



International
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India Pre-Decision Booklet



India

Pre-Decision Booklet



Public Services International
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ABOUT PUBLIC SERVICES INTERNATIONAL

Public Services International (PSI) is a global trade union federation representing 20 million working women and men who deliver vital public services in 150 countries. PSI champions human rights, advocates for social justice and promotes universal access to quality public services. PSI works with the United Nations system and in partnership with labour, civil society and other organizations.

PSI runs a Migration Programme through partnerships with its affiliated public service trade unions worldwide in defending the human and trade union rights of migrant workers, while promoting equality, access to justice and quality public services for all. Visit www.world-psi.org.

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HOW TO USE THIS MATERIAL

This pre-decision booklet contains basic information about several topics to help Indian health workers who are considering taking up employment overseas. It seeks to empower migrant health workers to make informed decisions and raise awareness of the issues related to health labor migration and ethical recruitment. This guide does not provide detailed information or advice but indicates the areas requiring further research and reflection by the individual.

In instances where the information is complex or likely to change, links to useful websites have been included. Individuals should use this material as a guide only and ensure the veracity and relevance of any information as much as possible.

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INTRODUCTION

Many migrant workers have unrealistic expectations and insufficient information about recruitment procedures, employment and living conditions abroad, labor laws and workers' rights in countries of destination, and social costs of migration. This lack of information on migration has placed a staggering number of migrant workers in vulnerable and risky economic and social situations. The availability and accessibility of adequate and up-to-date information is therefore crucial for individuals to make informed decisions and avoid fraudulent practices and other pitfalls in the migration process.

This pre-decision booklet is part of a series of migration information materials developed for Indian health workers under the International Labour Organization (ILO) *Decent Work Across Borders* (DWAB)¹ project which seeks to facilitate an approach to migration that benefits the migrant workers, the source and destination countries within a rights-based framework for labor migration management. The migration information materials seeks to address information needs of migrant health workers at all the stages of migration -- from pre-decision to return and reintegration. This booklet focuses on information needed by workers prior to making a decision to migrate for work overseas. Some aspiring

¹ http://www.ilo.org/manila/info/public/pr/WCMS_173607/lang--en/index.htm

migrants have opted to abandon plans to move to another country after receiving information on actual living and employment conditions abroad. Pre-decision information is crucial in the fight against illegal recruitment practices.

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Migration Realities

i. Overview of India emigration

India is known as a major source country of migrant labor in the world. Around 25 million Indians are estimated to be living and working overseas in over 100 countries. The country has for several years also been the largest recipient of remittances in the world. In 2013 alone the country has received an estimated \$ 71 billion in remittances. The other top recipients of officially recorded remittances for the same year are China (\$60 billion), the Philippines (\$26 billion), Mexico (\$22 billion), Nigeria (\$21 billion), and Egypt (\$20 billion).

While emigration from India has been happening for centuries, contemporary labor migration from India is typically described as being composed of two major patterns. The first refers to the outflow of skilled migrant workers to developed countries such as the USA, UK, Canada and Australia. The second is the emigration of low-skilled workers mostly to the Gulf countries triggered by the oil and construction boom in the 70s.

Despite the large number of workers leaving the country, there is a lack of systematic data on migration, particularly on skilled migration. The Ministry of Overseas Indian Affairs (MOIA) was established in 2004 to oversee all matters pertaining to Indians abroad.

India is unique as it is both a country of origin and destination. A significant number of migrant workers from Africa and neighboring countries like Bangladesh, Sri Lanka, Nepal have come to India over the years due to the latter's improving economy.

An important global trend is the increasing feminization of international migration with more and more women going abroad to work as domestic workers, caregivers and nurses.

ii. Overview of health worker migration

The international migration of health workers is nothing new but recent trends have pointed to an alarming increase in the movement of health workers such as doctors and nurses from developing to developed countries.

Globalization, demographic shifts and uneven development have intensified international migration in the health sector. High-income countries have relied on recruitment of foreign health workers to meet their needs instead of developing their domestic health human workforce. Unfortunately, many of the source countries are those which are already suffering from dwindling numbers of health workers and deteriorating health services and are having difficulties meeting the UN Millennium Development Goals.

Current international migration flows increase the unequal distribution of health personnel globally, weaken health systems and intensify global health inequalities. The World Health Organization (WHO) has already projected the global shortage of health workers to reach 12.9 million healthcare workers by 2035 if the situation remains as it is today.

India remains as one of the top source countries of health workers even as it is grappling with high maternal and infant mortality rates and facing a shortage of doctors, nurses, paramedics etc. A study released by the Public Health Foundation of India (PHFI) for the Ministry of Health and Family Welfare (MoHFW) has indicated an acute shortage of 6.4 million health workers. India is also included in the list of countries with “critical” health workforce shortages by the WHO.

To tackle the health workforce crisis, there is a need to increase training capacity, improve health workforce planning, development and retention, and promote ethical recruitment of migrant health workers.

Why do health workers migrate?

Health workers move for a variety of reasons. It is widely known though that the motivation to migrate is largely economic in nature.

Some of the common push and pull factors that drive the international recruitment and migration of health workers are shown below:

PUSH - factors or causes in the origin place which force people to move away	PULL - conditions that attract people to a particular location
Lack of jobs	Higher salaries
Low pay	Better working conditions
Poor working conditions	Lesser workload
Heavy workload	Opportunities for professional growth
Lack of adequate health infrastructure or facilities	Better technology and facilities
Lack of opportunities for professional growth	Higher standard of living
Poor implementation of policies	
Political instability	

Source: Public Services International “Quality Health Care and Workers on the Move”, National Reports of Kenya (2011), Ghana (2011), South Africa (2011), Philippines (2013) and Australia (2012).

iii. Impact of Health Worker Migration

The international migration of health workers has both negative and positive consequences. While migration can provide career opportunities for Indian workers, it can also expose them to vulnerabilities. Though it is known that remittances can boost the

economy of the origin country, it can also lead to social costs that may offset short-term gains and further weaken already failing health systems in developing countries.

1. Benefits of working abroad

- Possibility of earning a higher income and receiving better benefits for the migrant worker
- Opportunities for professional development
- Enhanced cultural awareness
- Better quality of life for the migrant worker and his/her family
- Remittances benefiting the origin country

2. Challenges and risks in working abroad

- Discrimination and violence against migrants
 - Racial discrimination
 - Gender discrimination
- Homesickness
- Culture shock
- Unhealthy living and working conditions
- Lack of social protection
- Lack of access to grievance and redress mechanisms

- Rights violations
- Lack of respect for migrants' religion and culture
- Human trafficking
- Psycho-social costs to migrants and their families
 - Separation
 - Loneliness
 - Anxiety
 - High-risk behavior in children left behind

3. Social costs of migration to the country

Oftentimes migration is considered a personal decision which impacts the migrant and his or her family alone. It is important to understand that while labor migration can bring economic gains through remittances, it can also lead to substantial social costs to origin countries.

Migration in the health sector has short-term and long-term implications to national development. For a country already experiencing a critical shortage of health workers, continued emigration of doctors and nurses pose serious threats to India's healthcare system. This situation leads to a phenomenon called "brain drain" wherein a country loses its essential health workforce at the expense of the right to health of its own population.

According to WHO statistics, there are six doctors in India for every 10,000 population, whereas in China and the US respectively, there are 14 and 26 for the same number of people. There are only 613,000 physicians in the country, against a minimum requirement of 1,330,000 representing an alarming shortage of more than 50%.

Health experts say that India also faces a 40 to 50% shortage of nurses due to increasing emigration of nursing personnel overseas.

India also suffers from a massive shortage of allied health workers. Based on the report of the National Initiative for Allied Health Sciences (NIAHS), there is a gap of 2,042,000 dental assistance-related technologists, 1,822,000 rehabilitation-related workforce, 893,000 miscellaneous health workers and 858,000 surgery and anesthesia-related professionals.

The scale of “brain drain” in the health sector is staggering. Replenishing the health workforce that is lost will also take years given the time and resources needed to train a doctor or a nurse.

Further, brain drain is happening in the midst of an already ailing health system in the country. Government spending on health care has been notoriously low through the years, hovering to around 1% of the Gross Domestic Product (GDP). Maternal mortality rate is still one of the highest in the world at 178 deaths per 100,000 live births, way behind the country’s commitment to reducing deaths to 109 by 2015 under the United Nations mandated health development goals.

The country is also struggling to bring down infant mortality rate which is at 42 deaths per 1,000 live births in 2012. According to a report from the Registrar General of India, one in every 24 infants at the national level, one in every 22 infants in rural areas, and one in every 36 infants in urban areas die within one year of life.

In addition, around 37% of Indian deaths are caused by “poor country” diseases like tuberculosis, malaria and diarrhea.

Any health worker thinking about working abroad should take into account these social costs of labor migration to the country.



Clarifying Expectations / Motivations

i. Making an informed decision

A positive migration experience requires realistic expectations. It is important to know exactly what you're getting into in your new job and living environment. Try to speak with as many people as possible when interviewing and ask as many questions as possible about the job itself so there are no surprises. Spend enough time to reflect on the short and long-term consequences of emigrating before you make a decision. Migration can bring big rewards, but it also involves a lot of risks and challenges.

ii. Important questions to ask before deciding to migrate overseas for work

The following questions will help you explore your thoughts about migration and clarify your expectations:

1. Why do I want to work abroad?

2. What are the benefits and risks of working overseas? Do the benefits outweigh the obstacles?
3. What and who are you leaving behind?
4. What about my responsibility towards India? Have I completed my mandatory time (for doctors) in rural India to qualify for a clearance certificate?
5. Will I be able to cope with stress/homesickness and adapt to change?
6. Am I ready to leave my family and friends?
7. How will moving overseas affect my family and other loved ones?
8. Can I obtain the necessary documents and afford the costs?
9. Will my qualifications be recognized?
10. Am I ready to work in a foreign environment?
11. What are my financial goals and would working abroad meet them?
12. What is the cost of living and how much can I expect to earn?
13. How long do I intend to stay away and do I have a backup plan if things do not work out?
14. Will working in a different country provide me with better opportunities than my current situation?

15. What other alternatives in the country do I have? Have I explored other job opportunities in other areas of India?
16. What do I need to have in place to return?

The more questions you ask yourself and clarify your expectations, the more you will understand what's important for you to have a decent and fulfilling life, and the better choice you will make.



Illegal Recruitment and Trafficking

i. Illegal recruitment

1. What is illegal recruitment

When committed by an unlicensed/unregistered Recruitment Agent (RA) as mandated by the Emigration Act, 1983:

- Any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, procuring workers, and includes, referring, contract services, promising or advertising for employment abroad, whether for profit or not

When committed by any person, whether non-licensee, non-holder, licensee or holder of authority

- Charging of fees greater than those prescribed by law
- Provision or publication of false information regarding recruitment

- To give any false notice, information or document, or commit any act of misrepresentation for the purpose of securing a license or authority
- To withhold or deny travel documents of a worker before departure
- Failure to reimburse the workers in connection with his/her documentation and processing for purposes of deployment in cases when the deployment did not push through
- To substitute or alter to the prejudice of the worker employment contracts
- To engage in any kind of recruitment activity while in suspension

2. Signs of Illegal Recruitment

Spotting an illegal recruiter can be difficult at times but below are some signs to look out for:

- Suggests shortcuts to a job in a destination country, bypassing the legal requirements
- Does not provide copies of the employment contract
- Does not provide adequate information about the employer and the work being applied for
- Does not provide sufficient information about the agency and
- Immediately demands payment without issuance of receipts

- Makes unrealistic promises of instant wealth and success to entice a worker to apply and work abroad

3. Do's and Don'ts

- Do not apply at recruitment agencies not duly registered with the MOIA.
- Do not deal with any person who is not an authorized representative of a licensed agency.
- Check the authenticity of your visa with the embassy concerned. You can directly contact each embassy and inquire about your visa status by giving your passport details.
- Do not accept visit/tourist/student visas.
- Always insist on the original copy of work-contract, duly attested by the concerned embassy.
- Keep a copy of your work-contract at home safely along with copies of your passport and other related documents before you leave India.
- Never sign blank papers either in India or after arrival in the destination country under any circumstances. In case you are persuaded or forced to sign on blank papers, please inform the nearest police station and the Embassy within 24 hours.
- Do not pay approved recruitment agencies more than the allowable service charges as provided by the Emigration Act of 1983. Report any violations to the concerned embassy or the MOIA.

- Do not accept any packet or parcel from known or unknown persons without checking personally the contents as it may be objectionable material such as narcotics.
- Do not pay service charges or placement fees unless you have a valid employment contract and an official receipt.
- Do not pay more than the maximum allowable recruitment fees – Rs 20,000 or 45 days salary, whichever is less. (Rs. 5000/- for skilled workers, Rs. 3000/- for semi-skilled workers, Rs. 2000/- for unskilled workers and Rs. 10000/- for highly skilled workers). These fees are based on the Indian Emigration Act of 1983 and may change depending on the prevailing government regulations at a particular point in time. Please check the website of the MOIA for the latest information (www.moia.gov.in).

4. What to do in case of illegal recruitment?

Complaints against recruiting agents can be addressed either through post or by e-mail to pge@moia.nic.in or dires@moia.nic.in. Complaints can also be filed with any of the eight Protector of Emigrants (check the list of resources for their contact information). A toll free Helpline No.1800-11-3090 can also be reached.

An aggrieved emigrant can also file a complaint with the Indian Mission in the country of destination on telephone or through e-mail, the details of which are available on www.meaindia.nic.in and www.india.gov.in.

ii. Trafficking

1. What is human trafficking?

Human trafficking is a grave violation of human rights and a modern form of slavery. Every year, thousands of men, women and children are trafficked within a state or across international borders. Almost every country in the world is affected by trafficking, whether it is a developing, developed or a country in transition. Trafficking exists in different sectors or industries even those that are often seen as stable sectors such as health care. Victims of trafficking can be of any age or gender although a disproportionate number of women are involved in human trafficking both as victims and as culprits.

A lot of the factors that push workers to migrate also leave them vulnerable to human trafficking. Due to poverty and desperation to support their families, workers take on jobs overseas. However, upon arrival in the country of destination, they find out that the work they were promised does not exist and they are forced to work in jobs or conditions to which they did not agree.

Traffickers can also coerce people to work through a variety of ways. Trafficked migrants usually have their passports and official papers taken from them upon arrival. Victims are then told that they are in the destination country illegally, which increases victims' dependence on their traffickers. Without their documents they cannot prove their right to stay in the country, nor can they go to the authorities for assistance.

Victims are often kept in captivity and also trapped into debt bondage, where they are obliged to pay back large recruitment, transportation and other fees before being released from their traffickers. Many victims report being charged additional fines or

fees while under bondage, requiring them to work longer to pay off their debts.

Human Trafficking as defined by the United Nations is “the recruitment, transport, transfer, harbouring or receipt of a person by such means as threat or use of force or other forms of coercion, of abduction, of fraud or deception for the purpose of exploitation.” This definition is spelled out in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children which supplements the UN Convention against Transnational Organized Crime. You can read more about the Protocol on the UN Office on Drugs and Crime website at (<http://www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext>)

Trafficking is a reality in India. It is a source, transit and destination country of trafficking for different purposes. Majority of the trafficking cases occur within the country, but a significant number also involves trafficking of Indian emigrant workers to other countries.

India addresses trafficking through the Immoral Traffic (Prevention) Amendment Bill of 2006. This law punishes trafficking for the purpose of prostitution but does not cover the wide -range of trafficking for other purposes such as domestic work and bonded labor.

The state has also ratified the UN Protocol in May 2011 and recently passed the Criminal Law (Amendment) Bill, 2013. While the latter takes on the broad definition of trafficking based on the UN Protocol, it still leaves out other forms of exploitation such as forced labor in different sectors of work.

Aside from the Indian national legislation against trafficking, emigrants from India should also familiarize themselves with the

national laws on human trafficking in their destination countries. Some countries have tougher and more comprehensive anti-trafficking laws which can provide adequate protection and support for trafficked migrant workers.

2. Types of trafficking

There are various types of trafficking in persons which every Indian emigrant worker should be aware of:

Forced labor

Forced labor involves victims being compelled to work very long hours, often in hard conditions, and to hand over the majority if not all of their wages to their traffickers. Forced labor crucially implies the use of coercion and lack of freedom or choice for the victim. In many cases victims are subjected to verbal threats or violence to achieve compliance.

The ILO has identified eleven indicators that individually or collectively imply the existence of forced labor. These are:

- Abuse of vulnerability
- Deception
- Restriction of movement
- Isolation
- Physical and sexual violence
- Intimidation and threats

- Retention of identity documents
- Withholding of wages
- Debt bondage
- Abusive working and living conditions
- Excessive overtime

Read more about these indicators at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf

Debt Bondage

A person becomes a bonded laborer when their labor is demanded as a means to pay off a loan. Many migrant workers have incurred huge debts to pay the costs of recruitment and travel in order to work abroad. Upon arriving in the destination country, it turns out that the promised job doesn't exist. They cannot leave until the debt is paid off. This is often accompanied with threats against the victims' family back at home.

Once in debt, the person loses control over their conditions of work and is forced to work long hours, often for seven days a week, for very little or no pay. The value of their work is significantly greater than the original sum of money borrowed. The debt becomes inflated through charges for food, transport and interest on loans, making it impossible to repay and trapping the worker in a cycle of debt.

Sexual exploitation

Sexual exploitation involves any non-consensual or abusive sexual acts performed without a victim's permission. This includes prostitution, pornography and escort work. Women, men and children can be victims. Many have been deceived with promises of a better life and then controlled through violence and abuse. Many of the poorest countries have the highest incidences of human trafficking. Where economic alternatives do not exist, women and girls are more vulnerable to being tricked and coerced into sexual servitude.

3. How to recognize and prevent human trafficking

The most important step to avoid and help fight human trafficking is to become informed. Learn about the human trafficking situation and related laws in both the origin and destination countries as much as possible. Take heed of the signs of illegal recruitment as had already been discussed in the previous section. Also:

- Be wary of attractive job offers on websites as well as dating websites. Many traffickers use websites to traffic victims.
- Investigate job offers, particularly where you are told to keep the opportunity secret and not to share information with anyone.

While there is no set formula to determine whether or not a person has been trafficked, the following list of questions can help determine if trafficking elements are present in a given situation:

- Is the person free to leave the work site?
- Is the person physically, sexually or psychologically abused?

- o Does the person have a valid passport or identification card and is he/she in possession of such documents?
- o What is the pay and conditions of employment?
- o Is the person afraid to share information about his/her living and working conditions?
- o Does the person owe a huge debt?
- o Does the person live at home or at/near the work site?
- o Has the person or a family member of this person been threatened?
- o Does the person fear that something bad will happen to him or her, or to a family member, if he/she leaves the job?

4. What to do in case of human trafficking?

If you are a victim of human trafficking or may have information about a potential trafficking situation, immediately report the matter to the police, concerned government agencies, embassies, trade unions/Non-Government Organizations (NGOs). See the list of resources at the end of this booklet for more information.



Ethical Recruitment of Health Workers

Health worker migration has been increasing worldwide over the past decades, especially from lower income countries with already fragile health systems. More and more health workers leave their home countries looking for better working conditions and career opportunities abroad. This has led to an increasingly inequitable access to health care, within and between countries.

The WHO has adopted the 2010 Global Code of Practice on the International Recruitment of Health Personnel as a way to address the challenges of labor migration in the health sector and improving retention of health workers. The Code aims to establish and promote voluntary principles and practices for the ethical international recruitment of health personnel and to strengthen health systems.

i. What is ethical recruitment

There is no single accepted definition of ethical recruitment but it is generally used as a term pertaining to a set of standards and practices that should govern the international recruitment of critical workers particularly those in health care.

ii. Principles

1. Effective human resources planning, management and development, leading to national self-sustainability
2. Equal rights and non-discrimination
3. Freedom of association and right to collective bargaining
4. Mutual recognition of qualifications
5. Transparency and Accountability
6. Strict regulation of recruitment
7. Mutuality of benefits

iii. Overview of the WHO Global Code of Practice

The WHO Code of Practice is voluntary, global in scope and applies to all health workers and stakeholders. The Code:

1. Discourages active international recruitment of health personnel from developing countries facing critical shortages of health personnel;
2. Urges states to address underlying causes of outmigration of health workers from developing to developed countries through health workforce development and creation of sustainable health systems;
3. Calls for protection of the rights and non-discrimination of migrant health workers;

4. Promotes cooperation between countries of origin and destination through bilateral or multilateral arrangements based on the principle of mutuality of benefits;
5. Encourages member states, international organizations, international donor agencies, financial and development institutions and other relevant organizations to provide technical assistance and financial support to developing countries that are experiencing critical health workforce shortages; and
6. Promotes data-gathering and information exchange nationally and internationally to better respond to challenges related to health workforce migration

More information on the WHO Code of Practice at http://www.who.int/hrh/migration/code/code_en.pdf.

i. Other Codes of Practice on Ethical Recruitment of Health Workers

Along with the WHO Code of Practice, other codes have been initiated to ensure ethical recruitment of migrant health workers. It is useful for migrant health workers bound for these countries which have existing codes of practice to be aware about them. They are listed below:

1. USA: Voluntary Code of Ethical Conduct for the Recruitment of Foreign-Educated Health Professionals to the United States (<http://www.fairinternationalrecruitment.org/images/uploads/THE%20CODE%281%29.pdf>)

2. United Kingdom: UK Code of Practice (CoP) for international recruitment (<http://www.idcsig.org/DoH%20International%20Recruitment.pdf>)
3. Europe: EPSU-HOSPEEM Code of Conduct on Ethical Cross-border Recruitment and Retention (<http://www.epsu.org/a/3715>)
4. Commonwealth Countries: Commonwealth Code of Practice for International Recruitment of Health Workers (<http://secretariat.thecommonwealth.org/files/35877/FileName/CommonwealthCodeofPractice.pdf#page=3&zoom=auto,0,415>)



Rights

At present, there are several international instruments that set forth the rights of migrant workers regardless of their status. Awareness about all these instruments is crucial in protecting the rights of migrant health workers and facilitating compliance of governments, employers and other key actors in labor migration.

i. Core Labor Standards

The International Labour Organization (ILO) is a tripartite organization consisting of governments, trade unions, and employers and is part of the United Nations system. It is responsible in maintaining and developing a system of international labor standards aimed at promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity. The ILO draws up labor standards in the form of Conventions which are legally-binding, or Recommendations which serve as non-binding guidelines. In principle, all international labor standards, unless otherwise stated, are applicable to migrant workers.

Conventions have to be ratified by a State to be legally-binding. However, in 1998, the ILO adopted the Declaration on Fundamental

Principles and Rights at Work. In the Declaration, ILO member states agreed that they should all respect, promote, and apply Core Labor Standards (CLS) whether they have been ratified or not and regardless of the level of economic development of the country.

The CLS consists of five standards laid out in eight ILO conventions:

1. Freedom of association and the effective recognition of the right to collective bargaining (Conventions No. 87 & No. 98)
2. The elimination of all forms of forced and compulsory labour (Conventions No. 29 & No. 105)
3. The effective abolition of child labor (Conventions No. 138 & No. 182)
4. The elimination of discrimination in respect of employment and occupation (Conventions No. 100 & No. 111)

You can find out more about the ILO Core Labor Standards at http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-manila/documents/publication/wcms_126253.pdf

ii. International instruments on migrant workers' rights

The ILO has also developed specific international standards for the governance of labor migration and the protection of migrant workers. These are the following:

ILO Migrant specific instruments

- Migration for Employment Convention (Revised), 1949 (No. 97)

- Migration for Employment Recommendation (Revised), 1949 (No. 86)
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
- Migrant Workers Recommendation, 1975 (No. 151)

All the above-mentioned instruments, including the list of countries that ratified them, can be accessed at the ILO website (www.ilo.org).

Along with the international labor standards, migrant workers and members of their families are also protected by all of the UN core international human rights instruments, particularly the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. The entire text of the Convention can be accessed at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>. The basic rights guaranteed under this Convention are summarized below: .

iii. Rights of Migrant Workers and Members of their Families guaranteed under the UN Migrant Workers Convention

Basic Freedoms:

- Right to freedom of movement
- Right to life
- Right to freedom from torture or cruel, inhuman or degrading treatment or punishment
- Right to freedom from slavery, servitude or forced compulsory labor

- Right to freedom of thought, expression, conscience and religion
- Right to privacy
- Right to property

Due process:

- Right to a fair and public hearing with all the guarantees of a due process
- Right to be provided with necessary legal assistance, interpreters and information in an understood language
- Right to liberty and security and freedom from arbitrary arrest or detention
- Right to be presumed innocent until proven guilty
- Prohibition to be subject to measures of collective expulsion
- Right to have recourse to diplomatic or consular assistance and protection
- Right to recognition everywhere as a person before the law
- Right to equality with nationals before the courts and tribunals

Employment:

- Right of equal treatment with nationals in respect to remuneration and other conditions of work such as overtime, holidays, etc.

- Right to join freely any trade union
- Right to enjoy the same treatment as nationals regarding social security benefits in so far as they fulfill the legislation requirements
- Right to emergency medical care

Family and Children of Migrant Workers:

- Right to a name, registration of birth and nationality
- Right of access to education

Cultural and Economic Rights:

- Right to preserve a cultural identity
- Right to transfer earnings and savings upon the termination of their stay in the State of employment

Information:

- Right to information by the State of origin, State of employment, or the State of transit of their rights arising from the present Convention, the conditions of their admission, and their rights and obligations in those States

Other Rights of Migrant Workers and Members of their Families Who Are Documented or in a Regular Situation:

Migrant workers and members of their families who are documented or in a regular situation shall enjoy the rights set forth below in addition to those already mentioned. In such a way, the Convention seeks to discourage irregular migration.

Temporary Absences:

- Right to be temporarily absent, for reasons of family needs and obligations, without effect on their authorization to stay or work

Freedom of Movement:

- Right to liberty of movement in the territory of the State of employment

Employment:

- Right to form associations and trade unions in the State of employment
- The right to equality of treatment with nationals in respect of protection against dismissal, unemployment benefits and access to alternative employment
- In case of violations of work contracts by the employer, the right to address his/her case to the competent authorities of the State of employment

Political Rights:

- Right to participate in the public affairs of the State of origin, in accordance with its legislation
- Right to vote and to be elected in the State of origin, in accordance with its legislation

Cultural and Economic Rights:

- Right to enjoy from export and import taxes

- The right to equality of treatment with nationals of the State of employment, including access to educational, vocational and social services

Information:

- Right to information, including all conditions concerning their stay and their remunerated activities

iv. Trade Unionism in the health sector

1. What is a trade union?

Trade unions are membership-based groups or organizations that represent, protect and advance the collective interests of workers.

2. What do trade unions do?

- Trade unions speak on behalf of their members
- Trade unions educate their members about their rights and provide them with information and advice about work-related issues.
- Trade unions provide members with a range of services including research, training, professional development, insurance, financial services and legal counseling.
- Trade unions negotiate or bargain with employers to get better pay and working conditions for members.
- Trade unions campaign on important issues that matter for workers such as low pay, discrimination at the workplace, and precarious work.

3. Why join a trade union?

- You will get support if you have a grievance or a problem at work.
- You're better off in a union. Research shows that union members generally receive higher pay, better benefits, and more paid holidays and flexible working hours than non-members.
- You will be entitled to additional membership services of the union such as insurance and discounts.
- You have more opportunities for trainings to improve your vocational and professional qualifications.
- You are safer and more secure in a union. Unionized workplaces have better health and safety practices and fewer accidents.
- You will be treated fairly at work. Unions protect members from unfair and discriminatory practices in workplaces.
- You will experience a sense of belonging to a group that values and cares for you. People who have a sense of belonging have better physical and mental health, have a greater capacity to manage stress, and tend to live happier lives.
- You have the opportunity to support campaigns that promote a more just and equitable society.

4. Can migrant health workers join trade unions?

All workers including migrant health workers have the basic human right to join and participate in trade union activities.

Some countries are far more open to a culture of unionism where majority of the workers are highly organized and their collective right to negotiate is respected.

However, there are still a number of countries that have laws and practices that do not comply with international core labor standards and explicitly prohibit workers from organizing into unions such as some countries in the Gulf region. It is therefore important to know the labor laws and your rights in the destination countries prior to making a decision to migrate.

5. How do you join a trade union?

If you want to join a recognized union in your workplace, you could approach a union representative for information. You can also get in touch with the Public Services International (PSI) or its affiliates in India to find out which union is relevant to you. Check the list of resources for more information.



Recruitment

i. Emigration Act, 1983 and the recruitment process

The Emigration Act of 1983 provides the institutional framework for the regulation of emigration from India. It lays down the procedures governing the registration of recruitment agents, issuance of permits for recruitment by employers, and application for emigration clearance.

The Ministry of Overseas Indian Affairs (MOIA) administers the Emigration Act through the eight offices of the Protector of Emigrants (POEs) which are located at Delhi, Mumbai, Kolkata, Chennai, Chandigarh, Cochin, Hyderabad, Jaipur, Rae Bareilly and Thiruvananthapuram.

Under the Emigration Act, 1983, there are two ways for Indian workers to be recruited for work overseas: through duly-registered recruitment agents or by direct recruitment by foreign employers with a valid permit issued by the Protector General of Emigrants (PGE).

In general, all Indian citizens intending to emigrate can do so without any clearances, except if migrating to the 17 countries listed

under MOIA as requiring emigration clearance. However, with a view to facilitating the movement of the workers to these countries as well, certain categories of persons have been exempted from this requirement and have been placed under “Emigration Check Not Required’ (ECNR) category. Skilled workers such as nurses and doctors are not required to obtain emigration clearance before migrating for work.

You can find more information about the Emigration Act in the MOIA website (www.moia.gov.in).

To check whether a recruitment agent is registered with the MOIA or whether it is active or not, please visit <http://poeonline.gov.in/>.

ii. Allowable Costs

The Emigration Act of 1983 puts a ceiling on the allowable fees that RAs can charge in exchange of services rendered. Skilled workers may be charged up to an equivalent of 45 days of salary or a maximum of Rs 20,000.



Employment Contract

A contract is a binding agreement that is entered into voluntarily by two or more parties. The purpose of a contract is to create legal obligations between you and your recruiter or employer to perform, or not to perform, specific duties.

i. Five things to look out for before signing a contract

1. Clear and understandable written contract

The contract should be in writing and clearly define the roles and responsibilities of both you and your recruiter or employer. It should be written in a language that you understand. You have the right to negotiate offers or counteroffers with your recruiter or employer and any changes agreed upon by both parties should be written into your contract.

2. Dates and period of employment

The contract should indicate the beginning and end dates of your employment.

3. Comprehensive and specific job description

Your contract should identify your specific job position, tasks, working hours, work location and unit.

Some migrant health workers have experienced problems where they were originally told that they would be working in a hospital, but then were assigned to another job outside of their area of expertise, or even in another facility.

4. Detailed information about compensation and other benefits

What is your base pay? What benefits will you receive? Are these benefits guaranteed or discretionary? Do you have overtime pay? Make sure all types of compensation and benefits are indicated in the contract.

5. Just cause for termination

What are the grounds for termination? Are these grounds fair? Or does the employer have a wide discretion in termination?

ii. What to do before signing a contract

1. Read your contract carefully before signing.
2. Do not let anyone pressure you or force you to sign a contract. Be wary of a recruiter that tells you that you need to sign a contract on the spot or does not allow you to take time to review it.
3. Have friends, family, and a lawyer if possible, to review the contract with you.
4. Ask questions and for explanations of contract clauses you do not understand.
5. Discuss and negotiate any contract terms you do not agree with.
 - a. If you come to an agreement, make sure it is included in writing into your contract. Do not rely on spoken promises.

- b. If you cannot come to an agreement, do not sign the contract.
 - c. Your refusal of one contract does not mean you will not be able to immigrate. Rather, this gives you the opportunity to look around and make sure you choose a recruiter that will treat you fairly and that can best meet your needs.
6. Do your research. The more information you have, the less likely you will be taken advantage of.

iii. India Overseas Employment Contract

According to Indian regulations, employment contracts should cover the following matters:

- Period of employment/place of employment
- Wages and other conditions of service
- Free food and food allowance provision
- Free accommodation
- In case of death of the emigrant, repatriation of the remains
- Working hours, overtime allowance, other working conditions, leave and social security benefits as per local labor laws
- To and fro air passage at the employers costs
- Mode of settlement of disputes

- Medical benefits
- Leave benefits
- Travel and transportation expenses
- Conditions for the termination of employment
- Provisions in regard to coverage of special risks including war
- Provisions in regard to remittances
- Provisions in regard to renewal of contract



Remittances

Remittances refer to the money sent to a recipient at a distance. The term is often used to describe money sent by migrant workers to family or friends in their origin countries (inward remittances), but can also refer to sending money abroad in foreign currency (outward remittances).

Remittances can be sent through formal or informal means. The table shows some of the advantages and disadvantages of both.

Characteristics of Formal and Informal Remittance Channels

	Formal	Informal
Modes of transfer	Money orders; Cheques; Demand Drafts; Electronic money transfers	Money sent through personal networks of the migrant worker (ex. cash carried in person); in-kind transfers; In India there is also the so-called Hawala / Hundi system where the migrant worker remits money through a Hawaladar or an agent. The latter will transfer the local current equivalent to the migrants' beneficiary through a counterpart in the origin country.
Cost	Can be very expensive. Service charges range from 10% to as high as 20% of the amount being remitted.	Cheap as it requires no documentation and involves a minimum number of parties.
Speed / Efficiency	Periods vary. Electronic money transfers such as wire transfer typically take 24-96 hours, but can also take place in real time. Other modes can take days and weeks. Various documentation requirements are also needed.	Varies but can be as quick as a few hours through the Hawala/ Hundi system or can take days and weeks as well depending on the informal channel chosen.
Availability / Coverage	Not all money transfer options are available at every location. While you can avail of the offline route at all bank branches, the online ones are mostly limited to urban areas.	Widely available as it relies on social connections such as family and friends. In many rural areas, hawala is the only possible means of sending money due to lack of banking facilities or linkages between the country of origin and destination.

	Formal	Informal
Security	Varies depending on the bank or financial institution chosen as well as the regulatory environment and practices in the countries involved. Overall though, formal channels offer better security than informal channels.	Being a document-free transaction, it provides anonymity and discretion. Trust is an important feature of the Hawala system. However, since this system is not regulated, it is very open to abuse.
Other characteristics	Remittances sent through official channels are generally preferred by governments as they are more transparent.	Obtaining data about informal remittances is difficult because of its nature and secrecy. This system has been used for criminal activities such as money laundering and smuggling.

Note of Caution:

Before deciding on the mode of transfer, consider very carefully the availability, accessibility, costs involved, speed, efficiency, reliability, convenience as well as your own needs and your family's.

Sending money from India

Indian residents can transfer money to a beneficiary abroad for various purposes as permitted under the Foreign Exchange Management Act (FEMA) including emigration, maintenance of relatives, medical treatment, education fees, etc.

It is important to be aware though that sending money from India to another country can be a very difficult process as it is highly

regulated and involves various government restrictions. The Indian rupee is a highly managed currency and the government keeps a close tab on rupees that are converted into other currencies. The government also revises ceiling amounts for out remittances based on the country's fiscal situation.

There is a limit to the amount that you can send per transaction and a certain number of transactions are only permitted in a year. Charges such as administrative costs, agent commission and transfer fees are covered by the remitter [sender] and may depend on the amount transferred and the mode of transfer.

Sending a cheque is the most difficult way to send money outside India. Should you need money sent from India while you are already abroad, you can also choose from any of the following modes of transfer:

- Foreign Currency Demand Draft
- Wire Transfer through Banks
- Direct Online Transfer

Before you choose a mode of transfer, consider the fees involved. In general, the faster the transfer is, the higher the costs.

Take note that regulations on remittances are constantly updated and thus the ones mentioned here may change. For more information, please visit the website of RBI at <http://www.rbi.org.in/home.aspx>.



Permanent Migration

Some Indian health workers opt to find employment overseas with the goal of moving permanently to another country. It is important to keep in mind though that immigration rules and regulations vary significantly from country to country.

There are countries that provide a number of pathways for permanent migration, while others have rigid immigration restrictions.

Before you make the decision to migrate, find out what options are available, whether for temporary stay or for permanent migration. If you are considering applying to settle permanently in another country, note that immigration rules may change and you must meet the requirements at the time when you make your application.

Equally important is to consider the situation of health in India and the shortages of health professionals in the country. If you are a doctor and have studied in a government institution, also ensure you have done the mandatory rural service to obtain a clearance certificate from the Ministry. While you explore your options of working abroad, you may also want to explore your options to stay and help improve the conditions of the health workforce in India. Working with your trade union and winning workers' rights is one important option to begin with.



Frequently Asked Questions regarding work abroad

i. How do I seek overseas employment?

A person can take up overseas employment in a foreign country either through a registered recruiting agent or directly through a foreign employer or a project exporter.

ii. How do I know if a recruitment agent is legitimate?

Get in touch with MOIA or the concerned POEs if the recruiting agent is duly registered under the Emigration Act, 1983. You can also visit <http://www.poeonline.gov.in/> and check the registration and status of the recruiting agent yourself. The website is said to be updated regularly.

iii. How do I know if advertisements for overseas jobs are reliable?

In case of ad by a registered recruiting agent, you must check that the registration certificate number is clearly mentioned.

Similarly, ads by Foreign Employers and Project Exporters should indicate their permit number. Full address with Telephone Number, Post Box Number, e-mail address of the advertiser should be mentioned in addition to the job and salary particulars to enable the respondent to check the veracity of the job and the employers. Clarifications in this regard could be sought from the office of any Protector General of Emigrants.

iv. How much do I need to pay recruiting agents for their services?

Recognizing that the recruiting agents are providing a service to prospective emigrants, the Government has allowed them to levy service charges. However, in a bid to prevent exorbitant charges, the Government has limited the maximum service charges that such agents can charge from each worker. The following are the rates of service charges depending on the type of worker:

Unskilled workers: Rs. 2,000
Semi-skilled workers: Rs. 3,000
Skilled workers: Rs. 5,000
Others: Rs. 10,000

Please check the website of the MOIA for the latest information on maximum allowable fees. (www.moia.gov.in).

v. What do I do in case of recruitment violations?

Complaints against recruiting agents can be addressed either through post or by e-mail to pge@moia.nic.in or dires@moia.nic.in. Complaints can also be filed with any of the eight Protector

of Emigrants (check the list of resources for their contact information). A toll free Helpline No.1800-11-3090 can also be reached.

vi. Where do I file my complaints against a foreign employer?

An aggrieved emigrant can file her/his complaint with the Indian Mission in that country on telephone or through e-mail, the details of which are available on www.meaindia.nic.in and www.india.gov.in.

vii. What happens to complaints filed by emigrant workers?

The complaints made by emigrants or intending emigrants against the registered recruiting agents are examined by the Protector General of Emigrants, if necessary in consultation with the Indian Mission abroad. Action is taken, as appropriate, in accordance with the provisions of the Emigration Act, 1983, and rules framed thereunder.

Complaints against unauthorized/illegal recruiting agents are referred to the police authorities for investigation.

Complaints against foreign employers are taken up with the Indian Missions abroad. A recalcitrant foreign employer is blacklisted (by placing him in the PAC list) from future recruitment in consultation with the Indian Mission. A list of foreign employers under the Prior Approval Category (PAC) is available on the website of the Ministry of Overseas Indian Affairs at www.moia.gov.in.

viii. What do I need to consider before migrating for work abroad?

First, make sure you do your research and understand the pros and cons of migration for you and your family and its attendant realities. Clarify your expectations, values and goals before making a decision.

Once you have decided to migrate, go through the proper recruitment process and know your rights and responsibilities in both the origin and destination countries. Check the veracity of your employment contract, visa and other related documents. Verify whether your recruiting agent is registered with MOIA and has a good track record.

Review the information and check out the list of resources provided in this booklet for more information.



List of Resources

i. Relevant government agencies on migration

Ministry of Overseas Indian Affairs

Akbar Bhawan

Chanakya Puri

New Delhi-110021

Tel: +91-11-2419-7900

Fax: +91-11-2419-7919

Email: info@moia.nic.in

Protector of Emigrants offices in India

The Protector of Emigrants, New Delhi	Jaisalmer House, Canteen Block, Mansingh Road, New Delhi. Tel: +91-11-2338-2472
The Protector of Emigrants Mumbai	Building `E' Khira Nagar S.V. Road, Santa Cruz (W) MUMBAI Tel: +91-22-2661-4393

The Protector of Emigrants, Chennai	TNHB Shopping Complex (Annexe) Ashok Nagar, CHENNAI-83 Tel: +91-44-2489-1337
The Protector of Emigrants, Kolkata	Room No.18, 'A' Wing MSO Building, 3rd Floor DF Block, Salt Lake KOLKATA-700 084 Tel: +91-33-2334-3407
The Protector of Emigrants, Chandigarh	Kendriya Sadan, 5rh Floor, Sector 9-A, CHANDIGARH Tel: +91-17-2274-1790
The Protector of Emigrants, Thiruvananthapuram	Suganthi, 24/846(1) Thycaud, THIRUVANANTHAPURAM Telephone No. 0471-2324835
The Protector of Emigrants, Cochin	3rd Floor, Putherickal Buildings, Market Road, Cochin - 682035. Telefax: +91-48-4236-0187
The Protector of Emigrants, Hyderabad	Gruha Kripa Building, M. G. Road, Hyderabad Tel: +91-40-2465-2557

The Protector of Emigrants, Jaipur	Hall No.3, RIICO CFC Building Sitapura Industrial Area, Sitapura, JAIPUR-302022 Tel: +91-14-1277-1529
The Protector of Emigrants, Rae Bareilly	1st Floor, Rudra plaza, Hospital Road, Rae Bareilly, U. P. Tel: +91-53-5221-1122/1123

Overseas Workers Resource Centre offices

Delhi

A 26, B1 Extn, 1st Floor
Mohan Cooperative Industrial Estate
MATHURA ROAD
NEW DELHI-110044
Tel: +91-11-4050-3090

Kochi

MRC
3rd Floor
Putherickal Building,
Market Road Ernakulam
Kerala - 682035
Tel: +91-48-4237-2040
Fax: +91-48-4237-2044

Panchkula

MRC, Panchkula

SCO-6, 1st Floor, Sector-5, Adjoining KC Cinema,
Panchkula (Haryana)

Telefax: +91-17-2257-8000; +91-17-2257-2111

Toll Free Number: 1800-1802038

Email: hopashry@gmail.comWebsite: <http://opbharyana.com/>**Relevant government websites/links**

Agency/Institution	Website Link	Description
Ministry of Overseas Indian Affairs	www.moia.gov.in	Information on all relevant acts, policies, recruitment, pre-departure, schemes , MOUs and BLAs
Protector of Emigrants	http://www.poeonline.gov.in/	RA registration and status
Passport Authority	http://passportindia.gov.in/	Passport and related services
Overseas Workers Resource Centre (OWRC)	http://www.owrc.in/	
Ministry of Labour & Employment	www.labour.nic.in	Labour and employment policies and updates
Ministry of Health and Family Welfare	www.mohfw.nic.in	Policies and Regulations related to health and health personnel, management of HRH, research and information
Overseas Indians	http://www.overseasindian.in/	Official e-zine of MOIA containing information about India and its Diaspora
The India Centre for Migration (ICM)	http://icm.net.in/	Researches on India migration

Agency/Institution	Website Link	Description
Overseas Indian Facilitation Centre (OIFC)	http://www.oifc.in/	Information / updates on Indian diaspora
Norka Roots (Government of Kerala)	www.norkaroots.net	Information, job search, certificate attestation, counselling, pre-departure, legal support, skill training, grievance redress, research, reintegration
Indian Nursing Council	www.indiannursingcouncil.org	Certification, attestations of qualifications, standards, courses, curriculum

ii. Trade unions

Public Services International

Sub-Regional Office for South Asia
 61, I Block, Ground Floor, Sector -10
 Faridabad,
 Haryana 121006

Email: kannan.raman@world-psi.org
 Tel: + +91-12-9226-1175
 Fax: +91-12-9228-6198

PSI Affiliates Directory

Mumbai Mahanagarpalika Karmachari Mahasangh Municipal Unions' Trust (MMKMMUT)

Municipal Unions Trust 52/2455
Sai Darshan - Opp. M.I.G. Cricket Club
Bandra East
400051 Mumbai
Maharashtra
Tel: +91-22-2640-8463
Fax: +91-22-2262-0057
Email: prakash.devdas@yahoo.com

Karnataka State Government Employees' Association (KSGEA)

#01, Cubban Park
Bangalore 560 001
Tel: +91-80-2237-5654
Fax: +91-80-2235-4784
Email: bsprasad1953@gmail.com

Tamil Nadu Government Officials Union (TGOU)

7, Neeli Veerasamy Street
Triplacane
Chennai 600 005
Tamil Nadu
Tel: +91-44-2844-1732
Fax: +91-44-4266-3826
Email: tngou1924@yahoo.co.in

National Organisation of Government Employees (NOGE)

B-202, Gautam Labadhi Appts,
Shivaj Path Tilak Road,
Dombivali East
Mumbai - 421201
Tel: +91-12-9510-5140
Fax: +91-12-9228-6198
Email: noge@airtelmail.i; jaylbhan@gmail.com

All India Cantonment Board Employees Federation (AICBEF)

House No. 738, Sector-15
Faridabad
Haryana 121007
Tel: +91-12-9228-3940
Fax: +91-12-9228-3940
Email: vlanger@hotmail.com

Indian National Municipal and Local Bodies Workers Federation (INMLBWF)

Municipal Corporation of Hyderabad
North-East Podium, C.C. Complex
Tank Bund Road
Hyderabad 500063
Tel: +91-40-2322-1610
Fax: +91-40-23249813
Email: adilshariff_2003@yahoo.com

Hind Mahila Sabha Indian Women Association (HMSIWA)

House No. 228
D-Block
Panki
Kanpur 208020
Uttar Pradesh
Tel: +91-51-2226-2014
Fax: +91-51-2226-2014
Email: abha_hms@yahoo.com

Trade Union Coordination Centre,

28, GurudwaraRakabGanj Road,
New Delhi-110 001.
Tel: +91-11-2371-4131; +91-11-2335-2273
Hind Mazdoor Sabha,
120, Babar Road,
New Delhi-110 001.
Tel: +91-11-2341-3519

Bharatiya Mazdoor Sangh,

Dattopant Thengadi Bhawan,
27, Deendayal Upadhyay Marg,
Rouse Avenue, New Delhi-110 002.
Tel: +91-11-2322-2654
Fax: +91-11-2321-2648
Email: bmsdtb@gmail.com

Indian National Trade Union Congress,

Shramik Kendra,
4, BhaiVir Singh Marg,
New Delhi-110 001.

United Nurses Association

A 4, Inland Palace,
Near Sidhartha Regency,
Veliyannor
P.O. Thrissur - 680021

iii. Professional associations and Migrants’ rights NGOs

Agency/Institution	Contact information	Description
Trained Nurses Association of India	Florence Nightingale Lane L – 17, Green Park Main New Delhi - 110016	Nurses representation, Advocacy and policy engagement with the government
Public Health Foundation of India (PHFI) http://www.phfi.org/	ISID Campus, 4 Institutional Area Vasant Kunj, New Delhi 110 070 India	Public health teaching, research and advocacy organization
Swasti – Health Resource Centre	A – 36, Ground Floor, Gulmohar Park New Delhi – 110049	Research, policy advocacy
V.V. Giri National labour Institute	Room No. 104, 1st Floor, Sector-24, NOIDA, U.P Ph: 0120-2411470, directorgeneralvvgnli@gmail.com	MOLE’s research institute. Research on labour and migration issues
Migrant Forum India		Pre-departure information, grievance redress
Society for Labour and Development		Research, policy advocacy



India Pre-Decision Booklet



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