

PROTECTION OF MIGRANT WORKERS UNDER BANGLADESH EMPLOYMENT LAW

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ABSTRACT

Migrant workers contribute significantly to the economic development and sustained growth of the country's GDP through their diligent efforts in sending remittances. However, Bangladeshi migrant workers face problems in multi-dimensional ways, which puts them in a vulnerable situation. In addition, human trafficking, which is one of the most heinous crimes and grave human rights violations in the current world, including Bangladesh. The existing legal framework for the protection of migrant workers is inadequate. As a result, it is very difficult for migrant workers' to secure safe migration and protect their rights. Bangladesh has a number of legal frameworks to combat human trafficking and protect the rights of migrant workers. However, there are still some barriers to implementing this legal framework and protecting migrant workers. This article intends mainly to analyse the existing legal framework as well as practical barriers to the protection of the rights of Bangladeshi migrant workers. Another aim of the article is to find out some ways forward to get rid of this challenge. It further seeks to critically analyse the nature and gravity of this offence, the weaknesses of the existing laws, establish linkages between human trafficking and safe migration, make some policy recommendations, and make joint efforts regarding the prevention of this offence, effective remedies for the victims of human trafficking, and protect their rights.

Keywords: Bangladesh Legal Framework, Migrant Workers, Human Trafficking, Protecting Rights.

INTRODUCTION

Labour migration has emerged as a significant global issue, particularly impacting the labour market. Bangladesh stands as one of the prominent countries involved in labour migration, primarily as a labour-sending nation. Each year, a considerable number of Bangladeshi migrant workers voluntarily leave the country to seek both long-term and short-term employment opportunities abroad. One key motivation for their migration is to provide financial support to their families in Bangladesh through remittances.

Migrant workers play a crucial role in the economies of both the host countries and their home country. They contribute to the labour force, fill skill gaps, and support various industries abroad. Additionally, their remittances contribute significantly to the economic growth and development of Bangladesh, as these funds often serve as a source of income, investment, and poverty reduction for their families. However, it is essential to address the challenges and issues faced by Bangladeshi migrant workers, including human trafficking, inadequate legal protections, and difficulties in accessing their rights. Ensuring the welfare and rights of these migrant workers is crucial, and efforts should be made to establish fair and ethical migration practices that protect their well-being and safeguard their rights throughout the migration process.ⁱ Labour migration is a significant factor in the development of the national economy. Over a half million Bangladeshi leave the country each year for long-term and short-term employment abroad; this trend began in the 1970s, accelerated through the 1980s and 2000s, and has recently experienced a sharp increase in 2005.ⁱⁱ In 2017, over a million migrant workers legally crossed the country's border.ⁱⁱⁱ However, human trafficking is a horrible form of organised crime that affects every country around the globe, including Bangladesh. Migrant workers from Bangladesh are also susceptible to becoming victims of this crime. It presents humanity with a tragic and hopeless aspect. In mid-2015, The mass grave containing the bodies of victims of human trafficking from Bangladesh was discovered in the jungles of Thailand and Malaysia, making headlines worldwide.^{iv} According to the IOM report, around 12.5 million Bangladeshi migrant labourers are currently employed in 165 countries.^v Most Bangladeshi migrant workers look for a job in industrialised nations where there is a large demand for unskilled or semi-skilled labour in order to improve their life and escape poverty.^{vi}

Despite the implementation of significant legislative measures in Bangladesh aimed at protecting the rights of migrant workers and addressing the issue of human trafficking. Moreover, some legal and practical obstacles persist that delay the effectiveness of these existing laws. This article aims to examine the current legal framework in Bangladesh and its effectiveness in protecting the rights of migrant workers. Additionally, it seeks to identify the challenges faced by victims of human trafficking in their daily lives. Moreover, the article endeavours to propose potential solutions to overcome the existing legal obstacles. Additionally, the paper aimed to examine the current legislation from a perspective that prioritises the needs and rights of migrant workers.

DEFINITION OF MIGRANT WORKERS

In a broad sense, human migration can be defined as the movement of people away from the location of their birth to a new location, typically with the goals of finding work, settling down permanently or temporarily, or both. Migration can either be domestic or international in scope. A “migrant worker” is defined by Bangladesh labour legislation as any citizen of Bangladesh who, in exchange for wages, (a) is preparing to migrate for work or is abandoning for any foreign country to work; (b) is employed in a trade or profession in any foreign country, or (c) has returned to Bangladesh at the end of the employment term or without having completed the employment term from a previous employer.^{vii}

According to the International Labour Organization (ILO), a “migrant worker” is someone who moves from one country to another to work for someone other than themselves. This definition also encompasses any person who is regularly admitted, as a migrant, for employment. In 1949, while the ILO Convention was being written, several groups of workers were specifically excluded from the definition of the migrant worker. It was done to reflect the prevalent migration patterns at the time. The following types of workers are not included:^{viii} Workers who enter a country illegally, frontier workers, artists, and members of liberal professions who arrive for a brief amount of time, seafarers, self-employed people, people coming mainly for training or education, people on a specific business or assignment for their organisation in another country for a limited or specified time, and who are compelled to depart the country upon fulfilment of their responsibilities or duty. The United Nations Convention on the

Protection of the Rights of All Migrant Workers and Members of Their Families, which was approved in 2000, presently contains the bulk of these categories. It represents the most current knowledge of migration patterns from the perspectives of both the exporting nations and the receiving countries. “The following categories of workers are included:^{ix} Traveling employees, immigrants recruited for a particular project, frontier employees who reside in a neighbouring state and visit there daily or at least once per week, seasonal employees, seafarers working on ships registered in another State than their own, employees on offshore facilities under the authority of another State than their own, and self-employed individuals are all examples of workers.

PROTECTION OF THE RIGHTS OF MIGRANT WORKERS UNDER THE BANGLADESH CONSTITUTION

The Bangladesh Constitution explicitly or implicitly recognises the fundamental civil and political rights of migrant workers and members of their families. It is abundantly plain in the Preamble to the Constitution that the state’s mission is to create a society that is “free from exploitation,” based on the rule of law, and sustained by respect for fundamental human rights and freedoms. Equal opportunity is guaranteed in Article 19, and respect for one’s labour is acknowledged as a right, a duty, and a matter of honour in Article 20 of the constitution. In more concrete terms, article 27 of the Bangladesh Constitution, which is located in Part III and which enshrines the fundamental rights that are enforceable, guarantees for equality before the law. Forced labour is forbidden by Article 34, which also makes it a crime under the law as it stands. The Supreme Court’s High Court Division is authorised to apply the Constitution’s Article 44 to legally enforce fundamental rights in accordance with Article 102, Clause 1. The rights granted by the Bangladesh Constitution appear to comply with the requirements and core principles of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC). However, just because a right is guaranteed by the Constitution does not automatically mean that it will be upheld and maintained.

PROTECTION OF THE RIGHTS OF MIGRANT WORKERS UNDER NATIONAL LAWS

The issue of human trafficking is a global concern that has prompted the enactment of specific laws in many jurisdictions to criminalize this practice. These laws are aimed at combating and addressing the serious problem of human trafficking. Bangladesh has also passed several legislations to combat the course of human trafficking. The law both defines and protects the rights of individuals and groups. It gives authority to act against cruelty, restricts access to share economic, political, and social resources, provides the foundation for institutions, and expresses a society's core values and beliefs. Consideration of human trafficking in Bangladesh reveals two fundamental truths: first, it is a common crime that involves severe violations of human rights, and second, it results in victims who need to be rescued and protected. The fight against human trafficking typically involves three main dimensions. Firstly, the criminal justice system plays a crucial role in identifying, apprehending, and prosecuting traffickers, ensuring that they face appropriate penalties for their crimes. Secondly, efforts are made to provide comprehensive support and assistance to trafficked individuals, including access to necessary care, rehabilitation, and opportunities for sustainable livelihoods. This is crucial for helping survivors recover from their ordeal and reintegrate into society. Lastly, addressing the root causes of trafficking is essential to prevent future occurrences, which may involve addressing factors such as poverty, inequality, lack of education, and social vulnerabilities that make individuals susceptible to trafficking. By tackling these three dimensions, societies can work towards effectively combating human trafficking.

THE OVERSEAS EMPLOYMENT AND MIGRANTS ACT 2013

According to section 3 of the Act, the government of Bangladesh or its delegated authorities are responsible for exercising control over any actions related to the recruitment and departure of migrant workers from Bangladesh to find employment outside of Bangladesh. As a result, no citizen shall migrate or encourage other citizens' migration to obtain employment overseas unless they do so in conformity with the terms of this act.^x Due to a citizen's migration, additional documents must be submitted in addition to the clearance issued under Section 20. A letter of appointment for an overseas job, a work permit, or a no objection certificate issued

by any authorities of the nation are among the additional documents. Also included are (a) proof of recruitment for overseas employment by a person, organisation, or entity authorised by the government under an agreement reached with any country, or (b) proof of employment by recruitment. These might be employed as protection and surveillance tools to watch over migrant workers and guard against their exploitation as human trafficking victims.

Application of the principle of equality

No one shall be subjected to discrimination because of their gender, language, birth, colour, age, ethnicity or national origin, political opinions, religion, ideology, family, marital status, social identity, or regional affiliation associated with employment of migrant workers abroad, their return, the provision of services, or the performance of any other action under this agreement.^{xi} The port or location, as may be defined by the government by the announcement in the Official Gazette, will serve as the departure point for employment overseas.^{xii}

Restrictions relating to migration

The state may restrict migration to a country by order if the government determines that doing so will be against the public interest or state interest or will put Bangladeshi residents' health and safety in danger.^{xiii} The government may temporarily impose restrictions on the movement of a person or a group of citizens in the public interest or to protect human resources.^{xiv}

Recruitment agents, license, and such others

The details about recruitment agencies, licenses, and other relevant topics are discussed in Sections 9-18 of the Overseas Employment and Migrants Act 2013.^{xv} According to section 9(1) of this Act, no one is allowed to engage in any activity that is related to recruitment unless they have been awarded a licence.^{xvi}

The recruitment agent must carry out their separate responsibilities for protecting migrant workers by Section 15 of the Act. The provision mandates that the recruitment agent undertake the following responsibilities: safeguarding the rights and welfare of migrant workers; facilitating the registration of migrant workers under section 19 when required; obtaining the necessary migration clearance; employing the migrant worker for the designated position; ensuring the provision of fair wages and additional benefits; fostering a conducive work environment in adherence to the terms and conditions outlined in the employment contract; and establishing and maintaining effective communication channels with the migrant worker. All

of these responsibilities must be fulfilled by the terms and conditions.^{xvii} Section 18 makes a reasonable provision for getting compensation from a recruiting firm. The surety money may be used to cover compensation for any affected migrant workers or the recruitment agent's expense of repatriating a worker who was transferred abroad. The government may order the concerned recruitment agent to pay suitable compensation if the money from the confiscated surety is insufficient to cover the affected migrant worker's damages or to assure their return or repatriation from abroad. The government may use the Public Demands Recovery Act of 1913's provisions to pursue a recruitment agent who refuses to pay the money required under subsection (3).^{xviii}

Registration of migrant workers, migration clearance, and such others

According to section 19 (1), any person or migrant worker who intends to immigrate by this act must register with the Bureau and record their trade or profession. The Bureau is also required to keep total records of all workers registered in the manner specified and, if necessary, to enter those records into registers. Section 19 (2) approves that a worker is allowed to register at any time in Bangladesh or with the Bangladesh embassy situated the country where they are employed and they have the appropriate trade and profession documentation if they have not done so by the deadline specified in paragraph (3) that says that employers must choose employees at random from a computerised database maintained by the Bureau, any other government-created organisation or company, and the recruiting firms from among those registered according to trade or profession under paragraph.^{xix}

In addition, migrant workers may be hired through open advertisements in the newspapers with the government's prior approval or the authorities with delegated authority, provided that qualified workers are not already in the database. In this case, the advertisement must state that no fee or money will be charged until and unless the worker has been hired.^{xx} In order to protect migrant workers from the risks of human trafficking, the issuance of migrant clearance holds significant importance. As per section 20, it is mandatory for the Bureau to affix a seal on the passport of every individual registered under section 19. This seal should bear the unique registration number assigned to the migrant worker. Additionally, the Bureau is required to issue a migration clearance electronic card to the migrant worker. This card should include essential information related to migration, such as the thumb impression and biometric data of the migrant worker, along with other pertinent details. These measures are crucial in ensuring

proper identification and documentation of migrant workers, thus contributing to their protection and preventing any potential exploitation or trafficking.^{xxi}

Employment contract

Overseas Employment and Migrants Act 2013 includes the two following provisions in section 22. (1) The recruitment agent is responsible for ensuring that both the worker and the employer sign an employment contract. This contract must include information regarding the worker's income, housing, term of employment, compensation amount in the event of death or injury, cost of transferring to and from the foreign nation, and other relevant details.^{xxii} (2) The recruiting agent will be considered the overseas employer's representative for the contract described in subsection 1. The employer and the recruitment agent will be equally and severally accountable for any obligations resulting from the contract.^{xxiii} This Act's attempt to include employment contracts is a commendable one. The employment contract between the employer and the hired worker must be signed by Section 22 of the Act. It must include information about the worker's pay, living conditions, length of employment, compensation for death or injury, and the cost of emigrating to and returning from a foreign country, among other things. The recruitment agent must submit a copy of the signed contract to both the Bureau and the Bangladesh embassy in the host country. When sending employees overseas, the Bureau or any government-established organisation, business, or corporation must arrange for the completion of an employment contract between the employer and the employee and provide a copy of this document to the Bangladesh Mission in the destination country.^{xxiv}

Established labour welfare wing and bilateral agreements on migration

If it is determined that the establishment of a Labour Welfare Wing within the Bangladesh Mission in the specific foreign country is necessary to enhance access to the local labour market or protect the rights of migrant workers, the government of Bangladesh has the option to take this step. The decision to set up a Labour Welfare Wing would involve creating a dedicated department or unit within the Bangladesh Mission that focuses on addressing the needs and concerns of Bangladeshi migrant workers in that particular country. The Wing will carry out the responsibilities described in this act and its Rules.^{xxv} In the country in question, an authorised employee of the Labour Welfare Wing is tasked with inspecting the place of employment where Bangladeshi migrant workers are to be employed and conducting meetings with the respective employers, as required.^{xxvi} In December of each year, after completing the

routine inspections required by subsection 1, the authorised officer of the Labour Welfare Wing shall submit to the government a comprehensive annual report detailing the status of Bangladeshi migrant workers in the host country, as well as any necessary recommendations for improving their living and working conditions.^{xxvii}

Furthermore, government may enter into a memorandum of understanding or an agreement with another country better to facilitate the migration of Bangladeshi citizens for overseas employment, improve the management of labour migration, to facilitate the repatriation and reintegration of the migrant workers in the home country, and to safeguard the welfare and rights of migrant workers and their families.^{xxviii} Any MOU or arrangement that is reached by paragraph 1 is required to ensure, among other things: (a) the rights, safety, and human dignity of all migrant workers both at home and abroad; (b) the protection of the labour and other human rights of Bangladeshi migrant workers in the concerned country, and the assurance that their working conditions are in line with international standards; and (c) the assurance that migrating workers have the right to return to Bangladesh.^{xxix}

Provisions for the protection of the rights of migrant workers

Right to information— Before departing from their place of origin, migrant workers have the legal right to information on the immigration procedure, the employment agreement, or the terms and circumstances of the job abroad, as well as information regarding their legal rights.^{xxx}

Legal aid- Workers who have migrated from other countries and fallen victim to scams perpetrated in the name of migration have the right to access legal assistance within reasonable means.^{xxxi}

Right to file a civil suit: A migrant worker who has been harmed by a breach of any provision of this act or the employment contract may initiate a civil suit for compensation without waiving the ability to seek criminal prosecution for any infringement under this act.^{xxxii}

Right to return home: It is the policy of Bangladesh that any migrant worker who is arrested, trapped, or otherwise in a state of hardship abroad has the right to request repatriation to Bangladesh and to receive any aid they may need from the Bangladesh Mission in that nation.^{xxxiii} The government may order a recruitment agency to pay for the repatriation of a

migrant worker who has become stranded abroad due to the agency's incompetence or illegal behaviour.^{xxxiv}

Financial and other welfare programmes: The government might construct or make it easier for migrant employees and members of their families to access bank loans, tax incentives, savings programmes, investment opportunities, and other facilities to promote the welfare and development of migrant workers and their families.^{xxxv}

Offence and Punishment under the Act

- Penalties for sending migrant workers overseas in an unlawful manner

Anyone, including a staffing agency, who knowingly and intentionally causes another person to (a) violate the provisions of this act or the Rules by sending or helping to send a person overseas for employment or entering into a contract on behalf of another person; (b) receive or attempt to receive any amount of money or a payment in any other form by providing a person with a false undertaking to provide overseas employment; (c) details, without a party's consent, without the party's consent; or (d) A person may be coerced into fraudulently migrating or convinced to enter into a contract for migration if they are offered falsely high salaries, benefits, and facilities, or if any other fraudulent action regarding a migrant worker is engaged in. If found guilty of this crime, the offender or the recruiting agent might face a prison sentence of up to five years and a fine of at least one lakh Bangladeshi Taka. In addition, they could lose their licence to practise as a recruitment agent.^{xxxvi}

- Penalty for publishing unauthorised advertisements

If an individual or recruitment agent publishes an advertisement for overseas employment or migration without obtaining prior approval from the government, such an act is considered unlawful under the relevant laws and regulations. As a consequence, the person or recruitment agent may face penalties for committing this offence. The punishment for this offense typically includes imprisonment for a period of up to one year. Additionally, a fine of at least 50,000 Bangladeshi Taka (USD 500)^{xxxvii}, or a higher amount as stipulated by the law, may be imposed. These penalties are intended to deter individuals and recruitment agents from engaging in unauthorised recruitment practices and to ensure compliance with the legal requirements set forth by the government and the Bureau. By imposing these consequences,

the authorities aim to regulate the recruitment process and protect the rights and interests of prospective migrant workers.^{xxxviii}

- Penalty for using unlawful means for collecting demand notes, visas or work-permit for overseas employment, or trading in such documents

Anyone who obtains a demand note, visa, or work permit from a foreign employer or country via dishonest or unlawful means or who resells these documents inside of Bangladesh, commits a crime that is punishable by up to seven years in jail and a fine of at least 3 lac (USD 3,000) Bangladeshi taka.^{xxxix}

- Penalty for arranging for departure through places other than the specified place of departure

The use of unlawful means for collecting demand notes, visas, or work permits for overseas employment, as well as the trading of such documents within Bangladesh, is considered a criminal offense. Individuals who engage in these activities face severe penalties as prescribed by the law. If someone is found guilty of obtaining demand notes, visas, or work permits through dishonest or unlawful means, or if they are involved in the resale of these documents within Bangladesh, they can be sentenced to a maximum of seven years in prison. Additionally, a fine of at least 3 lac (USD 3,000) Bangladeshi taka, or a higher amount determined by the law, may be imposed as part of the penalty'.^{xl}

- Penalty for other offences

If an individual violates any provision of the act in a manner that does not specify a particular punishment, the consequences will depend on the seriousness of the breach. In such cases, the offender may face penalties that can include imprisonment for a period of up to six months, a fine of up to 50,000 Bangladeshi Taka (USD 500)^{xli}, or a combination of both punishments. The severity of the violation and its impact on the rights and interests of migrant workers, as well as the overall objectives of the act, will be taken into consideration when determining the appropriate punishment. The authorities will assess the circumstances and nature of the offense to determine the most suitable penalty within the range specified by the law.^{xlii}

- Penalty for abetting or instigating an offence, and such others

If an individual or recruitment agent knowingly and intentionally assists or encourages the commission of an offense under this act, whether directly or indirectly, and as a result of such

assistance or instigation, the offense is committed, the aiding or instigating person or recruitment agent will be liable to the same penalties as the person or recruitment agency that actually committed the offence.^{xliii}

- Offences committed by a company

In the event that a director, executive, manager, secretary, or any other employee of a company is directly involved in violating this act on behalf of the company, that individual will be held criminally liable for the offence. However, there is an exception if they can prove that they had no knowledge of the violation and took all necessary precautions to prevent it.^{xliiv}

- Trial

This Act increases the speed of the trial. Despite everything else that may be included in the Code of Criminal Procedure 1898 (Act No. V of 1898), offences that fall under the purview of this act are to be tried by the Judicial Magistrate of First Class or, depending on the circumstances, the Metropolitan Magistrate. For cases tried under this act, the entire process must be wrapped up in no more than four months from the date charges were first filed. If the trial doesn't wrap up in that time, the Magistrate in order can request an extension from the Chief Judicial Magistrate's Court or the Chief Metropolitan Magistrate's Court, as appropriate, and explain why it's taking longer than expected. In that instance, he'll have to send a status report.^{xlv}

- Cognoscibility, compound ability, and so on of offences

In contrast to the non-cognoscibility, availability, and compound ability of offences under sections 31, 32, and 35, those under sections 33 and 34 have been cognizable, Non-boilable, and compoundable. According to section 40, the Mobile Courts Act, 2009's Schedule shall incorporate this Act (Act No. 59 of 2009).^{xlvi}

- Complaints to the government

Under Section 41, anyone who believes they have been wronged may file a complaint with the relevant government agency, including one alleging fraud, a demand for payment of costs at unapproved rates, or a breach of contract against anyone, including a recruitment agent, without giving up their right to bring a criminal case.^{xlvii} After receiving a complaint, the government, the authorities, or a person appointed by the government must complete their investigation within thirty (30) days of regular business hours. Within three months after the inquiry was

finished, if the research finds that the complaint is accurate, the government, the authorities, or the person authorised by it may, by order, dispose of the complaint directly or through arbitration (Salish). When dealing with concerns through arbitration, some rules must be observed.^{xlviii} Places or transportation leaving or arriving from Bangladesh may be subject to inspection by a government official authorised to prevent irregular migration or protect the interests of a potential migrant worker.^{xlix} After conducting any inquiry that may be required and issuing a written order, the government has the authority to demand reimbursement from any person for any amount of money that was wrongfully appropriated in contravention of the terms of this act.¹

Moreover, to ensure that migrant workers' rights are protected, the government may notify an officer or authorities, or execute a contract, delegating certain powers or functions given by this act. It may, if required, appoint an authorised agent or delegated authority in another country.^{li}

The Prevention of Suppression of Human Trafficking Act, 2012

According to the findings of a study that Ridwanul Hoque carried out, “[I]n Bangladesh, the idea of “labour trafficking” that is, trafficking in human beings to exploit their labour, was, until recently, lacking in the existing legislation. Since there is not yet a crime for “trafficking in persons for labour,” related crimes such as “fraudulent recruitment,” “receipt of money by any unauthorised person for the recruitment of workers for overseas employment” and “like offences,” “forced labour,” “forgery of travel documents” and others must be prosecuted instead. These crimes can be found in the Emigration Ordinance (1982), the Penal Code (1870), and other laws.^{lii} For instance, the Passport (Offences) Act 1952 makes it illegal to fake, change, or tamper with a passport, and the Bangladesh Passport Order 1973 makes it unlawful to depart from Bangladesh without a valid passport or travel document. Accordingly, these statutes cover lesser offences associated with the major crime of trafficking Bangladeshi migrant workers.^{liii} Following the provisions of section 5 of the Act, Bangladeshi law may be applied extraterritorially in cases where either the victims or the perpetrators are Bangladeshi nationals.^{liv} It has also been confirmed that offences related to human trafficking are extraditable offences.

- Punishment of human trafficking

Human trafficking is punishable in many ways, outlined in Chapter 2 (Sections 6–16) of the Prevention and Suppression of Human Trafficking Act of 2012. Criminal penalties for trafficking are specified in sections 6 and 7 (death penalty when the offence is in the form of organised crime and imprisonment for life in case of other types of crime). The newly passed law also covers ancillary crimes.^{lv} The efforts of the government of Bangladesh to safeguard victims of trafficking have been inadequate over the past year. There is persistent cause for alarm regarding the government's failure to adequately protect adult male victims of trafficking and forced labour, who account for a disproportionately large fraction of victims in the country. While there was no formal system in place, victims of internal trafficking were often sent to shelters by the courts, police, or Home Ministry authorities.

- The anti-human trafficking offence tribunal and the trial of offence

Specifically, section 21 and 22 declare that establishing a special anti-human trafficking tribunal has been confirmed with the mandate to expeditiously resolve all human trafficking trials. The laws stipulate that the Tribunal shall engage in the following procedures:

1. By publication in the Gazette, the government may appoint a judge of the level of a Sessions Judge or Additional Sessions Judge in any district to serve as the Anti-Human Trafficking Offences Tribunal to expeditiously try offences under this act.
2. The government has the authority to appoint the Nari O Shishu Nirjaton Daman Tribunal (Tribunal for Stopping Torture of Women and Children) in each district to act as the Anti-Human Trafficking Offences Tribunal of the district and assign and empower the tribunal to carry out its responsibilities in this capacity.
3. Only a Tribunal formed by this act may hear cases involving violations of its provisions.
4. The crimes may be brought before the tribunal within whose territorial authority any crimes, or any part of a crime, is committed, or the victim of crimes related to human trafficking is rescued.
5. If an offence was committed by a Bangladeshi citizen, a Bangladeshi company, or a person who regularly resides in Bangladesh but did so outside of Bangladeshi territory, the tribunal whose territorial jurisdiction the offender was a resident of, or in the case of a company, the location of its registered office, may try the case.

- Powers of the tribunal

The tribunal shall have all the authority of a Court of Sessions, subject to the requirements of this act. In the interest of justice, the tribunal may issue proactive orders requiring any person or institution to provide any report, document, or register to the tribunal according to this act.

The provisions offer broad government authority including the following:

1. The recording of evidence in locations other than the courthouse,
2. In addition to monetary penalties, to give civil compensation,
3. To order the implementation of any preventative measure,
4. The court must issue a control order while releasing the offender on bail, and
5. Allow materials that are held electronically, such as witness statements, including those collected in a foreign nation, to be admitted as evidence.

- Assistance, protection, and rehabilitation of the victims and witness

Under the provisions of sections 32–40 of the Act, a comprehensive protective measure package was established for the protection of victims and survivors, including the following measures:

1. The process of identifying victims,
2. Retrieval, treatment, and return to normal life (Provisions have been made for the creation of more safe houses)
3. Reimbursement of the victims' and witnesses' reasonable expenditures that were incurred as a result of the offence,
4. Access to free legal representation and compensation awarded by the court,
5. Protection from victimization and respect for victims' privacy and dignity, and
6. The rights of victims to get information.

- Victim-centric seizure, freeze, and confiscation of property

Section 27 of the Act requires the confiscation and freezing of assets belonging to individuals, both natural and legal persons, who are found to be complicit in human trafficking. The proceeds from these confiscated assets are directed towards a dedicated fund that has been established to provide assistance and support to the victims of this heinous crime. This

provision aims to disrupt the financial resources of those involved in human trafficking and ensure that the confiscated assets are used to aid and support the victims. By confiscating and freezing these assets, the authorities can dismantle the financial infrastructure that enables and perpetuates human trafficking activities.

SAFE MIGRATION AND HUMAN TRAFFICKING CASES

The protection of migrant workers encounters a significant challenge due to the issue of human trafficking, which is closely linked to labour migration. The employer-employee relationship and the inherent risks of injury and exploitation in the workplace are often factors in cases of labour trafficking. Given the connection between labour migration and human trafficking, addressing and preventing human trafficking becomes an important obstacle to ensuring the protection of migrant workers. Most instances of labour trafficking involve the relationship between an employer and an employee, in addition to the danger and threat that can be found in the working environment.^{lvi} In recent decades, the phenomenon of human trafficking, which can be seen as a modern form of slavery, has been associated with exploitative working and living conditions that are degrading to human dignity.^{lvii} In this context, the Forced Labour Convention 1930 (No. 29) of the International Labour Organization (ILO) defines forced or compelled labour as “any works or services exacted from any person under the fear of a penalty and for which the individual has not volunteered themselves voluntarily.

Additionally, the Forced Labour Protocol’s Article 1 (3) explicitly reaffirms the definition by adding three crucial components: (a) work or service, which refers to all forms of work performed in any activity, industry, or sector, including the informal economy; (b) threat of any penalty, which refers to a variety of penalties used to compel someone to work; and (c) involuntariness, which refers to false promises that induce an employee to accept the obligation to work.^{lviii} The relationship between labour migration and trafficking, according to the International Labour Organization (ILO), has long been recognised. The International Labour Organization’s Migrant Workers Convention (No. 143) was the first international law to establish measures to prevent human trafficking in 1975. The ILO Convention No. 29 on Forced Labour, adopted in 1930, was most recently updated at the 2014 International Labour Conference (ILO) with the adoption of a new Forced Labour Protocol to address issues

including human trafficking. The relationship between migration and human trafficking, as well as migratory workers, is specifically addressed in the protocol. Principle 11 of the ILO Multilateral Framework on Labour Migration details the connection between labour migration and human trafficking. Before 2000, various definitions of human trafficking took regional and geographic contexts into account.^{lix} In 2000, the United Nations adopted a protocol to end the practice of human trafficking worldwide to standardize the many regional definitions. This treaty, which entered into force in December of 2003, intends to suppress, punish, and prevent the trafficking of women and children worldwide.^{lx}

Bangladesh is a major country of origin for overseas labour migration. The movement of individuals from their home country to another country in search of employment is commonly referred to as 'labour migration'. However, this migration also presents a risk of human trafficking, where individuals may become victims of exploitation and trafficking. Bangladesh has become a more and more lucrative location for people trafficking due to labour migration. A significant number of Bangladeshi migrant workers are victims of fraudulent recruitment practices (for example, the receiving of money from migrant workers), and a significant number of migrant men and women have been coerced into exploitative practices that are analogous to human trafficking. A significant number of these victims have been subjected to physical or sexual violence, threats, restricted movement, or non-payment of salaries while residing in another country. According to the 2016 Trafficking in Persons Report (TIP) from the United States Department of State's Office to Monitor and Combat Trafficking in Persons, Bangladesh is both a source and transit nation for victims of human trafficking, including those who are coerced into labour or prostitution.^{lxi} Some Bangladeshi workers in the Middle East, Southern and East Africa, South and Southeast Asia, Europe, and the United States work in conditions consistent with forced labour. Many migrant workers risk debt bondage because they take on debt to pay high recruitment fees before leaving their home country. These fees are charged by licensed recruitment agencies affiliated with the Bangladesh Association of International Recruiting Agencies (BAIRA) in accordance with legal regulations. However, there are also instances where unlicensed sub-agents charge fees illegally. Another form of recruitment fraud is contract swapping, wherein an agency or agent deceives a candidate by promising certain working conditions but provides different conditions once the candidate has commenced employment.^{lxii}

POSITION OF BANGLADESH IN COMPLIANCE WITH INTERNATIONAL LAWS

The protocol to prevent, suppress, and punish trafficking in persons, especially women and children, which was signed in the year 2000, is the most important international tool for fighting human trafficking,^{lxiii} Moreover, the protocol against the Smuggling of Migrants by Land, Sea, and Air in the Year 2000^{lxiv} establishes a legal framework for the fight against the trafficking of people. However, it is a well-known truth that Bangladesh has neither ratified these two accords nor signed any of them. In addition, several international conventions protecting human rights have been approved by Bangladesh as the ICCPR,^{lxv} ICESCR, CEDAW, and CRC^{lxvi}, which include clauses requiring Bangladesh to take action against human trafficking and smuggling. It is important to note that Bangladesh made the positive decision in August 2011 to ratify the 1990 United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It is something that should be mentioned here (ICRMW). Through ratification, Bangladesh accepted its responsibility to implement the convention by implementing the required legal, administrative, and adjudicative procedures and ensuring adequate recourse for migrant workers whose rights are violated.^{lxvii} The Overseas Employment and Migrants Act 2013 was passed into law in Bangladesh as part of the country's efforts to comply with this convention.

SUGGESTION AND RECOMMENDATION

Amending Overseas Employment and Migrants Act in Bangladesh-

The Ministry of Expatriates' Welfare and Overseas Employment, along with representatives from the Refugee and Migratory Movements Research Unit (RMMRU) and the Manusher Jonno Foundation, formed an inter-ministerial group in 2009 in Bangladesh. Four provisions of the 1982 Emigration Ordinance were proposed for amendment by this committee. RMMRU constituted a new committee at the request of the National Law Commission, which included government officials and eminent law and migration specialists. The committee drafted the text of a new law known as the Act on Emigration and Overseas Employment. The Ministry is currently reviewing the document. The proposed law comprises 32 provisions.^{lxviii} It has taken into account Bangladesh's recent ratification of the United Nations Convention on the Rights

of Migrant Workers and Members of Their Families, which was signed in 1990. The Special Courts established by the 1982 Ordinance have been abolished under the proposed act. It has provided impacted persons the ability to pursue civil or criminal proceedings in a court of law if the government fails to file a case within a certain time frame.

In addition, he stated that there could be some amendments on the basis of human rights issues on how a victim would survive after a serious case of fraud by the agents, and the rule and activities stated in the Act that don't work in favour of the migrants can be considered in the case of both the government and agents. The Act is formulated fully on the basis of law; if any of the migrants face any problems, then she or he would be further depending on the prosecution.

Amending Bangladesh Overseas Employment Policy (BOEP)

The Bangladesh government had no formal policy to encourage or discourage female migration in the early 1970s. Early in 1981, Civil society organizations have repeatedly called for the adoption of a comprehensive national migration policy. In 2002, the Ministry of Expatriates' Welfare and Overseas Employment (MOEWOE) began the process of drafting an Overseas Employment Policy (OEP). The policy's first drafts were created by the Ministry. A technical assistance committee was constituted at a later time, and an advanced draft was agreed upon. The policy was approved by the government on November 5, 2006. It was created with the goal of organising the foreign job sector and ensuring the welfare of Bangladeshi migrant workers. The policy covers both male and female migrants, as well as short-term labour migrants and long-term diaspora residents.

In addition, the OEP emphasises the importance of maintaining recruiting agencies' transparency and accountability. It recognises the necessity to expand Bangladeshi labour markets. Another key issue addressed by the OEP is increasing the flow of remittances and making better use of them as an investment. The OEP is especially concerned about the social and economic reintegration of migrants upon their return home. In the annexure of the OEP, the roles of different government entities, such as the Ministry of EWOE, the BMET, and the Bangladesh Association of International Recruiting Agencies (BAIRA), have been detailed.

Amending migration governance: institutional framework

- Ministries

The Ministry of Expatriates' Welfare and Overseas Employment, the Ministry of Foreign Affairs, the Ministry of Home Affairs, the Ministry of Civil Aviation and Tourism, and the Ministry of Finance are all significant government ministries that deal with international labour migration. MOEWOE is the line ministry in charge of the migration sector's overall promotion, monitoring, and regulation. Its operations are focused on two primary areas: creating abroad work possibilities and addressing and ensuring the welfare of migrants.

- Bureau of Manpower, Employment and Training (BMET)-

In terms of handling labour migration, the BMET is the implementing agency of the Ministry of Expatriates' Welfare and Overseas Employment. The government established BMET in 1976 in order to maximize the benefits of labour export. Since the enactment of the Emigration Ordinance in 1982, it has served as the Ordinance's implementing agency. Currently, the BMET is involved in a variety of functions, including the regulation and control of recruiting agents, the collection and analysis of labour market data, the registration of job seekers for foreign employment, the provision of emigration clearance to job seekers, and the development and implementation of training programs in response to specific labour needs both nationally and internationally. It facilitates pre-departure briefing meetings to provide necessary information to prospective migrant workers before their departure for overseas employment. Furthermore, it plays a crucial role in resolving legal disputes that may arise in the overseas labour market, ensuring that the rights and interests of migrant workers are protected and appropriate remedies are pursued.”

- Bangladesh Overseas Employment Services Limited

Bangladesh Overseas Employment Services Limited (BOESL) was established by the government in 1984 as a limited firm to handle direct recruitment. BOESL has sent 19,191 people abroad since its beginning, accounting for barely 0.27 percent of the entire migrant population. BOESL sent 3,733 people abroad in 2010. This was the agency's biggest number of people deployed abroad since its foundation.

- Private recruiting agencies

The recruitment and placement stages play a crucial role in the overall labour migration process. In the 1970s, the government assumed the responsibility of a recruitment agency. However, since 1981, the private sector has taken on this role as part of its development, with private recruiting agencies leading the way. These agencies operate under licenses issued by the government. They proactively gather information on international employment demand and receive orders for recruitment from employers abroad. This shift from government-led to private sector-led recruitment reflects the changing dynamics of labour migration and the involvement of multiple stakeholders in the process. After receiving approval from the BMET, the agencies recruit workers from a BMET database of job seekers who meet the requirements of international businesses, and then process their cases for deployment. The BMET's immigration department must give a clearance certificate to each worker hired. Over time, the recruiting agencies formed a federation known as BAIRA. In December 1984, the group was founded by representatives from 23 recruiting firms. Around 860 agencies were members of the group in 2011.

CONCLUSION

After the passage of the Prevention and Suppression of Human Trafficking Act 2012 and the Overseas Employment and Migrant Act 2013, it can be argued that Bangladesh now has enough national legislative measures to safeguard migrant workers' rights and fight against human trafficking. However, The Acts granted the migrants very few rights and included contradictory rules, which created a chance for those who committed wrongdoing to avoid being held accountable for their actions. On the subject of the accountability of government functionaries, the acts were quiet. Unfortunately, not much work has been done to implement the Acts' requirements. More specifically, the government may not permit emigration for the purpose of obtaining employment outside the country from any port or place other than those ports or places that it specifically designates in a notification published in the gazette. The victims of human trafficking have less power than the traffickers, hence, the lack of enforcement of the Act is a significant problem. Because of this, workers who migrate cannot travel safely. Inadequate education about the Act among lawyers and law enforcement has been a key barrier

to their effective implementation. Human trafficking cannot be stopped by the government alone. To protect the rights and ensure the safety of migrant workers during their journey, it is imperative to mitigate the risk of human trafficking. This requires a concerted effort to support anti-trafficking initiatives and promote safe migration practices. Collaboration among all relevant stakeholders at various levels is crucial in this endeavour. Measures to combat human trafficking and promote safe migration should involve a comprehensive approach. This includes strengthening legislation and law enforcement efforts to identify and prosecute traffickers, as well as raising awareness among migrant workers about their rights and the risks associated with irregular migration.

Furthermore, it is essential for lawmakers to introduce a provision that facilitates greater participation of migrant workers in trade unions, providing them with official recognition. Migrant workers must assert their rights and advocate for the entitlements they deserve within this framework. The government should establish regular monitoring mechanisms to safeguard the well-being of migrant workers, ensuring they receive fair wages, standard working hours, overtime compensation, and a safe and conducive living and working environment, among other essential aspects. Simultaneously, migrant workers should be granted the right to nominate beneficiaries to receive the contributions they have diligently earned. These contributions hold significant value, and it is crucial that their heirs or designated beneficiaries receive them automatically. By ensuring these measures, peace and harmony can be fostered with other nations. The government must uphold international law principles by treating all individuals, both citizens and non-citizens, with equality and fairness. This commitment will contribute to the nation's overall progress and fulfilment of its objectives.

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^{lii} Ridwanul Hoque, Protecting Migrant Workers from Bangladesh: A Study of Legal Compliance with Migrant Workers' Rights, National Human Rights Commission, Bangladesh, p.104

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