

# International Law: Shaping Migration and Development in India<sup>1</sup>

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## Summary

*An underappreciated set of international legal agreements is helping shape migration from and development in India. The country's labour migration agreements with other states involve political choices by the Indian government that are being overlooked in public discourse. The agreements build on conventional wisdom about migration and development, and reflect a concern with a particular kind of development in India. At the same time, the agreements help normalise and encourage temporary migration from India, even though it is widely recognised that Indian workers who move abroad in this way are more vulnerable to exploitation.*

## Introduction

With recent figures showing almost 18 million Indians living outside India, India is easily the world's largest source of international migrants.<sup>2</sup> Indian migrants were once seen by the Indian government as being largely outside its sphere of immediate concern.<sup>3</sup> In recent decades, however, the Indian government's position has shifted, and it is now keen to build a strong relationship with Indian migrants abroad.

This relationship, the author suggests, is one that reflects its concern with India's development. The Indian state helps bring a particular kind of relationship between migration and development into being – one in which the state is contributing towards shaping Indians into people with transnational lives who will contribute effectively towards India's 'development'. In other words, the Indian state is crafting a version of what has been described as "transnationalism from above".<sup>4</sup>

Crucially, some of the ways in which the Indian state is doing this are not commonly understood, and yet its pursuit of development in India in this way is helping to make some

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<sup>1</sup> This paper is derived from research the author undertook to write his PhD thesis. That research was supported by an Australian Government Research Training Scholarship. A slightly different version was originally published in [Melbourne Asia Review](#), Asia Institute.

<sup>2</sup> United Nations Department of Economic and Social Affairs, Population Division. *International Migration 2020 Highlights* (ST/ESA/SER.A/452), [https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/undesa\\_pd\\_2020\\_international\\_migration\\_highlights.pdf](https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/undesa_pd_2020_international_migration_highlights.pdf).

<sup>3</sup> Bakirathi Mani and Latha Varadarajan, "'The Largest Gathering of the Global Indian Family': Neoliberalism, Nationalism, and Diaspora at Pravasi Bharatiya Divas", *Diaspora: A Journal of Transnational Studies*, Vol. 14, no.1 (Spring 2005), pp. 45-74, <https://www.utpjournals.press/doi/abs/10.3138/diaspora.14.1.45>.

<sup>4</sup> Andrew Rosser, "Transnational linkages, political dynamics, and the migration-development nexus: Towards a political settlements approach", *Geoforum*, Vol. 115, October 2020, pp. 132-134, p. 133, <https://www.sciencedirect.com/science/article/abs/pii/S0016718520301032>.

Indians vulnerable to exploitation abroad. This paper argues that political choices being made by the Indian government are being overlooked in public discourse. The paper does this by looking at an underappreciated set of international legal agreements and considering an important way in which these ‘labour migration agreements’ help shape migration and development in India.

## India’s Current Approach

The Indian state’s current approach to what it calls ‘the Indian Diaspora’ can be traced back to a 2001 governmental report by the High Level Committee on the Indian Diaspora.<sup>5</sup> That report treated the Indian Diaspora as “a great potential tool for national development”.<sup>6</sup> It suggested that the time had arrived “to involve the Indian Diaspora, in multifarious ways, in the economic rejuvenation of India”,<sup>7</sup> and identified a series of tangible measures to involve members of the Indian Diaspora in India’s development.

The report also led to far-reaching changes in the governance of the Indian Diaspora.<sup>8</sup> A new Ministry of Overseas Indian Affairs (MOIA) was created, which claimed both to be “dedicated to the multitude of Indian Nationals settled abroad” and to be “[d]riven by a mission of development through coalitions in a world without borders”.<sup>9</sup>

## Entering Labour Migration Agreements

An important result of the MOIA’s establishment was a surge in the number of labour migration agreements that India has entered with other countries. These sorts of international agreements set out rules relating to Indians working abroad, such as rules about workers’ recruitment and their treatment while they are outside India. The author calls them “labour migration agreements” to reflect their focus on people commonly described as “labour migrants”, even though this term is not usually used by the Indian government.

India entered two labour migration agreements during the 1980s, but most have been signed since the MOIA first took responsibility for them. India now has agreements with at least 10 countries, including with many of the countries to which Indians most often move, such as the United Arab Emirates (UAE), Saudi Arabia and Malaysia.

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<sup>5</sup> The Indian Diaspora, High Level Committee on Indian Diaspora, 2000, <https://web.archive.org/web/20171219114612/http://www.indiandiaspora.nic.in/contents.htm>.

<sup>6</sup> Robi Rado, “A tale of India, diaspora and development”, *Indian Law Review*, Vol. 4, no.1 (2020), pp. 31-46, p. 39, <https://www.tandfonline.com/doi/full/10.1080/24730580.2020.1728640>.

<sup>7</sup> Ibid.

<sup>8</sup> “The High Level Committee on the Indian Diaspora”, Global Forum on Migration and Development, <http://www.gfmd.org/pfp/ppd/313>.

<sup>9</sup> “About the Ministry”, Internet Archive: Wayback Machine, <https://web.archive.org/web/20151219025151/http://moia.gov.in:80/services.aspx?mainid=6>.

## Writing a Story about the World

Little attention is typically paid to these labour migration agreements. One reason for this is probably tied to the ‘non-binding’ nature of the agreements. None of the agreements is expressed as being enforceable in an international court or tribunal, nor are they likely to be. This is not, however, unusual as states frequently enter non-binding agreements. Law is not just about enforceability.<sup>10</sup> It needs to be understood more broadly than that.

Regardless of its enforceability, law helps us understand the world and how we should act in it. For example, the widespread imposition of border controls through the making of law is a relatively recent phenomenon, dating back only a century or so.<sup>11</sup> Yet, it has altered the way people understand their mobility. Even those whose passports give them relatively greater freedom to move internationally now ‘know’ that attention to border regimes is an essential part of planning an international journey.

In short, law creates knowledge. Calling it law helps make this knowledge appear more authoritative. Properly understanding how law works in the world, therefore, requires attention to the stories that law tells and to the way that law imbues those stories with authority.<sup>12</sup>

India’s labour migration agreements are united in telling a particular kind of story about Indians working abroad. This story aligns with conventional wisdom about the links between migration and development.<sup>13</sup> According to this wisdom, people generally move abroad from ‘poor’ countries, so they can send money ‘home’ in the form of ‘remittances’. These remittances, it is said, will help poor countries ‘develop’ by contributing towards their economic growth.

People who move to other countries do not, however, always send money home or even continue to see their places of origin as home. As a result, the conventional wisdom suggests that governments should adopt policies designed towards ensuring that migration

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<sup>10</sup> Robert M Cover, “The Supreme Court. 1982 Term – Foreword: Nomos and Narrative”, *Harvard Law Review*, Vol. 97, no.1 (November 1983), pp. 4-68, [https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=3690&context=fss\\_papers](https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=3690&context=fss_papers).

<sup>11</sup> B Opeskin, R Perruchoud and J Redpath-Cross, “Conceptualising international migration law”, in *Foundations of International Migration Law*, eds. B Opeskin, R Perruchoud and J Redpath-Cross (Cambridge: Cambridge University Press, 2012), pp. 1-16, <https://www.cambridge.org/core/books/foundations-of-international-migration-law/conceptualising-international-migration-law/CD29AF7B5B58E8E7A4CBE675E8179B18>.

<sup>12</sup> L Eslava, “Introduction”, in *Local Space, Global Life: The Everyday Operation of International Law and Development* (Cambridge: Cambridge University Press, 2015), p. 25, <https://www.cambridge.org/core/books/abs/local-space-global-life/introduction/CFEEF286F1DADCC5665481FED969C48A>; and S Pahuja, “Corporations, Universalism, and the Domestication of Race in International Law”, in *Empire, Race and Global Justice*, ed. D Bell (Cambridge: Cambridge University Press, 2019), pp. 74-93.

<sup>13</sup> Thomas Faist, “Migrants as transnational development agents: an inquiry into the newest round of the migration–development nexus”, *Population Space and Place*, Vol. 14, no.1 (2008), pp. 21-42, <https://onlinelibrary.wiley.com/doi/abs/10.1002/psp.471>.

actually does produce development.<sup>14</sup> One way of achieving this, it is said, is for workers to move temporarily rather than permanently.<sup>15</sup> With one eye on their eventual return home, these migrants should be more concerned about sending remittances.

This conventional wisdom is often framed in terms of a 'migration-development nexus'. It aligns with views expressed by a vast array of prominent international institutions, such as the Global Forum on Migration and Development, the International Organization for Migration, the International Labour Organization, the World Bank, the United Nations Development Programme and the United Nations.

It is true that 'temporary' migration often turns out to be permanent, and that 'permanent' migration might only wind up being temporary.<sup>16</sup> Classifying a person as a temporary migrant, nonetheless, has important effects. This classification directs migrants' attention to the likelihood that they will, one day, need to return home, and encourages them to plan accordingly. It also affects their legal status abroad,<sup>17</sup> in a way that makes them more vulnerable<sup>18</sup> to exploitation by unscrupulous employers.

The Indian government uses this potential for exploitation in explaining the importance of its labour migration agreements. In describing why the agreements matter, the MOIA pointed specifically to the "protection and welfare of workers", alongside other goals, such as the way the agreements "enhance employment opportunities" for Indian workers.<sup>19</sup> A Migrant Forum in Asia study of many of India's labour migration agreements suggests that "something is better than nothing" but concludes that the agreements have not been effective in protecting against exploitation.<sup>20</sup> The author is even more sceptical about the provisions of these agreements purporting to protect Indian workers, but that is not the aspect of the agreements highlighted in this paper.

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<sup>14</sup> Alan Gamlen, "The new migration-and-development pessimism", *Progress in Human Geography*, Vol. 38, no. 4 (2014), pp. 581-597, <https://journals.sagepub.com/doi/abs/10.1177/0309132513512544>.

<sup>15</sup> "About Abu Dhabi Dialogue," Abu Dhabi Dialogue, last modified November 12, 2021, <http://abudhabidialogue.org.ae/about-abu-dhabi-dialogue>.

<sup>16</sup> Catherine Dauvergne and Sarah Marsden, "The ideology of temporary labour migration in the post-global era", *Citizenship Studies*, Vol. 18, no.2 (2014), pp. 224-242, <https://www.tandfonline.com/doi/abs/10.1080/13621025.2014.886441>; and Daiva Stasuilius, "Revisiting the permanent-temporary labour migration dichotomy" in *Governing International Labour Migration: Current Issues, Challenges and Dilemmas*, ed. Christina Gabriel and Hélène Pellerin (Routledge: 2008), pp. 95-111, <https://books.google.com.au/books?hl=en&lr=&id=Q8I-tFA7aukC&oi=fnd&pg=PA95&ots=4cv8ISUxG6&sig=vlHpUxWm5FyGRspwBVa0Dyl1-14#v=onepage&q&f=false>.

<sup>17</sup> Ibid.

<sup>18</sup> Deepak Unnikrishnan, "The Hidden Cost of Migrant Labor: What It Means to Be a Temporary Person in the Gulf", *Foreign Affairs*, 7 February 2020, <https://www.foreignaffairs.com/articles/india/2020-02-07/hidden-cost-migrant-labor>.

<sup>19</sup> "Annual report 2014-2015", p. 22, Ministry of Overseas Indian Affairs, Government of India, last modified 12 November 2021, <https://www.mea.gov.in/images/pdf/annual-report-2014-15.pdf>.

<sup>20</sup> Piyasiri Wickramasekara, "Something is Better than Nothing: Enhancing the protection of Indian migrant workers through Bilateral Agreements and Memoranda of Understanding", *Migrant Forum in Asia*, February 2012, [http://mfasia.org/migrantforumasia/wp-content/uploads/2012/02/FINALFormat\\_Wickramasekara\\_MOUs%5EFeb2012\\_V4.pdf](http://mfasia.org/migrantforumasia/wp-content/uploads/2012/02/FINALFormat_Wickramasekara_MOUs%5EFeb2012_V4.pdf).

This paper focuses on one limitation in the agreements. The scope of each of India's labour migration agreements is restricted to temporary migration. For example, agreements with Bahrain,<sup>21</sup> Oman<sup>22</sup> and the UAE<sup>23</sup> each limit their coverage of Indian workers to those who will "leave" or "depart" the country when their employment contract ends. The agreement with Malaysia covers Indian workers in Malaysia "for a specified period of time".<sup>24</sup> Other agreements are less explicit, but each agreement clearly covers temporary migration, and none address permanent migration.

Permanent migration is not prohibited or even explicitly restricted, but the focus on temporary migration helps shape Indian migration. The agreements provide Indians with one pathway along which they may move abroad, helping facilitate (only) temporary migration. The support by states of movement to work abroad has been "crucial" to increasing this type of movement in recent times.<sup>25</sup> By telling a story of temporary migration, the labour migration agreements are helping normalise and encourage temporary migration.

So, the labour migration agreements are helping shape a world in which temporary migration is the norm – at least, for a particular kind of international migration. This is a world in which Indians move abroad to work and are categorised as temporary migrants when they do. Of course, this world of temporary migration is neither something that is entirely new,<sup>26</sup> nor is it being created by labour migration agreements on their own.

We are, however, used to thinking about how national immigration laws in destination states limit migrants' movement, and shape them into 'mere' temporary migrants. This comes as no surprise.

We are less used to thinking about the role of international law in creating temporary migration; and perhaps even less still to the role of international agreements to which migrants' states of origin have explicitly agreed.

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<sup>21</sup> "Memorandum of Understanding between the Republic of India and Kingdom of Bahrain on Labour and Manpower Development", Ministry of External Affairs, Government of India, 17 June 2009, Article 1, <http://www.mea.gov.in/images/pdf/mou-bahrain.pdf>.

<sup>22</sup> "Memorandum of Understanding between Ministry of Overseas Indian Affairs in the Republic of India and the Ministry of Manpower in the Sultanate of Oman in the Field of Manpower", Ministry of External Affairs, Government of India, 8 November 2008, art 1, <http://www.mea.gov.in/images/pdf/mou-oman.pdf>.

<sup>23</sup> "Memorandum of Understanding between the Government of the United Arab Emirates and the Government of the Republic of India on Cooperation in the Field of Manpower", Ministry of External Affairs, Government of India, 10 February 2018, art 1, [https://www.mea.gov.in/images/amb1/India\\_UAE\\_MoU.pdf](https://www.mea.gov.in/images/amb1/India_UAE_MoU.pdf).

<sup>24</sup> "Memorandum of Understanding on the Employment of Workers between the Government of India and the Government of Malaysia", Ministry of External Affairs, Government of India, 3 January 2009, Article 1, <http://www.mea.gov.in/images/pdf/mou-malaysia.pdf>,

<sup>25</sup> Stuart Rosewarne, "The Globalisation and Liberalisation of Asian Labour Markets", *The World Economy*, Vol. 21, no.7 (September 1998), pp. 963-979, p. 971, <https://onlinelibrary.wiley.com/doi/abs/10.1111/1467-9701.00175>.

<sup>26</sup> Sunil Amrith, *Migration and Diaspora in Modern Asia* (New York: Cambridge University Press, 2011), <https://www.cambridge.org/core/books/migration-and-diaspora-in-modern-asia/4765F3C9E5DFC16555E753FDC8204B1>.

## Producing ‘Development’

This world of temporary migration also suits states like India, whose concerns are not limited exclusively to migrant welfare. ‘Development’ was central to the MOIA’s work from the time of its establishment, just as it has been a fundamental concern of the Indian state since Indian independence.<sup>27</sup> The MOIA was merged into the Ministry of External Affairs in 2016,<sup>28</sup> but the same ‘mission of development’<sup>29</sup> as that which animated the MOIA lives on.

‘Development’ can mean many things.<sup>30</sup> It might, for example, speak about the highest possible standards of worker protection, or of people’s freedom to move abroad permanently if they so desire. Instead, development has often come to be treated as synonymous with economic growth.<sup>31</sup>

The way migration is connected to development might also be seen in many ways.<sup>32</sup> For example, migration might be seen as detrimental to development, on the basis that workers need to stay put to help develop their homelands. That notion was once in vogue in the conventional wisdom about migration and development but has since fallen from favour.<sup>33</sup>

International legal agreements, into which the Indian state has entered, build instead on what is the contemporary conventional wisdom about migration and development – the so-called migration-development nexus. India’s labour migration agreements envisage a development that draws on, and tries to maximise, the remittances that Indians with transnational lives will send home. The agreements reflect a choice that involves encouraging Indians to work abroad so that they might send money home and help produce economic growth in India.

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<sup>27</sup> Partha Chatterjee, “Development Planning and the Indian State”, in *Politics and the State in India*, ed. Zoya Hasan (New Delhi: Sage Publication, 2002), pp. 115-142, [https://books.google.com.au/books?hl=en&lr=&id=9LSICwAAQBAJ&oi=fnd&pg=PT96&dq=chatterjee+development+planning&ots=W9GvTvFa5D&sig=8PZVD1VX7ZeHw9\\_N5g3y0VEqUlc&redir\\_esc=y#v=onepage&q=chatterjee%20development%20planning&f=false](https://books.google.com.au/books?hl=en&lr=&id=9LSICwAAQBAJ&oi=fnd&pg=PT96&dq=chatterjee+development+planning&ots=W9GvTvFa5D&sig=8PZVD1VX7ZeHw9_N5g3y0VEqUlc&redir_esc=y#v=onepage&q=chatterjee%20development%20planning&f=false).

<sup>28</sup> Kallol Bhattacharjee, “Overseas Indian Affairs Ministry, MEA merged”, *The Hindu*, 7 January 2016, <https://www.thehindu.com/news/national/Overseas-Indian-Affairs-Ministry-MEA-merged/article13986483.ece>.

<sup>29</sup> “Consular Services”, Ministry of External Affairs, Government of India, Accessed 12 November 2021, <https://www.mea.gov.in/overseas-indian-affairs.htm>.

<sup>30</sup> Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton: Princeton University Press, 1995), <https://press.princeton.edu/books/paperback/9780691150451/encountering-development>.

<sup>31</sup> Gilbert Rist, *The History of Development: From Western Origins to Global Faith*, trans. Patrick Camiller (Bloomsbury, 2014), <https://www.bloomsbury.com/au/history-of-development-9781783600229>.

<sup>32</sup> Parvati Raghuram, “Which migration, what development? Unsettling the edifice of migration and development”, *Population Space and Place*, Vol. 15, no.2 (2009), pp. 103-117, <https://onlinelibrary.wiley.com/doi/abs/10.1002/psp.536>.

<sup>33</sup> Hein de Haas, “The Migration and Development Pendulum: A Critical View on Research and Policy”, *International Migration*, Vol. 50, no.3 (2012), pp. 8-25, <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1468-2435.2012.00755.x>.



## A Political Trade-off

There is, of itself, nothing inherently evil in this choice, but it is a choice. There is a political trade-off being made, in exchange for the hope of a certain kind of contribution to a certain kind of development. Indians are being encouraged to move abroad temporarily, and only temporarily, even though it is widely recognised that this puts them in potentially precarious positions.

Reports of migrant exploitation and even death are commonplace.<sup>34</sup> It is not inevitable that any individual migrant will be exploited, but it is clear that many temporary migrants will be.

India is now the world's leading recipient of remittances.<sup>35</sup> With India representing the world's largest source of international migrants, this might not seem surprising. According to the conventional wisdom, these flows, of people out of India, and money into it, help India develop. Yet, these flows have neither happened entirely by chance nor do they come without a cost.

There is a price to be paid so that India can 'develop' in a particular way. We need to understand who is paying this price, where responsibility for this state of affairs lies and how it has come to seem normal.

India's labour migration agreements appear, at first glance, to deal with technical aspects of Indians' movement abroad. These sorts of things, it seems, are best sorted out by 'experts', who understand how to deal with the logistics of international recruitment and worker protection. Yet these agreements also reflect political choices and tell a story about our world. They tell a story of temporary migration from India and help shape how Indians move abroad.

For anyone who might like to challenge the status quo, it is worth understanding that the treatment of Indians abroad is not purely a product of unscrupulous employers or limitations imposed by the laws in destination states. International law, made with the imprimatur of the Indian government, is playing an important role as well.

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<sup>34</sup> "Trapped: The Exploitation Of Migrant Workers In Malaysia", Amnesty International, 2010, <https://www.amnesty.org/en/documents/asa28/002/2010/en/>; "I Already Bought You': Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates", Human Rights Watch, 2014, [https://www.hrw.org/sites/default/files/reports/uae1014\\_forUpload.pdf](https://www.hrw.org/sites/default/files/reports/uae1014_forUpload.pdf); Pete Pattison and Niamh McIntyre, "Revealed: 6,500 migrant workers have died in Qatar since World Cup awarded", *The Guardian*, 23 February 2021, <https://www.theguardian.com/global-development/2021/feb/23/revealed-migrant-worker-deaths-qatar-fifa-world-cup-2022>.

<sup>35</sup> "Migration and Remittances Data", The World Bank, last accessed 12 November 2021, <https://www.worldbank.org/en/topic/migrationremittancesdiasporaissues/brief/migration-remittances-data>.