

International law and the making of migration and development in India

With recent figures showing almost 18 million Indians living outside India, India is easily the world's largest source of international migrants. Indian migrants were once seen by the Indian government as being largely outside its sphere of immediate concern. 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, I suggest in this article, 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'.

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 make some Indians vulnerable to exploitation abroad.

In this article, I draw attention to political choices being made by the Indian government that are being overlooked in public discourse. I do 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. That report treated the Indian Diaspora as 'a great potential tool for national development'. It suggested that the time had arrived 'to involve the Indian Diaspora, in multifarious ways, in the economic rejuvenation of India', 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. These changes included the creation of a new Ministry of Overseas Indian Affairs (MOIA), 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’.

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. I call 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 labour migration agreements with at least ten countries, including with many of the countries to which Indians most often move, such as the United Arab Emirates, Saudi Arabia and Malaysia.

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, and nor are they likely to be. This is not, however, unusual. States frequently enter non-binding agreements. Law is not just about enforceability. It needs to be understood more broadly than that.

Whether it is enforceable or not, 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. 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.

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. 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 to try to make sure this happens. That is, policies designed towards ensuring that migration actually does produce development. One way of achieving this, it is said, is for workers to move temporarily rather than permanently. With one eye on their eventual return home, migrants should be more concerned about sending remittances.

This conventional wisdom, which is often framed in terms of a 'migration-development nexus', aligns with views expressed by a vast array of different organisations. These include 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. 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, in a way that makes them more vulnerable 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. 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 Indian workers from exploitation. I am even more sceptical about the provisions of these agreements purporting to protect Indian workers, but that is not the aspect of the agreements I highlight here.

I focus instead 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, Oman and the United Arab Emirates 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'. 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. By telling a story of temporary migration, and only 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, 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.

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. The MOIA was merged into the Ministry of External Affairs in 2016, but the same ‘mission of development’ as that which animated the MOIA lives on.

‘Development’ can mean many things. 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.

The way migration is connected to development might also be seen in many ways. 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.

International legal agreements, into which the Indian state has entered, build instead on what is now the 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.

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 abroad.

Reports of migrant exploitation, and even death, are commonplace. 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. 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 not happened entirely by chance, and 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. We also need to understand 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 the world in which we live. 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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Image: Construction workers in Dubai. Credit: Jon Baik/Flickr.