, Lissy Joseph, Praveena Kodoth, Neetha N

2. INDIAN WOMEN DOMESTIC WORKERS IN THE GULF

Panelists: Lissy Joseph, Neha Wadhawan and Praveena Kodoth Chaired by Neetha N.

The second session brought in the dimension of patriarchy to the discussion on the Indian labour market and its relation with overseas migration. Speakers discussed the invisibilisation of migrant women workers and touched on the role of the State in regulating and skilling them, the myriad formal and informal mechanisms of migration in operation today and experiences of organising women domestic workers who go overseas for employment.

Listening to women

Speaking from several decades of experience in organising domestic workers in Andhra Pradesh, **Lissy Joseph** described how precariousness and violence pervades the occupation that absorbs a large number of working women. Even domestically, the gendered labour in paid housework is unprotected as it remains beyond the ambit of fundamental labour laws, such as for minimum wages. Through a prolonged struggle by trade unions, domestic workers secured recognition under the Unorganised Workers' Social Security Act, 2008. India is yet to ratify ILO Convention 189 of 2011 which is the international

framework recognising paid domestic work done by women as work and suggests a regulatory mechanism for the sector. As a result, for decades, trade unions have been campaigning for a national domestic law in line with the ILO's recommendations to ratify this convention.

Joseph witnessed the spiralling immigration clearances queues in Hyderabad where hundreds of women line up to emigrate to the Gulf, led by recruitment agents. Her organisation began hosting 'pre-decision' discussions in East Godavari and Kadapa districts with women thinking about migrating for overseas employment as domestic workers. As it is not possible to organise unions in the GCC countries after migration, these discussions are aimed at providing information to women before they have committed to a recruiting agent or paid the money needed for a visa. Often, those women who have returned from the Gulf after having worked as domestic labour lead these sessions. The decision to go abroad is prompted by several factors such as the search for better livelihoods, the need for cash income in women's own control or to escape sexual violence or other types of harassment in the home. The experiences of migration are mediated through different types

of networks for women, either through private recruitment agencies, as is the norm in West Godavari and Kadappa districts, or through familial connections and kinship networks already engaged in overseas employment, as seen in East Godavari. Many women migrants who go overseas belong to Dalit or religious minority communities, while a large number of domestic interstate migrants belong to Adivasi communities. Joseph pointed out the inadequacy of the pre-departure training given by recruiting agencies after the visa is approved. These discussions are of little meaning at that point as the person has already agreed to the terms set by agents/employers. Instead, they ought to take place earlier, must include training in the local language, basics of legal knowledge and other job-related skilling.

Once in the destination country, migrant domestic workers have complained of several issues related to the highly informalized and contractual basis of their employment. The largest number of complaints arise out of wage theft by employers and the migrant women's inability to enforce their legal rights abroad. Other issues include denial of healthcare facilities, sexual harassment at the workplace and unpaid labour being extracted, such as by forcing women to work in multiple relatives' homes without adequate breaks or additional payment. With Indian embassies being unresponsive to their concerns, migrant women are left without legal recourse in case of such exploitation.

Concerning regulation and return

Speaking about the cautions that need to be kept in mind when regulating migration for domestic work, **Neha Wadhawan** warned about the dangers of overlooking women's agency when bringing in regulation. Women have traditionally been seen as suitable only for house-based work, generally within their own homes, such as in low-paying, task-based piece rate jobs. This is why women going to work outside the home are often clubbed under the umbrella of human trafficking. Moreover, speaking about regulating recruitment without addressing working conditions in the destination countries misses the point. It has often been found that increasing the cost of compliance of regulations on recruiting agencies has led women to opt for informal channels of migration where they also have a greater degree of autonomy in choosing their employer.

Today, women are engaged in a large number of sectors overseas, such as in garment manufacturing, and domestic work is often a relatively better paying alternative among them. It is women's presumed docility under patriarchal oppression which is incentivising employers to prefer women workers in certain sectors. Beyond small-scale cottage

industry and agriculture-adjacent employment, such as in animal husbandry and pisciculture, more creative efforts must be undertaken for ramping up employment opportunities for women in their home states.

When thinking about women migrants' return, 'reintegration' efforts are generally limited to alternative employment in high-skilled jobs. It may be more useful to ask questions such as: were these women malnourished before they went overseas, has their malnourishment increased after returning and what healthcare infrastructure must be put in place to meet their specific needs? This would point to solutions such as improving pre-departure medical testing, improving work and living conditions abroad and providing healthcare coverage on return. Wadhawan emphasised that the State must take such a holistic approach to recognise women's unpaid contribution to social reproduction. A positive outcome of women working outside their own home, such as those working overseas, is that their remittances are visible in contributing to the creation of the home, a tangible asset, which is otherwise the traditional site of their drudgery. In this way, migrant domestic workers are not only contributing towards social reproduction in their destination countries but also back at home, through their remittances.

Wadhawan argued that the trade union movement in India must become more all-encompassing and pick up the demand for ratifying ILO Convention 189 on domestic work. We must also think of more creative framing of demands, for instance writing in obligations towards women's social security overseas when signing bilateral agreements and MoUs with GCC countries.

Understanding intermediaries

Picking up on the thread of discussion on the binary between forced and voluntary migration, **Praveena Kodoth** said that this was particularly relevant to women because their decision to migrate is always seen as 'forced'. A woman going outside the home is seen as generating instability within the social fabric. This paternalistic restriction on women's movement is codified into the law, not just in the Emigration Act, 1983 but in a slew of government circulars and notifications that have been brought out since. For instance, passports issued under 'Emigration Check Required' (ECR) category for travelling to 18 listed countries are for men with less than Matriculation level of education but all women under the age of 30 must undergo this process in the name of security. This unequal treatment creates restrictions and does not address the complex reasons for which women may emigrate, which includes escaping patriarchal control at home but also other aspirations which are not very well understood. As a result, the ECR regulations are regularly flouted by women who take to informal and

undocumented migration routes to secure a better future. From field surveys conducted during 2011, Kodoth found that over half of her respondents had gone abroad under the age of 30, flouting ECR rules. Our approach towards regulation must take into account how caste and patriarchy interact with State policy to generate risk for certain sections.

Speaking of the law, Kodoth argued that the first piece of legislation, the Indian Emigration Act, 1922, was brought in with the view of curtailing overseas migration. The approach changed over the years, with Supreme Court judgements incrementally taking the view that such migration must be 'regulated' instead. Finally, the law itself was amended in 1983. While the new law banned sub-agents in recruitment, in effect, it acted as a green light for mass emigration for work overseas. The result of this law was that sub-commissioning agents used by recruiters were removed only on paper. As there was an increasing demand for women workers overseas but recruiting agencies in big metropolises could not reach rural women willing to migrate, the entire network of sub-agents became clandestine instead of being eliminated. This network continues to operate in the informal sector and the profitability in sub-commissioning may have grown in recent decades instead, Kodoth argued. We even find that while cities like Mumbai used to be the nodes for overseas migration, now smaller cities such as Calicut and Thiruvananthapuram in Kerala have emerged as epicentres. This has been possible because returning migrants have started acting as local recruiting agents.

The system of emigration checks has also similarly failed, as in the case of ECR rules described earlier. They had been brought in to protect women from hazardous employment but remain ineffective because there is no mechanism to regulate the conditions of work or support workers in destination countries. To take another example, a government directive mandating foreign employers of women emigrants to provide a bank surety of USD 2,500 for travelling to all GCC countries except Kuwait was implemented in 2011. A result of this was that documented ECR migration drops sharply in the official statistic that year, particularly from Oman. When the same rule was applied to Kuwait in 2014, we see a similar decline in documented emigration. This shows the drastic effect of changes in emigration policy on the lives of women, often pushing them into informal and undocumented emigration routes. Since 2016, all overseas private recruitment of women workers was banned and only designated public sector agencies were allowed as recruiters. This means that even those already placed overseas can no longer arrange for their relatives, such as daughters or in-laws, to travel and work abroad through legal means. Another field survey conducted by Kodoth in 2019 found that all respondents interviewed had gone to work overseas through undocumented means because of this new rule. The paternalistic and protectionist approach in the passport issuance process, illustrated above, has been driven by the insecurity generated by women's mobility rather than any real concern with their safety and dignity. This demands for change.



Session 3: (L-R) Kranti LC via zoom, Bheem Reddy, Nikhil Eapen and J John

3. RECRUITMENT OF MIGRANT WORKERS AND ITS LEGAL (DE)REGULATION

Panelists: Bheem Reddy, Nikhil Eapen and Kranti L.C. Chaired by J. John

The recently introduced Emigration Bill, tabled in the Parliament of India in 2021, has generated both hope and doubts about the governance of overseas migration and the regulation of intermediaries involved in the emigration process, such as recruiting agencies and sub-commission agents. The third session discussed the contents of the draft legislation and the history of legal battles related to overseas migration. It also brought in the perspective of trade unions engaged in this process.

Emigration process

The Indo-Gulf migration is the world's second largest emigration corridor, after the USMexico border, with 8.8 million Indians living in six Gulf countries sending the highest amount in remittances from anywhere in the world. They are covered by several bilateral agreements and MoUs with the governments of these countries. Outlining the emigration process today, **Bheem Reddy** spoke about the changes he had observed from the time he visited the UAE for employment

in 1997 which led him to form an association of returnee emigrants and migrant workers.

Under the Emigration Act, 1983, emigration without clearance requirements ('Emigration Clearance Not Required' or ECNR category) had been limited to passport-holders who were college graduates. As the Indian economy got integrated into global supply chains, this restriction was lifted gradually, first for those who had finished Class 12 and, currently, to anyone who has passed Class 10. Those travelling with an ECR passport must pay INR 350 for mandatory coverage under the Pravasi Bharatiya Bima Yojana (PBBY), which provides an accidental insurance coverage of INR 10 lakhs. Since 2020, recruiting agents have been allowed to collect up to INR 30,000 (with an additional 18% Goods and Services Tax) as service charge for arranging visas for prospective workers. Recruiting agencies include major multinational agencies which must deposit INR 50 lakh worth in sureties with the union government and small-scale recruiters who have to deposit INR 8 lakhs in order to issue visas to up to 100 migrants.



Trade unions have been demanding a special Welfare Budget to be allotted by the union and state governments for migrant workers in the GCC countries to meet healthcare expenses, repatriation costs for the body in case of death abroad and related petty costs. Secondly, a longstanding demand has been to use the Advanced Passenger Information (API) database of all Indians travelling abroad to generate more precise statistics about the scale and composition of Indo-Gulf migration, which is currently only used for taxation and national security purposes. Thirdly, a major reason for overseas migrants' disenfranchisement has been the loss of their right to vote by travelling abroad. Unions are demanding for postal ballots in order to politically empower migrants.

Legislations

The Emigration Act, 1983 is set to be replaced by the latest draft bill proposed in 2021. **Nikhil Eapen** compared the changes being proposed with the ILO's General Principles and Operational Guidelines on Fair Recruitment to highlight its shortcomings. Under the existing law, the offices of the Protector of Emigrants (POEs) have been set up for licensing recruitment agencies as well as granting emigration clearance for prospective overseas migrants. As other speakers at the symposium highlighted, a large volume of overseas migration remains undocumented and takes place outside the procedure laid down in the law.

The new bill stipulates several provisions for tracking and enumerating workers going overseas. It recognises that a chain of sub-agents operate in the recruitment channel, an oversight in the current law. It addresses this by bringing in a process of self-regulation by the major corporate recruiting agencies. The State appears to be passing the buck on regulating sub-agents without stipulating the incentives for such private players to declare and regulate the practices of sub-agents. The new bill also proposes setting up State Nodal

Committees to prosecute erring recruiting agencies within a state's jurisdiction, a bureaucratic hurdle that affected regulation earlier. The POE is given wide-ranging powers to inspect contracts, cancel licenses of recruiters and enforce fair industry standards. However, the challenges faced by the 11 POEs in India today arises due to the lack of staff and funds to carry out the rigorous task of enforcing the law. The new bill does not make any provisions for this major shortcoming either.

One of the core principles set out by the ILO regarding fair recruitment is that workers should not have to pay for their recruitment. However, recruiters are currently allowed to charge a regulated service fee and the process of deregulation proposed by the new Emigration Bill will allow recruiting agencies to set their own service fee. This is besides the well-known practice of agents charging several times the prescribed fee. While the bill speaks of setting standards and ratings for recruitment agencies, it brings in many self-certification mechanisms for recruiters. Thus the outcome hinges on the assumed compliance by recruiters and that they will act in good faith. Another key tenet backed by the ILO is that workers must have clear contracts at the time of recruitment. The language of the proposed legislation is watered down in this regard, only stipulating that the conditions for the contract must be shared by the recruiting agency at the time of recruitment. This disregards the infamous practice of contract substitution and does not propose any way of tackling the same. Lastly, redressal mechanisms for dispute resolution are not specified in the proposed bill. It merely allows such disputes to be referred to the state police department. No separate dispute resolution mechanism to receive and process complaints or access to free and affordable legal aid, translation and other services is specified in the bill. By contrast, some countries are enforcing joint and several liability clauses to protect migrant workers.⁴

Taking a broader view, the proposed bill is couched in a language of workers' welfare and to streamline and increase the efficiency of the emigration process. It speaks little about the rights of workers. An example of what could be done alternately is the law in the Philippines which sets out a human rights framework in the preamble of its emigration legislation. For a country like India which sends millions of citizens to the Gulf, any proposed law must specify fair labour standards, workers' rights to form associations, elimination of discrimination, forced and child labour and safeguard basic human rights principles. This is where the current approach to emigration in India is severely falling short.

The lack of a rights-centric approach in the proposed bill is in line with the rollback of labour rights we are seeing across the board, argued **Kranti L.C.** The move towards a language

4. These clauses are inserted into employment contracts to allow recruitment agencies and primary employers in the destination countries to be prosecuted for breach of contract even after the migrant workers has returned to the home country.

of targeted welfarism must be seen in light of the shrinking space for labour protections at large, which we are also seeing in the BJP government's move to introduce four Labour Codes which will replace several labour protections. The proposed bill appears to be a shabby and hasty draft with ambiguity remaining over several of its provisions. Picking up from Eapen's criticisms of the proposed law, Kranti highlighted the lack of redressal mechanisms and the absence of minimum thresholds stipulated for employment overseas.

A feature of the new law relates to the increasing role seen for state governments, in line with the federal structure of the Constitution where labour is listed as a matter on the Concurrent List. This could however become a tool for the union government to wash its hands off any responsibility towards migrant workers instead of enshrining real federalism, he warned. Not only does the law not specify the source of financing for its various provisions, it also does not allow space for workers' representation on the proposed nodal committees at the state level.

Much remains to be seen in how the bill is operationalised after it is enacted into law. Kranti argued that the utility of any law is in how it is used by labour in its struggle for rights. Unfortunately, the Emigration Act, 1983 remains poorly litigated and has not been adequately used by workers' organisations to try to secure rights for migrant workers. It is an irony that the law itself was drafted in response to the Supreme Court's intervention in the matter of Erach Sam Kanga v. Union of India⁵ but there has been an alarming lull in litigation on the matter in the forty years since. The utility of the proposed law lies in how it is used creatively to secure workers' rights. This is challenging because it demands of foreign governments in the GCC countries to act according to Indian labour law or with reference to ILO standards. Lawyers will have to use the legal instruments at their disposal in an innovative manner to ensure that the law delivers some relief to overseas migrants.

5. W.P. No. 2632 of 1978; verdict in the Supreme Court delivered on 20 March 1979.

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A conference and workshop, organised by Fair Square Projects in collaboration with CEC

31st January - 1st February, 2023, India International Centre, New Delhi



Session 4: (L-R) Nicholas McGeehan, Colin Gonsalves, Vikas Bajpai, Usman Jawed

4. VITAL SIGNS: KEY FINDINGS AND DISCUSSION

Discussants: Nicholas McGeehan, Colin Gonsalves, Vikas Bajpai. Chaired by Usman Jawed

Nobody knows the true figure for how many migrant workers die in the Gulf or the causes of their deaths. But available statistics indicate it is many thousands of people every year, a large majority of them being healthy working age individuals. The first Vital Signs report has compiled and analysed the available information on the deaths of migrant workers from five Asian origin countries— Bangladesh, India, Nepal, Pakistan and Philippines— in the Gulf states of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE. Subsequent research in the project focuses on access to healthcare for migrant workers and particularly on heat stress in the context of climate change.

Vital Signs: The deaths of migrants in the Gulf (read the full report here), was the first of its kind to attempt to quantify and explain the deaths of migrant workers in the GCC countries where migrant workers occupy the vast majority of the jobs in low-paid sectors such as construction, hospitality and domestic work. The report found that as many as 10,000 migrant workers from south and south-east Asia appear to die

every year in the Gulf, with more than half of those deaths remaining effectively unexplained. It found that government data on migrant worker deaths is fragmented, incomplete and inconsistent, that there are serious and systematic issues with the manner in which the Gulf states investigate migrant worker deaths and that low-paid migrant workers in the Gulf are exposed to a series of cumulative risks to their health, including: heat and humidity, air pollution, overwork and abusive working conditions, poor occupational health and safety practices, psycho-social stress, hypertension, unsanitary living conditions, among others.

The report accessed data on migrant worker deaths from a wide range of sources, including data made publicly available by governments, data secured via Right to Information requests and data from informal sources. The data is fragmented and incomplete, making analysis of the causes and circumstances of migrant workers' death very challenging. On the available evidence, more than half of migrant worker deaths are not explained, which is to say that deaths are certified without any reference to an underlying cause of death, instead using

terms such as ‘natural causes’ or ‘cardiac arrest’. The report concludes that the most likely reason for this high rate of unexplained deaths is that there are serious and systematic issues with the way that Gulf countries investigate migrant worker deaths.

The *Vital Signs* research also found incomplete and inconsistent data maintained by sending countries as well. The following example from India, which is relatively better in its data management than other sending countries, is instructive. In November 2019, responding to a question asked in the Lok Sabha, the Minister of State in the Ministry of External Affairs said that 12,595 Indians had died in the Kingdom of Saudi Arabia between 2015 and October 2019. However, in response to an RTI in December 2020, the Indian Embassy in Saudi Arabia said that between 2015 and 2019, 7,444 Indians had died. This represents a dramatic difference of 5,151 people (69%) for an almost identical time period. A further response in the Lok Sabha in 2022 confirms that the higher figure is more likely to be accurate.

There are major inaccuracies in the data related to migrant deaths in the GCC countries as well. Comparing deaths of Indian migrant workers recorded between 2014 and 2017-18, we find that Kuwait attributes 42.1% of all such deaths to ‘heart attack’ while this is only 4.2% in Bahrain. The clinical definition of this term refers to the blockage of blood flow in the arteries temporarily while a permanent stoppage is called a ‘cardiac arrest’. All death is preceded by a cardiac arrest. In Bahrain, we find that 46.6% deaths are attributed to cardiac arrest. The massive inter-country disparity in this data indicates that either the cause of death has not been recorded accurately or there is an alarmingly high rate of heart attacks in Kuwait. Pointing to similar such disparities, McGeehan also noted how a cumulative 30.3% deaths in Kuwait in this period have been attributed to ‘natural causes’ or ‘sickness’, both of which are vague terms. Governments in the GCC countries argue that such inaccuracies are because of the inability to conduct invasive autopsies without the consent of family members of migrants. However, McGeehan argued that MRIs, biopsies or even verbal autopsies can reduce the number of uncategorized deaths—it is less than one percent in France while in the GCC countries, 50 – 70% of all migrant worker deaths remain unexplained.

While the GCC countries have some of the best private healthcare systems in the world, migrant workers cannot access them. Meanwhile, there are major cuts in subsidized, public hospitals. Heat stress and humidity is a major risk factor here and recent bans on working in certain hours during heat waves, such as in Qatar, are not enough to build a heat-resistant system. Hypertension is another ‘silent killer’, with

one study showing that migrants from Kerala had a 30% higher chance of suffering from this condition compared to a control population.⁶

The *Vital Signs* findings shows that the beginning point to solving the problem would be knowing its scale. The Government of India must bring in transparency in publication of the records available and acknowledging its shortcomings. Moreover, it must push for investigations in the GCC countries for better collection of data, through non-invasive autopsies and other methods available. It is urgent to make them accountable for failing health systems and poor living and work conditions of overseas migrants from South Asia.

‘A doctor who does not diagnose the disease process, that is, the pathology, is doomed to dress up the symptoms of the disease.’



Commenting on the launch of the report, **Vikas Bajpai** reminded the audience of the necessity of retaining an analysis of class and class struggle in any discussion on the conditions of migrant workers. Speaking from a public health perspective, Bajpai said that in his experience as a young doctor, he had found that the causes for much of disease is not physiological but social. Its solution lies in transforming the social structure. He said that it is important to arm workers with a vision for such a transformative politics if the problems highlighted in the sessions are to be overcome. The ‘NGO-isation’ of labour struggles can rob one of the horizons of possibility in the name of sticking to practicality.

‘I heard the discussion in the bill and we are looking at the lines and words in the bill and the assumption is that once it is enacted will become the law. But it is not the law.’

Bringing in his expertise from decades in the courtroom, **Colin Gonsalves** congratulated the authors of the *Vital*

6. Shamim Begam, N. Mini, GK. (2016). Impact of Migration on Non Communicable Disease Risk Factors: Comparison of Gulf Migrants and their Non Migrant Contemporaries in the District of Origin in Kerala, India. *Austin Journal of Public Health Epidemiology*, 3(3): 1038.

Signs report for bringing this new information to light in a compelling manner. To make use of this new information, he recommended using Constitutional Law as a weapon to secure justice for migrant workers. The terms set by the State for workers in the language of policy and law should not constrain one to appeal to the 'higher law' of the Constitution. Speaking to it being undergirded by ethical and moral principles, Gonsalves described constitutional law as deriving its power from its simplicity and claimed it is often what we already know in our hearts and minds about what ought to be. He recommended approaching the High Courts and the Supreme Court with the data on migrant deaths compiled by *Vital Signs* and the extensive documentation undertaken by trade unions over the decades related to alternative provisions that must be enacted into the law on emigration.





4. DELEGATES' WORKSHOP

The objective of the workshop was for participants to deliberate over the possible ways of addressing the challenges faced by Indian workers in the Gulf. The participants were divided into groups to discuss three dimensions related to Indo-Gulf migration: Knowledge Gaps, Policy Intervention and Labour Organising. Each group discussed the theme assigned to it and made presented its deliberations to the house. This was followed by an open house session where participants discussed possible ways of enacting the action points.

Agenda for research

The discussants identified three major research gaps from the existing literature on overseas migration in India. These were as follows:

1. Who decides to leave? A sectoral mapping of overseas migration.
2. The question of recruiting agencies: exploiters or facilitators?
3. The return home: the problem of 'reintegration' and socio-political changes brought by migration.

The states of Bihar, eastern Uttar Pradesh, Rajasthan and West Bengal have emerged as key hubs of overseas migration, exceeding migration from southern states such as Kerala, Telangana and Andhra Pradesh. The former are also states of heavy out-migration within India. We note significant regional variations in the patterns of migration. For instance, we find single female migrants from Andhra Pradesh working as domestic workers overseas but predominantly single male migrants from the northern regions. While young female migrants from among Adivasis are migrating alone interstate to work as live-in domestic workers, few among them seem to be going overseas. Analysing these differences can yield important insights about the role of financial and skill-based endowments, pre-existing networks, histories of migration in a region and the social axes of oppression such as caste and patriarchy in facilitating or blocking the decision to move. Moreover, we must overcome the data blind spots regarding which sectors Indian overseas migrants are engaged in, regional differences within the GCC countries and the hazardous working conditions among sectors. This will present a clearer picture of the aspirations with which people migrate.



The role of the recruiting agencies or sub-agents must be looked at more closely in order to understand what type of regulations to push for. On one hand, recruiters are seen as exploitative and involved in nefarious practices such as extracting forced labour, fraudulent advertising and human trafficking. On the other hand, the local sub-agent of a major recruiter may be the emigrants' sole point of contact with the potential employer and a link with the family back at home. Even if overseas migration is caused by several push factors, the small-scale recruiter may be seen as playing a facilitating role in migration. This needs to be understood better as it is also linked to the question of organising migrants. Recruiters may be important stakeholder for such organising, as was the case for contractors involved in agitating for construction workers' welfare boards.

The problems related to the return home must also be studied. In the existing discourse, this is framed as a matter of 'reintegration' within the home that was left behind. This ignores the political subjectivity of the migrant worker and the changes in the home being brought about when corridors of overseas migration emerge in a certain area. Several discussants had highlighted that different social security nets and social infrastructure must be developed for returning migrants. We must also look at the changes being brought in the source state by the returning migrants' experiences as workers, their political worldview and new social imagination.

Suggestions for policy

The discussants broke down the need for policy advocacy to three levels based on regional configurations. These include the (i.) international, (ii.) national and (iii.) state levels. At the international level, existing instruments on migrant labour such as the ILO Convention on Migrant Workers (Supplementary Provisions), 1975 and the UN International Convention on the Protection of the Rights of All Migrant Workers and Members

of Their Families, 1990 have to be used effectively. It will also be relevant to pay attention to the thinking of institutions such as the World Bank, International Monetary Fund, World Trade Organisation, World Economic Forum and so on, in order to understand the direction in which global capital seems to be moving. On the side of labour, strategic alliances will have to be made between organisations working at the national level with international NGOs, CSOs and trade unions. During the discussion, delegates also suggested exploring regional cooperation processes such as the UNDP's Colombo Development Dialogues, the Abu Dhabi Dialogue and to use the SAARC to raise some of these issues collectively as it is the South Asian nations which are emerging as the main source of Gulf migration. Best practices from other countries can also be documented as a template for India.



Nationally, we are observing a trend across the electoral spectrum to push for more market friendly policies and using the 'demographic dividend' to encourage overseas migration. Our response to this must be rooted in a discourse on universal human rights as well as the Fundamental Rights of Indians enshrined in Constitutional jurisprudence. These are the most powerful bases for claim-making in the politico-legal domain. Focus must also be laid on bilateral agreements signed with GCC nations to incorporate ILO standards. Effective lobbying with Parliamentarians who are open to hearing the concerns of the affected workers and their families may be explored. Central trade unions having membership across states may also be brought onto a central platform on this agenda. A stage to raise these concerns has been provided in the consultation process for the new Emigration Bill under discussion in Parliament and these avenues remain to be explored.

At the state level, it is suggested that the experiences of and lessons learned by older outmigration hubs in the southern states be shared with the emerging migration hubs of Uttar Pradesh, Bihar, Odisha, Rajasthan and West

Bengal. Organisations working in the southern states must open dialogue with civil society and governmental agencies operating in the northern and eastern hubs. As labour is a federal matter and the new bill pushes for a greater participation of the states, such information and experience-sharing exercises will likely gain urgency. At the same time, we must consider the treatment of immigrants from Bangladesh, Nepal, Myanmar and other countries coming to work inside India. It must be ensured that there are no double standards in our emigration policies for Indians going overseas and non-Indians coming to work in India.

Challenges of organising

The first task for organising overseas migrants is to map taluka and district level migration corridors. Experiences of organising in the home state, like in Telangana, show that groups of neighbouring villages tend to emerge as clusters for migration to specific countries. Trade unions will have to begin by identifying these specific clusters and encouraging returnees to join district level organisations to raise demands.

The second step is to link organisations in the source countries with those working in the GCC region. While it is almost impossible to organise trade unions in the Gulf countries given the restrictions on the freedom to form associations, there are several cultural organisations of overseas migrants and humanitarian organisations belonging to the Gulf countries which are open to engage on such issues. From past experiences, it has been possible to speedily deal with complaints by making such inter-linkages between source and destination countries.



The last effort must be a political one. Trade unions must work to raise the demands of overseas migrants as an electoral agenda. The Telangana experience shows that all major political parties now have dedicated wings for Indo-Gulf migrant returnees given the scale of the phenomenon and their visible presence. Another successful struggle waged recently was over the issue of 'referral minimum wages' suggested by the union government to the GCC countries. In 2020, these were reduced to USD 200 or (INR 15,000) for Qatar, Bahrain, Oman and the UAE and to USD 245 and USD 324 for Kuwait and Saudi Arabia, respectively. A successful struggle by trade unions followed by protests in New Delhi led to the minimum referral wages being raised once again. In the current scenario, it is a major challenge to register new trade unions even domestically. At such a time, creating informal organisations of returnees are among the first steps to take, along with trying for affiliation with the existing nationwide federations. Possibilities of articulating the demands of internal (domestic) and external (international) migrant workers were also discussed. This makes sense from an objective as well as organising point of view. Those migrating overseas for work will also at other points in time in their lives be seeking work within India as well. Furthermore, one can make analytic separations between domestic and international migration, but they are often migrating due to similar factors - lack of remunerative jobs at source being the big issue here. Lastly, for ground level work to be effective, one cannot address only a well defined subsection, that is to say, one cannot be rigidly exclusive about only tackling the concerns of overseas workers. Many of the problems- wage theft, lack of employer accountability, lack of collective representation and bargaining, occupational safety and access to healthcare, etc- are shared by domestic migrants as well. The difference is that the mechanism by which they are exploited that are different. So, while policy demands for either set of workers will defer, the objective situation demands that the concerns of workers be raised jointly and a shared understanding of the problems faced as well as the reasons behind them, be built among CSOs, Trade Unions and others. These actors should ideally think of coming together to form a representative platform to take this work forward.

APPENDIX A: LIST OF SPEAKERS

Atul Sood is a professor at the Centre for the Study of Regional Development, Jawaharlal Nehru University.

Bheem Reddy is a migrant rights activist associated with Emigrant Welfare Forum, Hyderabad.

Colin Gonsalves is a senior advocate at the Supreme Court of India and is the founding director of Human Rights Law Network.

J. John is founding member of Labour File and Social Security Now. He has several decades of experience dealing with the issues of workers in the informal sector and small producers.

Kranti L.C. is with the Human Rights Law Network.

Lissy Joseph is founding chairperson of National *Workers Welfare Trust*. She has over 25 years of experience in unionising domestic workers in Andhra Pradesh.

Neetha N. is a professor at the Centre for Women's Development Studies, an autonomous research institute supported by the Indian Council of Social Science Research.

Neha Wadhawan is the national project coordinator for Work in Freedom at the International Labour Organisation.

Nicholas McGeehan is founding co-director of FairSquare Projects. He has a PhD in international law on slavery, forced labour and human trafficking and is based in France.

Nikhil Eapen is a journalist and researcher on migrant issues at Equidem.

Prabhu Mohapatra is a professor at the Department of History, University of Delhi.

Praveena Kodoth is a professor at the Centre for Development Studies, Thiruvananthapuram.

Usman Jawed is a research and advocacy consultant with FairSquare Projects.

Vikas Bajpai is an assistant professor at the Centre of Social Medicine and Community Health, Jawaharlal Nehru University.

APPENDIX B: ABOUT THE ORGANISERS

FairSquare Projects is a non-profit human rights research and advocacy group. It produces original research designed to support people at risk of abuse, hold accountable those responsible, and identify how the abuse can be stopped. FairSquare works on three main issues: accountability in sport, the rights of migrant workers and the impacts of authoritarianism. FairSquare has extensive experience in investigation, legal and policy analysis and advocacy.

Vital Signs Partnership includes, alongside FairSquare, the Center for Migrant Advocacy in the Philippines, the Law and Policy Forum for Social Justice in Nepal, Justice Project Pakistan, and the Refugee and Migratory Movements Research Unit in Bangladesh. Supporting organisations include Migrant-Rights.org, which documents migrant workers abuses within the GCC and Migrant Forum Asia.

Centre for Education and Communication (CEC) is a labour resource centre. Since its inception in 1983, CEC has been promoting the rights, dignity and livelihoods of small producers, marginal farmers and communities dependent on labour. Its activities are strongly informed by the principles of gender rights, Dalit rights and social inclusion. CEC organises action research, executes field intervention and provides support for the development and execution of key ideas, concepts and frameworks that improve the capacities and lives of labouring communities.

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