

Comments to the draft EMIGRATION BILL, 2019, dated 20 January 2019, released for public consultation by the Ministry of External Affairs (MEA)

India Migration Now (IMN)¹ is a data, research and advocacy organisation which aims to promote research, policy and regulatory strategies that support and protect Indian migrants within India and abroad. Given the importance of migration to millions of Indian households, our vision is to ensure regulations and policies help Indians grab the opportunities that migration has to offer. The promotion and protection of welfare of emigrants is a core part of our work.

In this document, we present our comments on the draft Emigration Bill 2019 (hereafter “the draft Bill”) in response to the call for comments from the public by MEA (Ministry of External Affairs, 2019).

India is the source country for the world’s largest stock of international migrants and the draft Bill aims to manage their emigration process, and protect and promote their rights. Unfortunately, the provisions of the draft Bill fail to match the ambitions of its objective and instead merely reinforce the already established policy regime. The draft Bill fails to clearly define “*welfare*” and provide the necessary guidance for an effective policy and regulatory framework. While the inclusion of students and high skill workers to its purview is a welcome development; however the draft Bill, much like the Emigration Act 1983 (“the Act”), continues to exclude a large proportion of current and future Indian migrants abroad: Family members reuniting with Indian migrants already abroad, member of the Indian diaspora and other foreign citizens, alongside those who left India irregularly through illegal channels constitute a major proportion of Indians abroad. These Indian migrants are as vulnerable if not more as workers and students, and thus warrant, at least, equivalent promotion and protection of their welfare. In our view, if the draft Bill is to effectively and comprehensively ensure “*safe, orderly and regular migration*” from India, it is essential to provide greater clarity and guidance for a framework for the “*protection and promotion of welfare of emigrants*” and include all categories of current and future Indian “*emigrants*” abroad. Without these and other concerns (set out in our response) being addressed, the draft Bill could miss the opportunity to fulfil the hard fought shared objectives of the recent United Nations (“UN”) Global Compact for Safe, Orderly and Regular Migration 2018 (“GCM”). We welcome this attempt to update the emigration policy framework for India but urge further development of the draft Bill to arrive at a truly migrant-welfare enhancing framework.

Our comments are presented in two sections. In the first section titled “I. Overarching Comments”, we raise foundational concerns about the draft Bill. In the second section titled “II. Section-specific Comments”, we provide section-by-section feedback and proposals on particular provisions of the draft Bill. The thinking presented here builds on our past work on the principles and strategies required for an effective migration policy framework that takes into account the magnitude and diversity of emigration from India.

¹ Hosted by the South East Migration Foundation, a non profit organisation working towards ensuring that India captures the opportunities migration has to offer. IMN is building the most comprehensive data, research and policy repositories for migration in India and is working with stakeholders across India and abroad.

SECTION I. OVERARCHING COMMENTS

In this section we summarise eleven significant issues of concern in the draft Bill. These are grouped into (i) foundational concerns and (ii) regulatory concerns.

(i) **Foundational Concerns**

1. **The objectives of the draft Bill needs to be more clearly defined:** While we laud the intent to transition from a regulatory approach to a management approach towards emigration, the overall purpose of the draft Bill is unclear. Specifically, beyond registration and data collection procedures, what is meant by emigration management? In its current form, the draft Bill merely reinforces the framework of the Emigration Rules, 1983 (“the Rules”) and subsequent amendments and notifications. By assigning loosely worded duties to the Bureau of Emigration Administration (“BEA”) and recruiting agents/student enrolment agencies, the draft Bill is continuing the ad hoc approach towards Indian emigrants. In our view, instead of narrowly specifying a regulatory regime and delegating the policy making process completely to the Central Government, the draft Bill should focus on providing broad principles and guidance for a policy framework that comprehensively manages emigration and protects and promotes the welfare of emigrants.

2. **The purview of the draft Bill needs to include all Indian migrants abroad irrespective of the purpose of migration:** While the inclusion of all workers and students into the purview of the draft Bill shows progressive intent, the continued exclusion of all other Indian migrants overseas is extremely concerning. Designing a policy framework for the most vulnerable sections of Indian emigrants is the right approach, but the assumption that amongst Indian emigrants only workers and students fit the most vulnerable description is erroneous. Family migrants/dependents, migrants extending and changing their VISA status at destinations and irregular migrants are as vulnerable if not more as workers and students, and thus warrant, at least, equivalent promotion and protection of their welfare. For instance, the increasing scale of irregular migration to the European Union (“EU”) and family migration to the United States (“US”) are putting Indian migrants in increasingly exclusionary and hostile social environments. It is also important to consider that women and children constitute a significant proportion of family migration from India. In Section III A, we have compiled the vulnerabilities and welfare concerns of Indian emigrants in non-Gulf destinations. Given the evolving nature, range and magnitude of emigration from India, these are major oversights and gaps.

In our view, if the draft Bill is to effectively and comprehensively promote and protect the welfare of Indian migrants abroad and ensure safe, orderly and regular migration from India, it is essential to **widen the objective of the draft Bill and the definitions of Emigrant and Emigration/Emigrate to include all categories of current and future Indian migrants abroad.**



3. **Need for an ex ante - migrant rights based approach towards emigration for a proactive and future-proof policy framework:** The current provisions of the draft Bill continue the post 1983 ad hoc approach towards Indian emigrants. An approach relying on the regulation of intermediaries/employers and the discretion of statutory bodies.

For instance, the Emigration Clearance Required (“ECR”) regime has overtly emphasised migration to the Gulf at the expense of other corridors. This is partially due to the lack of an authentic database regarding the number of Indian abroad and their migration patterns. But also, there is an implicit assumption that a developed destination country with advance public institutions and social welfare systems is inclusive of all foreign immigrants, and thus will sufficiently ensure the protection and welfare of Indian emigrants. Furthermore, it is also reflective of the Indian Government’s primary view of emigration policy as a means to manage the export of human resources rather than a humanitarian framework to safeguard Indian citizens overseas (Committee on External Affairs, 2018).

The ECR regime along with other notable initiatives like *Madad*, *Pravasi Bhartiya Bima Yojana (PBBY)*, the *eMigrate portal* etc., while laudable in their intentions, are reactive and inadequate attempts to promote and protect the welfare of the world’s largest emigrant stock. In our opinion, **it would be prudent if the rights of all Indian migrants abroad are enshrined in the draft Bill.**

Migration from India is a dynamic process with constantly evolving profiles of migrants and destinations. An ex ante migrant rights based approach towards emigration management and emigrant welfare can be considerate of this and avoid the pitfalls of a purely reactive approach. Such an approach can provide Indian migrants abroad with adequate security and welfare. **The GCM and other multilateral migration conventions provide the necessary guidance for the principles needed for a truly visionary and future proof emigration policy framework (please see Section III C for more details).**

(ii) **Regulatory Concerns**

4. **Will the prescribed regulatory measures for recruiting agents place excessive controls on the market and inadvertently create barriers to migration?** Given the important role played by middlemen like recruiting agents and sub agents in minimising information asymmetries for workers and students going overseas, the regulatory structure has to be careful in **finding a balance between governing the overseas employment process and preserving the market mechanism for the recruitment industry.** The primary aim of regulations should be the formalisation of these traditionally informal industries, the creation of strong disincentives for practices which undermine the welfare of migrants and ensuring the efficient supply of recruitment services for workers seeking overseas employment.

A parallel aim of any emigration policy framework should be minimising barriers to migration and the cost of migration. Evidence suggests that the regulatory process for recruiting Indians overseas has contributed to the decreasing emigration rate in the past decade, in contrast to Bangladesh, where the emigration rate has rapidly increased — due to emigration policies that encourage emigration (United Nations, 2013; ILO, 2018) (See Section III B for more details). There is also a genuine concern that the prescribed regulatory approach overburdens recruiting agents



who want to operate formally, and thus inadvertently contribute to increasing informal/irregular channels for migration abroad.

In the absence of any independent evaluation of the proposed regulatory regime, which merely incorporate and reinforce the regulations of the Rules and subsequent amendments, it is an open question whether the draft Bill's regulatory approach is inadvertently creating barriers to migration through excessive controls on the recruiting industry?

5. **Why student enrolment agencies have the same regulations as recruitment agents?** While we acknowledge the involvement of stakeholders from the recruitment industry in the policy making and implementation process, the interests of student enrolment agencies have been ignored. The enrolment of students into foreign universities is a fundamentally different process than the recruitment of workers. Student enrolment agencies work with a different business model and service a different customer base, students applying overseas — which is increasingly relying on self funding rather than scholarships for financing their education abroad. And thus imposing the same regulatory regime for both is misguided and can lead to adverse consequences for Indian students wanting to study abroad.

SECTION II. SECTION-SPECIFIC COMMENTS

We have listed our item-wise comments in the table below, referenced against the corresponding chapter and section of the draft Bill

Sl. No.	Chapter and Section No.	Page No.	Comment
A.	Chapter I 2.(1)(e) and 2.(1)(f)	2,3	<p>2.(1)(e): While the inclusion of students in the definition of “emigrate and emigration” is a welcome development, the continued exclusion of other Indian migrants already overseas or aspiring to go overseas is concerning. In Section III A, we show the scale of non work and non education related migration from India and the compilation of issues they face. This supports the case for including all Indian migration abroad into the definition of</p> <p>2.(1)(f)(i): It is also unclear as to why students and other India migrants overseas have been excluded from the definition of “emigrant”? Given that students pursuing bachelor degrees are often below the age of 18, it is also unclear why any citizen of India, not below 18 years of age, is excluded from the definition of “emigrant”?</p> <p>2.(1)(f)(ii): Moreover, why are Indians abroad longer than 3 years not covered under the “emigrant” definition? Many Indians abroad for more than 3 years do not have the option of citizenship or long term residency rights and require equivalent protection and rights as short term migrants. This includes students and researchers who often have to be abroad for more than 3 years to complete their education and projects.</p> <p>2.(1)(f): Furthermore, unlike the 1983 Act, “dependent” has not been defined. It is unclear why that is the case, given its usage in the exclusionary criterion for the definition of “emigrant”. Defining “dependent” will prevent any vagueness in the interpretation of who is an “emigrant”. We recommend the following definition based on international convention (IOM, 2011): “<i>refers to person married to migrant workers, as well as their dependent children and other dependent persons who are recognised as members of the family by the applicable legislation or applicable bilateral or multilateral agreements between states concerned.</i>”</p>



B.	Chapter II 11. (i) and (vi)	15	<p>11.(i): Consider designing pre departure orientation programs for all migrants leaving India.</p> <p>11.(vi): Measures for enhancing the welfare and protection of migrants should be defined in principle in the draft Bill and not left solely to the discretion of statutory bodies. (See Section III C for more details.)</p>
C.	Chapter II 12.(i), (ii), (iii) and (xviii)	17,18	<p>12.(i): It will be prudent to include all Indian migrants going abroad in a digitised database. Such a database can be tallied with databases held by destination countries (many of whom keep it public).</p> <p>12.(ii): In order to have a comprehensive approach towards emigration, it will be beneficial to share such a database also with researchers, non governmental organisations (NGOs) and other external stakeholders for research and other support towards policy formulation.</p> <p>12.(iii): a) Measures for enhancing the welfare and protection of migrants should be defined in principle in the draft Bill and not left solely to the discretion of statutory bodies. (See Section III C for more details.) b) Consider defining the migrant life cycle in Chapter I of the draft Bill, in order to ensure that emigrants are provided comprehensive support and security.</p> <p>12. (xviii): This inquiry process needs to be defined in more details in the draft Bill and should be applicable to all Indian migrants abroad.</p>
D.	Chapter III 14, 15(1)	20	<p>14 and 15(1): a) It is unclear what is the purpose of the mandatory registration? If the purpose is to maintain a database of emigrants exiting the country, then measures prescribed should not hamper the emigration process.</p> <p>b) In our view, all migrants leaving India should be captured in any database.</p> <p>c) As an alternative, the Emigration Check Posts (ECP) can be utilised to establish the purpose and length of migration upon exit instead of a mandatory registration. ECP can combine the self reported data of emigrants with an updated global VISA/Immigration Pathways database of all destinations for Indian migrants. Such a database can be maintained by the Bureau of Emigration Administration or the Bureau of Emigration Policy and Planning.</p>



D.	Chapter IV 17.(4)	23, 24	<p>16.(4): a) Given that recruiting agents already have registration and reporting requirements along with ratings, inspections and sanctions, the requirement for depositing a large security amount seems excessive for ensuring compliance and legitimacy of recruiting agents. It is potentially a barrier to entry for new recruiting agents and can lead to an undersupply of such services for potential migrants. This in turn can lead to adoption of illegal/irregular channels for seeking employment overseas and other negative welfare effects for emigrants. Or worst, a decrease in emigration from India, which is what evidence suggests. (Please refer to Section III B for more on this)</p> <p>b) For meeting expenses in the event of repatriation to India, there can be alternative arrangements where intermediaries have to pay up only when such events occur.</p> <p>c) An independent ex post evaluation of the impact of the prescribed regulations would be prudent before enshrining it in the draft Bill.</p>
E.	Chapter VI 26.	33	<p>26.: It is unclear as to why student enrolment agencies have the same regulations as recruitment agents? Student enrolment agencies work with a different business model and service a different customer base, students applying overseas — increasingly rely on self funding rather than scholarships for financing their education abroad. And thus imposing the same regulatory regime as recruiting agents is misguided and can lead to adverse consequences for Indian students wanting to study abroad and/or an increase in illegal/irregular channels of migration abroad.</p>

SECTION III: APPENDIX

A. Magnitude, issues and benefits of non employment and non educational migration from India.

Figure 1: Categories and sub-groups of migrants from India

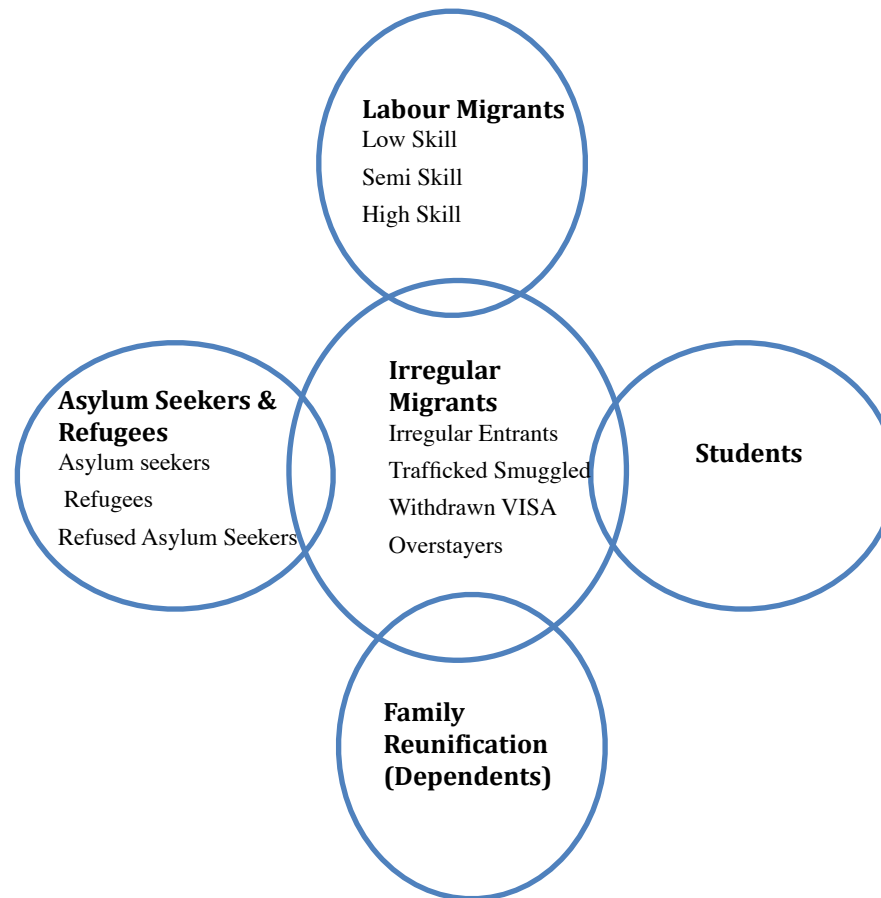
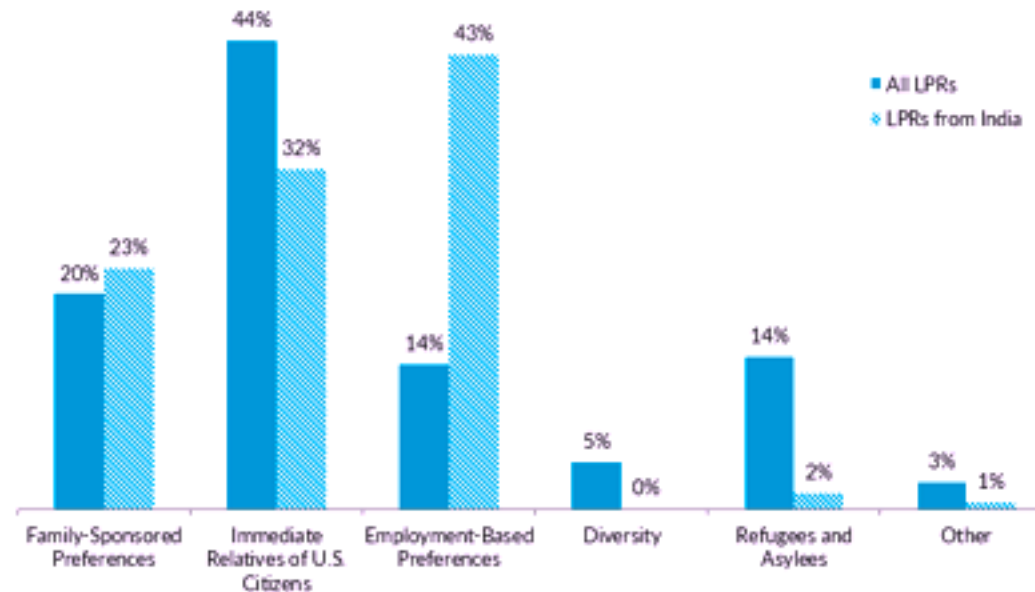




Figure 2: The Immigration Pathways of Indian Immigrants (LPRs from India) compared to All Immigrants in the United States, 2015

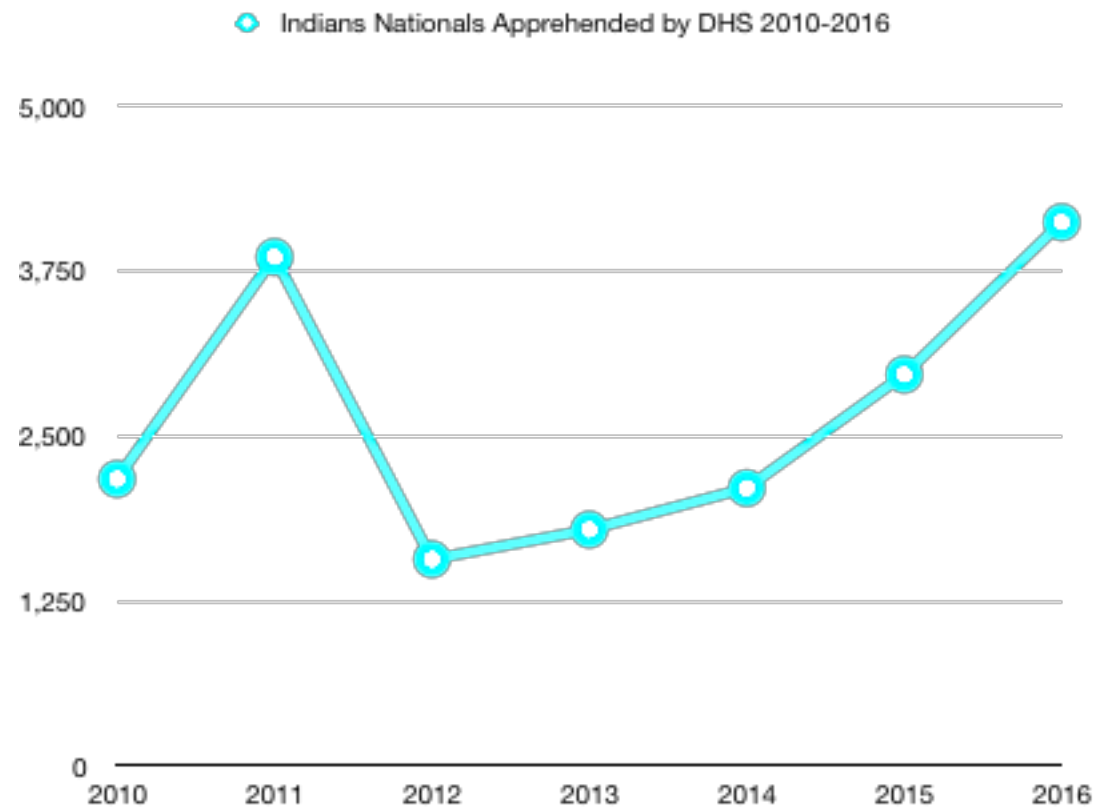


Source: Migration Policy Institute's tabulation of data from Department of Homeland Security (DHS), 2015

- There were significant backlogs for Indian citizens applying for LPR status through employment-based and family-sponsored channels, due to the annual per-country quota of immigrant visas available for these categories. According to the most recent visa issuance data, in August 2017 the State Department was processing visa applications filed by Indians in September 2003 for some family and employment preferences (Zong and Batalova, 2017).



Figure 3: The number of Indian apprehended by the Department of Homeland Security (DHS) in the US has been rapidly rising this decade



Data Source: DHS (2018)

- There were approximately 267,000 unauthorised Indian immigrants in the 2010-14 period (Zong and Batalova, 2017).

Table 1: Top Sponsors' country of birth by landing year of their sponsored relative in Canada, 2007-2011

Country	2007	2008	2009	2010	2011
India	14.3%	14.0%	15.0%	14.5%	12.9%
China, People's Republic of	10.4%	8.9%	9.3%	8.4%	9.9%
Not Stated	9.1%	10.2%	9.6%	9.2%	8.2%
Philippines	5.1%	5.0%	5.1%	5.9%	6.1%
Pakistan	3.9%	4.6%	3.8%	2.3%	3.5%
Vietnam, Socialist Republic of	3.3%	2.2%	2.3%	2.0%	1.6%

- **India has been the top country of birth of sponsors for Family Class immigrants in Canada.**

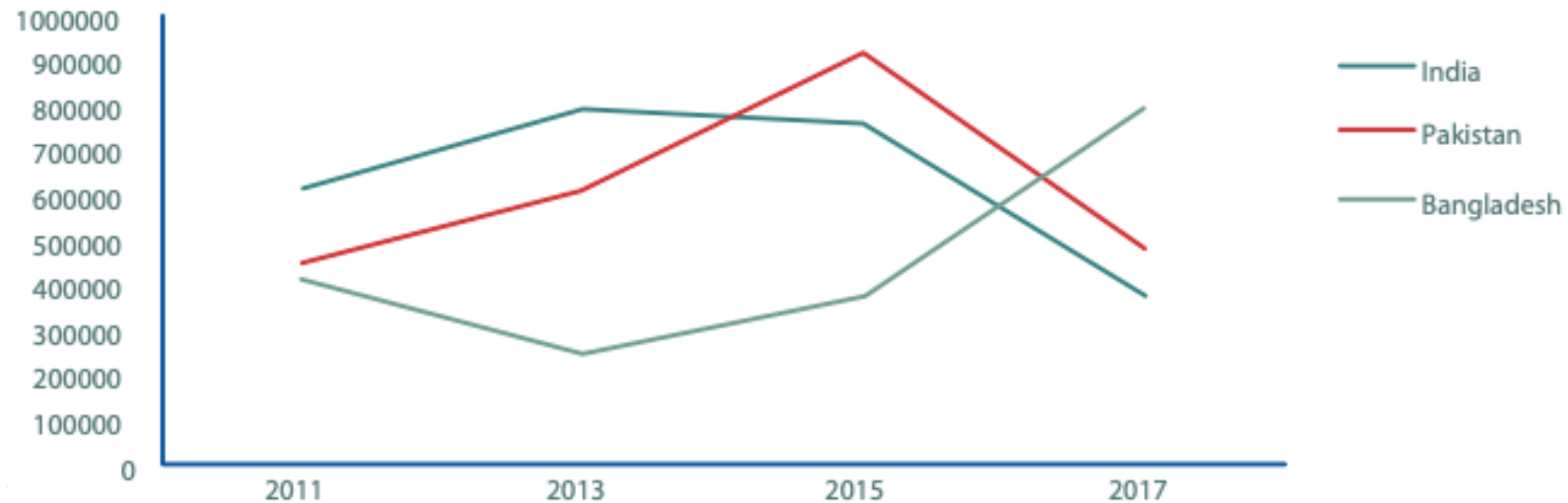
**Table 2: Issues faced by non Worker and Student Indian migrants abroad**

Destination Country	Major Migrant Type	Issues
United States	Family, Irregular, Asylum Seekers	Employment Restrictions, Exclusion from Social Security, Racial Harassment and Discrimination, Lack of information on rights and policies, No access to legal recourse, Fraudulent Marriages
Canada	Family, Irregular, Asylum Seekers	Fraudulent Marriages
European Union	Family, Irregular	Employment Restrictions, Exclusion from Social Security, Racial Harassment and Discrimination, Lack of information on rights and policies, No access to legal recourse, Homelessness, Fraudulent Marriages
GCC	Family, Irregular	Employment Restrictions, Exclusion from Social Security, Racial Harassment and Discrimination, Lack of information on rights and policies, No access to legal recourse, No access to proper housing and sanitation, inadequate medical, Fraudulent Marriages



B. Impact of regulations on the emigration from India

Figure 4: Total emigrants from India, Pakistan and Bangladesh to GCC countries (2011–17)



Source: International Labour Organisation, 2018

- The number of emigrants from both India and Pakistan has decreased substantially since 2015, while the numbers of Bangladeshi workers migrating to the Gulf Cooperation Countries has seen a sharp increase during the same period. In absolute numbers as well, more Bangladeshi and Pakistani workers have migrated to the six GCC countries than Indian workers in the past two years. This shift could be attributed to the introduction of the compulsory employer registration through the E-migrate system and the introduction of high minimum referral wages, which could have disincentivised recruitment from India (ILO, 2018).



C. Principles for promoting, protecting and regulating the Welfare of Indian Migrants

- **Migrant rights are the rights of migrants that are implicitly or explicitly expressed in international human rights and public law instruments. A rights-based approach acknowledges that the rights of migrants are granted mainly by human rights law, and also through treaties from other branches of international public law (GMDAC).**

Table 4: Key treaties from international public law that convey rights to migrants and India's stance on each

Year	Key treaties from international public law that convey rights to migrants	Ratified/ Not Ratified by India
1949	International Labour Organization (ILO) Convention no. 97 concerning Migration for Employment	Not Ratified
1951	Convention relating to the Status of Refugees and its 1967 Protocol	Not Ratified
1954	Convention Relating to the Status of Stateless Persons	Not Ratified
1961	Convention on the Reduction of Statelessness	Not Ratified
1974	International Convention for the Safety of Life at Seas	Ratified
1975	ILO Convention no. 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers	Ratified
1979	International Convention on Maritime Search and Rescue (SAR)	Not Ratified
1982	United Nations Convention on the Law of the Sea	Ratified
2000	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime	Ratified
2000	Protocol against the Smuggling of Migrants by Land, Sea and Air	Ratified
2011	Convention concerning Decent Work for Domestic Workers	Ratified

**Table 5: Comparison of the Objectives of the Global Compact for Safe, Orderly and Regular Migration and the Draft Bill**

Objective of the GCM	Entirely taken into account	Partially taken into account	Not taken into account	Relevant Draft Bill Sections	Comments
Collect and utilize accurate and disaggregated data as a basis for evidence-based policies				Chapter II 12 (ii), 12 (xv), 13 (v)	<i>One of the major features of the draft Bill is the importance it gives to the need for collecting data.</i>
Minimize the adverse drivers and structural factors that compel people to leave their country of origin					<i>Not within the purview of the draft Bill</i>
Provide accurate and timely information at all stages of migration				Chapter II 11 (i), 12 (iii), 13 (i, ii, iii, iv, v, vi)	<i>The draft Bill does take into account pre departure, departure and return migration into its purview. However, the ambit of return migration is very broad and the bill takes a very narrow perspective of it.</i>
Ensure that all migrants have proof of legal identity and adequate documentation				Chapter IV 19 (v)	<i>The draft Bill mentions renewal of documents and adds the responsibility of protection of emigrants on RAs, but doesn't specifically mention legal documentation.</i>



Enhance availability and flexibility of pathways for regular migration				Chapter II 11 (ii)	<i>The draft Bill calls for Negotiation of labour and manpower cooperation agreements and memorandum of understandings, social security agreements, issues of migrant and mobility partnership related framework with destination countries, however this may not be sufficient to ensure regular migration pathways</i>
Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work				Chapter II 11 (i)	<i>The draft Bill does ensure the objective, however the term ethical recruitment is not defined.</i>
Address and reduce vulnerabilities in migration				Chapter II 11 (ii)	<i>It is a major objective of the act, however the entire process may not completely ensure that vulnerabilities of emigrants are actually reduced</i>
Save lives and establish coordinated international efforts on missing migrants					<i>Not addressed</i>
Strengthen the transnational response to smuggling of migrants				Chapter II 13 (ii)	<i>Added into the draft Bill, a positive development.</i>
Prevent, combat and eradicate trafficking in persons in the context of international migration				Chapter VIII 28 (vii)	<i>Added into the draft Bill, a positive development.</i>



Manage borders in an integrated, secure and coordinated manner				Ch 12 11. & 12.	<i>Emigration Check Posts and Functions of the BEA</i>
Strengthen certainty and predictability in migration procedures for appropriate screening, assessment and referral				Chapter II 11 (i), 4(1)	<i>Provisions exist but are ad hoc</i>
Use migration detention only as a measure of last resort and work towards alternatives					<i>Not within the purview of the draft Bill</i>
Enhance consular protection, assistance and cooperation throughout the migration cycle				Chapter II 12 (iii)	<i>Not addressed adequately</i>
Provide access to basic services for migrants				Chapter II 11 (ii)	<i>The term basic services is not defined in the draft Bill, however it takes into account social security.</i>
Empower migrants and societies to realize full inclusion and social cohesion					<i>No relevant provisions</i>
Eliminate all forms of discrimination and promote evidence-based public discourse to shape perceptions of migration					<i>No relevant provisions</i>
Invest in skills development and facilitate mutual recognition of skills, qualifications and competences				Chapter II 12 (iii)	<i>BEA has been assigned the relevant duties</i>



Create conditions for migrants and diasporas to fully contribute to sustainable development in all countries					<i>Not within the purview of the draft Bill</i>
Promote faster, safer and cheaper transfer of remittances and foster financial inclusion of migrants				Chapter II 11 (ix)	<i>The process might get clearer when the Rules come out.</i>
Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration				Chapter II 12 (i)a 12 (xviii)	<i>Relevant provisions in place.</i>
Establish mechanisms for the portability of social security entitlements and earned benefits				Chapter II 11 (ii) 12 (iii)	<i>The entitlements are not specifically defined.</i>
Strengthen international cooperation and global partnerships for safe, orderly and regular migration				Chapter II 11 (i) 13 (vi)	<i>Relevant provisions in place.</i>

**Table 6: The Dhaka Principles for Migration With Dignity (IHRB, 2012)**

i	All workers are treated equally and without discrimination
ii	All workers enjoy the protection of employment law
iii	No fees are charged to migrant workers
iv	All migrant worker contracts are clear and transparent
v	Policies and procedures are inclusive
vi	No migrant workers' passports or identity documents are retained
vii	Wages are paid regularly, directly and on time
viii	The right to worker representation is respected
x	Working conditions are safe and decent
xi	Living conditions are safe and decent
xii	Access to remedy is provided
xiii	Freedom to change employment is respected, and safe, timely return is guaranteed



SECTION IV: BIBLIOGRAPHY

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