

LAW INTERVIEW

# Women migrant workers facing the continuum of exploitation

Ann Stewart is a Professor of Law at the University of Warwick. She researches and teaches in the area of gender and law with a particular interest in issues relating to development, human rights and global gender justice. Adib Shamsuddin from Law Desk talks to her on the issues of discrimination faced by the women migrant workers.

Law Desk (LD): How do you see the position of women in the context of international migration legal framework?

Ann Stewart (AS): That's not an easy question to answer, because women migrate in different ways, depending on a number of issues. For instance, if you come from a country which facilitates your professional skills, training and ultimately your migration, you tend to have a stronger bargaining position. Additionally, if you are migrating legally, in a documented way, to a country which has a strong human rights structure, labour regulatory framework, and then you are probably going to be fine. In the UK, nurses who have migrated to work for the NHS which is regarded as a good employer, find progress more difficult than nurses who have come from local background. But you can still face issues of discrimination even though you have migrated under quite formal advantage. Primarily, women who migrate for work purposes are said to be migrating for survival, for the betterment of their own

lives or their families. The extent to which they can do depends on where they end up, what conditions they are in and how much protection do they attract as workers in that country. The UK, for example, has good labour rights standards. If you migrate in a documented way and work in a regulated part of the economy, your rights are well protected. If you migrate to the Gulf States, for any contractual work and as a temporary migrant, you have few labour rights.

There are a lot of cross cutting issues that make life precarious for women labour. The majority of women are not skilled in conventional terms in the sense that they are more involved in the care giving services, and hence they often end up in the twilight zone of labour relations. For example, if you are a maid, there's seldom chance for you to be seen as a worker despite the International Labour Organisation has classified domestic work as work like any other work in Convention No. 189.



LD: What can we do to combat exploitation of women in cases of involuntary migration?

AS: I agree there is a continuum of exploitation. There are measures by the UN to

combat organised crimes which includes measures to prevent trafficking, under the Palermo Agreement. Today it is recognised that these circumstances might be classified as modern day slavery. We are now acknowledging that slave-like conditions do continue to exist even in our modern times. There is now a lot of effort to put into to tackle these situations - what some call a 'rescue' industry. However, it is not clear that these efforts to combat trafficking have had much success. The mixed success comes from the fact that often the traffickers are found to be known to the victim, which muddles the situation. Also, personnel within the 'sending countries' seemed to have developed an expertise in trafficking since trafficking is the only way one can get out given the country's vulnerable economic position. The refugee crisis also spawns an industry of exploitation.

I don't think there is an easy solution until we improve the global infrastructures that produce the income gap that leads people to become involved in trafficking. Hence, until we tackle the profound income inequality between the 'sending state' and the 'receiving state' and the money that is made by getting around the fences that rich states put around their borders, we are not going to have an effective solution. You can try with law enforcement agencies, but it's not going to have a long lasting impact until we address the core issues.

LD: Workplace harassment or discrimination has been a big concern for labour rights activists. The existing labour laws perhaps were never meant to cater to the needs of women in workplace. Do you think the time has come for us to review our labour laws?

AS: As feminist legal scholars have pointed out, workplaces were crafted for men - as the ideal workers. Workplaces are public space and historically men have dominated the public sphere whereas women attended family or what many call the private sphere.

In the UK, research has shown that workplace harassment or discrimination is highest in sectors where women are just emerging as a potential workforce. It causes a power struggle in a sexualised form. And this is not for women only. Even one from the LGBT community, different from the norm of 'white male' worker in my country, is susceptible to discrimination in workplace.

There is a male entitlement supported by patriarchy. So the already fragile social norms preventing us from acting on our prejudices seem to break down. Women and the aforementioned groups find themselves vulnerable.

LD: What changes can we bring to combat exploitation and discrimination against women?

AS: Women's activism is stronger in some parts of the world than others. But there is importance in campaigns, political struggle and advocacy groups. There is a need to keep the pressure on. There is a role for social media to expose and to support political campaigns backed by any legal sanction or whatever is deemed necessary. There is a need to produce debate and organised solidarity to tackle these issues. But that's not always easy because not all the groups speak in a single voice.

Although I am a lawyer, I believe law supports politics not the other way around. They do go together, but as a feminist one has to participate in activism, make demands and expose what wrongs are going on. Only then can we ensure through law that the wrong doing is contrary to human rights and is a form of discrimination. There is also a need for the protection of those who come forward to report discrimination. I think a lot of things go hand in hand. States have responsibilities, so do the politicians to take these things seriously and mobilise public concern.

LD: Thank you for your time.

AS: You are welcome.



LAW VISION

## PLATFORM FOR TORT LAW A crying need indeed!

If a proper platform is established in our country with the assurance of effective implementation of the tortious remedies, then people would think twice before committing haphazard acts and the victims would rest easy knowing that they at least have a forum for a quick relief.

S M HASIB MAHMUD  
THREATENING and causing of physical injury, incidents of medical negligence, malpractice by lawyers, defamation by libel or slander, and above these all the road accidents, are some of the news that we are so used to reading in the newspapers in the morning with a cup of tea that the only function we perform after is the utterance of some mourning tsk resonances for the poor souls along with some heated phrases for the perpetrators.

These are just fragments of legal matters in our country where efficacious remedies are presumed to be non-existent. Yes, the remedies for the same events do exist, but in the form of alternate pathways which are too intricate for the common people to understand. For majority, the only types of legal claims they know are of civil and criminal in nature. Thus very much expectedly, the matter of law of tort is a far cry. Although, every other civilized country has equipped themselves with proper sets of laws to deal with cases coming through such events, we are still far from an alternative.

The most obvious distinction

the guilty, tort laws rather focus on pecuniary compensation and some other equitable remedies. Criminal suit for a wrongful act almost always takes time to punish the guilty, where such punishment might not even benefit the injured, other than giving him the temporary satisfaction of a meagre justice. Jail time or some limited amount of fine on the guilty is unlikely to help the child get a better living where the only earning member of the family got severely injured or killed. Nonetheless, an adequate amount of compensation for that same wrongful act might set the pathway for that same child to have a safe and secured future.

Sadly though, the law of tort has not yet had an established platform in the legal practice in our country due to the lack of a central statute and unavailability of proper judicial precedents. Whatever limited number of tort based judgments we have had so far, they all were filed under various heads of alternate legislations. Take for example, the landmark *Tareq Masud case* was filed as a simple money suit in an ordinary Civil Court under the Fatal Accidents Act, while the more recent *Jihad's*

tort. As a result, the need of a central statute on tort law is a crying need for our legal sector, along with a separate judicial platform for trial of such cases.

In addition to the prior mentioned events, even playing loud music is considered a wrongful act of nuisance under tort that goes unnoticed where the victims suffer unbearable consequences. Remedies in these regards should be easily accessible for the common people, and it would, had there been a separate judicial platform for the people to go to, with a central piece of legislation. If the common law court system of the UK is observed, they have the Queen's Bench Division of the High Court of Justice to try the cases under tort laws so that matters could be settled efficaciously. Similarly, in India there is a Claims Tribunal that exclusively tries cases concerning motor accidents. Likewise, if a proper platform is established in our country with the assurance of effective implementation of the tortious remedies, then people would think twice before committing haphazard acts and the victims would rest easy knowing that they at least have a forum for a quick relief.

It is undoubtedly praiseworthy to mention that cases under tort laws are now being tried in our Courts of law, nevertheless, the alternate pathways are being stretched too thin and the dire need for a central statute has never been necessitated more before. For that reason, enactment of such legislation is only to be expected from the legislature and the establishment of a specialised judicial platform for trial of such claims is to be expected from the government, for so long the situation remains unchanged, swift and operative remedies for the common people will remain a paucity.

between tort and criminal laws is the type of remedy they both provide for. While criminal laws mostly focus on punishment of

compensation case was filed under Article 102 of the Constitution as an alternate pathway under constitutional

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FOR YOUR INFORMATION

## Zero tolerance for female genital mutilation

REFLECTING deep-rooted inequality between the sexes, and constituting an extreme form of discrimination against women and girls, Female Genital Mutilation (FGM) comprises all procedures that involve altering or injuring the female genitalia for non-medical reasons. It is internationally recognised as a violation of human rights of girls and women. This archaic practice also violates their rights to health, security and physical integrity, their right to be free from torture and cruel, inhuman or degrading treatment, and their right to life when the self-same procedure results in death. Globally, it is estimated that at least 200 million girls and women alive today have undergone some form of FGM.

continue to observe 6 February as the International Day of Zero Tolerance for Female Genital Mutilation and to use the day to enhance awareness raising campaigns and to take concrete actions against female genital mutilations.

In December 2014, the UN General Assembly adopted another resolution calling upon member States to develop, support and implement comprehensive and integrated strategies for the prevention of FGM including training of medical personnel, social workers and community and religious leaders to ensure they provide competent, supportive services and care to women and girls who are at risk of or who have undergone FGM.



INTERNATIONAL DAY of ZERO TOLERANCE for FEMALE GENITAL MUTILATION

February 6

The causes of female genital mutilation include a mix of cultural, religious and social factors within families and communities. Where FGM is a social convention, the social pressure to conform to what others do and have been doing is a strong motivation to perpetuate the practice. FGM is often motivated by beliefs about what is considered proper sexual behaviour, linking procedures to premarital virginity and marital fidelity. Though no religious scripts prescribe the practice, practitioners often believe the practice has religious support.

Although the practice is largely known to be concentrated in countries in Africa and the Middle East, FGM is a universal problem and is also practiced in some countries in Asia and Latin America. FGM continues to persist amongst immigrant populations living in Western Europe, North America, Australia and New Zealand.

On 20 December 2012, the UN General Assembly adopted a resolution in which it called upon States, the United Nations system, civil society and all stakeholders to

Though the practice has persisted for over a thousand years, programmatic evidence suggests that FGM can end in one generation. The UNFPA, jointly with UNICEF, leads the largest global programme to accelerate the abandonment of FGM. The programme currently focuses on 17 African countries and also supports regional and global initiatives to raise awareness of the harms caused by FGM and to empower communities, women and girls to make the decision to abandon it.

To promote the abandonment of FGM, coordinated and systematic efforts are needed, and they must engage whole communities and focus on human rights and gender equality. These efforts should emphasise societal dialogue and the empowerment of communities to act collectively to end the practice. They must also address the sexual and reproductive health needs of women and girls who suffer from its consequences.

COMPILED BY LAW DESK (SOURCE: UN.ORG).

