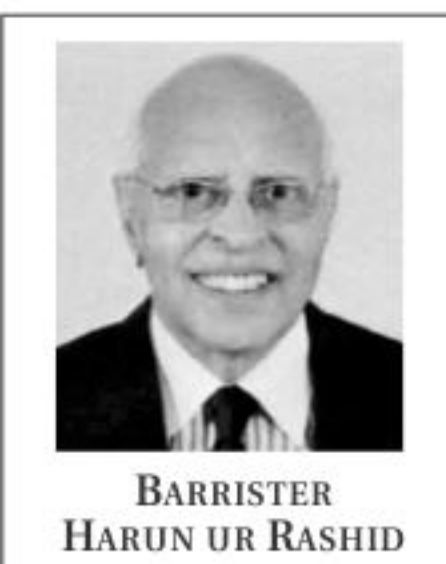


**BOTTOM LINE**

**INDIA-CHINA STRATEGIC DIALOGUE**

Forging stronger economic ties



BARRISTER HARUN UR RASHID

INDIA and China are recognised as two significant powers of the "Asian Century." China is India's largest trade partner, but the trade deficit between the two is highly in favour of China.

While the two-way trade was at \$73.9 billion last year, it reportedly dipped to \$55.6 billion during the past 10 months. Both the countries have expressed an interest to take the figure up to \$100 billion by 2015.

The trade deficit between the two countries in 2011-12 is pegged at \$23 billion. India has been concerned over widening trade imbalance in favour of China. Chinese companies have taken significant share of Indian market in electronic hardware, white goods, consumer items including mundane puja products, construction machinery and power transmission.

Prime Minister Manmohan Singh pressed for greater investments from China during his meeting with Premier Wen Jiabao in the Cambodian capital Phnom Penh on November 20.

A Dialogue was established in 2010 during Prime Minister Wen Jiabao's visit to India and the first round was held in Beijing in September last year. The second such Dialogue was aimed at discussing ways to enhance investments and business engagement between the two of the fastest growing economies, significantly at a time when the Western world is in deep debt crisis.

At the beginning of the second dialogue on November 26, it is reported that Zhang Ping, Chairman of the National Development and Reform Commission of China and the leader of the delegation, said that the two countries should expand communication and coordination of their macro-economic policies, learn from each other's 12th five-year plans of economic development, seek cooperation in basic economic structure, encourage investment in each other's countries, and look for



green economic cooperation.

Montek Singh Ahluwalia, India's vice chairman of the economic planning commission and leader of the Indian delegation, said that India-China economic cooperation was still a new initiative with huge potential. He said the two countries should overcome information deficit in economic fields and seek cooperation in sectors such as water-recycling, digital science and micro-irrigation.

The two countries set up five working groups for cooperation in areas like railways, energy, environment protection (energy efficiency and water), Hi-Tech (Information and Communication Technology) and policy coordination.

The following Memorandums of Understanding were signed by the two sides in the presence of the delegation leaders:

- Memorandum of Understanding between the Planning Commission of the Government of the Republic of India and National Development and

**Economic cooperation between China and India is not only desirable but also achievable, as globalisation has created growing interdependence leading to a shared stake in maintaining peace and stability in an increasingly integrated world.**

Reform Commission of the Government of the People's Republic of China on undertaking joint studies;

- Memorandum of Understanding between the Bureau of Energy Efficiency, Ministry of Power, Government of the Republic of India and National Development and Reform Commission of the Government of the People's Republic of China on enhancing cooperation in the field of energy efficiency;

- Memorandum of Understanding between the Ministry of Railways of the Government of the Republic of India and Ministry of Railways of the Government of the People's Republic of China on enhancing technical cooperation in the railway sector; and

- Memorandum of Understanding between the National Association of Software and Services Companies (NASSCOM), India and the China Software Industry Association (CSIA) on enhancing cooperation in the IT/ITES sector.

The two sides agreed that the third India-China Strategic Economic Dialogue will be convened in China in 2013. They also agreed that prior to the 3rd Dialogue, the working groups would meet to implement the consensus and decisions agreed to by the two sides at the second Strategic Economic Dialogue.

Despite the rapprochement and robust economic engagement undertaken, the relationship has a constant undercurrent of tension because of the memories of the brief war between them in 1962 when China defeated India, and is often described as

uneasy.

India says China controls 41,440 square kilometers (16,000 square miles) of its territory in Aksai Chin in Kashmir, while Beijing claims that the Indian state of Arunachal Pradesh, which shares a 1,050-kilometer (650-mile) border with the Chinese-run region of Tibet is rightfully Chinese territory.

Border talks between India and China, although continuing, have not made much progress. On the contrary, the Chinese have hardened their position on Arunachal Pradesh. They have objected to the visit of the Indian prime minister to the state. They have refused to issue visas to the residents of Arunachal Pradesh and have openly declared the state to be a part of "Southern Tibet."

External Affairs Minister Salman Khurshid says the Chinese recently issued passport map showing India's Arunachal Pradesh state and the Himalayan region of Aksai Chin as part of China, which is "unacceptable." India retaliated by starting to issue visas to Chinese citizens with a map of India that includes all territories claimed by New Delhi.

On a larger canvas, China is viewed with suspicion as a long-time ally of, and weapons supplier to, Pakistan. For Beijing, the presence in India of the Tibetan spiritual leader, the Dalai Lama, and 120,000 other exiles from Tibet remains a source of tension.

India is keen to engage the new Chinese leaderships. On December 3 India's National Security Adviser Shivshankar Menon visited Beijing for two days and held discussions with senior Chinese officials on bilateral issues.

Notwithstanding conflicting interests and divergence on geopolitical realities, economic cooperation between China and India is not only desirable but also achievable, as globalisation has created growing interdependence leading to a shared stake in maintaining peace and stability in an increasingly integrated world.

The writer is a former Bangladesh Ambassador to the UN, Geneva.

Emigration fraud and justice for migrant workers

RIDWANUL HOQUE

SAFE migration of Bangladeshi workers to foreign countries has become synonymous with prosperity of their families and growth of the national economy. In October 2012 alone, for example, remittance from migrants reached \$1,453 million. Ironically, however, Bangladeshi migrants' rights continue to be violated. Over the past few years, some have even become victims of trafficking. The phenomenon of migration fraud is so pervasive that hundreds of men and women face serious exploitation overseas and/or return with nothing in their hands but nightmarish experiences.

Readers may recall recent cases where many Bangladeshi citizens were defrauded after having been promised lucrative jobs in Libya. The magnitude of economic contributions by Bangladeshi migrant workers is so high that it has overshadowed the gravity of violation of their rights. Making matters worse, the law continues to obstruct, in significant ways, victimised migrants' access to justice, which is the subject of the present article.

In August 2011, Bangladesh ratified the 1990 UN Convention on the "Protection of the Rights of All Migrant Workers and Members of Their Families." This is the most comprehensive international instrument dedicated to the cause of migrant workers. By ratifying it, Bangladesh has assumed obligations to implement the Convention by adopting necessary legislative, administrative and adjudicative measures and to ensure an effective remedy for the migrant workers whose rights are violated. The question, however, is to what extent do Bangladeshi laws and policies meet the requirements of this Convention? And, are existing remedies against migration fraud and offences effective?

The first law that independent Bangladesh enacted to regulate emigration for overseas work was the Emigration Ordinance 1982 (EO). Among other things, it criminalises a number of activities that endanger emigration of any person. For example, it is an offence to fraudulently induce any person to emigrate (s. 21). It will also be an offence if any recruiting agent charges any emigrant any fee in excess of the fees prescribed by the government, or if any person not being a recruiting agent demands or receives any money from any person for providing foreign employment (s. 23). For the trial of these and other offences, the Ordinance has provided for a special court to consist of the chairman of the competent Labour Court.

Unfortunately, however, the law by itself creates a block to the victim's access to justice. A migrant worker -- and this includes a potential migrant who has been defrauded -- cannot directly initiate any criminal prosecution. Section 26(3) of the Ordinance provides that a special court shall have jurisdiction to try an offence "only upon a complaint in writing made by [a person authorised] by the government." In 1985, the government

authorised the Bureau of Manpower, Employment and Training (BMET) and the District Employment and Manpower Offices to initiate such a prosecution.

This obstructive provision has significantly limited victims' access to justice. This scenario is a clear negation of the constitutional equality clause and an affront to the principle of fairness and equal legal protection. When any person has been a victim of an offence, it is his or her right to initiate a criminal case and it is the duty of the state to ensure the trial. In case of offences under the EO, this very basic constitutional right has been breached.

Under current practice, when any person lodges a complaint with the BMET or with the District Employment Office, the complaint is inquired into by these authorities and then either a criminal case is filed or the complaint is resolved through arbitration. Another important question arises: can any government agency arbitrate or resolve a criminal allegation without the backing of any law authorising the compounding of the offence? No doubt, there is a great virtue in the settling of a claim of money by an unsuccessful migrant, but the vice of not prosecuting a clearly defined criminal offence is too acute. Put another way, the BMET does not seem to have any transparent and fixed criteria for determining when a criminal allegation has to be prosecuted under the EO and when not.

To gain an informed perspective with respect to the migration victims' access to justice, I recently filed an RTI application to BMET (in accordance with the Right to Information Act) with the assistance of BLAST. The BMET passed the petition to four District offices at Rajshahi, Jessore, Bogra and Dhaka. A question in the RTI application was: "on what basis does the BMET decide that a complaint shall or shall not be reported as a criminal offence?" All respondent offices replied that the question did not apply to them.

Thanks to the RTI and thanks to the BMET I received some information regarding the number of criminal cases filed under the EO 1982. As the RTI responses show, in Khulna, for example, thirty cases were filed from 1998 to 2012, and convictions were achieved in two cases. In Bogra, for the same period, twenty three cases were filed and acquittals resulted in eleven cases while convictions were achieved in 12 cases.

Apart from these data, we do not have any updated information regarding the cases in the dockets of the Special Courts. However, an old statistic is worth mentioning here. An IOM study in 2002 reports that, during 1985 to 2000, only 50 cases under the EO were filed in the three labour courts based in Dhaka. Undoubtedly, by any standard, this is a very low figure for case inflow. Besides, the above BMET statistics indicate that the rate of prosecution is extremely low vis-à-vis the

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huge number of fraud and offences with respect to emigration. Arguably, this dismal scenario of the access to justice for the migrants is attributable to the above restrictive legal provision that bars an affected citizen from lodging a criminal case directly.

On the other hand, although the BMET arbitrates migrants' complaints about fraud or cheating, it has no standard policies or rules to govern the arbitration. There is one exception, however. Rule 23 of the Emigration Rules 2002 provides that the registrar of emigrants (i.e., the DG of BMET) may dispose of any complaint against any recruiting agent and may hold any inquiry. The harsh reality is that when the BMET arbitrates it does not award a higher amount of money than is legally prescribed and documented. The maximum legal ceiling of fees collectible by any agent from emigrants is Tk.84,000 for male emigrants and Tk.20,000 for female emigrants. Ironically, this beneficial provision operates discriminatorily against women migrants as their claims against the recalcitrant agents cannot be more than Taka.20,000 under the Ordinance, although they invariably pay much more than this for their overseas migration.

To conclude, despite its remarkable progress in managing and controlling the emigration processes, Bangladesh continues to be failing in providing an effective remedy for the violations of migrants' rights. As a migrant-sending country ratifying the Migrants' Rights Convention, one of the important responsibilities of Bangladesh is to prevent abuses in recruitment practices by controlling the recruitment system through adequate criminal and administrative sanctions.

As the above discussion shows, there are certain legal rules that do not meet the standard of "effective remedy." If Bangladesh has to make its laws and policies compatible with the Convention, there is an immediate need to repeal s. 26(3) of the Ordinance that is an impediment to the migrants' access to justice and to adopt a policy for alternative settlement of disputes, keeping provisions for independent arbitration and power to award an adequate amount of compensation.

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Avoidable tragedy

MUNIR QUDDUS

WE at the BDI, Bangladesh Development Initiative (BDI), express deep sorrow at the tragic loss of lives, and offers sincere condolences to the families of the garment workers who died in the recent accidents involving fires in garment factories.

Even though it will take some time before we know for sure if these fires were accidental, what is evident is that the management has been negligent in ensuring workers safety. It seems once again that the desire for profits prevailed over prudence and good sense. Instead of ensuring a safe work environment, too many RMG owners have rented or built poorly designed buildings, overcrowded their factories and practiced unsafe production methods.

The news that workers who were trying to escape the fire were sometimes forced back and refused access to escape exits demands a criminal investigation and punishment, going all the way to the top leadership of these companies. A stiff fine, or financial compensation for the families, although appropriate, is simply not enough to prevent future recurrence.

As the governing body of garment producers and exporters, the BGMEA must take responsibility for this and other tragedies. More importantly, from the national perspective and the long-term interest of this important sector, this tragic loss of lives should not go in vain.

This incident has received global media attention; mostly negative. Incidents like these not only impact the outlook of Bangladesh, but also the long-term profits of the RMG industry. Given the sensitivities of global customers, companies like Wal-Mart are very cautious about the reputation of their suppliers. Only if appropriate lessons are learned and implemented with urgency, can future accidents be avoided.

No doubt many garment factory owners treat their workers well and emphasise safety. However, the few who are not give the entire industry a bad name. The BGMEA members and the very hardworking garment workers of Bangladesh, most of whom are women, have faced serious crises before and have successfully overcome them.

The child labour crisis of the 1990s, the end of the MFA (2005), and severe disruptions from natural disasters are some of the few disruptive events that come to mind. With grit and determination, the industry -- entrepreneurs, managers, government and most importantly the workers -- has overcome these to reach the pinnacle of success today.

According to some sources, the industry employs nearly 3 million workers, mostly women, and exports nearly \$18 billion -- a truly remarkable achievement that has transformed the economy and society of Bangladesh for the better.

As part of the greater Bangladesh civil society and the Bangladeshi Diaspora, we urge the garment owners, the BGMEA and the government regulatory bodies to work together with the workers to avoid future tragedies such as the one the nation has just experienced.

The writer is President, Bangladesh Development Initiative, a non-partisan research and advocacy group based in the United States.

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