

INTERNATIONAL MIGRANTS DAY

Emigration fraud and justice for migrant workers

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SAFE migration of Bangladeshi workers to foreign countries has become synonymous with the prosperity of their families and the 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 the 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, the 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 this, 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 migrant fees 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 (DEMO)

to initiate such a prosecution.

This obstructive provision has significantly limited victims' access to justice. This 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



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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, 30 cases were filed between 1998 and 2012, and convictions were achieved in two cases. In Bogra, for the same period, 23 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 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 Tk.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 fail 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 operates as 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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Human rights, business and the Dhaka principles

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ON this International Migrants Day, we are reminded of the plight of migrant workers around the globe, whether they are working in cities in their home countries or overseas. Only recently, Bangladesh witnessed the tragic blaze at the Tazreen Fashion factory in Ashulia where rural migrants were among those who died. Migrant workers from Bangladesh in construction sites across the Middle East suffer because of appalling work and living conditions. Bonded labour is commonplace, and protection for these vulnerable workers is almost non-existent. The same is true of migrant workers across much of South and Southeast Asia.

And yet, even in the face of such appalling treatment, remittances from these workers contribute hugely to national economies and social development. In Bangladesh the figure stands at 12% of GDP. Without their labour, the global economy would cease to function in many ways. What are the practical steps needed to ensure that this vulnerable workforce receives greater protection and respect?

First, the government must be held accountable for its obligations to protect worker rights as spelled out in the International Labour Organisation (ILO) conventions.

Second and equally important, the business community, regardless of sector or location, has its own responsibility to respect human rights as defined in the UN Guiding Principles on Business and Human Rights. Companies face significant risk to their reputation if their due diligence regarding treatment of workers far down complex supply chains is inadequate. We know that ignorance is no excuse. Walmart's name has been in

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the world's press recently in association with the fire at Ashulia for currently or formerly sourcing from Tazreen Fashion factory.

Walmart will not be alone in looking more closely at its due diligence mechanisms regarding checking fire safety regulations and other working conditions in suppliers' factories in Bangladesh and elsewhere in the aftermath of the tragedy.

Companies should also know how migrant workers recruited in Bangladesh are treated when they end up working in their suppliers' factories in Jordan or Mauritius, or on construction sites of hotels in Dubai or Malaysia, or, indeed, at home, in the export processing zones of Chittagong or Dhaka. If there is a risk of bonded labour or other forms of exploitation in their suppliers' or contractors' operations, that risk travels up the supply chain to the very top. In September this year, US President Barack Obama spoke of the urgency of combating modern-day slavery, and US legislation is beginning to require disclosure by US companies of steps they are taking to combat trafficking and forced labour in their global supply chains.

Despite such efforts, workers remain vulnerable whether they have travelled across international boundaries or within their own nations. As important as government-led efforts are in protecting migrant worker rights, business can't and shouldn't wait for governments to fix the problem.

The company that does not undertake corporate human rights due diligence throughout supply chains risks being complicit in serious human rights abuses.

Do companies check to see whether contract workers are being charged intolerable levels of fees to secure a job overseas, or find themselves unable to escape from debt bondage, while working overseas or at home? Are companies aware whether the passports of workers recruited abroad are being withheld by their labour broker or employer, denying migrants lawful freedom of movement and means of identification?

As a contribution to ongoing efforts to protect migrant worker rights, the Institute for Human Rights and Business is today launching with RMMRU in Bangladesh and globally the Dhaka Principles for Migration with Dignity. The Dhaka Principles were first discussed at an international roundtable on Migrant Rights convened by RMMRU and IHRB in Dhaka in June 2011.

They have developed over the past two years through a multi-stakeholder process involving companies, unions, governments and experts from around the world. They provide companies and other key actors with a set of overarching principles and practical guidance, which applies from the point of recruitment of a migrant worker to the point of his or her safe return home.

It would be fitting to think that International Migrants Day 2012 saw the start of a global business commitment to abide by the Dhaka Principles and to fulfil their responsibility to respect the human rights of migrant workers everywhere. A powerful step in achieving a more just world for all would be to accord migrant workers the human dignity and decency of work that their contribution to the global economy merits, which is their fundamental right. And that work should begin today in Bangladesh.

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Expatriate Bangladeshis: A neglected source of funds

S.M. RUHUL ALAM

"£1.1m record-breaking success for the East London Mosque!" We should feel proud of this news headline as almost all the money was donated by expatriate Bangladeshis in the UK. On one night in Ramadan thousands of people helped break the fundraising record for the third year in a row. The generosity and enthusiasm of donors helped us reach a total of £1,125,725 on the night! Now the question is how much money are our government and non-government organisations (NGO) collecting as donation for disaster preparedness fund from expatriate Bangladeshis? The answer is, very little!

We are not prudent. If we face any trouble, we rush to solve the problem though, if we had prepared early, it could have been avoided or solved easily. Nothing good can happen without a plan. During the holy month of Ramadan, various mosques, madrasas and orphanages of Sylhet region collect huge donation through live fund-raising programmes on Bangla TV channels based in London. As the people of Sylhet region have a plan, they can utilise the opportunity to collect huge donation from the Bangladeshi community. Can't the government and NGOs take this opportunity to collect funds for disaster preparedness? Expatriates are good sources of fund, but we do not do anything about this.

My classmate Alahaji Fulla, an African, collected clothes, TVs, shoes, and blankets, and sent them to Africa. We should not wait for a disaster and then ask for money to overcome it. We need disaster preparedness. The Bangladeshi community can also do what Fulla did. If we can collect funds and goods from expatriates Bangladeshis, it would be a step in our journey to self reliance using our own resources.

It's easy to arrange a live fund-raising programme. If the Bangladesh High Commission in London contacts any Bangla TV channel, it will get a time slot. In return, the TV channel will take money. Definitely,



SK ENAMUL HAQ

There should be a separate wing for fund collection from our own community in Bangladeshi diplomatic missions. Its mission would be to expand the network with influential Bangladeshis. Based on the influence of these persons, community mobilisation will be effective.

Ramadan is the best time to raise funds. However, we can also consider our important national days e.g. Victory Day, Independent Day, International

Language Day. NGOs can also try to raise funds through live fund-raising appeals. But it must be mentioned that the government has to convince the expatriate Bangladeshis that funds collected through live-fund raising will be properly spent and without any discrimination. If such trust can not be created, fund-raising attempts will fail.

In this regard, the role of our media is also important in motivating expatriate Bangladeshis as well as their relatives living in Bangladesh. Our expatriates read online Bangla newspapers regularly. If media publishes articles on expatriates' role in disaster preparedness, they will be motivated. Expatriates also get news from their relatives; thus, if the relatives are motivated, they can also ask the expatriates to donate money for disaster preparedness fund.

Community mobilisation is an effective tool for collecting donations. Who will ring the bell? The government should do it, not only in the UK but also in many parts of the world where our expatriates are holding important positions. There should be a separate wing for fund collection from our own community in Bangladeshi diplomatic missions. Its mission would be to expand the network with influential Bangladeshis. Based on the influence of these persons, community mobilisation will be effective. We must remember that demand is unlimited but resource is limited. The recent global recession has given us warning that the developing countries can't depend on foreign aid as the rich countries are passing tough times.

Many NGOs that are working on disaster management with foreign aid have received warnings from donors that, due to global financial turmoil, it is very tough to raise funds from the people in rich countries. We can't stay idle and blame others. We must have firm belief that with the assistance of our people, we will overcome disasters successfully and prove that we are self-reliant as a nation.

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The article 'Beast breeding industry!' by Asif Nazrul, which appeared on Dec. 17, 2012, was printed in Prothom Alo on Dec. 15, 2012. Translation by The Daily Star.