



A Critical Review: Legal Redress and Health Services for Bangladeshi Migrant Workers



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OKUP (Ovibashi Karmi Unnayan Program)
A grassroots migrants' organization

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Acknowledgement

This study report is basically prepared based on case studies of migrant workers who received supports and services both legal and health from OKUP and IMA Research Foundation during 2012 under the projects supported by CARAM Asia and Caritas Luxembourg. Some interviews of migrant workers who especially approached to the BMET arbitration for legal redress have also been analyzed for this publication. The study attempts to make out the gaps and loopholes in the existing laws on one hand and the ground practices especially regards to legal redress and health services of Bangladesh migrant workers on the other in order for undertaking necessary initiatives by the concerned authority to ensure better services to the migrant workers.

This is evident that the migrant workers have become important agents for the development of both the countries of origin and destination. In the context of Bangladesh, remittances sent by migrant workers contribute around 13 percent of country's GDP, has increased foreign currency reserve, reduced aid dependency on foreign aid etc. Different studies and researches showed remittances have multiplier effects at micro economy as well. It has increased household incomes of the migrant families, and thereof, broadened opportunities for them to avail of both durable and nondurable goods and services. At local level, remittances in Bangladesh have generated multiplier effects on the economy through creating jobs, spurring new economic and social infrastructure at developments etc.

However, the cases which have been analyzed for this study showed that migrant workers often face difficult hardship in getting proper legal redress and health services both in the countries of origin and destination. In absence of these services, many migrants are forced to lead more miserable life and fall again into the vicious cycle of poverty.

Further protection and promotion of rights of migrant workers especially legal redress and health services both at home and the destination can contribute to maximize further benefits out of migration. Therefore, the findings of this study can assist concerned stakeholders through providing with particular facts and information to review the existing laws and to undertake special measures to make sure appropriate redress and services for Bangladeshi migrant workers.

Shakirul Islam

Chairman

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Context

Many of the Bangladeshi migrants often fall victims to fraudulence, violation of rights during the migration process, in their workplace in destination countries, and even after returning home. The unscrupulous agents/middlemen are very much active throughout the migration cycle. They provide false and fake information to the migrants, charge high migration cost. The less skilled migrants especially the women have no alternative but depending on the middlemen who are unauthorized and remain legally unattainable. The authorized recruitment agents, who are engaged in doing migration process officially, have hardly accountability. In practical, they take no responsibility once the migrants are boarded on the plane. They are not even ready to acknowledge even if the migrants especially women become victimized and abused.

Contrary, precarious conditions in the workplaces sometimes force many of them to return home before expiry of the job contracts. The women migrants, who mostly comprise domestic works, remain more vulnerable to abuses, as they work inside the houses. Amongst many reasons of abuse and exploitation are the explicit exclusion of migrant domestic workers from the labour code in the destination countries that provides hardly scopes of legal redress; the "sponsorship system" put individual employers in a position to exercise extraordinary control over the migrants through confiscating their passports and identity documents, threatening arrest, detention or criminal charges and/or locking domestic workers inside the house. The system provides little to no accountability that would require employers to treat workers with dignity, to pay them on time, or to give them time off from work.

In such a situation, migrants especially the women domestic workers suffer financial, physical, social and psychological damages. The percentage of the total migrant workers facing such damages, however, is difficult to be assessed, but there is no scope of complacency to think it a small figure. During the year 2012, OKUP itself provided assistance with repatriation of 70 victimized women migrants. Other like-minded organizations in Bangladesh have also provided supports and services to significant numbers of victimized women migrants in the same year. Different media has given wide coverage on the plights of women migrant workers who returned back experiencing torture and abuse.

Different sources mentioned several hundreds of women migrant workers have returned home following abuse in the last two years. OKUP-UNDP Report revealed 85% women migrant workers faced both verbal and physical abuse while 20% reported sexual abuse. However, all these reports might be the tip of the iceberg because there is no effective mechanism of documentation of abuses and exploitations the migrant workers face every now and then throughout the migration cycle.

¹"2008: HIV vulnerabilities faced by women migrants from Bangladesh to the Arab countries" the report is published as part of the regional research undertaken by the UNDP in close partnership with CARAM Asia and other development partners

Parvin, a 16 year old girl traveled to Lebanon on 29 April 2011. A local broker had arranged her job through the authorized recruiting agent (Bangladesh Export Corporation, RL-803) at the cost of TK. 70,000 (USD 875). Parvin's age was shown 26 in the passport and her given address was false. Within few days in Lebanon, Parvin's dream turned into nightmares. She realized the reality is so harsh. She couldn't bear all hard works from dawn to midnight, and therefore, used to get beaten. She was not allowed to talk her family even not a single time upon arrival and was not given salary at all. In such a situation, the little girl decided to escape from the house to find another job. She got relaxed when a person listened to her story and assured her find a good job. Unfortunately the man left her on the street in Lebanon in senseless condition after brutal atrocity on her. The medical test report revealed she was raped by a gang of miscreants. Parvin got serious mental trauma and had lost her memory. A local NGO in Lebanon provided her two months medical treatment and kept her in their shelter home. On August 29, 2011, OKUP received her at the airport in critical mental condition when the Lebanon based NGO assisted in repatriation and refer to OKUP. OKUP sheltered her several weeks, provided necessary treatment and counseling until she could remember her home address. Finally she had been able to reunite with her family, but not able to get any compensation neither from the arbitration at the Bureau of Manpower Employment and Training nor from anywhere else!

The violence against migrant women is not only the case for Bangladeshis. Women migrants especially the migrant domestic workers from all sending countries suffer gross violations of human rights. The US-based Human Rights Watch (HRW) report published in 2010 has revealed the common problems the migrant domestic workers face at the workplace. Another report published in August 2008 revealed that 95 expatriate housemaids had died in Lebanon since January 2007 due to tortures and exploitations. The execution of numbers of migrant workers including the case of beheading of eight Bangladeshis as well as Sri Lankan maid Rizana Nafeek in the Kingdom of Saudi Arabia caused huge international outcry. There were many other reports published, but the exact number of foreign domestic workers on death row never comes out since the authorities do not publish official figures.

The cases of victimized women migrant workers shows they return back with no single penny. Many of them found mentally imbalance, physically sick even couple of months later of their return. Sometimes families of the victimized women are not ready to get back them in such a critical condition. Social taboo, stigma and discriminations are also associated to the issue of reintegration of these victimized women.

Not only those who travel overseas face problem but many potential women migrants become victims of deception and fraud by the local brokers. There are many cases women migrants gave money to the local brokers for overseas job placement but they are not sent abroad. This is fact that the migrants manage costs for migration either selling their last livelihood belongings or taking loan with interest.

In such a situation what will happen to them, who will take liabilities of such a fraud? Is there any legal protection for these potential migrants if they are cheated or fraud by the unscrupulous agents? It should be noted that these migrants might have contributed much more to the national economy if they had not been faced such situation.

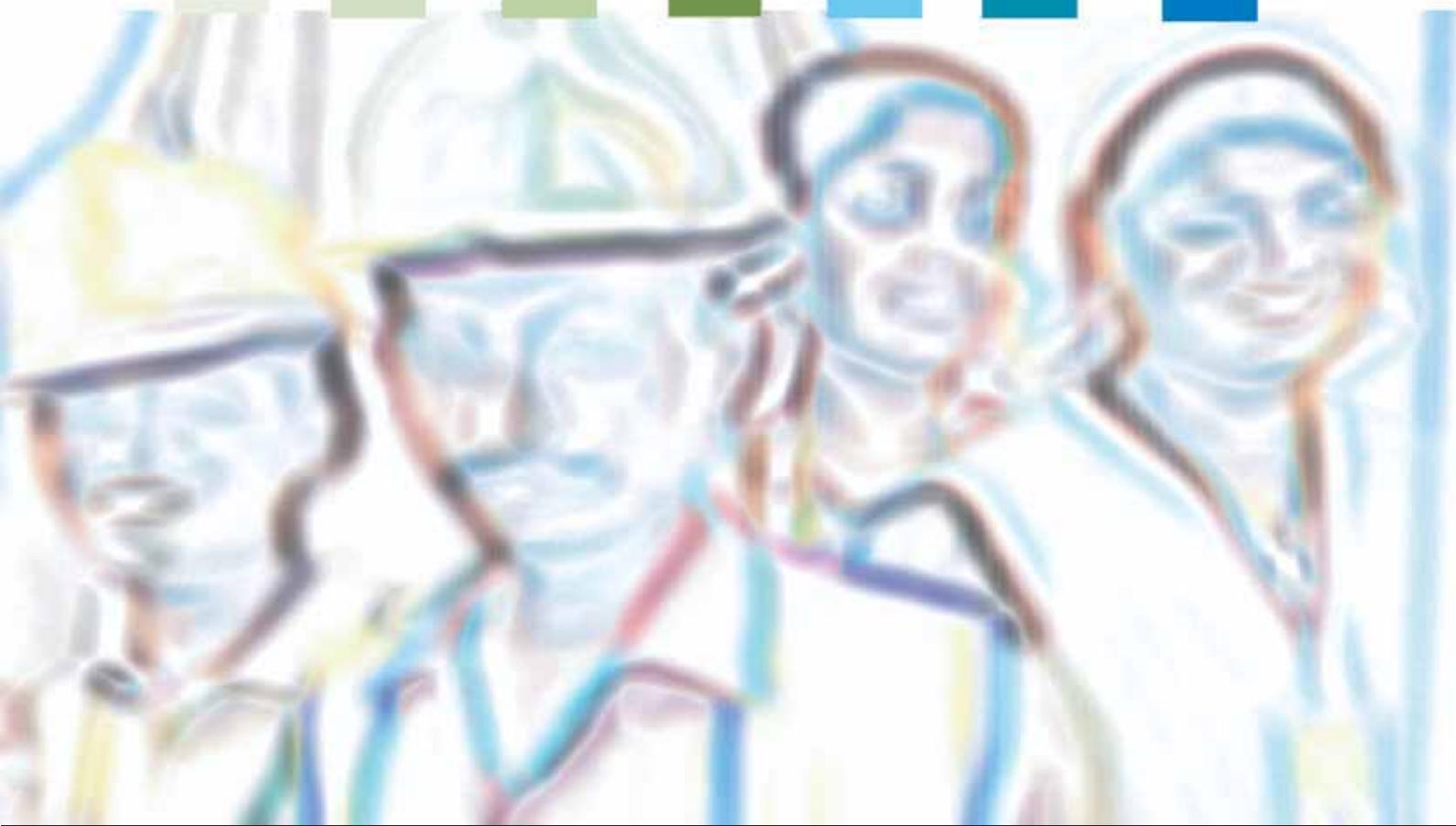
Amatun bibi, 35 years old widow from Narayangonj district started to work as a housemaid in her village to raise her three sons and give a meal for them. Facing harsh reality she decided to go overseas for the good future of her sons. She took a loan of TK. 40,000 (USD 500) on interest and gave it to a local dalal (Sub-agent) to process her overseas job. Dalal cheated her. He turned a deaf ear to Amatun's persuasions and neither would he return the money taken from her even after a year. Meanwhile, interest of her money gets piling up all the time and making burden on her. On filing a complaint with the village leaders and elders arbitration (Shalish) was held. The middleman had promised to pay up her money at the arbitration but he is yet to keep his promise. Seeing a bleak prospect, Amatun is still exploring door to door of the influential persons but

Not only fraudulence, abuse and lack of legal redress is a concern, Right to Health of migrant workers is always denied. Nobody who is rearing crops out of the migration cycle does concern about the health of migrant workers.

The "Bangladesh Overseas Employment Policy 2006" spelled out the necessity of creating awareness among migrant workers about health related issues especially of the HIV/AIDS. The policy also ensured the specific mention of health services in the job contract between the worker and the employer. However, it did not mention any specific regulation for mandatory health checking of the overseas job seekers. The "Emigration Ordinance 1982" had hardly given importance of health rights of the migrant workers. The Code of Conduct of Recruiting Agencies and License Rules (2002) states the recruitment agents must 'arrange the medical examination properly', but there is no mention that guides the procedure of medical testing including HIV/AIDS. In 2008, the concerned ministry has come up with the "Health Check-up Policy for the Out-bound Bangladeshi Migrant Workers" which mentioned all necessary measures to ensure the quality of medical testing. All these have done from the perspective of avoiding any resentment from destination countries in order to maintain the competitive labour market for the Bangladeshi workers not from the perspective of ensuring right to health of migrants.



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Prospect of Labour Migration in Bangladesh

Labour migration has become an inevitable phenomenon in today's globalized world, and Bangladesh is not out of the box, rather it is one of the major labour sending countries in the South and South East Asia.

Bangladesh is a country of 160 million people and is one of the world's most densely populated countries. Despite having steady development, there is still high unemployment. In 2011, the unemployment rate was reported 5%. Other statistics show nearly 2.5 million youths are added into labour forces each year. However, Bangladesh is yet to ready to provide suitable employment to all of these growing labour forces. In this context, an increasing number of people are heading for overseas employment every year with the prospect of a better livelihood for a better and decent life.

The official recruitment of Bangladeshi workers in overseas job started in 1976 with a modest number of 6,078, which has now tallied over eight millions spread across more than 100 countries. Presently the average number of people going abroad for jobs annually is 500,000. Of them, only 2.21 percent are professionals, 31.56 percent are skilled, 13.99 percent semi-skilled and 52.23 percent are less-skilled. Such a large percent of less-skilled migrant workers reflects the weak part of Bangladesh's labour migration.

Amongst the total outflow of migrant workers, majority are men. The migration of women workers in Bangladesh had to face different structural obstacles in the forms of bans and restrictions since the beginning of 1980s up to 2003. There was also lack of appropriate documentation of women migration until 1991. Therefore, the official number of women migration is comparatively low. However, in the recent years more and more women are migrating independently to realize their aspirations, dreams and increase support to their families following the lifting of bans and restrictions in 2003. Data shows that since 1991 to December 2012, a total of 206,525 women workers went abroad. The average flow of women migration between 1991 and 2002 was less than one percent which stood 6.13 percent in the year of 2012. In 2011, the ratio of women migration was 5.38 percent. Compare to the year of 2011, the growth rate of women migration in 2012 was 21.99 percent. Of them, most are employed in domestic work. A good number of them are employed in the ready-made garment industries, and a small number are in the professions like nursing.

More than 80 percent of the overseas employment from Bangladesh takes place in Arab countries in the Middle East, which include the Kingdom of Saudi Arabia, the United Arab Emirates, Kuwait, Qatar, Bahrain, Oman, Jordan, Lebanon and Malaysia. However, Lebanon, UAE, Saudi Arabia, Jordan and Mauritius are the biggest recruiters of Bangladeshi women workers. The deployment of these huge numbers of Bangladeshis in overseas labour market is duly important for Bangladesh economy in many ways.

² CIA World Factbook as of July 2012

³ Personal analysis based on BMET data source

Contributions of Migrants' Remittances to National Development

Over the years, remittances sent by the migrant workers have become the lifeline of the country's national economy. In 2012 only, Bangladesh received a record amount of USD 14.17 billion as remittances from its migrant workers which is around 13 percent of the country's GDP. The steady growth of remittances starts from only USD 2.07 billion in 2001 up to USD 11.00 billion in 2010 and USD 12.01 in 2011.

In the Fiscal Year 2011-12, remittances play a significant role to shift the overall balance of payments reserves from a moderate deficit to a small surplus. The current account surplus increased from USD 885 million to USD 1.7 billion in the Fiscal Year of 2011. Comfortable reserves of foreign exchange have also contributed to overall macro stability and have reduced aid dependency. The increasing amount of remittances helps ease the country's foreign exchange constraint, stabilizing the exchange rate and allowing Bangladesh to import much needed raw materials, intermediate goods and capital equipment.

Migrant workers who send remittances are mostly less-skilled and semi-skilled, and most of them come from poor rural families, making their remitted savings an important means for their families to escape poverty. Different studies conclusively found that migrant families invested more in health and education which is valuable for long-term economic growth and poverty reduction in Bangladesh. Different studies show remittances have considerable contribution to cut the poverty at household level and allow migrants and their families consume more goods and services at community level. This also contributes to improve the socio-economic development through broadening the opportunities in creating jobs and spurring new economic and social infrastructure and services.

Labour Migration Management Regulations and Policy in Bangladesh

Overseas labour migration in Bangladesh is regulated under the Emigration Ordinance 1982 which was inherited from the British Colonial Past Immigration Act 1922. This was transformed into Emigration Rule in 2002 and included the Recruiting Agents Conduct and License Rules and Wage Earners' Welfare Fund Rules. These Rules however mostly covered the provisions of the Emigration Ordinance 1982, and focused on the procedural aspects of emigration rather than the promotion and protection of the rights of migrant workers. Numbers of shortcomings of the ordinance in the current context have not been effectively considered. Most importantly, the concerned Ministry of Expatriates' Welfare and Overseas Employment has already taken initiative to revise the Ordinance and make a new law.

⁴The World Bank Economic Update, October 2012

⁵Islam. Shakirul: Study On Relation Between Contribution Of Migrants To Development And Governments' Budget Allocation For Protection Of Migrants: OKUP-CARAM Asia,

⁶Remittances: Impact on migrant workers' quality of life: CARAM Asia, October 2010

However, the Government of Bangladesh adopted the "Bangladesh Overseas Employment Policy" in 2006 considering the great contribution of migrant workers to the national economy. The policy asserts that the government shall remain vigilant in ensuring and protecting the rights and privileges of migrant workers as per the labour laws of the host country and ensure protection of their universal human rights and social securities. This includes the protection of both economic and social identities of migrants. The key issues of the policy include: abolition of any scope of irregular migration; protection of migrant workers' rights; social security of migrant workers and their families; monitoring and accountability of recruiting agencies; improved use and transfers of remittance flows; assistance for returnee migrants and effective resource allocation for the institutions of migration.

Surprisingly, neither the Emigration Ordinance nor the Overseas Employment Policy has taken into account the prevailing patriarchal attitudes to women migration; rather successive governments had imposed different forms of bans and restrictions on women migration during the period between 1981 and 2003 which put women migrants in more vulnerable situation.

The "Emigration Ordinance 1982" had hardly given importance of health rights of the migrant workers. The "Bangladesh Overseas Employment Policy 2006" spelled out the necessity of creating awareness among migrant workers about health related issues especially of the HIV/AIDS. The policy also ensured the specific mention of health services in the job contract between the worker and the employer. However, it did not mention any specific regulation for mandatory health checking of the overseas job seekers. Only a clause of the Code of Conduct of Recruiting Agencies and License Rules (2002) states the recruitment agents must "arrange the medical examination properly", but there is no mention that guides the procedure of medical testing including HIV/AIDS. The National Policy on HIV/AIDS and STD has directive guidelines on HIV testing that mentions protecting the rights of all those who have undergone testing or will go through testing in the future. However, there is no mention on how to protect the rights of the migrants who are denied work permits if they are found with HIV/AIDS and STD. In 2008, the Ministry of Expatriates' Welfare and Overseas Employment of Bangladesh framed a policy entitled "Health Check-Up Policy for the Out-bound Bangladeshi Migrant Workers" which mentioned all necessary measures to ensure the quality of medical testing. The provisions of the policy indicates appropriate health check-up of the outbound migrant workers from the motivation of avoiding of any resentment of destination countries over the screening process in order to maintain good reputation in the competitive labour supply market, but not to ensure the health rights of the migrants.

Apart from those, Bangladesh government has MOU with several countries to deal with the recruitment procedures. These MOUs are triggered from the perspective of promotion of migration, therefore, has scarcely focus on the legal and health rights of the migrant workers, in particular the women migrant domestic workers.

Who does care for us as Human beings?



Legal Redress Mechanism for Bangladeshi Migrant Workers

The treatment of migrant workers in destination countries especially domestic workers or maids has been a long standing issue. Local laws in most of the destination countries exclude domestic workers denying them rights guaranteed to other workers. Moreover, the sponsorship (kafala) system ties the workers to their employers leaving the employer's complete control over the workers' ability to change the job or to even leave the country. Combined with the lack of legal rights, the weak legal infrastructure has made access to justice remote for the migrant domestic workers. Many migrant workers have no way of defending themselves due to lack of access to lawyers and translators. Entire trials are conducted in local language of the destination country. Lack of proper investigations and legal proceedings allow abusers to escape justice whereas the poor migrants have to pay a lot.

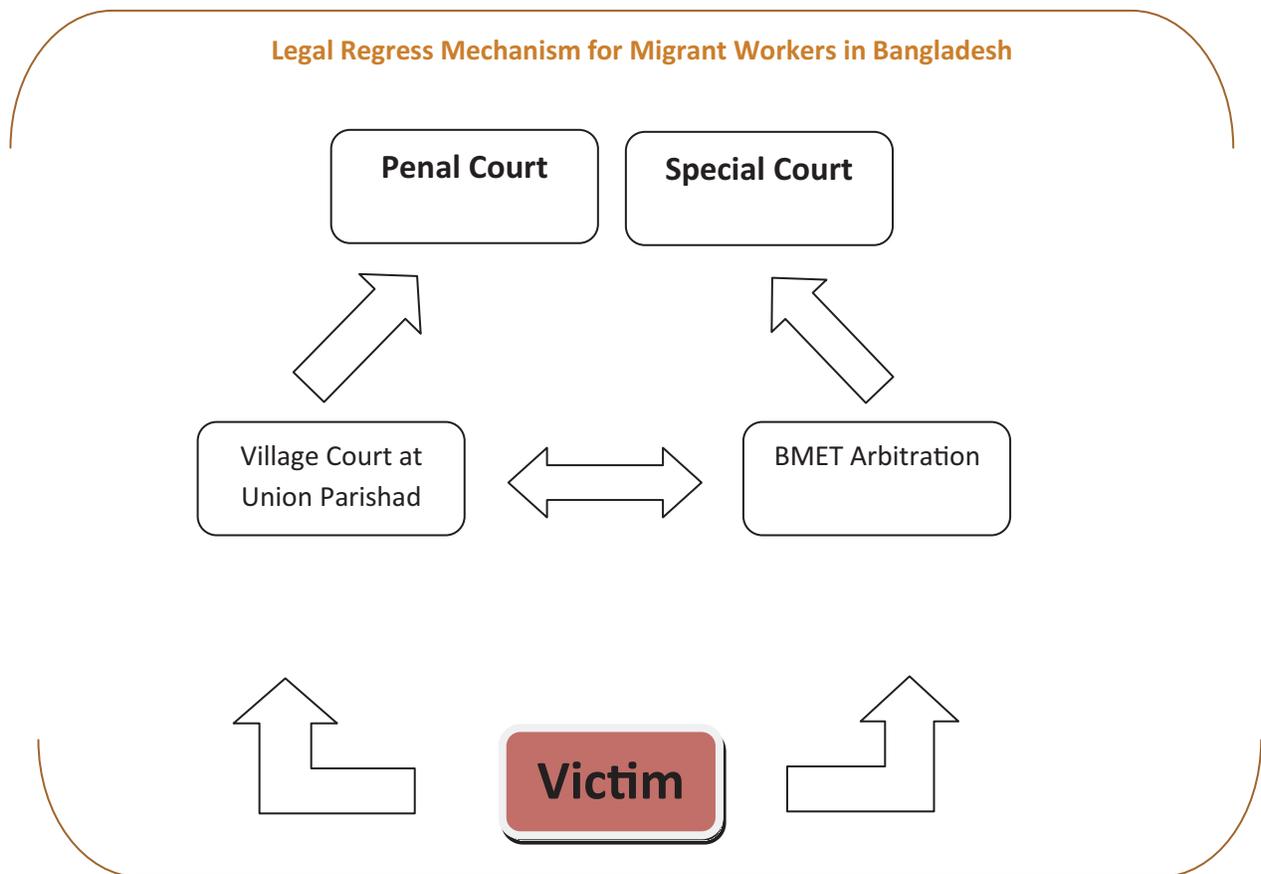
To deal with this situation, Bangladesh government has opened 19 Labour Wings at Bangladesh Missions in the major labour concentrated destination countries and appointed labour attaches to provide services. However, there are still gaps in required human resources and welfare staffs in the Labour wings to deal with migrants' cases appropriately. There is poor budgetary allocation to appoint lawyers and render necessary welfare services. The Wage Earners' Welfare Fund Rules 2002 contains provision of allocation of money to provide legal aid to the wage earners but it has little implications on the ground. Therefore, many migrants, in particular the women domestic workers face hardships in getting proper legal redress and compensation in the case of any rights violation.

In the context of legal redress back home in Bangladesh due to fraudulence, deception, negligence or violation of rights of migrants, the Emigration Ordinance 1982 has provisions that include penalty for contravention of agreement (Clause 24); recovery of expenditure from recruiting agents for repatriation of migrant worker (Clause 25); establishment of Special Courts for trial of offences (Clause 26); punishment for fraudulently inducing to emigrate (Clause 21), receiving money for providing foreign employment (Clause 23), unlawful emigration (Clause 20); power to withdraw recruiting license (Clause 15), cancel, suspend and forfeit security of recruiting agents if they are found to be violating the law and its rules.

However, the penalty for unlawful emigration is very minimal- one to five year imprisonment with a fine not exceeding taka five thousand (USD 62 approximately). Unfortunately, there is no specific provision of appropriate compensation of migrant workers who become the victims of unlawful emigration, or contravention of agreement either by the recruitment agents or the employers, or because of abuse and exploitations happened to them. Rather, the Ordinance has the provision of penalty of individual migrant workers if they abandon their employers. The Ordinance does not take into account the actual circumstances of the causes behind the incidence of run away or breach the contract by the migrant workers especially women domestic workers.

Loopholes and Challenges in Legal Redress Mechanism

Within the purview of the Emigration Ordinance 1982, the aggrieved migrant workers can access to legal redress in two means - (1) Special Court and (2) Arbitration at the Bureau of Manpower Employment and Training (BMET). Apart from that the aggrieved migrants or their families can seek justice in the Criminal Court on one hand, and the village court on the other.



Special Courts

The Emigration Ordinance has a provision (Section 26) that the government may establish as many special courts as it considers necessary for trial of offences under this ordinance. It consists of a person who is the chairman of a labour court established under the industrial Relations Ordinance, 1969. The special court shall take cognizance of, and have jurisdiction to try, an offence punishable under this ordinance only upon a complaint in writing made by such person as the government may, by a general or special order, authorise in this behalf. A special court trying an offence under this ordinance shall try such offence summarily and will follow the procedure laid down in the code of criminal procedure, 1898 (Act V of 1898) for summary trial.

According to BMET, on 11 April 1983, the government by a notification of the Ministry of Labour and Manpower set up four Special Courts in Dhaka, Chittagong, Khulna and Rajshahi. Subsequently, on 25 March 1985 through an order, the government authorized the director general of BMET, managers of Employment Exchanges and Assistant Director of District Employment and Manpower Offices to make complaints to the Special Courts. In fact, such special courts that have the authority to have investigation done by the police and where migrant workers, with authorization of the BMET, can appoint lawyer on their behalf, are a much better system for legal redress. Ironically, this has no implication on the ground. Although there is no correct statistics available in terms of cases filed and or settled at the special courts, but the BMET sources confirmed very few complaints made to the special courts till the date, but fates of those are not known. Such a situation is enough to explain how poorly the legal redress mechanism of the migrant workers is being run.

Arbitration at the BMET

Under the ordinance, there is Emigration Rules 2002 that is used in settling the complaints filed by the aggrieved migrants who face economic and other losses due to violation of rules or negligence either by the recruiting agencies, employers or even the Bangladesh mission abroad through "Arbitration". On settling the complaints, The Emigration Rules 2002 says - the Registrar (BMET) will arrange investigation into the complaints against recruiting agencies or emigrants; Emigrant or recruiting agency representative will be present in person during the investigation; and the Registrar, if necessary, can send a copy of the investigation report to the police or the court.

This rule does not specify the procedures of the investigation and timeframe. However, the citizen charter says the BMET would appoint investigation officer, hold hearing, prepare the report and send it to the Expatriates' Welfare and Overseas Employment Ministry within 30 days from the day of receiving the complaint for the final decision. In reality, this procedure often results in sheer delay in investigation as well as realization of the compensation money. In many cases, the complainants do not get the compensation. In 2012, a total of 460 complaints were made to the BMET. Of them, 307 were established and 212 settled. Analysis of complaints' cases reveals how the migrant workers, who are already deceived and denied rights and dignity, become victims of the "arbitrary" legal redress mechanism. The challenges in the Arbitration are as follows:

Unjustified Compensation in the Arbitration

This could be explained by the example of Josna Begum, a female worker who was forced to return home from Abu Dhabi, UAE following physical abuse and non-payment of wages by her employer. She complained to the BMET on March 13, 2011 for compensation and actions against the recruiting agency, TM Overseas, which arranged her migration, but did not take care of her phone calls when her employer tortured her. After three months of submitting the complaint, the BMET set the date of hearing and gave a verdict after nine months. The recruiting agent, TM Overseas pays Josna Begum TK 20,000 (USD 250) despite her claim that she paid TK 70,000 (USD 875) as migration cost to them, and she had a good amount of interest on the money she borrowed for going to Abu Dhabi. The Bureau's justification here is that the government-fixed rate for migration of the household workers is Tk 20,000 (USD 250), and so the compensation money should be the same. A great question, however, remains what happened to the social, psychological and physical damages to her. Following a failed migration, the poor women become helpless. Only TK 20,000 (USD 250) after nearly a year of complaining is not of much help to her and many others facing similar or even worse conditions.

No provision of appointing a Lawyer/representative in favour of migrant workers

According to the Rules, the migrant worker in person has to be present in front of the investigator during the arbitration. There is no provision for the migrant to bring a lawyer or a representative to speak on his or her behalf while the recruiting agent can send his representative for the hearing. Many of the migrant workers, who mainly come from the rural areas, and are not so confident in front of the officials; in many cases, they don't have proper evidence as well. Taking the advantage of helplessness of the migrants, the recruiting agents often swindle them again. There are allegations that oftentimes the recruiting agencies delay for indefinite period of time in giving the compensation settled at the arbitration. During that time, the recruiting agents contact the workers and offer lump sum amount even less than the settled amount. There is no precedence of any punishment of the recruiting agents if they do not pay any compensation to the migrants even after the settlement in the arbitration.

Unequal Treatment with Migrant Workers in the Arbitration

The arbitration authority can declare one-sided verdict if any party is not present at right time, but the reality is different when the representative of the recruiting agency attends late. Even, there is no sitting arrangement for the victimized migrant workers during the arbitration hearing whereas seats are arranged for the recruiting agency representatives. The unequal treatment of migrant workers in the arbitration is a sheer discrimination. Such an unfair deal makes unfriendly environment for the aggrieved migrants, treats them as culprits not the victims, and contributes to decrease their morale. The recruiting agents take this advantage and try to impose their own guilty on the migrants. There is an allegation that sometimes the arbitration officials favour the recruiting agents, not the poor and aggrieved migrants. Sometimes, they encourage the migrants to sign on a stamp stating that they have received the compensation in full, although it is not. All these happen because the migrants who are, in general, from poor background having no or little education and are capable to establish their complaints properly.

Improper Investigations and Actions

Rafiqul Islam's case is one of many examples to explain how weak the investigation system of the BMET arbitration is. On January 31, 2010, he filed a complaint to the BMET against Uttara Overseas. His allegation was that Uttara Overseas had sent him to Iraq with fake visa via Dubai Airport. After arriving in Iraq, he was provided a job. He had to work 16 hours a day without any pay. After six-month stay in Iraq, he managed to return home. After the complaint, the BMET held six hearings and gave a verdict that Uttara Overseas did not do anything wrong and that Rafiqul Islam will not get any compensation.

Rafiqul Islam then filed a complaint to the police headquarter in Dhaka. Police investigation later found that Uttara Overseas used fake visa and passport to send Rafiqul to Iraq. With one passport and visa, he was sent to Dubai, and with the PC passport and fake visa he was sent to Iraq without arranging any legal job. A nexus of transnational manpower brokers is found in Rafiqul's case. With that police report, Rafiqul Islam again appealed to the BMET seeking compensation. The BMET reinvestigated on the basis of police findings and asked Rafiqul to compromise in exchange for TK 50,000 (USD 625) with the recruiting agent. Rafiqul did not agree, and so BMET did not do anything. Rafiqul spent a total of TK 300,000 (USD 3,750) for a job in Iraq, but up until now the Manpower Bureau could not help Rafiqul get back the compensation.

Rafiqul had filed a civil case under sections 420 and 406 of the Code of Criminal Procedure (CrPC) in 2010. In that case, only a village broker was sentenced to 18 months of jail. Rafiqul did not get any financial compensation. If Rafiqul now wants to sue Uttara Overseas, he has to do it under 420 and 406 sections of CrPC, as the Human Trafficking Act did not come into being before 2010 when Rafiqul was sent to Iraq. The BMET is also not suggesting Rafiqul to file complaint under Penal Code.

Unjustified Compromise

The security deposit of the recruiting agents to the government is not enough. This sometimes causes unjustified compromise if the recruiting agents deny paying the compensation on the ground that their license has been cancelled. The gravity of the issue could be explained by an example. In response to the complaints by 21 migrants who had to returned home for having no jobs in Romania, BMET conducted hearings and found the complaints true. Accordingly, it gave a decision that all of them are compensated. The amount required for this compensation was TK 2,216,000 (USD 27,700). However, the Al-Abbas International, which was responsible for compensation, did not pay it despite receiving repeated letters from the BMET. Finally on February 10 in 2011, the Expatriates' Welfare and Overseas Employment Ministry cancelled the recruiting agency's license and ordered that the security money, which is TK 450,000 only (USD 5,625), will be shared equally among the 21 affected workers. Such a practice of compensation is nothing but farce in the name of justice.

Non-compliance of the settlement in the Arbitration

There is no specific provision regards to non-compliance of the arbitration settled at the Bureau of Manpower and Employment. The instance of such a situation can find from the case of the "5 aggrieved migrants (Kamrul Islam, Belal Hossain, Mohammad Enamul, Mohammad Momin and Mohammad Suruj)" which was filed at the arbitration on May 15, 2011. The victims urged that the recruiting agency - Al Wasi International - sent them to Singapore in June 2008, but they did not have any job for a year. For the next one year, they were employed on irregular basis, but were not paid properly. Food and accommodation were also very poor. They were beaten if they would demand better jobs and wages. On return, they demanded compensation from the agency.

On September 14, 2011, the BMET settled that Al-Wasi International would compensate each of the workers with TK 84,000 (USD 1050), but the agency did not comply with the order. The five workers again applied to the BMET to get their compensation. On January 26, 2012, the BMET again asked the agency to pay the money but the agency paid a deaf ear. The ministry came up with the warning that the agency license would be cancelled unless it compensates the affected migrants. Two warning letters resulted in no change in the mind of the agency. The case was dropped finally.

The irony is to be noted here that migrant workers cannot file cases in the regular court against the recruiting agent when a complaint is made to the arbitration, but a recruiting agent can go to the court disapproving the verdict of the arbitration at the BMET and the ministry concerned. This is a big discrimination in terms of availing justice for the workers. Such a situation is much more distressful for the women migrant workers who usually come from remote villages and are from the very low educational background.

Penal Courts

The justice in the penal code, on the other hand, is not easily accessible all the time for the victimized women migrants. In absence of legal support services for migrants and the prevailing loopholes in the law, perpetrators always get advantages. For example, the notorious Idris Ali, a gang leader of a traffickers' ring in Munshigonj district, got bail from the court and been threatening to the victims - Fulmala, Halima and others. What happens when the public prosecutor takes side of the culprit on his vested interest; what happens when people are afraid of giving witness against the culprit; what happens when the migrants have hardly documents to produce before the court? What is the monetary compensation in this case?

Village Court or Shalish

The migrant workers might seek redress from the village court or Shalish. In general, the brokers and the middlemen themselves are powerful or they maintain close relation to the influential quarter in the society; contrary the migrants especially the women who come from the marginalized groups having little or no education, no money and power as well. In such a situation, the decision of the village arbitration committee often goes in favour of the influential and powerful members who dent to rule over such committees. The deprived migrant women workers get hardly redress from such the redress mechanism. The other limitation of the village court is the ceiling of the amount up to Tk. 25,000 (USD 315) that is authorised for setting down.

Does anybody Care for OUR HEALTH?



Loopholes and Challenges in Legal Redress Mechanism

Although migrant workers play the vital role in the development of both the countries of origin and destination, Right to Health of Migrant Workers is always denied. Nobody who is rearing crops out of the migration cycle does concern about the health of migrants.

In Bangladesh, there is a sheer lack of adequate policy on how to protect the rights of migrants' health. GAMCA (Gulf Approved Medical Testing Centres Association) policy on medical testing is something that is prescribed by the six GCC countries to meet their objectives. Though Bangladesh started supplying migrant workers to the Middle Eastern and later to the Southeast Asian countries in 1976, the government has not been able to frame a strong regulation in last four decades that protects migrants' rights while going through medical tests throughout migration cycle. The 2008 "Health Check-up Policy for Out-bound Migrant Workers" has been halted due to intervention of GAMCA on the grounds that the policy was against its constitutional right. While health rights of many of 8.3 million migrant workers is being denied every now and then, authorities have not been able to activate the policy and move forward yet.

Again, when some of the countries require mandatory health insurance for issuance of work permits, it is not known if Bangladesh has any such condition in the MOUs that the employers must pay standard premiums to have a standard coverage of health services; nor the Bangladesh government has taken any effort to ensure an international health insurance for each and every migrant worker before their departure. Discrepancies in health insurance sector, as seen in the case of Malaysia that asks the migrant workers to pay premiums, only contributes to the increase in health risks of the migrants. In the case of Arab countries, the low premium insurance given by the employers especially in the case of women domestic workers does not give any standard coverage. Lack of knowledge and education of migrants in regards to health insurance also deprive them of the services.

Meanwhile, as a lot of irregularities take place every now and then in overseas recruitment process, especially with the involvement of large number of illegal brokers. The recruitment agencies generally do not negotiate with the employers for better pays and facilities, let alone health insurance. In many cases, the agencies or the brokers are more than happy just to arrange a job. More jobs mean more business for the recruiting agencies and the local brokers, but are detrimental from migrants' rights perspective unless migrants' rights are not protected in the job contracts. On the other hand, poor living condition, unbalanced food, unfavorable working state etc. lead to a situation where migrant workers in the destinations often remain vulnerable to health risks. Social exclusion, stigma, low wage, living away from the families for long, high expectation of family members etc. also contributes to health causes of migrant workers.

In the cases where the migrants are deported for medical unfitness, there is no legal binding for the employers to pay compensation. Medical testing centers, even if found out providing wrong health reports, are not held responsible or made to pay compensation. In the cases of GAMCA, for wrong diagnosis, the medical centers are to pay fines to the GCC, but there is no provision of compensating the affected migrant workers. Thus, the migrant workers facing medical unfitness suffer huge social and financial losses. Measuring such the losses and the number of affected migrants require further investigations.

Different research, studies, report show number of migrants are forced to return home only on the ground that they become "medically unfit" when they undergo medical test in the destination country either upon their arrival or during the visa renewal process. There is, however, no record of the number of such workers. According to a data of Bureau of Manpower Employment & Training (BMET), only during January and August 2009* a total of 16,405 workers were sent back home on various grounds. But, the reasons of deportations were not mentioned. The IOM situation assessment Study 2009 showed 4.5 percent of the migrants returned home due to being termed "medically unfit", in fact, most of migrants are not informed by testing centres about their diseases diagnosed.

A database of 42 migrant workers which is maintained by OKUP during June-September 2012 period shows 31 percent returned migrant domestic workers have been facing different forms of physical complications including pains in the joints, ear, neck, lower abdomen etc. that developed in their body only because of physical torture by their employers. Around 30 percent of them reported that they had been suffering from complications like heart problem, waist pain, weakness, fever, headache, eye problem etc. due to overloaded work and insufficient food; whereas 10 percent migrant domestic workers faced workplace injury and consequent difficulties including paralysis either in hand or in leg. Most importantly, 5 percent returned migrant domestic workers found mentally sick amongst them somebody had lost their memories as well. On the other hand, some 14 percent migrant domestic workers reported they were sent back home because they were found Hepatitis B+ in their blood while only 2 percent of them found HIV infected. It is to mention that data from National AIDS and STD Programme (NASP) in 2011 showed among the reported HIV/AIDS cases, around 60% are returnee migrants and/or their spouses and children.



I used to work as a pipe pasting labour in a Malaysian factory as a thriving migrant worker. I was good at work and earning better. Once I had experienced a massive attack by some miscreants on my way back home from the work place. I got seriously injured. I had to get lost my both of hands because of the injury. Company arranged everything to send me back home. I didn't get compensation. I was the only bread earner in my family. Now I am unable to work. My dream fed away. I am leading a miserable life.

* "Situation Assessment on HIV preventive education and services for the labour migrants" IOM, 2009, Shakirul (Unpublished)

The number of deaths of migrant workers abroad has been increasing exponentially since 2004. In 2008, the number of dead bodies transported home was 2,237, which had been 1,673 in 2007, 1,402 in 2006, 1,248 in 2005, and 788 in 2004. In most of the cases, the autopsy reports mention "Cardiac Arrest" as the major cause of the death. There is also workplace accident, road accident, suicide claim etc. There is a big question why many of the workers aged between 25 and 40 should die especially due to so-called "cardiac arrest" while they were medically fit during the medical test each year for visa purposes. Why the women migrants like "Monoara" would choose the path of suicide only within 10 months of her expatriate life when she headed for making a better earning for a better living of her four children!!

Surprisingly, no further investigation or autopsy is done upon arrival of the death bodies. However, it is much more tragic to get compensation from the Welfare Fund in the case of death of migrants. Sometimes, Bangladesh Mission takes prolonged delay to investigate whether the family of a deceased migrant gets any compensation from the employer or not. In addition to that, the legal bindings of proving guardianship from the family court, inherent bureaucracy and corruption within the system itself make the whole procedure very complicated.

Monoara, a Bangladesh woman went to Lebanon in January 2008 but she died on 28 October 2008 and her dead body transported home on 31 December 2008. The post mortem of Monoara's dead body was done in Lebanon, and the report said "Monoara Begum died on the 28th October 2008 around 07:00H a.m. consecutive to falling from an altitude which caused severe fractures of the cervical vertebrae and fractures at the upper limbs, the thorax, the basin and the legs. Death immediately occurred upon the stopping of the heart and the lungs consecutive to severe wounds." During the investigation the employer claimed Monoara jumped from the balcony and died.

After four consecutive years' repeated hammer from the BMET, the Bangladesh Embassy in Jordan (since there is no Bangladesh Embassy in Lebanon) finally in May 2012 confirms Monoara's investigation report was perfect, and accordingly Monoara's family would not get any compensation from the employer.

Now Omar Ali needs to give a proof of guardianship of his four minor children, and has to provide with Indemnity Bond. For the Guardianship he has to file a case in the Family Court and has to go a long way further to get Taka 100,000 (US\$ 1250) as death compensation of his wife who was a migrant domestic worker in Lebanon.

Omar Ali regretted saying "the government is always happy to receive Dollars from the poor migrants; but never cares of the difficulties we face daily. Who will understand my condition? Who will realize the sufferings of my children? To whom I would appeal to change the situation?....."

In such a circumstance, who should take care of the health of migrant workers - is the governments of the countries of destination or the origin or both? Or the migrants will only be considered as the money making tools and would be thrown away just after stopping their contributions to the development of each country of origin and destination?

Policy Recommendations

The "Migrant Workers and Overseas Pilipino Act of 1995" treats the fraudulence practices against the migrant workers as economic sabotage against the State and redressed accordingly. Bangladeshi migrant workers have substantially been contributing to the national economy through remittances since 1976. The Bangladesh Overseas Employment Policy aims to protecting the economic entity, mentioned that the government will ensure recognition and protection of social identity of the migrants. The policy also ensures protection of universal human rights and social securities of migrant workers. However, there is still huge gap between the policy and the ground reality. The Recruiting Agency's Code of Conduct and License Rules, 2002 has given responsibility to the recruiting agencies to maintain a fair process of labour migration; take care of the migrant worker while working abroad; contact the employers in any problem if arises, contact the Bangladesh missions and request it to take up the issue and address the problems if it goes beyond the capacity of the agent. On the other hand, the BMET, which is the regulatory authority of labour migration sector, is responsible to enforce the laws and regulations. While the sector is mired with a lot of malpractices of various forms, and complications, neither the regulator nor the business sector seems serious enough in playing their roles in due manner.

In regards to the health rights, the structural inequalities, differences in culture, language and locations experienced by migrants have a significant impact on their overall health. Therefore, migrant population, who are essential part of labour-receiving countries and the economies of the countries of origin, require special healthcare services for better productivity.

Existing literature on migrants' health, regulations or absence of appropriate regulations of the countries of origin and destination, social and legal inequalities - all suggest that the migrant population who are healthier before their departure become less healthy during the post-migration period. People move from one country to another to improve their living, but deterioration of health (whose percentage is to be determined), instead, goes against the very objective of migration. This particular issue requires wider national, regional and global attention for finding ways out to address health challenges of the migrants.

To improve the legal redress mechanisms, and health services of Bangladeshi migrant workers, some recommendations are put forward for incorporation in the laws concerned.

Recommendations Regards to Legal Redress

- The Emigration Ordinance 1982 should be amended in a manner that the BMET has a separate arbitration cell comprised of officials with sound knowledge on migration-related laws and rights. District Employment and Manpower Office should be made functional and used as a support service in this regard.
- Complainants should have the right to appoint lawyers to speak on his or her behalf. Settlement of a complaint should not take more than three months.
- The Special Courts should be made functional and can be treated as the higher court. If any complainant is not happy at the verdict of the arbitration authority, they can go to the Special Court. In this case it is not necessary that they are authorized by the BMET. The BMET rather should provide legal aid in this regard.

- Loss of complainant's health, time, social dignity and financial damages should be considered in fixing the compensation money. The amount should be such that the complainant can recover his or her socio-economic status.
- It is not enough to declare a verdict and direct the recruiting agencies to pay the compensation. Rather, there should be provisions that the recruiting agency pays the compensation to the arbitration cell's accounts, which will distribute the compensation to the complainants.
- The practice that security money of the recruitment agency is shared among the complainants if the recruiting agency does not pay should be abolished. The Law should have a provision that the recruiting agency's properties would be confiscated if it does not pay the compensation in time.
- The BMET should have an accommodation to provide temporary shelter at minimal cost for the complainants who need to come to Dhaka and stay for a day or two to attend the hearings.
- The provision that the BMET sends the investigation report to the ministry for final decision should be cancelled. Instead, there should be a monitoring committee comprised of officials from the ministries of expatriates' welfare, civil aviation, home, immigration police, BMET and migrants rights groups to oversee the arbitration process. The committee will meet quarterly to monitor the arbitration status.
- BMET should publish an annual report on arbitration; successes and achievements and ensure its transparency.
- If there are human trafficking elements in the complaints, the BMET arbitration cell would refer the case to be filed under Anti-Human Trafficking Act. BMET should extend legal aid to the victims in this regard.
- BMET should have online database system on the status of the arbitration so all concerned can see it whenever required.
- In the cases of sexual exploitation, physical tortures, labour attaches can file cases in regular courts of the destination countries. For this, however, the Bangladesh missions should have strong legal aid officials.

Recommendations Regards to Health Services

At Pre-departure Stage

- The first and foremost task of Bangladesh is to constitute a national taskforce on migration health comprised of the representatives from the ministries of health, expatriates' welfare, foreign affairs, home affairs, BMET, police department, representatives of migrant NGOs and experts on migrants' health. The ministry of expatriates' welfare will lead the team. The taskforce will first identify the health challenges of migrants and their families and make suggestions on the measures the government should take.
- On the basis of finding health challenges, it will revive the Medical Testing Policy for the Out-bound Workers-2008 and make necessary changes required and get it approved by the cabinet, and if needed, by the parliament.

- Diagnosis of the aspirant migrants should be standardized in line with World Health Organization to make sure that they are not deported once they arrive in destination countries. Bangladesh should negotiate the GCC countries in this regard.
- Bangladesh should not allow enlistment of any specific number of medical centers for conducting medical tests of any particular country; rather introduce grading system of diagnostic centers on the basis of the standards and facilities of the centers. The Director General of Health Services will maintain the list of different graded diagnosis centers and make their grades public. The government will allow aspirant migrants to go to certain graded medical centers for medical tests. As a result, the medical centers that do not attract overseas jobseekers will upgrade their standards.
- There should be regulations that the sensitive tests like HIV/AIDS will be conducted only after counseling with the aspirant migrants.
- BMET will arrange comprehensive pre-departure orientation on health issues, cautionary measures at the destinations, health facilities and their rights.
- There should be rules stating high amounts of penalty if any medical centers conduct wrong tests. If any migrant worker is deported after arriving in the destination, the wrong-doer medical center will also pay compensation for financial, social and health costs.
- Pre-departure medical tests should not be used as tools to prevent workers from migrating, but to help them cure from diseases, if any.

At the Destination

- The government should recruit health officials at the Bangladesh missions to look after the health of the migrants. They will not be meant to look after only healthcare, but to deal with legal matters relating to health in the cases where employers do not comply with the laws. For example, the official will help the workers claim compensation in the cases of occupational injury or claim health insurance facilities. The official will also look after the cases where workers are diagnosed with medical unfitness. In those cases, the official will, in need, get their tests done for the second time. If found really unfit, the official will refer the cases to the authorities in Dhaka for claiming compensation from the medical centers responsible in Dhaka.
- Health officials will visit labour camps or the areas with concentration of Bangladeshi workers to learn of their medical problems and claim healthcare from the employers, in need.

Upon Return

- The government should keep records of the migrant workers who return home for being medically unfit and accordingly realize the compensation from the diagnostic centers for the affected workers.
- If any migrant is diagnosed with HIV/AIDS, they must be provided with medical care and rehabilitation facilities provided by the health department or other NGOs in Bangladesh.

Ovibashi Karmi Unnayan Program (OKUP) is a grassroots' migrants' organization. It is registered with the NGO Affairs Bureau, The Prime Minister's Office, The People's Republic of Bangladesh. OKUP operates on the principle of human rights first based on substantive equality and non- discrimination. OKUP believes in centrality of migrant workers and flagging the migrants' voice for the promotion and protection of rights of migrants in all stages of migration. OKUP interventions include pre-departure information, training and services; assistance in return and reintegration through shelter, counseling, legal aid, medical support, economic reintegration etc. Among other significant activities are empowerment of migrants, left-behind families and communities through unity, capacity building and leadership, and also research and advocacy in order of flagging migrants' voices and perspectives in the concurrent migration discourse.

Over the years, OKUP has developed close collaboration with different donor organizations home and abroad including UNDP, IOM, UN Women, Open Society Foundation, Caritas Luxembourg, Bureau of Manpower Employment and Training (BMET), CARAM Asia etc.



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