

DISSERTATION

ON

***International Convention on the Protection of the Rights of
All Migrant Workers and Members of Their Families
(ICRMW) and Overseas Workers of Bangladesh: A Case
Study.***

Course Title: Supervised Dissertation.

Course Code: Law 406.

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Word Count: 7357 excluding Footnotes and Bibliography.

Consent Form

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List of Abbreviations

ADB – Asian Development Bank.

BMET – Bureau of Manpower, Employment and Training.

BRAC – Bangladesh Rehabilitation Assistance Committee.

CAFOD – Catholic Agency For Overseas Development.

FY – Fiscal Year.

GDP – Gross Domestic Product.

ICRMW – International Convention on the Protection of the Rights of All Migrant Workers and
Members of Their Families.

ICMC – International Catholic Migration Commission.

ILO – International Labour Organization.

ILOSTAT – International Labour Organization Statistics.

IOM – International Organization for Migration.

OEMA – Overseas Employment and Migrants Act.

OKUP – Ovibashi Karmi Unnayan Program.

RMMRU – Refugee and Migratory Movements Research Unit

SDGs – Sustainable Development Goals.

UDHR – Universal Declaration of Human Rights.

Abstract

Overseas workers play very important role in the economy of the both host and origin country. Host countries generally accept workers due to the shortage of labour or in those sectors in which their citizens don't prefer to work. On the other hand, unemployed people from origin countries in expectation of employment and better salary migrate to the host countries. Thus they keep the wheel of economy rotating and development of the host and origin country in balance. Most of the host countries deal with the issues of workers by labour law whether its own or other countries citizens. However, the differences between written laws of different countries and the process of implementation have always been a barrier for upholding their legal rights. Different international organisations made laws to set the basic standards to ensure their rights, but the role of these organisations as well as national authorities in case of implementation is questionable. For this reason, the situation surrounding to the implementation and ensuring their rights is getting more and more complex and questionable. The goal of this paper is to provide a depth discussion of the situation of overseas workers from the perspective of Bangladesh.

Declaration

I certify that this thesis doesn't contain any material that has been previously submitted for any organisation without due acknowledgement, nor does it contain any material that has been previously published or written by another person, except where due acknowledgement is made in the text.

Syeda Sadia Afreen

Date:

Acknowledgement

At the beginning of my study, I want to express my gratitude to few individuals for their inspiration and assistance during the research, Firstly, I would like to thank my supervisor, Mohammed Shahjalal, senior lecturer, department of law, who assisted and directed me throughout the research despite all the difficulties. His helpful advices and suggestions helped me to stay on track. I am thankful to him for everything he has done for me.

Secondly, I would like to convey my gratitude to Dr. Md. Mehedi Hasan, the chairperson of Department of Law for providing us basic directions and arranging classes from expert for helping us to complete and write a standard research paper.

Finally, I would like to convey my gratitude to all my friends and course mate from the university who assisted me in gathering and accessing related information. I would want to thank everyone who contributed their thoughts and opinions to my research. I want to thank everyone of them from the bottom of my heart.

Literature Review

Human rights are those rights which we have simply because we exist as human being not granted by any state and applicable to all individuals indiscriminately. Civil and political rights are a class of rights that protect individuals' freedom from infringement by government, social organizations and private individuals and which ensure one's ability to participate in the civil and political life of the society and state without discrimination. Employment rights are those rights that provides protection to an employee in the place where the person works.

In 1972, in the resolution no 1706 of the Economic and Social Council of UN, voice was concerned about the rights of overseas workers. In 18th December,1990 UN in its General Assembly adopted International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families which safeguards all the basic rights related to human rights, civil and political rights and employment rights of overseas workers. The convention was made considering the existing human, civil, political and employment rights related conventions of UN and ILO. In 2011, Bangladesh ratified ICRMW. In 2013, Bangladesh adopted Overseas Employment and Migrants Act to keep up with UN standards.. The Committee on the Protection of the Rights of All Migrants Workers and Members of Their Families is an independent body consists of experts in the field which works only when any allegation brought before them. Though the goal of ILO and UN is to protect the rights of overseas workers and establish equal treatment between nationals and foreign workers, but most of countries set different rules and treatment even don't maintain or follow the basic standards. In many countries, specially middle east and developing countries there are laws but no implementation.

Chapter One

Introduction

1.1 Introduction

Bangladesh stands in 6th position as overseas workers sending and 8th in remittance receiving country in the world¹. Despite being one of the highest remittance receiving country, rights of overseas workers as a human being and worker is unnoticed. Both male and female overseas workers help to increase rural development rate, female employment rate and help to equal distribution of national resources. They are one of the GDP contributors and remittance earners of the country. As per a report by IOM on returning workers in 12 districts of Bangladesh, nearly 70 percent who had returned in February to June are still unemployed.² 29% of them returned as they were asked to leave the country they were working in, 23% were worried about COVID-19 situation, 26% were returned as their family asked to do so, and 9% of them returned as they were worried about left stranded.³ UN as well as Bangladesh government introduce separate law for overseas workers, but the situations doesn't change because of the lacking of adequate implementation frameworks. Moreover, measures of the receiving countries are not enough to protect their basic human rights let alone other rights. From the beginning of going abroad as overseas worker to return to country, everywhere they face safety issue, social and economical discrimination. International laws don't instructed countries under which law matters of migrant workers

¹ Giorgi Gigauri, "Migrants' contribution to the 50 year journey of Bangladesh", The Daily Star,(Bangladesh, March 26,2021).

² Ibid.

³ Md.Mahabub Ul ALAM Khan, " Agonising condition of our migrant workers", The Daily Star,(Bangladesh, December 20,2020)

should be dealt. As a result, regulations related to migrant workers differ from one country to another and the problem related to protection of their rights remain unsolved.

1.2 Research Question

My interest in overseas worker reflects my desire to find the answer of following question:

- 1) What are the reasons behind the violation of rights of overseas workers of Bangladesh?

1.3 The Objective of the Study

The rights of overseas workers ensured by international and national law, the current situation of the overseas workers and the reasons behind the violation of their rights, are the subject of this thesis. The main goal of the study is to inform the reader about the gaps in current legal protection measures for overseas workers, and the legal measures that the system should have. The following is a list of study's specific goals:

- To know the present legal rights of the overseas workers.
- To learn about the rights and protection measures under Bangladeshi law.
- To learn the protected rights under international laws.
- To learn about the reasons behind the failure of protecting the rights.
- To recommended the measures that should be taken for effectively protect the rights of overseas workers.

1.4 Methodology of the Study

The method used in this paper is largely qualitative. In some cases, quantitative method is used to determine the percentage and numbers of individuals in some cases. I was unable to apply quantitative method effectively due to time restrictions. To get a full understanding of the subject, in this paper I used document study, observational study, descriptive study and case study methodologies. Only online papers, journal, reports and books were explored in this research. Primary sources are used to determine the legal rights of overseas workers under the existing international and national law. But mostly secondary sources are used in conducting the research and reaching a satisfactory conclusion.

1.5 Scope of the Study

The paper primary focuses on describing the existing legal rights of overseas workers given by international and national laws. The paper examines the existing international conventions to access the legal standing of their rights according to current international laws. The research also discuss the current national law to check whether it is keeping up with international standards and able to protect their rights. In addition, this paper examines the problems behind enforcing those rights from legal and other perspectives. Furthermore, the legal issues related to the protection of the rights of overseas workers are examined from the perspective of Bangladesh.

1.6 Limitations

In this research, international conventions and national laws which are only related to the rights of overseas workers are discussed. Only online resources are used to complete the paper. There are no interviews with any parties involved as overseas workers in this study. The study is fully related to the legal rights of overseas workers in context of Bangladesh. Aspects from other countries are not addressed.

Chapter Two

Overseas Workers: Definitions, ICRMW and ILO Legal Frameworks

2.1 Definitions

In general sense, overseas worker is a person who moves to another country or area in order to find employment. Encyclopaedia Britannica address migrant labour as casual and unskilled workers who move about systematically from one region to another offering their services on a temporary, usually seasonal basic. IOM defined “Labour Migrants” as those who move for the purpose of employment. Migrant for employment means a person who migrates from one country to another (or who has been migrated from one country to another) with a view to being employed other than on his own account and includes any person regularly admitted as a migrant for employment.⁴ UN convention defines migrant worker as a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a citizen.⁵ OEMA defines, migrant worker or worker means any citizen of Bangladesh who, for wages,-

- a) Is in the planning process to migrate for work or is departing to any foreign country for work;

⁴ International Labour Organisation, instruments (6,67)

⁵ Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990, article 2(1).

- b) Is employed in any trade or profession in any foreign country; or
- c) Has returned to Bangladesh at the end of the tenure of employment or without having completed the tenure of employment in a trade or profession from a foreign country.⁶

All the definitions clearly stated that for being classified as overseas workers one have to migrate to another country for the purpose of employment, not for any other reasons like study, traveling or staying. It can also be said that people are counted as overseas workers based on their purpose to migrate. Also all the definitions include both male and female as labour migrants because the definitions addressed every worker as person not on the basis of gender. So, women who migrate to another country for work can also be counted as labour migrant under the definitions.

2.2 Contributions

Bangladesh is the eighth largest remittance receiving country in the world which is the second largest source of country's foreign income. According to data from Bangladesh Bank, average 29% of foreign currency inflow in Bangladesh in FY(1982-2020) contributed by remittance. Overseas workers impact greatly in the rural economy and empowerment of rural women. 13 million nationals of Bangladesh from different countries send over 235 billion as remittance since 1976.⁷ Every year 2.2 million young people are joining the workforce and due to lacking of job opportunities most of them choose to go abroad which ultimately alleviates the burden of unemployment.⁸ In many cases, overseas worker is the only bread earner of the family. They mainly migrated for changing the economic condition of their family. They contribute in alleviating the poverty in rural areas, increasing household incomes which resulted upgrading the living standards of that family as well as per capita income of Bangladesh which resulted in upgrading the status of the country from lower middle-income country to least developed country. In case of successful migration, they not only help to change their family conditions but also effect positively to the society. For example, it encourages others to go abroad, gain economic solvency, and empower themselves. Overseas worker helps to change the whole scenario of rural economy by

⁶ Overseas Employment and Migrants Act 2013, section 2(3).

⁷ Giorgi Gigauri, "Migrants' contribution to the 50 year journey of Bangladesh", The Daily Star,(Bangladesh, March 26,2021).

⁸ Ibid.

ensuring equal distribution of national resources which ultimately help in developing country's economic condition and strengthen it.

2.3 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

ICRMW is the main international instrument to deal with the matters related to overseas workers. It is a comprehensive convention which protects the human, civil and political and employment rights of overseas workers and their family members from the departure of origin countries to the safety of workplace in state of employment and again return to origin countries. It is divided into nine parts and protects the rights of regular, irregular, documented, undocumented workers. ICRMW is applicable to all overseas workers and members of their families irrespective of gender, colour, religion, nationality, age or in simple words any social and political status.⁹ But this convention is not applicable to those people who are sent to another country by international agencies and their own state for performing official functions.¹⁰

2.3.1 Human Rights

Right to life of every overseas workers and members of their families are protected by article 9. It means every worker has the right to live and no one even the government can take their life arbitrary. If the reason of death of any worker is unnatural then the perpetrator behind the incident will be held responsible by law. Torture, cruelty, inhumane or degrading treatment towards workers is forbidden.¹¹ They are protected against any abuse, humiliation, mental suffering and physical pain intentionally caused. No workers will be subject to slavery, forced or compulsory labour.¹² Any work or services can't be done by the workers under any threat or taking advantage of any situation and will not be treated like own property. But when the compulsory labour is enforced by law for any offence against worker and any compulsory service applicable to all then compulsory labour is not forbidden. Article 8 ensured freedom of movement by stating that workers can leave and enter the country of origin and employment freely. It is an important right for workers as most workers family and relatives live in the

⁹ ICRMW,1990, article 1(1).

¹⁰ ICRMW,1990, article 3(a).

¹¹ ICRMW,1990, article 10 .

¹² ICRMW,1990, article 11 .

country of origin for visiting them and again join to work they need to move freely between origin and host or employment country. Also article 39 gives right to regular workers to move freely with their families and choose residence in employment country. So, in others words regular workers can live and enjoy right with their family members in host country like its own national. ICRMW ensures freedom of thought, conscious and religion.¹³ Every worker can practice their own religion and can't be forced to change their religious belief. They can also show their religious belief through action by wearing religious cloths. Article 13 gives workers freedom of expression. They can hold and express their opinion on any matter without any interference from any party. They can express their opinion through social media, public protest and also by publishing books.

2.3.2 Civil and Political Rights

No worker and their family members should be arrested arbitrary and deprived from liberty, any deprivation of liberty must be carried out accordance with law.¹⁴ Article 16 and 17 safeguard the rights surrounding arrest and any restriction of liberty. It safeguards targeted collective detention. Also in case of arrest, the reason for arrest must be told to them as far as possible in the language they understand. As per this article they also have the right to challenge the legality of detention and in case of unlawful detention to get compensation. In the period of detention, they should be treated with humanity, accused should be kept separated from convicted and juvenile from adults.¹⁵ They enjoy the same right like national in time of detention. Article 16(2), provides security to overseas workers against any violence, physical injury, threats from public officer, private person. ICRMW protects the right of overseas workers to seek assistance from diplomatic authority. Upon arrest and detention of workers, diplomat should be informed as soon as possible on request and family of the workers can seek assistance from diplomat without any delay.¹⁶ So, the consular or diplomat is the primary authority to help overseas workers facing arrest or detention. Unauthorized confiscation or destruction of personal documents which can prove the identity of the workers is prohibited by article 21. Confiscation of passport or any equivalent

¹³ ICRMW,1990,article 12 .

¹⁴ ICRMW,1990, article 16(4).

¹⁵ ICRMW,1990, article 17 .

¹⁶ ICRMW,1990, article 16 (7).

documents by unauthorised person is forbidden. It can only be done by person authorised by law and also that person has to provide details of confiscation. Every workers and their family members have the right to be informed free of charge about their rights under this convention and the obligation arising out of their admission in the state.¹⁷ So, the workers and their family members should be informed about their rights, conditions applicable for their stay in that country and also related to their remunerative activities. Article 28, ensures right to access emergency healthcare for all overseas workers and their family members in equality with national. It means in life threatening or any other situation where workers need to be attended by doctor otherwise which may cause greater harm they will receive similar services like national. Every children from the family of overseas workers have the right to access free primary and secondary education like nationals irrespective of their migration status.¹⁸ So, the children of workers if want can avail the chance of joining school or access up to secondary level education like nationals, where the status of migration for example regular, irregular doesn't matter.

2.3.3 Employment Rights

ICRMW provides safeguard measures for protecting employment rights of overseas workers. It ensures equal treatment of workers and nationals in workplace including terms and conditions, overtime payment, and other benefits.¹⁹ They will be paid same for same work as the nationals get, rate of overtime payment, weekly working hours and holidays, minimum wage, safety and health benefits like nationals. Article 54 says that regular workers will get protection against dismissal, unemployment benefits and alternative employment like nationals. Every worker and their family members have the right to join and seek assistance from trade union which is formed in accordance with law.²⁰ According to this article, if the law of any ratified country permits to form trade union then workers can join and seek assistance from trade union, but not otherwise. Earnings of overseas workers is important for their family. That's why, ICRMW permits workers to transfer their earnings from one country to another in accordance with the law of concerned

¹⁷ ICRMW,1990, article 33 .

¹⁸ ICRMW,1990, article 30 .

¹⁹ ICRMW,1990, article 25 .

²⁰ ICRMW,1990, article 26 .

states.²¹ So, workers have to transfer their earnings from one country to another through permitted lawful means.

2.4 ILO Convention 97 and 143

Convention 97 deals with all types of assistance and rights of migrant workers starting from their departure as workers to their benefits from social security services.²² As per this convention, states has to provide free assistance to facilitating their employment, departure, journey and reception. Legal guidelines related to employment, remuneration, trade union, injury or death , paid leaves and holidays are also given in the conversion .Convention 143 mainly deals with the duties of member states towards illegal migrant workers. It gives the responsibility on member states to identify, verify the transit of illegal migrant workers as well as take preventive measures.

Chapter Three

Overseas Workers: Legal Frameworks of Bangladesh

3.1 Introduction

Before 2013 the whole migration process was conducted by ordinance and policies. But after ratifying ICRMW on 24th August,2011, Overseas Employment and Migration Act was passed for compiling with the rights given under ICRMW which mainly deals with migration process and civil rights of overseas workers. As The Constitution of Bangladesh is applicable for everyone, rights reserved in it also applicable on overseas workers as the citizens of Bangladesh.

3.2 The Constitution of Bangladesh

Constitution of Bangladesh is the supreme law of Bangladesh. Rights reserve by it is mainly made by considering UDHR. Article 26- 44 of the constitution of Bangladesh deals with the fundamental human rights. No person shall be deprived of life and personal liberty.²³ It is the

²¹ ICRMW,1990, article 32 .

²² Ajare 'Deji, "Rights of Migrant Workers under International Law".

²³ The Constitution of Bangladesh,1972, article 32 .

most basic fundamental right as exercise of other rights depending on it. In many western countries, death penalty is forbidden considering the right to life and if any law is contradictory to this right is void and strictly scrutinized. All forms of forced labour is forbidden with an exception which allows forced labour only when it's a punishment for criminal offence and required for public purpose.²⁴ The article includes all forms of forced labour which is not supplied willingly even though wages is paid.²⁵ Forced labour not only includes physical force but also imprisonment in case of failure of providing services, hunger and poverty which forces anyone to accept employment in less than standard wages.²⁶ No person shall be subjected to torture or cruel, inhumane or degrading treatment or punishment.²⁷ This article limits the power of punishment or treatment. The exercise of this article depends upon the social norms and values. For example, in past slavery and torture of slaves were not counted as crime. But due to the changes of moral and social norms now it is considered as crime and punishable under law. Article 36, ensures the freedom of movement. It ensures citizens to move and settle freely within Bangladesh as well as leave and re-enter Bangladesh. So, any citizen can go abroad and re-enter for work, study, travel etc. Even, the minimum freedom of movement can't be cut down for the detainee on the ground of inconvenience of custodian.²⁸ The right to leave and re-enter Bangladesh must include the right to passport as a pre-requisite.²⁹ Article 33, provides specific procedure against arbitrary arrest and detention. Due to the sensitive nature of the right, as it limits the exercise of some other rights for example right to liberty, movement etc, it is mandatory that arrested person must be informed about the reasons of arrest or detention, allowed to consult and defended by lawyer, must be presented before magistrate within 24 hours of arrest. Any discrimination on the ground of religion, race, cast, sex or birth is forbidden.³⁰ Even muslim law's right of pre-emption base on vicinage is void and discriminatory.³¹ But any different treatment which is not made based on religion, race, cast, sex or birth place is valid.

²⁴ The Constitution of Bangladesh,1972, article 34 .

²⁵ People's Union v. India, AIR 1982 SC 1473 .

²⁶ Aio-O-Salish-Kendra V. Bangladesh,(2011)63 DLR 95 (Child Labour).

²⁷ The Constitution of Bangladesh,1972, article 35(5).

²⁸ Prem Shankar Sukla V. Delhi Administration, AIR 1980 SC 15535 .

²⁹ Syed Makbool Hossain V. Bangladesh,(1992) 44 DLR 39 .

³⁰ The Constitution of Bangladesh,1972, article 28(1)).

³¹ Younusco Textiles Ltd. V. Jamuna Knitting,(2007)) 12 BLC 202.

Every citizen shall have the right to choose any lawful profession, occupation, trade or business.³² According to this article for entertaining any lawful profession, trade or business qualification can be prescribed by law and restrictions can be put by law on exercising such right. Article 38, said that every citizen shall have the right to form association or unions, subject to any reasonable restrictions imposed by law in the interest of morality or public order. In the fifteenth amendment, grounds of restrictions are described. Right of association is restricted when it is formed for destroying religious, social and communal harmony, formed for creating discrimination on the ground of religion, race, cast,sex, language or place of birth, formed for terrorist activities and objectives of the association is inconsistent with Constitution.

3.3 Overseas Employment and Migrants Act

OEMA mainly deals with migration process of the workers and the responsibilities of recruitment agencies. It is only applicable to overseas workers not any person employed outside the territory by the government or leave the country any other reasons rather than working outside. Registration is required for working outside territory as migrant workers.³³ Though the Act directs workers to register in concerned bureau, but it is not mandatory. As the word ‘shall’ is used to describe the section. The section is made to keep proper record of workers. For the departure, workers need clearance as per section 20 along with the evidence of recruitment, letter of appointment or no objection certificate by employment country authority.³⁴ Such information can prevent any bad occurrence in the host country, for example unemployment, fraud etc. The responsibility of making a legally enforceable written employment contract between employer and employee, and submit the contract to concerned bureau and Bangladesh mission of employment country is on the agency.³⁵ The contract shall have details of the wages of workers, accommodation facilities, employment duration and compensation in case of injury or death. Workers have the right to know about migration process, employment contract and their rights before departure.³⁶ So, before departure they can know about by which route they are migrating, duration and type of their visa, their wages, duration of employment, their human, civil and

³² The Constitution of Bangladesh,1772, article 40 .

³³ OEMA,2013, section 19.

³⁴ OEMA,2013, section 4 .

³⁵ OEMA,2013, section 22 .

³⁶ OEMA,2013, section 26 .

employment rights etc. Section 9-18, deals with the matters related to processing of licence of agency, responsibility towards workers and compensation in occurrence of any mishaps for the fault of agency. Section 27 provides that victim of fraud will get legal aid or help. For example, collection of more money than fixed for sending abroad, giving them any type of temporary visa than employment visa, sending them giving the hope of getting good, high salary and immediate job they can get legal help. In violation of any provision of this Act and employment contract, the workers can file civil suit for compensation.³⁷ In case of fraud, not getting wages and other benefits as per employment contract, workers can file civil suit. The Act also give workers right to return home. It is a very effective right for the workers who are detained, stranded, unemployed or in any other distress situation in employment country. According to section 33, the person who send migrant workers abroad by unlawful manners and collects extra money than government fixed amount shall be punished up to 5years imprisonment and fine not less than 1 lakh taka. For recruitment advertisement not approved by government, authority who published shall be punished up to one year of imprisonment with fine not less than 50 thousands taka.³⁸ If demand note, visa, work permit is collected by unlawful way for example misrepresentation, fraud than agent shall be punished up to seven years of imprisonment with fine not less than 3lakh taka.³⁹

3.4 The Expatriates Welfare and Overseas Employment Policy

The policy deals with six areas of migration to smooth the migration process and protect the rights of overseas workers. It gives directions towards safe migration, protect workers and their family members, ensure welfare and access to facilities, conducted migration of female workers, and proper planning towards labour migration. It also provides specific directions for different ministry directly or indirectly related to migration, for ensuring their safety. It also recommends the government to make special arrangements for the training and development of female overseas workers.

³⁷ OEMA,2013, section 28 .

³⁸ OEMA,2013, section 34 .

³⁹ OEMA,2013, section 35 .

Chapter Four

Overseas Workers: Current Situation and Reasons Behind Violation of Rights

4.1 Introduction

Overseas workers played a very important role to develop rural economy and women empowerment. In most cases, they are the only bread earner of the family. Most of them don't have any resources or decent work to support their family as most of their economical conditions is not so good, don't have good academic backgrounds, some of them have the responsibility to support their family. Middle east is the most preferable destination of overseas workers from Bangladesh. But due to the negligence of the authority, lack of awareness and various social – economical reasons their basic human, civil and employment rights are violated.

4.2 Current Situation of Overseas Workers of Bangladesh

A renowned daily newspaper reported that in the last six years 13,827 bodies of deceased workers were sent to Bangladesh, averaging around 2,300 per year.⁴⁰ Bangladeshi workers in gulf countries has been facing torture, exploitation and severe discrimination related to wages, working hours, treatment etc. In many cases, their passport are taken, forced to work in low wages and less dignity jobs. They need to work hard on 45-50 degree Celsius temperature and in night they have to sleep in shabby places due to poor accommodation. After all this hard work, they paid less than nationals for the same job. Also, a consider number of workers don't get their wages regularly and move from one job to another is restricted for both skilled and unskilled workers.⁴¹ In last 5 years, at least 487 coffins of female overseas workers have returned and among 200 women died in Saudi Arabia.⁴² Kulsum, a 14 years old girl from Brahmanbaria was died in King Faisal Hospital of Saudi Arabia due to torture by her employer. She went to Saudi Arabia through a local middleman 17 months prior to her death and MH International prepared her documents. Family members said that Kulsum was tortured physically and sexually. Family informed the incident to the agency but the agency didn't take any steps to bring her back. They also said that the employer with his son break her knee, back and leg four months ago and few days later left her on street. Saudi police rescued her and admitted her to the hospital. Her right to right is violated as her death was not natural and occurred due to abuse, physical and mental torture by employer which ultimately caused her death. The laws failed to protect her from torture,cruelty,or inhumane behaviour and her right to life. Peyara Begum, a young woman from Sunamgonj went to Saudi Arabia in 2018 through local middleman and her documents were prepared by B.S. International. From the time of her arrival, she was forbidden to contract with her family and her family thought she died. On 30th December,2022 she returned to the country with her 7 months old baby who bears the evidence of her sexual abuse. Her passport was not with her and returned to the country in travel pass which hindered her freedom to leave and return origin and host country. Now, she is mentally unstable. She was like her employer slave as she couldn't do anything without their permission and treated like their own property. A worker went to Saudi Arabia and worked as factory supervisor. When he suffered from teeth pain and

⁴⁰ The Daily Prothom Alo, 10th February,2014.

⁴¹ Tasneem Siddiqui, " International Labour Migration from Bangladesh: A decent work perspective.", 2005, Policy Integration Department, National Policy Group, International Labour Office, Working Paper No 66,

⁴² TBS Report, " 52% female migrants faced torture, workplace harassment: Study", The Business Standard, (Bangladesh,7th October,2021).

went to hospital, doctor refused to treat him because of his nationality. The behaviour of the doctor violates his right to equal access to healthcare services like nationals as he was denied to attend only because of his nationality. A female workers used to work for 17 hours (from 5.00 am to 10.00 pm) without any rest as domestic worker. She was given very little food and consequently she had low blood pressure. When she became too sick to work, her employer started to beat her. In Saudi Arabia working hours of domestic worker is 15 hours. In ICRMW it is said that nationals and overseas workers will be treated equally in respect of wages, working hours etc. Her continuous working of 17 hours is clear violation of the provision. In Saudi Arabia, there is no trade union but it has worker's committee which functions are similar to trade union but Saudi Arabia like many other gulf countries doesn't allow overseas workers to join the committee.

4.3 Reasons of Violation of the Rights of Overseas Workers

As per ILOSTAT data, among 164 million of overseas workers 42% are female. ICRMW is made considering the rights given under main ILO, UNs' human rights, civil and political rights and employment rights conventions. Most of the female workers from developing countries work as domestic helper and in many cases become victim of sexual harassment and rape. But in ICRMW, there is no separate provision for addressing the gender based violence against workers. The question may be raised that as the law protects all workers against torture, cruelty or any inhumane treatment which ultimately includes sexual abuse as physical and mental abuse are included under inhumane treatment, why it is necessary to address the issue separately. It is necessary to show the determination to eradicate such gender based crimes. For example, right to life, freedom of movement is ensured in UDHR, but again re-addressed in ICRMW. There is no effective or harsh measures for protecting right to life, ensuring freedom from slavery, preventing inhumane treatment, ensuring equal wages, working hours, freedom to join trade union and other human, civil, political and employment rights. There is no proper guidelines in international and national law for criminal offence against them regarding to which authority they should go to seek justice. Though for criminal offence they can file case under that country's law but as they are not nationals of that country and those who knows the language most of them only have speaking skill not reading and writing and not nationals of that country, for this reason the defence of ignorance of law is justified for them. So, all the origin and host

countries should make a common law which gives them guidelines regarding in which court they should file suit, from where they can seek assistance, which authority they should first inform about the incidence etc and give the responsibility to inform about the process to their overseas workers. In OEMA section 22 it is said that it is the responsibility of the agents to make legally enforceable written employment contract between the parties. So, for safe migration it is the responsibility of the agents to collect evidence of recruitment, letter of appointment or no objection certificate though the section doesn't say anything about who is responsible for collecting such documents. Section 26 of OEMA said workers shall be informed about conditions of employment and their rights, but the section doesn't say who will be responsible for providing such information. In OEMA, steps which are created for smoothing the process and ensuring safety, the word 'must' is not used rather 'shall and may' which means obligation to fulfil those requirements are not mandatory. Also, there is no provision to protect complainant worker from offender which may put him or her in further risk. In every criminal cases, state considers the crime is done against the state and as plaintiff institutes case. But as for the crimes against workers as the crime is taken place in host country, it is the duty of that state to file case against the offender not only considering the crime as against state but also the economic condition and other barriers of the workers. But due to the negligence and not giving pressure, host countries let alone file a case, they even don't investigate the matter properly.

Due to lengthy process, cost and different other reasons workers who doesn't want to pursue civil suit, the only way for them to get justice is arbitration. But in our country there is no proper team to conduct arbitration of overseas workers. Complaint is submitted to the Director General of BMET. Though women arbitration cell is established but due to performing additional duty with regular duty they can't give due care and attention.⁴³ Accommodation to The Overseas Employment and Migration Management Rules, 2017, officer for arbitration shall be appointed from BMET who will be responsible for resolving complaint between the parties upon hearing on the fixed date and place written in issued notice.⁴⁴ No guidelines are provided regarding the conduction of arbitration by officer, process of investigating of the complaint and code of conduct for the parties, officers and staffs involving in arbitration process. In resolving the complaint, the authority generally consider government fixed amount for fixing the amount of

⁴³ Shakirul Islam, " Access to justice for Bangladeshi migrant workers: Opportunities and Challenges", CAFOD .

⁴⁴ Ibid.

compensation. According to IOM(2010),workers has to pay in most of the trice than the fixed amount. So, the compensation amount fixed by the authority is very low and has any effect on their condition.

Educational attainment of overseas workers is very as only 86.3% of Bangladeshi workers have secondary or lower levels of formal education.⁴⁵ Awareness and education both are related to each other. Due to lower education background workers are not aware of their rights and related laws, which ultimately effects the number of complaint. Many workers specially female due to social stigma, family shame are discouraged to share about the physical, mental torture and sexual abuse and, lodge case in the court. Economic conditions of most workers are not good, many of them went abroad selling their last property or taking loans. The cost of lodging case and other costs during the process of getting justice discourage them to file case or civil suit.

Chapter Five

Recommendations and Conclusions

⁴⁵ Professor Mustafizur Rahman, “ Challenges for Migration in light of the SDGs: Context of Bangladesh”, keynote presentation in the dialogue organised by Citizen’s Platform for SDG’s, Bangladesh and BRAC on 6th May, 2018.

5.1 Findings

There are several lacking in law, policies and social security services for overseas workers. In international law their rights are reserved, but the responsibility of ensuring their rights are not fixed. There is no provision addressing gender based violence against women workers. Also in case of violation of rights, guidelines regarding the process of getting justice also not given. The laws of Bangladesh only guarantee their right to institute civil suit, not criminal. There is no proper team and guidelines for arbitration. There is no law to ensure justice in criminal cases, not even given fixed proceed to pursue criminal cases. In most of the countries, don't fixed minimum wages for the migrant workers and overtime payment. Most of the countries treat domestic workers under ministerial decision not under labour law or specific enforceable law. This ministerial decisions don't give any guidance related to criminal cases and compensation in case of workplace injuries or death. Upon arriving to Bangladesh being victim of violence, torture, there is no social reintegration programs for overseas workers. Due to mistreatment by employer, workers suffer physical and mentally and need treatments. There is no such projects by government to treat their physical and mental health. In case of sexual abuses, they are abandoned by the family and need rehabilitation and support. Only BRAC conducts project for their rehabilitation, accommodation and no initiative from government. In case of pregnant workers by the employer, no instruments is here for forcing the employer to take responsibilities of the child.

5.2 Recommendations

There are urgent necessary to upgrade and amend the existing laws in both national and international levels. International community needs to ensure every workers sending and receiving countries ratify the conventions and takes effective measures to ensure them. Many countries for example, Lebanon doesn't ratified some documents related to migration. International community must need to ensure every ratified countries take effective steps, for example making national law, ordinance, policies and enforce the law. International community needs to make a fully combined laws relating to their rights, workplace environment, protection measures, procedure to institute a suit and punishment and addressing gender based violence against female workers. Need to make proper coordination with the authority of different

countries to ensure access to criminal and civil justice. Receiving countries need to make laws to prevent any discrimination in getting justice and facilitate the proceedings. As well as Bangladesh needs to recognize their right to file criminal complaint. Receiving countries have to ensure fair process for enforcing the rights of overseas workers. It needs to make mandatory by law to have contract paper, appointment letter, receiving skill development training to boost their abilities, informing them about their rights before departure and where to go for seek assistance. There is no proper team and guidelines related to arbitration, a fully dedicated team and proper legal guidelines need to conduct arbitration related to migration. Though Bangladesh is one of the highest remittance receiving country, but it is undeniable fact that Bangladesh is the major supplier of low / unskilled workers. As 46.2% of workers are low/ unskilled which many times lead the workplace discrimination related to wages, workings hours etc.⁴⁶ It must be ensures every worker receive proper training before leaving. Need to raise awareness with proper collaboration with NGOs among people regarding human trafficking, general information regarding migration, consequences of going abroad through illegal ways. Need to make proper agreement between countries to collect compensation for their workplace injuries, death, bearing the costs of treatment in case of injury as well as their due salaries. Strengthen the monitoring system and quick response system to prevent crimes against workers. Ensure equal opportunity and access to the all the training programs. Make sure the training centre is nearer with good communication ways. Response quickly in rescuing migrant worker who is suffering from any kinds of degrading or inhuman treatment especially by Bangladeshi embassy in different countries. For the victims of torture or any other degrading treatment give free mental health services. Conducted free social reintegration programs, specially for them who are abandoned by their families as well as free accommodation facility. Help failed migrant workers financially as well as to make the cost lower and reasonable for migration. Conduct one stop information and service centre in every upzillas in Bangladesh with quick response to facilitate the process. For the betterment of the workers and enforcing their rights, primarily it is necessary to take proper steps to follow the recommendations.

⁴⁶ BRAC Survey, “ Migration and the achievement of SDGs for Bangladesh”, Advocacy for Social Change, BRAC .

5.3 Conclusion

For a overpopulated country like Bangladesh overseas workers are like blessing. It is not possible for creating employment opportunities for all the people inside the country as every year more and more people joining workforce. Accepting the reality authority should take proper steps to protect their rights and safety so more people are encouraged to work abroad. Overseas workers are the second major contributor of foreign income. They are balancing the economy of Bangladesh by proper distribution of assets in cities and rural areas. Different UN and ILO conventions related to overseas workers are made to internationally recognizing the rights of workers. As well as Bangladesh made national law and policy to keep up with international standards. But still in both in national and international laws, there are lacking in law as well as procedure. For example, matters related to female workers, guidelines related to arbitration and social reintegration services upon returning. Bangladesh is committed to take lead in fulfilling the goal of SDGs and without help from workers it is not possible to achieve economic growth, gender equality goals etc. Comparing to female population of Bangladesh, female migration is very low due to recent horrible incidents, social stigma. So, the authority have to create awareness among workers about their rights, immigration process and ensure their safety, social reintegration services for both specially female workers.

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