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EDITORIAL NOTE

Portability of Social Security for Indian Migrant Workers in the Gulf: A Need of the Hour

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In this paper, I illustrate how Indian migrant workers, particularly domestic workers experience victimisation when they travel for work. I describe how different types of social security remain absent in countries to which migrant workers travel for work. I also criticise the failure of the Indian State to respond to this absence by focussing only on exit-control, i.e. creating a distinction between Emigration Check Required (ECR) and Emigration Check Not Required (ECNR) categories of emigrants. I suggest that the priority instead should be empowerment of migrant workers. I conclude by suggesting how social security could be made portable through consistent diplomatic efforts towards efficacious negotiations with governments in the Gulf to ensure a framework for their empowerment.

I. INTRODUCTION

In the month of May 2018, Sheeja Das, a migrant worker from India was compelled to jump off her employer's residence in Oman in an attempt to save herself from violence.¹ Sheeja broke both her spine and legs--an

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¹ T.A. Ameerudhin, Indian maids in Gulf back in focus as Kerala woman jumps off second floor of employer's home in Oman, (09/06/2018), available at <https://scroll.in/article/881518/>

irrevocable loss for the rest of her life. Haseena Begum, another Indian migrant worker suffered from the same fate when she was thrown by her employer from the third floor of her employer's residence in Saudi Arabia.² Migrant workers continue to suffer from exploitation in host countries. However, little has been done by the Indian Government to ameliorate their working conditions.

Most private sector employment of Indian workers in the Gulf operates within the visa sponsorship, or Kafala system. While there have been some reforms recently, the Kafala system still ties a foreign worker's residency permit to a sponsor.³ Workers require written consent from their sponsors to change employers or exit the country under normal circumstances.

The International Migration Report released by the United Nations in 2017 indicated that 8.9 million migrant workers from India work in the Gulf.⁴ Out of this, 2.27 million reside in Saudi Arabia, 1.2 million are situated in Oman, and 1.16 million in Kuwait.⁵

Indian diaspora that travels for work could be broadly categorised into skilled and unskilled workers.⁶ While in the year 2014, skilled labour constituted about 30 per cent of the Indian labour force in countries in the gulf, more than seventy per cent continued to remain low-skilled. I restrict the scope of this paper to the plight of *low*-skilled migrant workers, as opposed to all migrant workers. However, before adopting this approach, I admit that the conception of 'skill' is a gendered and socially constructed design.⁷ What is classified as 'low-skilled' may become skilled and vice versa without any

indian-maids-in-gulf-back-in-focus-as-kerala-woman-jumps-off-second-floor-of-employers-home-in-oman, last seen on 17/08/2018.

² Geetika Mantry, *Modern Day Slaves: How Indian Workers' Rights are Violated in the Gulf*: (25/11/2017), available at <https://www.thenewsminute.com/article/modern-day-slaves-how-indian-migrant-workers-rights-are-violated-gulf-72179>, last seen on 17/08/2018.

³ Kadira Pethiyagoda, *Supporting Indian workers in the Gulf: What Delhi can do*, available at https://www.brookings.edu/wp-content/uploads/2017/11/indian_workers_gulf.pdf, last seen on 17/08/2018.

⁴ Khaleej Times, *UAE has largest number of Indian migrants in world*, available at <https://www.khaleejtimes.com/international/UAE-has-largest-number-of-Indian-migrants-in-world> last seen on 17/08/2018; see also Kadira Pethiyagoda, *Supporting Indian workers in the Gulf: What Delhi can do*, available at https://www.brookings.edu/wp-content/uploads/2017/11/indian_workers_gulf.pdf, last seen on 17/08/2018.

⁵ *Ibid.*

⁶ Kadira Pethiyagoda, *Supporting Indian Workers in the Gulf: What Delhi Can Do*, available at https://www.brookings.edu/wp-content/uploads/2017/11/indian_workers_gulf.pdf, last seen on 17/08/2018; see also 8 Binod Khadria, "The Dichotomy of the Skilled and Unskilled Among Non-Resident Indians and Persons of Indian Origin: Bane or Boon for Development in India?" in *Indian Skilled Migration and Development: To Europe and Back*, (G. Tejada, U. Bhattacharya, B. Khadria, and C. Kuptsch, Springer, 2014), 36.

⁷ Martin Ruhs, Bridget Anderson, *Who Needs Migrant Workers, Labour Shortages, Immigration and Public Policy*, (Oxford, 2009), at 20.

necessary transformation in the nature of work. Skill is a fuzzy concept often intertwined by demeanour, style, accent and often aesthetic appearance. A worker often sounds and looks right.⁸

Every year, Indian migrant workers send about \$3.5 billion in the form of remittances.⁹ Indian migrants pay huge transaction costs to avail the facilities of recruiting agents to achieve even menial employment in the Gulf often about 1,00,000 rupees, an average fee paid to achieve an employment visa.¹⁰

The Human Rights Watch in its Report entitled '*Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia*' voices the testimony of migrant workers which describe the horror of their lived experiences in the Gulf.¹¹ While the report comprehensively describes the vulnerabilities they face, it goes ahead to admit the need for an independent, public inquiry which attempts to map the plight of migrant workers.¹²

Endeavouring to safeguard the interests of migrant workers, the Indian Government has concluded social security agreements with 17 countries.¹³ However, none of these agreements have been signed with countries in the Gulf. Apart from this, the Government's attempts to curb exploitation have been exit-control oriented, i.e. (the check is on the vulnerability of the person emigrating, for instance, persons who haven't completed matriculation can emigrate only after attaining a clearance).¹⁴ Despite these efforts, exploitation of migrant workers continues to take place unabated.

In the first part of this paper, I contextualise the discussion by illustrating different forms of exploitation and abuse that have systematically victimised Indian migrant workers in the Gulf. In the second part of the paper, I proceed to attributing this victimisation predominantly to the lack of portability of Indian social security schemes to Gulf nations and explain its relevance to migrant workers by highlighting the harm arising out of their absence. Here, I discuss different types of social security schemes that continue to remain absent in Gulf Countries which result in exploitation of migrant workers. Here, I also criticise the Government's response for only revolving

⁸ *Ibid.*

⁹ Human Rights Watch, *Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia*, at 13, (July 2004 Vol. 16, No. 5(E), available at <https://www.hrw.org/sites/default/files/reports/saudio704.pdf>, last seen on 17/08/2018.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*, at 8-9.

¹³ BRICS Second Employment Working Group Meeting, (Hyderabad, July, 2016), available at https://labour.gov.in/sites/default/files/uploadfiles/03-BRICS_SSA.pdf, last seen on 17/08/2018.

¹⁴ Siddharth Sonkar, *Merely Ditching Orange Passports Not Enough. Here's What Needs to Be Done to Protect Migrant Workers*, *The Wire* (12/02/2018), available at <https://thewire.in/economy/orange-passport-migrant-workers-mea>, last seen on 17/08/2018.

around exit-control over empowerment of migrant workers by arbitrarily creating (a) a dichotomy between ECR (Emigration Check Required) and ECNR (Emigration Check Not Required) labelled migrants and (b) restricting predominantly unskilled female migrant workers below the age of thirty from travelling for work.

I conclude by suggesting how social security could be made portable through consistent diplomatic efforts towards efficacious negotiations with governments in the Gulf to ensure the empowerment of migrant workers.

PART I

II. CHARACTERISING THE 'MIGRANT' AND THE 'MIGRATION'

There is no commonly-accepted definition of 'migrant' in international law. However, the International Convention on the Protection of the Rights of Migrant Workers and Members of their Families (CPRMWMF) conceptualises the migrant worker as "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a national".¹⁵

Migration of workers to the host country could be circular, transient, temporary, or even permanent.¹⁶ It is an unstable, lengthy, complex process riddled in procedural nuances. Migrant workers typically experience risks intrinsically associated with their mobility. These risks are faced throughout their stay at the host country into their departure, their placement and their return.¹⁷ Throughout the cycle of migration, workers are confronted with unemployment, injury, sickness and adversities arising out of old-age including poverty and illness.¹⁸ These stages become relevant to assess the need for adjustment in social security measures to specifically cater to the circumstantial needs.¹⁹ For instance, workers are relatively more susceptible to illness during the stage of departure, necessarily requiring social security measures concerning healthcare.²⁰

¹⁵ UNESCO, Migration, available at <http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/migrant/>, last seen on 17/08/2018.

¹⁶ Nurulsyahira Taha, Mahmood Messkoub & Karin Astrid Siegmann, How Portable is Social Security for Migrant Workers? a Review of the Literature, https://www.iss.nl/sites/corporate/files/Taha-et-al-portability_of_rights-2013_LitRev_bibly_220913.pdf, at 3-5.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

III. THE PUSH OF INDIAN MIGRANT WORKERS TO THE GULF

Migration is an economic as well as a *social* phenomenon, unemployment being only one of its driving factors.²¹ While the economic condition of the host country plays a pivotal role in determining decisions relating to migration, social conditions such as a desire to achieve upward social mobility could be extremely relevant.²² For instance, women decide to choose domestic work abroad over the same work in India hoping for an improved social status and in an attempt to escape abuse from their husbands. Migration often results in their families acknowledging them as breadwinners.²³

IV. TRAPPED IN THE GULF: DESCRIBING LIVED EXPERIENCES OF INDIAN MIGRANT WORKERS

An observation made by the Human Rights Watch (HRW) encapsulates the excruciating condition of migrant workers in the Gulf:

“One of the most striking features of some of the testimonies from migrant workers was their belief that the exploitation they experienced in Saudi Arabia was an aberration. Propelled by desperate economic circumstances in their home countries, and perhaps misplaced naïve optimism, they returned a second or third time to the kingdom with hopes of better conditions, only to experience salary reductions again”.²⁴

Migrant workers from countries *inter alia* India and Bangladesh have informed the Human Rights Watch about arbitrary salary reductions by their employers once the workers reached Saudi Arabia.²⁵ Workers are often appalled to learn about their actual monthly salary which is often far lower than promised through recruitment agents.²⁶

Migrant workers are often lured by unregistered recruiting agents into believing that they would attain free visas if they travel to the Gulf.²⁷ In

²¹ Anderson and Ruhs, ‘*Migrant Workers: Who Needs Them?*’, at 46, in *Who Needs Migrant Workers?* (Oxford, 2009).

²² See Praveena Kodoth, V.J. Varghese, ‘*Protecting Women or Endangering the Emigration Process*’, available at, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.476.2628&rep=rep1&type=pdf>, last seen on 17/08/2018.

²³ *Ibid.*, at 57.

²⁴ Human Rights Watch, *Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia*, at 20-21, (July 2004 Vol. 16, No. 5(E), available at <https://www.hrw.org/sites/default/files/reports/saudio704.pdf>, last seen on 17/08/2018.

²⁵ *Ibid.*, at 21.

²⁶ *Ibid.*, at 20-21.

²⁷ Anuradha Nagaraj, *Trafficked, exploited, ransomed - Indian workers in the Gulf face new test*, (30 September, 2019), Reuters, <https://www.reuters.com/article/us-india-gulf-labour/>

2003, for instance, Ibrahim, an Indian driver suffered tremendous financial loss in a fraudulent “free visa” scheme. Ibrahim had expended about one lakh rupees towards securing employment in Saudi Arabia, only to be arrested and deported upon arrival.²⁸ The Kafala system exacerbates this condition, as pointed out in the following words²⁹:

“The kafala system fosters a legal system that lacks basic protections for migrant workers, nurturing a fertile ground for employers and employment agencies to abuse the system. For instance, sponsors can delay paying wages, confiscate passports, and deport workers without cause.”³⁰

Domestic workers, especially women, particularly suffer from the absence of sufficient legal protection.³¹ Women face different forms of abuse including deprivation of food, overwork, confinement, physical, psychological, verbal and sexual abuse.³² Workers involved in the construction of development and infrastructure project are often forced to adjust to deplorable conditions of work. These workers often live in cramped labour camps, often uninhabitable and harsh, seriously undermining their social condition.³³

V. BONDED LABOUR AND OVERTIME WORK

Migrant women and men are compelled to work in contravention of the prescribed³⁴ period of eight hours per day, without any compensation for overtime work, denying them any rest.³⁵ Employers have a tendency of reducing their monthly wages unilaterally in breach of the national law.³⁶ Few migrant workers often have to take a harsh call on whether it would make more sense

trafficked-exploited-ransomed-indian-workers-in-the-gulf-face-new-test-idUSKBN1WF03S, last seen on 14/12/2019.

²⁸ *Supra* note 24, at 26.

²⁹ Human Rights Watch, *Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia*, at 20-21, (July 2004 Vol. 16, No. 5(E), available at <https://www.hrw.org/sites/default/files/reports/saudio704.pdf>, last seen on 17/08/2018

³⁰ *Ibid.*

³¹ Kadira Pethiyagoda, *Supporting Indian Workers in the Gulf: What Delhi Can Do*, at 3, available at https://www.brookings.edu/wp-content/uploads/2017/11/indian_workers_gulf.pdf, last seen on 17/08/2018.

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ Art. 151, Royal Decree No. M/51 dated 23/8/1426 • Council of Ministers Resolution No. 219 dated 22/8/1426.

³⁶ Human Rights Watch, *Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia*, at 20-21, (July 2004 Vol. 16, No. 5(E), available at <https://www.hrw.org/sites/default/files/reports/saudio704.pdf>, last seen on 17/08/2018.

³⁷ *Ibid.*

to remain in the host country and work without receiving any pay than incurring huge losses in the immigration process and leave.³⁷

Employers often successfully end up luring migrant workers to remain by offering a final exit visa and paying for their transportation to the country of origin. Migrant workers, especially those who do domestic work, victims of asymmetry in bargaining power, more often than not agree to stay and continue to face abuse with a faint tinge of hope for travelling back to India.

The victimisation of domestic workers is accentuated by the lack of protection of *domestic* workers under national labour law in the Gulf.³⁸ Even where there are specific standards of social security obligations under national law, employers end up flouting them. In Saudi Arabia, for instance, specific standards have been stipulated for daily work.³⁹ Moreover, there are clear conditions prohibiting overtime work without pay. In complete contravention of these provisions, employers coerce migrant women and men to work well above eight hours a day and even forty-eight hours a week while refusing to pay any overtime wages.

VI. INADEQUATE MEDICAL SUPPORT AND CARE

Health coverage for migrant workers is a scarcely available form of social security in the Gulf.⁴⁰ Employers in possession of official residency documents of the workers often refuse to provide these documents to workers in dire need for medical support. This puts the migrant worker at the risk of facing arrest when they seek medical treatment as a result of failure to present documents which attest their legal status.⁴¹

VII. UNPAID SALARIES: A BREACH OF EMPLOYER MANDATE

Unskilled migrant workers are particularly paid extremely low wages in Saudi Arabia.⁴² To worsen their condition, employers often withhold their salaries, forcing them to work and remain within the host country.⁴³ The Human Rights Watch points out:

³⁷ *Ibid.*

³⁸ *Ibid.*, at 36; "Article 151 of their labor law states: The employer shall pay the workman for additional work hours an additional wage equivalent to the workman's normal wage plus fifty percent (50%). Where the work is performed on the weekly day of rest or on feast days or official holiday, the employer shall pay the workman additional wages for the regular or additional work hours".

³⁹ *Ibid.*

⁴⁰ *Ibid.*, at 29.

⁴¹ *Ibid.*

⁴² *Ibid.*, at 38-40.

⁴³ *Ibid.*

“The conditions of departure for some migrant workers – including official deportation -- afford them no opportunity to lodge complaints against their employers and seek remedy in Saudi Arabia for unpaid salaries and other benefits that they are owed.”⁴⁴

Many migrant workers face both verbally and physical abuse; some even get sexually molested.⁴⁵ They are not allowed to plead their cases in the court of law, and some never get to leave the house where they work for two whole years or more, depending on the contract.⁴⁶ They are not allowed to speak their own language or to talk on the telephone. They work night and day in the house without weekend breaks, annual or sick leave.⁴⁷ When they set off on their journey home, many are not paid their wages in full.

VIII. ARBITRARY DETAINMENT AND PUNISHMENT

The most serious form in which the liberty of migrant workers is curtailed is through an acute lack of transparency in arrest and detention of *inter alia* Indian migrant workers.⁴⁸ For instance, in the year 2003, an Indian diplomat named V.V. Narayam publicly criticised the lapse on the part of the Saudi authorities in providing information to family members as to why they were arrested without following any due process.⁴⁹ Families of arbitrarily arrested workers are often desolated in despair in the absence of diplomatic support from the Indian Embassy in the host country or any concrete grievance-redressal mechanism. For instance, the family of Udaykumaran Cholakkil, a 26 year old migrant worker from India fell victim to an absence of recourse in such situations.⁵⁰

IX. PRIORITISATION OF EXIT CONTROL INSTEAD OF EMPOWERMENT OF MIGRANT WORKERS: MISPLACED?

The Indian Government has adopted the route of curtailing the exit of migrant workers to prevent their exploitation. The purported justification behind the same lies in the Emigration Act, 1983.⁵¹ The Ministry of External Affairs through a notification in 2006 excluded 13 categories of individuals usually belonging to the privileged classes from requiring any check before

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*, at 11.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*, at 88.

⁵¹ The Emigration Act, 1983, available at <https://emigrate.gov.in/ext/static/emig-act.pdf>, last seen on 14/12/2019.

emigrating to any country.⁵² Simultaneously, it has classified countries across the world into two categories: ECR and ECNR, the former typically comprising of countries in the Gulf.⁵³ The reason behind this classification (between ECR and ECNR countries) was that at that point in time, the labour legislation existing in ECR countries were inadequate for the protection of migrant workers. Low-skilled workers travelling to ECR countries require prior checks before emigration.⁵⁴ The ECR/ECNR bifurcation, however, is a form of exit control not envisaged under the Emigration Act. Industry stakeholders have criticised this arbitrary classification since the Emigration Act does not allow the Central Government any authority to create this bifurcation⁵⁵. They further point out that Section 41(1) only allows foreign *employees* from being exempted and not the exemption of foreign *countries* from the ECR check.

To make it worse, the existing framework disallows women belonging below the age of 30 from travelling for work to ECR countries. The rationale behind prohibiting women below thirty years of age from travelling for work to ECR countries is to prevent their possible exploitation. The idea behind the rule is that older women would be better able to deal with such challenges. However, young Indian women continue to travel to gulf countries for domestic work, often on tourist visas.⁵⁶ As a result, young women are pushed into vulnerability of these women as they are forced to rely further on unofficial channels and unscrupulous agents to secure the approval from the Government to travel for work. The existing framework surrounding emigration prejudices low-skilled migrant women since the age restriction applies only to low-skilled women. This ends up impacting them disproportionately since they are denied an opportunity towards empowerment. Migrant women are often abandoned or widowed or in abusive marriages, seeking refuge through emigration. Women emigrants in fact often spend a significant amount of time abroad, rebuilding their lives, forging new relationships in destination countries and challenging sexual norms.⁵⁷ In a paper published by the Ministry of External Affairs, the exit-control framework received criticism for increasing the cost in securing employment (as a result of ECR). Workers have to pay exorbitant sums of money to secure clearances, since most workers rely on recruitment

⁵² Ministry of Overseas Indian Affairs (S.O. 2161(E) dt. 28/12/2016), available at <http://www.mea.gov.in/images/pdf/list-of-exempt-countries.pdf>, last seen on 14/12/2019.

⁵³ Siddharth Sonkar, Merely Ditching Orange Passports Not Enough. Here's What Needs to Be Done to Protect Migrant Workers, *The Wire* (12/02/2018), available at <https://thewire.in/economy/orange-passport-migrant-workers-mea>, last seen on 17/08/2018.

⁵⁴ *Ibid.*

⁵⁵ *Supra* note 52.

⁵⁶ Rejiman Kuttappan, Sushma asks UAE to stop issuing work visas to Indian women who arrive on visitor visas, (December 7, 2018) *the news minute*, <https://www.thenewsminute.com/article/sushma-asks-uae-stop-issuing-work-visas-indian-women-who-arrive-visitor-visas-92893>.

⁵⁷ Praveena Kodoth, V.J. Varghese, Protecting Women or Endangering the Emigration Process, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.476.2628&rep=rep1&type=pdf>.

agents to facilitate the process involved in securing the approval of the government to travel for work.

PART II

X. THE WAY AHEAD: ENSURING PORTABILITY OF SOCIAL SECURITY TO THE GULF

Instead of prioritising exit-control, India needs to strive towards the empowerment of Indian migrant workers. This could be done by facilitating the creation of a safe space for workers abroad through a coordinated and accessible social security framework. In a paper entitled '*Portability of Social Security*', Gasper and Truong suggest that a central tension exists between the non-mobility of entitlements and the mobility of labour.⁵⁸ The portability of social protection is an important transformative reform needed to respect the human rights of migrants, who are required and generated by the global economic system.⁵⁹ Instruments that facilitate portability of social security include international agreements on social security between two or more states aimed at improving access to entitlements. These instruments should ideally encompass not only official and documented migrant workers but also workers in the informal sector within the host country.

The portability of social security could be defined as the ability to transfer entitlements accruing from social security initiatives from one country to another (for instance, from India, to Saudi Arabia, for an Indian worker travelling for work).⁶⁰ The transfer could also take place within localities in the same country or between jobs for that matter.⁶¹ This is known as spatial portability. It could also take place between members of the same household, a very specific social context. This kind of transfer is particularly known as social portability.

Portability of social security mitigates risks involved in migration since security remains immune from travel.⁶² This ensures that migrant workers do not incur economic losses by travelling to another country for work, eliminating aversion and increasing diversity in opportunities.⁶³ An increased

⁵⁸ Nurulsyahira Taha, Mahmood Messkoub & Karin Astrid Siegmann, How portable is social security for migrant workers? A review of the literature, https://www.iss.nl/sites/corporate/files/Taha-et-al-portability_of_rights-2013_LitRev_bibly_220913.pdf, at 3-5.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*, at 5-6; see also Anna Cristina d'Addio Maria Chiara Cavalleri, Labour Mobility and the Portability of Social Rights in the EU, *CESifo Economic Studies*, Volume 61, Issue 2, 1 June 2015 (pp. 346-375).

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Ibid.*

availability in opportunities becomes particularly relevant within the Indian context due to widespread unemployment arising out of limited opportunities for work within the country.⁶⁴ Movements between host countries or back to source countries should not lead to lower pension benefits or gaps in health coverage compared to staying in one country.⁶⁵

Some Gulf countries have recently taken initiative to make social security more available to Indian migrant workers.⁶⁶ The changes prohibit the confiscation of passports and punish firms that fail to pay salaries.⁶⁷ They require employers to provide workers with copies of their contracts, penalizing any violations to those contracts. However, Human Rights Watch (HRW) reported gaps in these reforms. Domestic workers and short-term workers (who enter the country for less than two months) were not covered by the law and its enforcement mechanisms.⁶⁸ This fails to address the problem of continued exploitation of migrant domestic workers in gulf countries.⁶⁹ Domestic workers are often made to work for late hours without adequate food or any day off. Their passports and verifying documents are withheld by the employer, confining them to the workplace.⁷⁰ They are often not provided with facilities for medical support and health insurance. Indian Embassies in destination countries need to be equipped with better grievance redressal mechanisms to make recourse more accessible under such circumstances. Government agencies could further create a framework to investigate and inquire into the nature of treatment that emigrants continue to receive once they are under the control and supervision of the employer. In fact, such assistance should be made throughout the migration cycle, from the point in time when the migrant worker begins her journey to her return to India (in fact, the Draft Emigration Bill floated by the Ministry of External Affairs recently includes a mandate for such due diligence by government authorities)⁷¹. Indian embassies could further provide shelter to migrant domestic workers, typically women who successfully escape abuse from their employers. In Kuwait, for instance,

⁶⁴ *Ibid.*

⁶⁵ Robert Holzmann, Johannes Koettl, and Taras Chernetsky, Portability Regimes of Pension and Health Care Benefits for International Migrants: An Analysis of Issues and Good Practices, 23-24, Social Protection Discussion Series (World Bank, 2005), available at <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/0519.pdf> last seen on 15/08/2019.

⁶⁶ Kadira Pethiyagoda, Supporting Indian workers in the Gulf: what Delhi can do, (21 November, 2017), Brookings Doha Center Publications, <https://www.brookings.edu/research/supporting-indian-workers-in-the-gulf-what-delhi-can-do/> last seen on 17/08/2018

⁶⁷ *Ibid.*

⁶⁸ HRW, Saudi Arabia: Steps Toward Migrant Workers' Rights, (15/11/2015), <https://www.hrw.org/news/2015/11/15/saudi-arabia-steps-toward-migrant-workers-rights>, last seen on 17/08/2018.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ Section 12, Draft Emigration Bill, 2019, available at https://mea.gov.in/Images/amb1/Emigration_Bill_2019.pdf, last visited on 15/12/2019.

900 to 1000 women are housed across various embassies.⁷² Providing shelter to workers, particularly women at embassies can play a remarkable role in providing a transient safe space before they are safely rehabilitated back to the country of origin. There has, however, been a common complaint that these embassies are, instead of ensuring protection to workers, serving the purpose of temporary detention centres from which they are not allowed to leave until they are finally deported back to the country of origin.⁷³ Embassies should instead focus on educating and empowering workers seeking shelter so that they can pursue their contractual rights against inter alia unscrupulous employers and agents. The Government could provide health coverage to families of migrant workers left behind in India along with the workers themselves when they return to the home state.⁷⁴

The Indian Government could also take coordinated measures to make social security portable for migrant workers. Coordination between the Indian Government and Gulf Countries could take place through bilateral arrangements to make social security accessible and portable. This would overcome the problem of exclusion of Indian migrant workers from the local public social security system in Gulf Countries (such as Oman and Saudi Arabia).⁷⁵

The Indian Government could, through bilateral negotiation and arrangements, create obligations to incorporate provisions for equality of treatment between migrant and national workers in national legislation.⁷⁶ Equality of treatment in this context implies that emigrating workers should receive the same treatment as far as possible as regular residents in the host state. The Qatar Government recently introduced a legislation that requires that there is no discrimination in respect of payment of minimum wage to workers.⁷⁷ The Indian Government could foster bilateral arrangements to create benchmarks for mutually acceptable standards of employment such as minimum wages provided by the employer in the host state.⁷⁸

⁷² Thessa Lageman, Kuwait opens shelter for 'runaway maids', (10 November 2014), Al Jazeera, available at <https://www.aljazeera.com/news/middleeast/2014/11/kuwait-opens-shelter-runaway-maids-201411891044918779.html> last seen on 15/12/2019.

⁷³ *Ibid.*

⁷⁴ Ursula Kurke, Filling the Gap of Social Security for Migrant Workers: ILO's Strategy, ILO Geneva, at 9-10, available at <https://europa.eu/capacity4dev/file/26767/download?token=OCv4wtP> last seen on 15/08/2019.

⁷⁵ Robert Holzmann, Johannes Koettl, and Taras Chernetsky, Portability Regimes of Pension and Health Care Benefits for International Migrants: An Analysis of Issues and Good Practices, at 12, World Bank (May, 2005), available at <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/0519.pdf> last seen on 15/08/2019.

⁷⁶ *Ibid.*

⁷⁷ Aparna Jayakumar, New labour laws in Qatar benefiting migrant workers a 'momentous step forward': ILO, (17 October, 2019) available at <https://news.un.org/en/story/2019/10/1049471>, last seen on 15/12/2019.

⁷⁸ Ursula Kurke, Filling the Gap of Social Security for Migrant Workers: ILO's Strategy, ILO Geneva, at 9-15, available at <https://europa.eu/capacity4dev/file/26767/download?token=OCv4wtP> last seen on 15/12/2019.

Migrant workers often lose out on social security schemes both in the host country and in the country of origin because they do not fulfil the minimum qualifying period to be eligible for such benefits.⁷⁹ Sickness benefits, maternity benefits, etc often accompany long qualifying periods as prerequisites. Spending different periods of service in different jurisdictions does not allow the accumulation of such periods, thereby depriving workers of such benefits. It becomes difficult to make pension benefits portable since the period of contributions are not aggregated, disadvantaging international migrants. Bilateral social security arrangements between India and destination countries can ensure for the purposes of fulfilment of the qualifying period, the duration of work at both the jurisdictions (i.e. host and country of origin) are taken into account. To facilitate a better sync of contributions made in both jurisdictions, migrant workers lump sum payments could be made accounting for the duration of their stay at the host country.⁸⁰

Legislative endeavour in India concerning the exploitation of migrant workers in the Gulf continues to remain regressive in failing to prioritise better access to social security abroad.⁸¹ In August, 2018, the Standing Committee on Labour constituted by the Ministry of External Affairs in the Sixteenth Lok Sabha published a Report with suggestions to improve the conditions of employment for migrant workers.⁸² The Committee noted how important it is for the MEA to ink bilateral and multilateral agreements with destination countries in order to facilitate the welfare of migrant workers. The Committee also acknowledged that the Indian Government is endeavouring to sign bilateral agreements with destination countries to make social security accessible (unfortunately, since the publication of the Report, there has not been significant progress to this effect). The Committee also highlighted the need to improve the grievance redressal system against unscrupulous agents that push migrant workers towards vulnerability.

The Standing Committee on External Affairs under the Chairmanship of Dr. Shashi Tharoor noted that the current legislative framework is inadequate

⁷⁹ *Ibid.*

⁸⁰ Robert Holzmann, Johannes Koettl, and Taras Chernetsky, Portability Regimes of Pension and Health Care Benefits for International Migrants: An Analysis of Issues and Good Practices, 23, Social Protection Discussion Series (World Bank, 2005), available at <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/0519.pdf> last seen on 15/08/2019.

⁸¹ PRS Legislative Research, Issues Relating to Migrant Workers including Appropriate Legislative Framework and Skill Development Initiatives for Prospective Emigrants, Standing Committee Report Summary, available at <http://prsindia.org/report-summaries/issues-relating-migrant-workers-including-appropriate-legislative-framework-and> last visited on 15/12/2019.

⁸² Standing Committee on Labour, Sixteenth Lok Sabha, Fortieth Report, Overseas Employment of Women Workers Including Nurses and Maids, Issues and Regulatory Framework, (August, 2018) available at http://164.100.47.193/lssccommittee/Labour/16_Labour_40.pdf last seen on 15/12/2019.

to meet with the necessary safeguards for migrant workers.⁸³ The Committee regretted the delay in the introduction of the Draft Emigration Bill in the Parliament.⁸⁴ The Bill consists of provisions for a digitalised database enumerating all migrant workers, their recruitment companies and educational qualifications. The Bill also envisages a separate department under the Protector of Emigrants that would be responsible for investigating exploitation-based complaints against abuse. The Bill, however, does not seek to do away with the exit-control framework that exists today. It instead prioritises *inter alia* the regulation of conduct of recruitment agencies (by mandatory registration, certification, etc) over ensuring portability of social security of migrant workers. This legislative endeavour, therefore, misses the real problem, i.e. the failure of exit control in reducing reliance on unauthorised agents and indirect routes to acquire emigration clearance.

XI. CONCLUSION

A protectionist method of reducing exploitation of marginalised migrant workers misses the point: the need of the hour to strive towards the empowerment of Indian migrant workers. The Indian Government should, instead of curtailing the mobility of migrant workers, dedicate its efforts towards empowering these workers and skilling them so that they can avail higher-skilled work in the long run. Such attempts have achieved heightened success in mitigating the exploitation of migrant workers originating from the Philippines.⁸⁵ These efforts would reduce risks involved in the migration process, making migrant workers capable of negotiating their contracts independently without seeking the help of recruiting agents. In order to ensure portability of social security to the Gulf, the Indian Government could oversee enforcement of national laws in host countries through a multipronged approach to improved legislation and enforcement through them method of consistent diplomatic efforts towards negotiation.

⁸³ Standing Committee on External Affairs, Sixteenth Lok Sabha, Twenty-Third Report, Issues Relating to Migrant Workers Including Appropriate Legislative Framework and Skill Development Initiatives for Prospective Emigrants (02.01.2019) available at http://164.100.47.193/lsscommittee/External%20Affairs/16_External_Affairs_23.pdf last seen on 15/12/2019.

⁸⁴ *Ibid.*, at 76.

⁸⁵ Praveena Kodoth, V.J. Varghese, Protecting Women or Endangering the Emigration Process, available at 63, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.476.2628&rep=rep1&type=pdf>, last seen on 17/08/2018.