



RIGHTS WATCH

Rights of migrant workers

While domestic laws ensure necessary protection for migrant workers, safety concerns persist once the workers are abroad. Furthermore, a significant challenge lies in the lack of an adequate monitoring system and insufficient resources and infrastructure for authorities to supervise the recruitment process and working conditions of these workers.

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A significant number of Bangladeshi migrant workers are working across various parts of the world, and a large number of them are employed in countries in the Middle East. According to the data of Bureau of Manpower, Employment and Training, approximately 10 million Bangladeshi workers are currently working in the Middle East.

A large number of these migrant workers are subjected to various forms of discrimination and violence. In addition to physical and mental abuse, World Bank reports have highlighted issues such as passport confiscation and non-payment of salaries. As a result, workers are forced to undertake hazardous works and excessive overtime, leading to severe health issues and even deaths.

A study conducted by the Bangladesh Institute of Development Studies in 2019 revealed the dire situation faced by Bangladeshi workers in the Middle East. The study shows that 67% of workers had experienced abuse, 73% did not receive any safety guidelines, and 62% lacked access to healthcare. Additionally, the research found that 24% of workers did not receive their salaries, and 42% experienced delays in payment. It is pertinent to note that the death rate of Bangladeshi migrant workers in the Middle East has increased at an alarming rate compared to that in the previous years.

The *Kafala* system is one of the significant ways of torturing and exploiting workers. Under this system, workers are unable to change jobs or leave the country without

their employer's permission. If the owner's permission is not taken, the workers often face difficulties in finding future employment, including being sent back to their home country. In effect, this system legitimises the oppression of workers.

On the other hand, due to various irregularities in the hiring processes, workers suffer through multiple problems. Agencies and sometimes brokers charge additional fees from workers creating a vicious cycle of debt and thereby forcing workers to work longer hours. More often than not, workers do not receive the promised work environment and salaries as assured by the agencies.

In this regard, it should be highlighted that receiving money through false promises and false assurance of salaries and benefits is punishable offences according to section 31 of the Overseas Employment and Migrants Act, 2013 (OEMA). These offences are punishable with up to five years' imprisonment and one lac BDT as fine.

Furthermore, due to a lack of sufficient information, migrant workers have to face various complications, although according to section 22 of the OEMA, every migrant worker has the right to get information (vide an employment contract) regarding the migration process, work environment, and relevant legal rights. Moreover, according to section 27 of OEMA, any migrant worker who becomes a victim of fraud has the right to get legal assistance.

Apart from filing criminal cases under this Act, aggrieved workers can file civil suits

to seek compensation under section 28. Migrant workers also have the right to return to their country according to section 29, and workers have the right to get assistance from the embassy in this regard. The recruitment agency will have to bear the cost of migrant workers returning to the country if negligence or illegal activities on part of the agency are reason underlying the return to home of any migrant workers.

While domestic laws ensure necessary protection for migrant workers, safety concerns persist once the workers are abroad. Furthermore, a significant challenge lies in the lack of an adequate monitoring system and insufficient resources and infrastructure for authorities to supervise the recruitment process and working conditions of these workers.

Moreover, many Bangladeshi workers are undocumented, and hence, they remain deprived of legal protection. In this context, undocumented women workers who migrate as domestic aides are the most vulnerable, and their protection should be addressed on an urgent basis. For the protection of Bangladeshi workers, an overarching infrastructure is needed for the proper implementation of the law. Furthermore, diplomatic relations between Bangladesh and the Middle Eastern countries ought to be strengthened, and in this regard, Bangladeshi overseas missions can play a vital role.

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FOR YOUR INFORMATION

Muslim marriages Relevant laws, rights, and obligations

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There are many rights and obligations that vest upon the parties after solemnisation of a valid marriage. For instance, the legitimacy of children, claim for maintenance, questions regarding the right to inheritance, etc. are all dependent upon the status of marriage. Similarly, statutory laws try to regulate aspects of marriages as part of public weal. Hence, it is useful to get acquainted with the laws, consequent rights and obligations of marriages. This article briefly discusses a few such rights and obligations with respect to Muslim marriages.

As per section 3 of the Muslim Marriages and Divorces (Registration) Act 1974, every marriage solemnised under Muslim law shall be registered. Where a marriage is solemnised by the Nikah registrar himself, he shall register the marriage at once. On the other hand, where a marriage is solemnised by a person other than the Nikah registrar, the bridegroom shall report it to the concerned Nikah registrar within 30 days from the date of solemnisation. Interesting to note, registration is not mandatory in Hindu marriages. But registration should be done for getting legal protection while traveling abroad, asset transfer, preparing a deed of gift, presenting evidence in court, and divorce. The Hindu Marriage Registration Act 2012 has paved the way for registration of marriages solemnised under the Hindu law.



According to the Child Marriage Restraint Act, 2017 the parties to a marriage must be of legal age of marriage. Section 2 of this Act sets the minimum age of the groom at 21 years, and that of the bride at 18 years. It is pertinent to mention that this Act does not render marriages validly solemnised under Muslim Law invalid but penalises the solemnisation of marriage of or between underage individuals.

Interestingly, there has been a misconception about 'court marriage' in our society which merely is an affidavit sworn by the parties to a marriage before a magistrate to the effect that they have decided to marry at their own discretion and without any undue influence or coercion. As such, after this procedure, in order to validate the marriage, formalities must be completed as per the family law (e.g., Muslim personal law).

Dower is a strict financial obligation set by *Shariah* that has to be undertaken by every Muslim husband as a consequence of a marriage. There may be two portions in terms of the time of payment of dower: prompt and deferred. The prompt portion has to be paid immediately, and the deferred portion is payable on dissolution of marriage or at the occurrence of any specified event. Dower should be determined based on the social status and economic capacity of both parties. The whole or any portion of the dower that is to be paid to the wife should be clearly mentioned in the *Kabinnama*.

Clause 18 of the *Kabinnama* speaks about delegating the right to divorce to the wife, also known as *Talaq-i-Tafwid*. This right can be delegated unconditionally or with conditions attached by the husband. It gives a Muslim woman the right to repudiate the marriage without the intervention of court.

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COURT CORRIDOR

On implementing the DIRECTIONS OF THE COURT

MD FATEEN FARHAN

The High Court Division (HCD) has, over the years, made numerous significant directions and observations on issues ranging from environment protection to accountability of governmental entities and statutory bodies. However, these decisions have rarely been translated into any substantial changes in our day-to-day practices. This article focuses on some of these examples and the possible reasons underlying such phenomenon.

For instance, in 2020, the HCD ordered a ban on single-use plastic products in coastal areas, hotels, motels, and restaurants across the country in one year. To end rampant and pervasive use of plastic, the HCD additionally instructed the government to enforce the ban on use of plastic bags and to shut down manufacturing factories.

Despite the categoric judicial directions, as a study conducted by the Bangladesh Environmental Lawyers Association (BELA) in 2023 indicates, there has been a



steep rise in annual per capita plastic consumption in urban areas, surpassing the previous figures. The study reveals a six-fold increase in the consumption of LDPE

packaging materials since 2005.

In addition to this, in 2020, the HCD directed the Bangladesh Road Transport Authority (BRTA) to increase the number

of vehicle fitness testing centers to monitor unfit vehicles. However, the number of unfit vehicles increased from 2.9 lacs in 2019 to 5.08 lacs in 2022. Thus, the massive increase in the consumption and usage of plastic and in the number of unfit vehicles clearly contrasts the directions of the court.

Like these, there are numerous instances where the directions of the court have not been complied with and have not yielded optimistic results. Well-crafted court orders are often ignored and they indicate the acute need for smooth interaction and coordination among different organs of the state. Lack of political will across multiple governance tiers, resource constraints and administrative bottlenecks can be underscored as the central issues which prevent the implementation of the directions of the courts. The schism between direction and implementation increases with time due to the absence of effective monitoring and public awareness as well.

Although there is no effective monitoring body, the court has the power to appoint committees to oversee implementation of certain orders. Indeed, in some cases, the court has sought to monitor and supervise the implementation of its orders by appointing supervisory committees. It may be argued that only cases with high public exposure get such supervision. To address this, the court needs to establish a mechanism to administer and supervise implementation of its directions in every instance, instead of selective ones.

In conclusion, the unpleasant relationship between direction and implementation needs to be taken into consideration at the earliest for the sake of good governance and rule of law. The judicial system, law enforcement agencies, and the public must work together to ensure proper implementation to realise the directions that the court lay down.

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