

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Saudi Arabia has attracted more low-paid Indian migrants over the last 25 years than any other country in the Gulf region.ⁱ Every day, close to 1,000 Indian low-wage migrant workers are provided with emigration clearances to travel to Saudi Arabia.ⁱⁱ They are recruited to work in cafeterias, supermarkets, construction sites, and guest houses; they sweep streets, cook in restaurants, and serve in households as domestic workers. Together, they send close to 500 billion INR (approximately 8.2 billion USD) back to India every year.ⁱⁱⁱ Remittances to Kerala account for nearly a third of the state's net domestic product.^{iv}

Indian migrant workers in Saudi Arabia are a part of the estimated nine million workers who make up the country's migrant labour force, along with others from across South Asia and North Africa, including Pakistan, Bangladesh, the Philippines, Yemen and Ethiopia.^v

However, Indian migrant workers can often face exploitation and deception in the pre-departure phase in India which contribute to serious human rights abuses in Saudi Arabia.

Focus of the report

Amnesty International India acknowledges that governments and non-state actors in both sending and receiving countries are responsible for the protection of migrant workers. However, the particular focus of this report is what India can do as a sending country to protect migrant workers from human rights abuses, including forced labour and human trafficking.

This report examines the systemic factors in the pre-departure phase of the migration process that contribute to the exploitation and deception of migrant workers by individual brokers and recruiting agents in the state of Kerala, India.

It also documents the human rights abuses migrant workers encountered during their employment and residence in Saudi Arabia, and analyses the role played by the Indian government in regulating recruiting agents and ensuring access to remedy for migrant workers. On their return, workers that Amnesty International India spoke to have found it harder to find regular jobs, and in many cases migrant workers are in debt and struggling to repay their visa loans.

Amnesty International India found that migrant workers were vulnerable not only because of the individual acts of deception and abuse by rogue visa brokers, recruiting agents and employers in Saudi Arabia; but their vulnerability also stemmed from the design and implementation of policies and laws that regulate the recruitment and employment of migrant workers in India and Saudi Arabia.

Human rights abuses in Saudi Arabia:

Unpaid wages

A third of the migrant workers Amnesty International India interviewed reported facing problems with wage payments – including wages being arbitrarily deducted, underpayment, late payment and even non-payment.

In some cases, migrant workers said they were not paid in months, or were not paid at all, and were told by their employers to continue working if they wanted to be paid some day.

Migrant workers, when they begin their jobs, are usually burdened by the debt they have accumulated to buy their visas, and can also face the additional burden of being expected to support their families in India.

Overworked and underpaid

Migrant workers told Amnesty International India that they worked for hours much in excess of the eight hour maximum prescribed under Saudi labour law. Some workers said they used to work between 15 to 18 hours a day – which severely affected their health – but were not paid or were underpaid for their overtime work. Some of the workers interviewed by Amnesty International India also said that they were made to work on all seven days of the week without a day's rest.

Identity documents

The confiscation of passports continues to be a routine practice among low-paid migrant workers in Saudi Arabia. An overwhelming majority of migrant workers interviewed had their passports confiscated by their employers.

Employers also used residence permits as a tool to control migrant workers and prevent them from running away. Migrant workers complained that their sponsors had refused to give them residence permits, or delayed giving them for months. Sometimes the permits were arbitrarily retained, and the migrant workers were told that they would be returned for a price. Migrant workers without a residence permit cannot work legally, or move freely, and may not be admitted to hospitals for medical treatment. They can even be arrested.

Exit permits

Under the kafala system, migrant workers must obtain an exit permit from their employer before they can return to their country.^{vi}

This means that if workers arrive in Saudi Arabia to find that they have been deceived about the terms and conditions of their work during the recruitment process, or are subjected to abusive working or living conditions by their employer, the question of whether or not they can change jobs depends on their employer – the very person responsible for their abuse.

Some migrants interviewed by Amnesty International India said that they had to pay large sums of money to secure an exit permit from their sponsors. In two cases, workers paid amounts as high as 10,000 riyal – roughly equivalent to about four to five months of wages.

In some cases, workers who faced serious exploitation at the hands of their sponsoring employers, including non-payment of wages, excessive working hours and confiscation of documents, were not permitted to return home because they did not have an exit permit.

Forced Labour

Amnesty International India found cases where workers had been engaged in employment for which they had not offered themselves voluntarily – because they had been deceived or had pay withheld for a prolonged period of time – and faced credible threats of penalties if they stopped working, including the withholding of passports and

exit permits and failure to pay pending salaries. These cases constitute forced labour. Some migrant workers, who had clearly been deceived into situations of forced labour, were also victims of human trafficking.

Deception and Exploitation in India

According to the International Labour Organisation (ILO), deception can take place at all three stages of the trafficking cycle – a) at the time of recruitment, b) during the transportation process and c) either before the commencement of work or during its progress.^{vii} Deception is often the first step in a chain which can, at times, lead to situations of forced labour.

In the interviews that Amnesty International India conducted, a third of the migrant workers interviewed said that they had been deceived by their brokers.

Amnesty International India documented a range of abuses in the pre-departure phase of recruitment which included:

- Deception about work conditions including wages, nature of employment, hours of work and payments to the sponsor.
- Excessive fees for employment visas.
- Deception about legality of the work arrangement.

According to the UN Special Rapporteur on Trafficking in Persons especially Women and Children, an independent expert:

“The employment agent himself can be considered a trafficker if s/he knows or turns a blind eye to the fact that the employer is recruiting the worker for the purpose of exploitation, but is deceiving the worker about this intention.”^{viii}

Visa brokers – who act as intermediaries between employers and recruiting agents in India – provide a range of services that include selling visa review letters, providing information about jobs and prospective working conditions and wages, directing prospective migrants to recruiting agents for visa processing, and buying air tickets. Some brokers are also based in Saudi Arabia, where they often receive arriving migrant workers at the airport and act as the first point of contact between them and the sponsoring employer.

Under the Saudi labour law, employers are required to bear all costs related to the recruitment and employment of migrant workers, including fees for the application and renewal of residence permits, work permits, changing professions, exit and re-entry visas, and air tickets.

However Amnesty International India found that migrant workers often paid exorbitant amounts of money for their recruitment and during their employment in Saudi Arabia.

During the recruitment process, migrant workers sold their work tools, their family gold, their land and cattle in India and borrowed heavily from banks, friends and family members to buy employment visas to travel to Saudi Arabia. Sums of money sometimes amounting to as high as 250,000 INR (4,100 USD) were paid to deceptive recruiters (visa brokers and recruiting agents) who made false promises about jobs and prospective working conditions.

Many migrant workers that Amnesty International India interviewed were employed on free visas, an informal arrangement where sponsors permit migrant workers under their sponsorship to work for other employers and do different jobs in return for a fee. The arrangement is illegal under the Saudi labour law, and if caught migrant

workers can be fined, detained or even deported. In these cases, migrant workers paid for the application and renewal of their residence permits, insurance, and their exit permits to return home.

The kafala system

The kafala system is a sponsorship system present in six Gulf countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates) – with notable variations in its form – which regulates the recruitment and employment of migrant workers. Under the kafala system, every migrant worker must have a specific job and a sponsoring employer under whom she works — neither of which can be changed easily. Under the kafala system in Saudi Arabia, workers need the permission of their sponsor to return to their country of origin.

The ILO Committee of Experts has said that the kafala system is conducive to the exaction of forced labour.^{ix}

Visa brokers

The recruitment of Indian migrant workers for employment abroad is governed by the Emigration Act, 1983, which sets up a mechanism for recruitment to be conducted through government-certified recruiting agents (individuals or public or private agencies).^x

Under the Emigration Act, visa brokers are illegal and can face up to two years in jail and a fine up to 2,000 INR. The majority of workers interviewed by Amnesty International India admitted that they paid brokers for their visas instead of going through government-certified recruiting agents. A 2007 survey by the Centre for Development Studies, a research institution in Trivandrum, found that only eight per cent of returned migrants had emigrated through certified recruiting agents.^{xi}

Migrant workers dependent on visa brokers – who are all unregistered and unregulated - can be exposed to exploitation and deception, and made further vulnerable to human rights abuses when they emigrate.

Due diligence by recruiting agents

In the case of Saudi Arabia, only recruitment agents registered with the Saudi consulate in Mumbai – also referred to as wakala holders – are authorised to conduct the visa application process. Under the Emigration Act, recruiting agents have certain obligations towards migrant workers recruited by them. However wakala holding recruiting agents interviewed by Amnesty International India maintained that their obligations to migrant workers travelling to Saudi Arabia were different, and they did not have an obligation to conduct due diligence to ensure that these workers are fairly recruited without deception.

Recruiting agents in Kozhikode, Ernakulam and Trivandrum (the hubs of migration in Kerala) told Amnesty International India that they believed their obligations did not extend to seeking to ensure that migrant workers traveling to Saudi Arabia are provided safe employment, regular salaries, renewed residency documents or a mechanism to settle disputes with their employers

This is at odds with the domestic legal framework, because the Ministry of Overseas Indian Affairs has clarified in a government order that recruitment agencies must exercise the same due diligence in the wakala process that they exercise in regular recruitment.

Pre-departure training

The UN Special Rapporteur on Trafficking in Persons, especially Women and Children has stated that:

“The role of prevention is critical in ensuring that the crime of trafficking does not occur in the first place. Despite its importance, the efforts to combat trafficking have been largely centred on a ‘symptom-specific’ approach in that solutions are sought only after particular problems occur. It follows that resources and efforts are often concentrated on prosecuting traffickers or developing assistance programmes for survivors of trafficking but neglect the development and implementation of comprehensive and systematic prevention measures.”^{xii}

In 2013, the Ministry of Overseas Indian Affairs stated in its Annual Report that one of the crucial challenges that migrant workers face is the 'difficulty in accessing authentic and timely information' relating to overseas employment, recruitment agents and emigration procedures. The Ministry concluded that the lack of this information makes workers dependent on intermediaries and vulnerable to exploitation.^{xiii}

Despite this emphasis by the Ministry of Overseas Indian Affairs, attendance in pre-departure orientation programmes is a serious problem.

In 2012, approximately 100,000 low-paid migrant workers from Kerala were granted emigration clearances to work abroad. However, according to the Project Manager involved in pre-departure trainings at the Non Resident Keralite Affairs (NORKA) in Trivandrum, such programmes reach out to only 3,500 to 6,000 people a year.

Of the 51 workers interviewed by Amnesty International India, not even one had attended or undergone a pre-departure training. More than half of the migrant workers said that they had not even heard of the pre-departure training programmes.

Remedy

The UN Special Rapporteur on Trafficking in Persons has highlighted the importance of the right to effective remedy for victims of trafficking, noting that:

"The international community clearly recognizes that trafficked persons, as victims of human rights violations, have the right to adequate and appropriate remedies, which goes beyond the right to the possibility of obtaining compensation."^{xiv}

Amnesty International India interviewed migrant workers who had been deceived into jobs where they faced serious human rights abuses including forced labour, but none of those interviewed had tried to seek remedy.

Most migrant workers had found their jobs through visa brokers who were related to them, and this discouraged the workers from blaming their brokers. In some cases, workers said that the terms and conditions of the agreement were violated by their sponsors, and the brokers were not to blame.

Others were either sceptical about their chances for remedy if they were to engage in the judicial process, or were not well-informed about their legal rights, the available enforcement mechanisms, and how to access them.

Regulation of recruiting agents and visa brokers

"I have not seen a single case in my tenure as Protector of Emigrants in Chennai where an illegal recruitment agent has been convicted. On one case, after filing the first F.I.R, the first hearing came after 16 months. This is the problem with our system."

- D. Jai Sankar, former Protector of Emigrants in Chennai^{xv}

None of the workers that Amnesty International India interviewed had tried to access remedy

However, secondary research, including interviews with the Protector of Emigrants, delineated the problems that migrant workers face while trying to access justice mechanisms. These include delays in the trial process and the power differential between the recruiter and the migrant worker.

According to the Protector of Emigrants officer in Kochi, between 2011 and 2013 his office received 53 complaints against fraudulent recruiters. But not a single case had led to a conviction.

Protector of Emigrants

Under the Emigration Act, 1983, the Protector of Emigrants (PoE) offices are responsible for the protection of the interests of overseas migrant workers. In 10 cities across India, the PoE is meant to protect, aid and advise all migrants. In reality, however, the PoE office plays a far more limited role, confining itself to the granting of emigration clearances and the perfunctory supervision of recruitment agents.

The PoE offices in both Chennai and Kochi lacked the institutional capacity to effectively regulate the recruiting agents under their jurisdiction

Recommendations to the Government of India

The report makes recommendations on steps the Indian government must take to fulfil its obligation to strengthen protections for the rights of migrant workers abroad, including effective regulation of recruiting agents and brokers; implementing compulsory pre-departure training programmes and providing effective access to remedy.

- Invite comments and recommendations from relevant government stakeholders including civil society organizations, academics and trade unions to draft a new emigration law to replace the Emigration Act, 1983. This law must be consistent with international human rights standards and aligned with progressive emigration management systems.
- Consider alternate regulatory measures to recognise and regulate visa brokers including:
 - Providing clear terms of reference by which visa brokers may be tied to recruiting agents.
 - Informing brokers about their legal obligations and duties and the human rights of migrant workers.
 - Issuing short-term and individual licenses to visa brokers to conduct recruitment in collaboration with recruiting agents and renewing licenses based on their record.
 - Emphasizing to recruiting agents that the onus is on them to conduct due diligence on the prospective work conditions promised by visa brokers tied to them.
- Enforce greater regulation of recruiting agents by setting up a separate department under the Protector of Emigrants to conduct timely and surprise checks and reviews. Provide the department with the necessary logistical and financial support and assistance to undertake their duties.
- Improve access to remedy by setting up a separate department with enforcement powers under the Protector of Emigrants to investigate complaints of exploitation or other abuses by recruiters. The department must provide access to legal aid, information, translation services and other assistance where necessary.
- Expand the outreach of the pre-departure orientation and support programmes provided by the Government of India and the state of Kerala, including through the Overseas Workers Resource Centre, the Non Resident Keralite Affairs Department (NORKA) and the Migrants Resource Centre (MRC).

Recommendations to the government of Saudi Arabia

- Sign and ratify without reservations the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.
- Sign and ratify without reservations the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- Fundamentally reform the kafala system and remove the requirement for migrant workers to obtain the permission of their employer to move jobs or leave the country.
- Reform national labour laws to ensure that migrant workers have adequate protection against abuses by employers and the state.

ⁱ S. Irudaya Rajan and K.C Zachariah, *Kerala's Gulf Connection 1998 – 2011 Economic and Social Impact of Migration*, Orient Blackswan, 2012, p. 12, para. 2.

ⁱⁱ Government of India, Ministry of Overseas Indian Affairs, “Annual Report 2012 – 2013” *Annual Labour Outflow from India Destination Wise from 2008 – 2012*, p. 53. (http://moia.gov.in/writereaddata/pdf/Annual_Report_2012-2013.pdf).

ⁱⁱⁱ World Bank Migration and Remittances Data, Bilateral Remittance Matrix 2012. (<http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTDECPROSPECTS/0,,contentMDK:22759429~pagePK:64165401~piPK:64165026~theSitePK:476883,00.html#Remittances>).

^{iv} S. Irudaya Rajan and K.C Zachariah, “Inflexion in Kerala's Gulf Connection”, *Report on Kerala Migration Survey 2011*, September 2012, p. 7. (<http://www.cds.edu/wp-content/uploads/2012/11/WP450.pdf>).

^v Calculated based on the difference between the total population of Saudi Arabia and the number of Saudi nationals, Central Department of Statistics and Information, Saudi Arabia. (<http://www.cdsi.gov.sa/english/index.php>).

^{vi} A sponsorship system present in six Gulf countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates) – with notable variations in its form – which regulates the recruitment and employment of migrant workers. Under the kafala system, every migrant worker must have a specific job and a sponsoring employer under whom she works — neither of which can be changed easily.

^{vii} ILO, The Cost of Coercion, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 2009, p. 6, para. 25. (www.ilo.org/wcmsp5/groups/public/@ed_norm/.../wcms_106387.pdf).

^{viii} S. Huda, Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children: Mission to Lebanon, E/CN.4/2006/62/Add. 3, 20 Feb. 2006, p. 9.

^{ix} Observation (CEACR) – Saudi Arabia adopted 2009, published 99th ILC session (2010) Forced Labour Convention, 1930 (No. 29). (http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2309889).

^x The Act also allows for recruitment through registered project exporters and employers with permits.

^{xi} S. Irudaya Rajan, V J Varghese & M S Jayakumar, “Chapter Two”, *Beyond the existing structures: Revamping overseas recruitment system in India* (Submitted to Ministry of Overseas Indian Affairs), Research Unit on International Migration, CDS Trivandrum, 2009, p. 29. (<http://www.cds.edu/wp-content/uploads/2012/09/MOIA-CDS-Final-Report-June-2009.pdf>).

^{xii} Joy Ezeilo, Trafficking in Persons, especially Women and Children, A/65/288, 9 August 2010, (<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/483/11/PDF/N1048311.pdf?OpenElement>).

^{xiii} Ministry of Overseas Indian Affairs, Chapter VII, Information dissemination on Legal Migration, Annual Report 2012 – 2013, p. 26. (http://moia.gov.in/writereaddata/pdf/Annual_Report_2012-2013.pdf).

^{xiv} Report of the Special Rapporteur on trafficking in persons, especially women and children, 13 April 2011, A/HRC/17/35, para. 16

^{xv} Interview with Amnesty International India in Chennai on 12 June 2014