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Migrant Workers of Bangladesh: A Critical analysis of ILO Standards

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ABSTRACT

Bangladeshi citizen travels abroad mostly for employment and contribute to the gross domestic product (GDP) through increasing remittance. National instruments aim to manage and provide better protection to the migrants. Various measures have been introduced by successive governments in Bangladesh, including new ordinances, statutory, regulatory orders, and framed rules. International Trade law establishes specific mechanisms to deal with migrant workers over the world. In addition, International Labour Organization (ILO) is aimed to develop the working conditions of the workers and provide them with equal opportunities over the world. Therefore, Oman, Qatar, Saudi Arabia and the countries of the Middle East is the main attraction of Bangladeshi workers, and most of the countries are not member state of the International Labour Organization (ILO). Although ILO is one of the specialized agencies of the United Nations but has not any specific provisions relating to the non-state parties as well. To this extent, the International Trade Law mandate should come into an organized system or there should be a unique mechanism for migrant workers over the world especially for the countries of the third world.

The research endeavors to analyze the ILO standards relating to the migrant workers of Bangladesh and whether these standards are sufficient for protecting the rights of the migrant labour of Bangladesh or not.

Keywords: *Migrants, worker, Bangladesh, Labour, ILO, WTO.*

I. INTRODUCTION

Labour migration is a growing and common phenomenon in the world. The process of labour migration expresses the way of employment in a foreign country. In Asia, international labour migration is an attractive way of employment. With the employment of migrant labour, Bangladesh is earning a significant number of remittances which significantly impacts its economy and GDP. Like other South-Asian countries, Bangladesh is in the same situation of surplus human resources combined with skilled, semi-skilled, less-skilled, and professional labour force. Over recent years, migration has facilitated the opportunity for many people to be

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involved in the global market. Almost 80% of migrant people are involved in productive and creative work although most of the cases they are deprived of good jobs of the required quality.² A large number of people willingly migrate to search for both long and short-term employment, thus it has significant impact on the economy of Bangladesh and also plays a vital role in contributing gross domestic product (GDP).³

(A) Definition of Migrant worker

Generally, the process of getting employment in a foreign country is known as migration. Present legal definitions of 'Migrant Labour' are given by different sectors such as International Labour organization (ILO) and International Organization for Migration (IOM).

Definition of Migrant workers from a different perspective is given below:

According to the definition of International Organization for Migration (IOM)

“The movement of people from one country to another for employment is called labour migration.” (IOM,1951)⁴

The definition provided by ILO of Migrant Labour is,

“A migrant worker as per the ILO is defined under Article 11(1) of the Migration for Employment Convention (Revised), 1949 (No. 97): “The term ‘migrant worker’ explains about a person who migrates from one country to another for employment.” (ILO convention, 1949)⁵

At present more than 7.5 million Bangladeshis are working abroad and yearly rate is 0.3million to 0.4 million. The main market of Bangladeshi migrant labour is Oman, Qatar, Saudi Arabia, Jordan, Lebanon, the Middle East, Arab countries, and so on. The amount of remittance contributes to the economic development of the country.⁶

II. ILO’S PROVISIONS RELATING TO MIGRANT LABOUR

The ILO is the longest-established organization dealing with the migration of labour. Instruments relating to migrant workers are mainly specific conventions no -97 and 143. These are accompanying recommendations along with the ILO’s instruments on fundamental

² Wickramasekara P. Asian labour migration: Issues and challenges in an era of globalization. Geneva: ILO; 2002 Aug 24.

³ Mahmood R.A.; Immigration Dynamics in Bangladesh: Level, Pattern and Implications, paper presented for the Asiatic Society of Bangladesh, Dhaka,1996

⁴ International labor migration (IMO)

⁵ ILO convention, 1949, (No 97)

⁶ T. Siddiqui “International labour migration”, The Daily star, 5 February, 2016

⁶ Annual report of central Bank of Bangladesh

principles and rights as well as all other ILO standards. ILO has several conventions relating to migrant workers, these are documented and undocumented.

In 1998 ILO's Declaration on Fundamental Principles and Rights at work, stated that 'all the ILO member state have a particular obligation which Aries from the fact of being the member of the organizations.' (ILO convention 1998).⁷ These obligations are like, to respect, to promote, and to realize in good faith along with the constitutional provisions. Therefore, four categories of principles and rights at work even the state parties have not ratified which they refer to such as freedom of associations and the efficient recognition of the elimination of child labour and the abolition of discrimination in respect of employment and occupations.

The Declaration of 1998 provides specific references especially to groups with special needs, including migrant workers. Before 15 years ago, these fundamental principles and rights have been recognized. They are like the essence of the eight 'core' ILO conventions which are explained in more detail.⁸

(A) Fundamental principles and rights at work

The two major conventions relating to ensuring freedom of Associations are 'The Freedom of Association as well as Protection of the Right to Organize Convention, 1948, and the convention of Right to Organize and Collective Bargaining, 1949.'⁹ These conventions ensure the rights, freely exercised of workers and employers without any distinctions for organizing further and defending their interests. In addition, convention no- 98 protects the rights of workers and employees to organize, forbids collaboration in the activities of both workers and employees.¹⁰

The refusing of trade union's rights and anti-union discrimination against migrant workers also is in an irregular situation, the ratified countries have been treated as the subject the comment by the Committee of Experts for Application of Conventions and Recommendations (CEACR) and by the Committee on Freedom of Association (CFA). Nationality provisions under CFACR are very strict to run the risk, to deprive some workers right to elect their representations in full freedom. Therefore, the Forced Labour Convention, 1930¹¹ and the Abolition of Forced Labour Convention, 1957¹², forbid forced and compulsory labour for all types of persons, irrespective of the location to economic activity. The illegal exaction of forced labour, has fleeting increased

⁷ Preamble of ILO convention 1998

⁸ *ibid*

⁹ The Right to Organize Convention, 1948 (No. 87), The convention of Right to Organize and Collective Bargaining, 1949 (No. 98)',

¹⁰ Right to Organize and Collective Bargaining Convention, 1949 (No. 98)

¹¹ The Forced Labour Convention, 1930 (No. 29)

¹² The Abolition of Forced Labour Convention, 1957 (No. 105)

concern by the ILO supervisory bodies along with the debt bondage of migrant workers in agricultural as well the non-agricultural sectors, the sex industry along with the domestic service, trafficking of both male and female migrant workers in agriculture.

The ILO has defined the occurrence of forced labour relating to migrant workers, especially as a result of cross-border trafficking which can be concerned as a major area.¹³ They have a concern about the insufficient penal protection in the situation of forced labour practices relating to the migrant worker such as excessive power used by the employers to the migrant workers in an irregular situation like domestic servants, non-payment of wages, long working hours, and physical violence.¹⁴ Through the minimum age convention 1973, the elimination of child labour has covered the elimination of child labour.¹⁵ Specific age limits for admission of children to work provided 18 years' age boundaries of engaging in hazardous work through Convention No. 138. Therefore, the Convention No. 182, provides the worst forms of child labour to compromise such as (a) forced labour and slavery, along with child trafficking and forced labour for armed conflict; (b) pornography and child prostitution; (c) drug trafficking production (d) child mortality morals.¹⁶ The ILO has modernized rules specifically relating to migrant workers in two different political incidences: firstly, in 1949, in the aftermath of the Second World War and, secondly, in 1975, in the wake of the 1973 oil crisis. Both Conventions Nos. 97 and 143 disclose the issues relating to the whole migratory process, such as emigration, immigration, and transit.¹⁷

The current ILO standard relating to social security contains all similar clauses in regards to equality of treatment for nationals and foreign workers in the host country. Accident Compensation Convention, 1925 specifically established the equal right of treatment for foreign workers of any state.¹⁸ The Equality of Treatment (Social Security) Convention, 1962 provides for the right to equal treatment regarding all nine branches of social security.¹⁹ It further provides for the maintenance of acquired rights and the export of benefits. The Maintenance of Social Security Rights, 1982²⁰, and recommendation to Maintenance of Social Security Rights, 1983²¹, provides a general procedure for maintaining acquired rights along with the rights in

¹³ ILO: "Freedom of association and collective bargaining": General Survey, Report III (Part 4B), International Labour Conference, 81st Session, 1994, para. 118.

¹⁴ ILO: Report of the Committee on the Application of Standards.

¹⁵ The minimum age convention 1973(No. 138)

¹⁶ *ibid*

¹⁷ General Survey, 1999, *op. cit.*, para. 101.

¹⁸ Compensation Convention, 1925 (No. 19)

¹⁹ The Equality of Treatment (Social Security) Convention, 1962 (No. 118)

²⁰ The Maintenance of Social Security Rights, 1982 (No. 157)

²¹ Maintenance of Social Security Rights, 1983 (No. 167)

the course of acquisition for transfer residence from one to another country including the applicable provision of the benefits at the time of returning their countries of origin.

Instruments relating to migrant workers including the new Safety and Health in Agriculture Convention, 2001 (No. 184), the Private Employment Agencies Convention, 1997 (No. 181), provides specific provisions aimed to prevent abuses of migrant workers relating to recruitment and placement by private employment agencies.

Bangladesh is an important and active member State of the ILO since 22 June 1972. Bangladesh has ratified thirty-six (36) ILO Conventions and a protocol along with the seven fundamental Conventions as initiated in the ILO Declaration. The office works in ILO in close collaboration with its tripartite constituents and social partners towards achieving Bangladesh's decent work objectives.

There is the absence of a proper promotional campaign from the point of ILO relating to structural and technical assistance for ratification of ILO Convention No 97 and 143 relating to migrant workers along with the application of the recommendations of ILO standards.

III. LEGAL AND INSTITUTIONAL FRAMEWORK REGARDING MIGRANT LABOUR OF BANGLADESH

The Overseas Employment and Migrants Act 2013 in Bangladesh is the potential legal arrangement of migrants and their family's overseas employment.²² A new law is enacted by revoking the Immigration Ordinance, 1982 (Ordinance No. XXIX of 1982), and to make provisions to confirm the International Convention on the Rights of Migrant Workers and the Members of Their Families 1990 along with other international labour and human right.²³

The Overseas Employment and Migrants Act 2013 contains forty- nine Articles with nine chapters and defines various terms relating to migration. Second and third chapter deal with sending workers overseas, and migration, recruitment agents and licence. Chapter four deals with registration of migrant workers and migration clearance. Chapter five deals with employment contract and the following chapter deals with labour welfare wing and agreements on migration. Chapter seven states about rights of migrant workers and the last chapter deals with offences, penalties, and trial.

There are five major departments, dealing with international labour migration.²⁴ The ministries

²² Ministry of Laws of Bangladesh

²³ Immigration Ordinance, 1982

²⁴ 1998: Labour Force Survey, Bangladesh Bureau of Statistics.

are, a) the Ministry of Expatriates' Welfare and Overseas Employment; b) the Ministry of Home Affairs; c) the Ministry of Foreign Affairs, d) the Ministry of Finance; and e) the Ministry of Civil Aviation and Tourism. In addition, The Ministry of Labour and Employment was given the power to the management of international labour migration till 2001. In December 2001, the Government formed a new ministry as a response to the demands from immigrant Bangladeshis and migrant labour. The Bureau of Manpower, Employment, and Training (BMET, 1976) is the executing agency under the Ministry of Expatriates' Welfare, and Overseas Employment for processing labour migration establish in 1976 by the Government to ensure maximum benefit from labour migration to the national economy.²⁵

In the 1970s, the government of Bangladesh was accustomed to carrying out the functions and process of recruitment. Therefore, since 1981, the function was maintained by the individual recruiting agents, as a development part of the private sector after being permitted from the BMET. Over the period, recruiting agencies were organized under the Bangladesh Association of International Recruiting Agencies (BAIRA) which was established in December 1984 with the representatives of 23 recruiting agencies.²⁶ Within 2002, the members of the association become almost 700 organizations. The Government of Bangladesh established the Bangladesh Overseas Employment Services Limited (BOESL)²⁷ in 1984 as a limited company object to direct recruitment role. Around 55-60 percent of recruitment is maintained through the initiatives of people and social networks such as an individual contract.

Bangladesh ratifies thirty-six (36) ILO conventions and a Protocol of which thirty-two (32) are in force and a Convention has been denounced. Therefore, four (4) instruments abrogated and none have been ratified yet. Therefore, Domestic Workers Convention, 2011 was held in 2011 in Geneva at the 100th Conference of ILO by which the member states of ILO are required to ensure recognition of the domestic work as 'labour,' and people who are engaged in this units are recognized as 'domestic workers'.²⁸ The states whose have ratified this convention are obliged to provide a contract of recruiting the employee, facilities to contact and meet with relatives, fight to judgment, wages, working hours, vacations, from trade union along with proving necessary steps regarding the bargaining of essential facilities and management. Initially, two states ratified this convention, and it came into force on 5th September 2013. Although thirty-six countries have ratified this convention Bangladesh has not ratified this

²⁵ Bureau of Manpower, Employment and Training (BMET). estd.1976.

²⁶ Bangladesh Association of International Recruiting Agencies (BAIRA)

²⁷ Bangladesh Overseas Employment Services Limited (BOESL)

²⁸ Domestic Workers Convention, 2011 (No. 189)

convention yet.²⁹ The employers discriminate against Bangladeshi women workers everywhere including salary compared to other women.³⁰ In addition, they face problems relating to accommodation and food even feel helpless in seeking assistance the Bangladeshi Mission abroad. In addition, criminal activities are increasing day by day relating to the immigration of migrant workers.³¹ There is the absence of a mutual relationship with the trade union of labour receiving countries.

IV. CONCLUSION AND POLICY RECOMMENDATIONS

The existing situation relating to migrant labour in Bangladesh is the effect of inadequate implementation of both ILO's standards and domestic legislation relating to the practice of occupational safety and health of migrant workers. The non-compliance with the ILO conventions labour legislation is another root cause in this regard. Therefore, non-compliances or non-implementations of labour laws have several effects such as short-term and long-term effects on the economic development of the country. Therefore, as a specialized agency of the UN, ILO'S role in peacebuilding need to be enhanced.

In this regard ILO should frame a specific convention for non-state parties of ILO and Bangladesh should ratify the same. The government and other stakeholders need to follow the ILO's labour standards on Labour Migration in the overall migration process. The training of women in various job sectors is also necessary. The government needs to support Bangladeshi workers migrating to other countries, including specific policies on recruitment agencies and unlicensed sub-agents, reducing unreasonable fees and harassment during transit according to the minimum standards as outlined in the ILO's Private Employment Agencies Convention, 1997 (No. 181). The country needs to ensure accessing essential services for migrant workers, preventing sexual and gender-based violence and responses should be especially stressed in this regard along with the health issue. In addition to, missions in destination countries should establish resource centers so that all overseas migrant workers can get information to secure their rights, access social protection services, and get recourse to justice if they are being abused. The government should sign bilateral agreements with destination countries on migrant women workers' rights generally, Ministry of Expatriates' Welfare and Overseas Employment (MEWOE).

²⁹ World Bank: World Development Report 2019.

³⁰ Murshid K.A.S., Kazi, (2002)

³¹ Siddiqui, Tasneem. "Migration as a livelihood strategy of the poor: the Bangladesh case." (2010).

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