
CHALLENGES FACED BY INDIAN MIGRANT WORKERS IN GULF COUNTRIES: THE KAFALA SYSTEM, BONDED LABOR, AND THE NEED FOR LEGAL REFORM

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ABSTRACT

Indian migrant workers act as a very important pillar in the economies of Gulf Cooperation Council (GCC) countries by contributing significantly in construction, infrastructure, and service sectors. This contribution of labor has been a very important factor in the high development of the region, but the exploitation faced by these workers is often not recognised behind economic progress. While these workers are very important in the growth of GCC economies, they are treated by a lot of systemic challenges, particularly the Kafala sponsorship system which violates human rights and limits their personal freedoms.

The Kafala system, which bounds migrant workers' legal status to their employer, highly restricts their ability to change jobs or leave the country without the employer's permission. In practical world, this has created an environment where workers are frequently subject to forced labor, unsafe working conditions and racial discrimination which results in a continuous cycle of exploitation. Though reforms have been attempted but the presence of the Kafala system hinders the adequacy of such efforts.

This article tries to dive into how the Kafala system promotes bonded labor especially among Indian migrant workers and suggests legal reforms necessary to address these issues. It examines challenges, reviews recent reforms and highlights instances such as the 2022 FIFA World Cup in Qatar to see the practical results of current labor laws.

Historical Background of Indian Migration to the Gulf

The movement of Indian workers to the Gulf is not a new process. It dates back to the 19th century, when Indian merchants, sailors traveled across the Arabian Sea for seasonal employment.¹ However, the oil boom of the 1970s marked the beginning of large-scale labor migration. The discovery of petroleum created a high demand for cheap labor and India particularly states like Kerala, Tamil Nadu, and Uttar Pradesh emerged as a primary sending region.²

Unlike migration to developed western countries, Gulf migration was framed as temporary and circular as the workers were hired on fixed term contracts with no provisions to permanent residency or citizenship.³ This temporary nature was backed by both Gulf immigration laws, which explicitly restricted settlement and India's emigration regime, which looked at overseas employment primarily as a form of economic relief.⁴

The base of this migration pattern laid the foundation for systemic exploitation. With recruitment agencies and middlemen extracting a hefty fees and Gulf employers having total authority over employment and residency, Indian workers became subject to double vulnerabilities which were at home and abroad.⁵

The Kafala Sponsorship System and Its Exploitative Nature

The Kafala system is a type of sponsorship framework which is exercised in countries Saudi Arabia, Qatar, United Arab Emirates, Kuwait and Bahrain. Under this system, an emigrant worker's legal and employment status is directly tied to an employer or guarantor. This sponsorship system creates a huge power imbalance as the workers' legal status depends solely on their sponsor and it restricts their ability to change jobs, leave the country or even seek legal remedies without permission from their employer or sponsor.⁶

¹ Annie George, "Indian Migration to the Gulf: Historical Patterns and Contemporary Realities," *Economic & Political Weekly*, Vol. 41, No. 24 (2006), at 2446

² S. Irudaya Rajan & P. Sivakumar, *India Migration Report 2018: Migrants in Europe 11* (Routledge 2019) (discussing Kerala and Tamil Nadu as primary migrant-sending states during the 1970s oil boom).

³ Philippe Fargues, "Immigration Without Inclusion: Non-Nationals in Nation-Building in the Gulf States," *Asian and Pacific Migration Journal*, Vol. 20, No. 3-4 (2011), at 278.

⁴ Ministry of Labour & Employment, Government of India, *Report on Overseas Employment and Emigration Policy* (2012).

⁵ Ray Jureidini, *Migrant Labour Recruitment to Qatar: Report for Qatar Foundation Migrant Worker Welfare Initiative 7* (2014).

⁶ International Labour Organization, *Migrant Labour in the Gulf Cooperation Council: The Impact of the Kafala System 9* (2017).

The ILO (International Labour Organization) has criticized the Kafala system for promoting “a culture of dependency” that undermines workers’ ability to assert their rights.⁷ Although initially it was implemented to help regulate migration and ensure availability of labour, the system has grown into a mechanism of control with many workers tolerating abuse and exploitation under the guise of employment.

In Qatar, reforms such as the removal of exit permits (2016) and introduction of a minimum wage (2021) sought to remove exploitative practices.⁸ Still these reforms have not removed structural problems as the workers still remain largely bound to their employers’ for a lot of things such as approval for changes in employment and Passport confiscation still continues as a common practice to tighten control over migrant workers despite prohibited under Qatari law and international conventions.⁹

Exploitative Working Conditions

Indian migratory workers suffer poor and harsh working conditions in these Gulf countries, particularly in the construction sector, where they frequently work long hours under extreme heat without any safety measures in place. These unsafe surroundings put the workers at threat of severe health hazards and frequent accidents.¹⁰

Large scale programs similar as the 2022 FIFA World Cup in Qatar drew multinational attention for labor exploitation as the probes revealed a wide lack of safety gear, insufficient medical access and inadequate training which led to thousands of preventable deaths of these migratory workers. Between 2011 and 2020, over 6,500 workers died in Qatar, though authorities attributed most to “natural causes” similar as heart attacks and strokes.¹¹

Even with new safety standards, enforcement remains futile. A 2020 Human Rights Watch report found that workers often had no option for compensation or justice after workplace injuries.¹² The poor living conditions also add up in the exploitation of the workers as a lot of them are made to live in overcrowded, unsanitary dormitories with little to no access to

⁷ International Labour Organization, Promoting Fair Migration: A Report on Migrant Workers in the Middle East 12 (2018).

⁸ Qatar Ministry of Administrative Development, Labor & Social Affairs, Labour Reform in Qatar: Progress and Next Steps (2020).

⁹ Amnesty International, *supra* note 3.

¹⁰ International Labour Organization, Promoting Safe and Secure Working Conditions for Migrant Workers in the GCC 14 Int’l J. Migrant Labour 120, 123 (2019).

¹¹ The Guardian, The 2022 World Cup and Migrant Workers in Qatar: An Ongoing Crisis (Jan. 30, 2021),

¹² Human Rights Watch, World Cup Qatar: Worker Abuse Continues Despite Reforms (2020).

healthcare.¹³ Reforms such as Qatar's 2021 minimum wage have had a limited effect because the enforcement remains inconsistent and employers retain significant power.¹⁴

Bonded Labor and Passport Confiscation

One of the most deceptive forms of exploitation is bonded labor which is because of the practice of passport confiscation. Employers frequently seize passports of these workers upon their arrival, which traps the workers and prevents them from changing jobs or leaving the country.¹⁵

Debt bondage is another central problem. Many Indian workers' pay a very large recruitment fees which is often thousands of dollars. This leaves them in debt even before beginning employment. As they are unable to repay debts, they are forced to tolerate exploitative conditions.¹⁶ and if the workers try to leave employers, they risk deportation or being reported for illegal immigration, which silences them to raise their voice about this injustice.¹⁷

While Qatar and Saudi Arabia introduced laws prohibiting passport confiscation in 2016 and 2019 respectively, their enforcement remains inconsistent.¹⁸ As reports show that many workers still have their passports seized which makes a gap between legal reform and actual practice.¹⁹

Discrimination and Legal Exclusion

Indian migrant workers very often face discrimination based on their nationality, race, and religion. Laws in many Gulf countries fail to stop such discrimination which allows this unequal treatment. Workers from South Asia are often looked at as disposable labor and hence they subjected to wage discrimination and racial stereotyping particularly.²⁰

Domestic workers many of whom are women face additional vulnerabilities based on their gender. They are excluded from general labor law protections so they have to go through long

¹³ Amnesty International, Qatar: Life and Death in the World Cup Construction Projects (2021).

¹⁴ Qatar Ministry of Administrative Development, *supra* note 6

¹⁵ International Labour Organization, The Protection of Migrant Workers 'Rights: A Global Perspective 18 Int'l J. Migrant Labour 45, 52 (2020).

¹⁶ Human Rights Watch, Migrant Workers in the Gulf: The Burden of Debt and Bondage (2021).

¹⁷ Human Rights Watch, Kafala and Passport Confiscation: Barriers to Justice for Migrant Workers (2018).

¹⁸ Qatar Ministry of Administrative Development, Labor Reforms and the Protection of Migrant Workers: A Step Forward (2016).

¹⁹ Saudi Arabia Ministry of Human Resources and Social Development, Saudi Arabia's Domestic Workers Law: Reform and Enforcement (2019).

²⁰ M.A. Ansari, Discrimination Against Migrant Workers in the GCC Countries: The Role of Nationality and Race 32 Arab L.Q. 85, 90 (2018).

working hours, lack of rest days and abuse as well with almost no legal remedy.²¹ Even reforms like Saudi Arabia's 2013 Domestic Workers Law, which offers limited protections have failed to address systemic abuse.²² The mixture of discriminatory practices, exclusion from lawful protections and the restrictions of the Kafala system trap Indian workers in cycles of exploitation with almost no opportunity to their rights.²³

Case Study: The 2022 FIFA World Cup in Qatar

The World Cup medications exposed the realities of conditions of migratory labor under the Kafala system. Stadium construction and other crucial structure systems counted heavily on workers from India, Nepal and Bangladesh. examinations have shown overdue payment, unsafe conditions, and forced overtime, despite Qatar's pledges of reform.²⁴

Although Qatar has removed exit permits and introduced a wage protection system, abuses still persisted. Amnesty International and Human Rights Watch noted a lot of cases where workers could not access the reforms due to poor enforcement.²⁵ The World Cup thus represented failures of the little reform and proved the urgent need for systemic change.

Proposed Legal Reforms and Awareness Measures

The exploitation of the workers highlights the important need for complete and full reforms which includes both the laws of Gulf countries and India's emigration rules.

The **kafala system** must be abolished in a practical sense not just in law through the introduction of effective enforcement measures such as independent labor inspections, job mobility and strict penalties and punishments against passport confiscation.²⁶ Gulf countries must also strengthen wage protection systems and ensure timely access to dispute resolution mechanisms for migrant workers.

India must also use its position as a major labor-sending country to renegotiate bilateral labor agreements with binding minimum wage standards, enforceable dispute settlement procedures

²¹ UN Women, Domestic Workers in the Gulf: Legal Protections and Gender-Based Violence (2019).

²² 20 Saudi Arabia Ministry of Human Resources and Social Development, Domestic Workers Law: A Step Toward Justice for Migrant Labor (2013).

²³ International Labour Organization, The Kafala System and Its Impact on Migrant Workers: A Legal and Human Rights Perspective (2017).

²⁴ Amnesty International, *supra* note 3.

²⁵ Human Rights Watch, *supra* note 2.

²⁶ International Labour Organization, "Reforms, Not Just Promises: Qatar's Progress Toward Labor Rights" (2022) (noting continued obstacles to abolishing kafala in practice).

and regular monitoring and regulation of recruitment practices.²⁷ Domestically, India's Emigration Act of 1983²⁸ requires a reform, as it is outdated and not relevant to modern migration phenomena.²⁹ A revised framework should regulate recruitment agencies more strictly, cap migration related fees, criminalize and punish exploitative practices. In addition, a transparent and digitalized system for grievance redressal would reduce corruption and exploitation by middlemen.

The empowerment of workers is also very important. compulsory pre-departure training programs which would cover contract terms, cultural exposure, complaint procedures, knowledge of international rights and the labor laws of the country in which they're going would give emigrants the tools to repel abuse and assert their rights abroad.³⁰ cooperation between the Indian government, civil society associations, and diaspora networks could insure the sustainability of similar action.

International supervision by the International Labour Organization (ILO) and United Nations is pivotal for protections and hold Gulf countries responsible for violations of international convention.³¹

²⁷ Ministry of External Affairs, Government of India, Annual Report on Emigration (2021).

²⁸ The Emigration Act, 1983, no.31, Acts of Parliament, 1983(India)

²⁹ S. Irudaya Rajan, "Reforming India's Emigration Act: Towards a Rights-Based Framework," *Economic & Political Weekly*, Vol. 55, No. 47 (2020), at 17.

³⁰ Human Rights Watch, "I Was Sold": Abuse and Exploitation of Migrant Domestic Workers in Oman and the UAE (2016) (highlighting the need for pre-departure awareness).

³¹ United Nations Special Rapporteur on Contemporary Forms of Slavery, Report on Migrant Workers in the Gulf (A/HRC/45/52, 2020).