RIGHTS WATCH

Rights of the Bangladeshi healthcare workers in the UK

Local authorities in the UK nowadays are increasingly distanced from the care workers, especially the Bangladeshi migrants, due to adopting the outsourcing policy and contractual arrangements through labour suppliers instead of government agencies. Note that in the UK, care workers are tied to a sponsoring employer for their visa status. As a result, the care workers are less likely to air their grievances against the employers.

DR. MD. MAHBUBUR RAHMAN

There are many critical human rights issues of Bangladeshi healthcare workers who went to the United Kingdom (UK) under the Health and Care (HC) worker visa scheme. Despite the demands of Bangladeshi healthcare workers in the UK, various reports and discussions reveal that Bangladeshi healthcare workers are facing numerous human rights violations by health and care companies there. The violations include but are not limited to forced payment of higher recruitment fees and worse conditions for lower pay, which is in breach of international fair recruitment policies, restrictions on the freedom of movement, excessive workload, threats and intimidation from management, and systematic wage theft.

In February 2022, following Brexit, the UK government introduced the new HC worker visa scheme. The HC visa responded to an acute shortage of care workers precipitated by the decline in migration of EU nationals after the United Kingdom left the European Union in January 2020. Although the exact number of Bangladeshi migrants in the UK care industry is not readily available, in 2023, the UK hired 4,107 skilled workers across diverse sectors from Bangladesh as per the statistics of the Bureau of Manpower, Employment, and Training (BMET). In the current year, 3077 Bangladeshi migrants went to the UK as of August 2024 (BMET). A good number of them are working in caregiving and domestic assistance.

However, concerns remain about the potential for abuse and labour exploitation in the system, necessitating the strengthening of rules about appropriate sponsors and demonstrating the significant power inequalities underpinning the HC visa scheme. Among various reasons, the UK's recent health policy changes resulting in privatisation of the care sector have led the Bangladeshi workers to face adverse conditions. It has been observed that local authorities in the UK nowadays are increasingly distanced from the care workers, especially the Bangladeshi migrants, due to adopting the outsourcing policy and contractual arrangements through labour suppliers instead of government agencies. Note that in the UK, care workers are tied to a sponsoring employer for their visa status. As a result, the care workers are less likely to air their grievances against the employers. There are also allegations that some UK care companies recruit almost double the figure of workers than what is approved. They do so with the help of some Bangladeshi recruiting agencies, agents and sub-agents. As a result, almost half of the Bangladeshi health and care workers in the UK are actually forced to work illegally, although they migrate legally. Naturally, a lower payment is given to them, which is an insufficient livelihood in the UK as per the country's living standard.

In the given context, a set of actions can be recommended for the relevant actors, including the UK and Bangladesh governments, the health and care companies in the UK and the recruiting agencies, agents and sub-agents in Bangladesh. They must work in concert to identify, prevent, mitigate, and account for rights violations against the Bangladeshi healthcare workers in the UK. Indeed, the UK's care policy must be revisited, and necessary changes must be introduced so that it can ensure the full human rights protection of all health and care workers, including the Bangladeshi migrants working in the field. Also, the relevant monitoring agencies of the UK Government over their health and care companies must work more effectively and efficiently in line with international standards. Necessary actions should be taken by the UK Government in order to prevent the misuse of the repayment clauses. Notably, the repayment clause is a common feature of employment contracts issued by health and care companies in the UK, where workers are charged an inflated cost if they chose to leave employment. Some Bangladeshi healthcare workers in the UK reported that this cost is sometimes too high, which goes up to 20,000 GBP.

Bangladesh Government can take initiatives through BMET to offer formal education and training to the aspirant health and care workers in the UK so that no questions are raised about their qualifications once they are in the UK. Different NGOs, consultancy firms and training centres can assist in this matter. Securing the emigration cards from BMET by the recruiting agencies must be strictly regulated and monitored so that the exact number of emigration cards can be traced and secured against a particular number of job openings in the UK. This action will significantly minimise the potential scope of human rights violations. The health and care worker migration between Bangladesh and the UK could be a win-win situation if the above-mentioned actions could be adopted by the relevant actors in the UK and Bangladesh.

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RIGHTS VISION

Constitutional right to a healthy environment

In the name of development, Bangladesh has frequently undertaken various environmentally hazardous projects and policies. The incorporation of the right in the Constitution would create an obligation on the State to scrutinise policies and developments from a healthy-environment lens.

FARIA JAHIN AUNTARA

The notion that a safe and healthy environment can be a right may still sound new to us. The right to a healthy environment was first formally brought up in the Stockholm Declaration in 1972. Afterwards, many countries have incorporated environment-centric provisions into their respective constitutions, as a right, or a duty. The research of David Boyd, UN Special Rapporteur on Human Rights and Environment, manifests that more than 150 jurisdictions have enshrined this right in their Constitution or legislation. In 2021, the Human Rights Council passed a remarkable resolution recognising access to a healthy and sustainable environment as a universal right.

The only reference about the environment was incorporated into the Constitution of Bangladesh in 2011. Article 18A provides that the state will endeavour to protect and preserve the environment. Needless to say, this article is inscribed in part II of the Constitution and does not constitute a substantive right to a healthy environment. As Bangladesh has yet to declare the right to a healthy environment as a directly enforceable right, our judiciary has tried enforcing this right through other substantive human rights, for example, the right to life (established in the Dr. M. Farooque v Bangladesh case.) In line with the current jurisprudence, a claimant has an onerous burden to prove that the contested environmental action has "directly and seriously affected" the quality of life.

Aside from the judicial perspective, the recognition of the right to a healthy environment is crucial in adopting and implementing environment-sensitive policies. In the name of development, Bangladesh has frequently undertaken various environmentally hazardous projects and policies. The incorporation of the right in the Constitution would create an obligation on the State to scrutinise policies and developments from a healthy-environment lens. This way, the environment itself would become an important stakeholder in such decisions.

Recognising the right to a healthy environment also has procedural implications. In the procedural sphere, stakeholders can uphold the right to participate in environmental decision-making, access to receive information, and seek justice in case of infringement of the right. Alongside the procedural and substantive protections, the recognition also has certain practical benefits. Professor Boyd substantiated in research that out of 92 countries that enshrined the concerned right in their constitutions, in 78 countries, environmental laws got strengthened. Bangladesh has over 200 eco-centric laws. However, the application and implementation of those laws always fall short. With a strong constitutional status, those laws will gain momentum and find a strong basis.

Although countless arguments can be presented in favour of recognition of the right to healthy environment, many antitheses and counterarguments can also be advanced and debated as well. Those who are against the incorporation of constitutional environmental right argue that the right to a healthy environment is downright useless. In response to this criticism, the UN Human Rights Council (2020) presented a report in which David Boyd demonstrated that states incorporating this right have initiated good practices in addressing the substantive and procedural elements of the right.

Bangladesh requires robust environmental policies and laws to tackle and mitigate environmental degradation. Coincidentally, we are at a moment where constitutional reform is being widely discussed. Certainly, the path of recognising the right to a healthy environment is strenuous but not impossible or too early.

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GENDER AND LAW

Gender bias entrenched in our legislation

JEBA MOBASHWIRA

From family structures to politico-legal frameworks, deeply rooted patriarchal views have historically influenced every aspect of life. Even secular laws enacted in the 19th and 20th centuries were shaped by overwhelmingly male-dominated legislative bodies. Gender norms during these times were deeply influenced by male chauvinism, with men being regarded as the dominant figure in both public and private spheres, while women were subjected to submission and obedience. Consequently, these laws bear the imprint of a patriarchal view, privileging male authority over women's agency.

Victim-blaming and character assassination of women, especially in cases of rape, has been extremely common in legal practice. In fact, they were legally authorised and often weaponised against women for a long time through sections 146 and 155(4) of the Evidence Act 1872. The Evidence (Amendment) Act 2022 was passed very recently which restricted this practice of harassment of rape victims. Nonetheless, this institutionalised sexism persists in Bangladesh, continuing to directly or indirectly favour violence against women.

This traditional view persisted even after our independence, with the constituent assembly being composed mostly of men who carried forward the entrenched assumptions. It is reflected in Article 28(2) of our Constitution, which states that women shall have equal rights with men in all spheres of the State and of public life. The phrase 'equal rights with men' underlies an implicit patriarchal assumption of positioning men as the standard against which women's rights are to be weighed. Men are positioned as the implicit baseline, while women are given equality "with" them rather than independently. The Article could have been phrased as "Men and women shall have equal rights", placing both genders on equal footing, without one serving as the reference point for the other. Again, Article 28(4) classifies women as a "backward section" and permits the enactment of separate laws for them. It raises an important question as to whether the objective of closing the gender gap can be achieved by enacting special laws while classifying women as backward. In that case, it could be argued that the 1972 Constitution did not establish true gender equality, rather affirms the traditional notion of gender equity.

As Bangladesh stands at a crossroads and await reforms, the patriarchal legacies embedded in its laws need to be scrutinised, challenged, and, in some cases, amended to better align with principles of equality and human rights.

Discriminatory provisions were also incorporated within our citizenship law. Section 5 of the Citizenship Act 1951, for example, historically placed restrictions on Bangladeshi women's ability to pass citizenship to their children if they married foreign nationals. However, this section was amended by the Citizenship (Amendment) Act 2009 by replacing the word 'father' with 'father and mother', thus allowing both father and mother equal rights to pass citizenship to their children.

Even under our adultery law, women are regarded as inactive participants when it comes to bearing liability. Section 497 of the Penal Code 1860 implicitly views women as lacking agency by placing the burden of guilt solely on men in cases of extramarital affairs.

These laws, therefore, reinforce the traditional gender-based stereotypes. As Bangladesh stands at a crossroads and awaits reforms, the patriarchal legacies embedded in its laws need to be scrutinised, challenged, and, in some cases, amended to better align with principles of equality and human rights.

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