

DISSERTATION

ON

***Overseas Workers: Their Rights and Role of International
Organizations.***

Course Title: Supervised Dissertation.

Course Code: Law 406.

Submitted To:

Mohammed Shahjalal,

Senior Lecturer,

Department of Law,

East West University.

Submitted By:

Name: Syeda Sadia Afreen,

ID: 2016-2-66-036,

Department of Law,

East West University.

Date of Submission: 14.09.2022.

Total Words: 6809 Excluding Footnotes and Bibliography

Consent Form

The dissertation titled “ OVERSEAS WORKERS: THEIR RIGHTS AND CHALLENGES”

Prepared by Syeda Sadia Afreen, ID: 2016-2-66-036 submitted to Mohammed Shahjalal for the fulfilment of the requirements of Course 406(Supervised Dissertation) for L.L.B. (Hons) degree offered by the Department of Law, East West University is approved for submission.

Signature of the Supervisor

Date:

Table of Contents

List of Abbreviation.....	6
Abstract.....	7
Declaration.....	8
Acknowledgment.....	9
Literature Review.....	10

Chapter one

Introduction

1.1 Introduction.....	11
1.2 Research Questions.....	12
1.3 The Objective of the Study.....	12
1.4 Methodology of the Study.....	12
1.5 Scope of the Study.....	13
1.6 Limitations.....	13

Chapter Two

Overseas Workers: Who, Contributions, Legal Frameworks of Asian and Middle Eastern Countries.

2.1 Definitions.....	14
2.2 Contributions.....	15
2.3 Legal Frameworks of Asian and Middle Eastern Countries.....	15-16
2.3.1 Laws of Malaysia.....	16
2.3.2 Laws of Japan.....	16
2.3.3 Laws of Jordan.....	16-17
2.3.4 Laws of Saudi Arabia.....	17
2.3.5 Laws of United Arab Emirates.....	17

Chapter Three

Legal Frameworks of Developed Countries

3.1 Introduction.....	18
3.2 Laws of United States.....	18
3.3 Laws of Germany.....	18-19
3.4 Laws of Sweden.....	19
3.5 Laws of Italy.....	19
3.6 Laws of Canada.....	19

Chapter Four

Legal Frameworks of Bangladesh

4.1 Introduction.....	20
4.2 Laws of Bangladesh.....	20
4.2.1 Constitution of Bangladesh.....	20
4.2.2 Overseas Employment and Migrants Act.....	21
4.2.3 The Expatriates Welfare and Overseas Employment Policy.....	21

Chapter Five

International Legal Frameworks and Role of International Organizations

5.1 Introduction.....	22
5.2 International Conventions Related to Migrant Workers.....	22
5.2.1 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.....	22
5.2.2 ILO Convention 97 On Migration for Employment Convention	23

5.2.3 ILO Convention 143 On Migrant Workers.....23

5.2.4 ILO Convention 189 Concerning Decent Work to Domestic Workers.....23

5.5 Role of International Organizations.....23-24

Chapter Six

Recommendations and Conclusion

6.1 Findings.....25

6.2 Recommendations.....25-26

6.3 Conclusion.....26

Bibliography.....27

List of Abbreviation

FY- Fiscal Year.

EU- European Union.

GDP- Gross Domestic Product.

ICRMW- International Convention on the Protection of the Rights of All Migrant Workers
and Members of Their Families.

ILO- International Labour Organisation.

IOM- International Organization for Migration.

KSA- Kingdom of Saudi Arabia.

OEMA- Overseas Employment and Migrants Act.

UAE- United Arab Emirates.

UDHR – Universal Declaration of Human Rights.

UN- United Nations.

Abstract

Overseas workers play very important role in the economy of the both host and origin country. Host countries generally accept workers due to the shortage of labour or in those sectors in which their citizens don't prefer to work. On the other hand, unemployed people from origin countries in expectation of employment and better salary migrate to the host countries. Thus they keep the wheel of economy and development of the host and origin country in balance. Most of the host countries deal with the issues of workers by labour law whether its own or other countries citizens. However, the disunity between written law whether it is national or international and implementation have always been a source of dispute. Different international labour organisations made laws to set the basic standards to ensure their rights, but the role of these organisations in case of implementation is questionable. For this reason, the situation surrounding to the implementation and ensuring their rights is getting more and more complex and questionable. The goal of this paper is to provide a depth discussion of the situation of overseas workers from the position of international labour law.

Declaration

I certify that this thesis doesn't contain any material that has been previously submitted for any organisation without due acknowledgement, nor does it contain any material that has been previously published or written by another person, except where due acknowledgement is made in the text.

Syeda Sadia Afreen

Date:

Acknowledgement

At the beginning of my study, I want to express my gratitude to few individuals for their inspiration and assistance during the research, Firstly, I would like to thank my supervisor, Mohammed Shahjalal, senior lecturer, department of law, who assisted and directed me throughout the research despite all the difficulties. His helpful advices and suggestions helped me to stay on track. I am thankful to him for everything he has done for me.

Secondly, I would like to convey my gratitude to Dr. Md. Mehedi Hasan, the chairperson of Department of Law for providing us basic directions and arranging classes from expert for helping us to complete and write a standard research paper.

Thirdly, I would like to convey my gratitude to Professor Dr. Muhammad Ekramul Haque, for his guidelines for writing research through his classes. His resourceful classes help me to properly write my thesis.

Finally, I would like to convey my gratitude to all my friends and course mate from the university who assisted me in gathering and accessing related information. I would want to thank everyone who contributed their thoughts and opinions to my research. I want to thank everyone of them from the bottom of my heart.

Literature Review

As soon as ILO was founded in 1919, the situation of workers employed outside the territory of origin countries were addressed to establish their rights and ensure their safety. In the first session of International Labour Conference 1919, ILO decided two goals in the field of overseas workers. Firstly, equal treatment between nationals and overseas workers and secondly, coordination of migration policies between the states. In 1990, UN adopted International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families which safeguards all the basic rights related to human rights and employment environment of overseas workers. In 2013, Bangladesh adopted Overseas Employment and Migrants Act to keep up with UN standards. ILO also passed convention no 97, 143,189 for protecting the rights of legal rights of both legal and illegal workers. But the international organizations don't take any effective measure to effectively enforce those rights. The Committee on the Protection of the Rights of All Migrants Workers and Members of Their Families an independent body consists of experts in the field can work only when any allegation brought before them. Though the goal of ILO is to establish equal treatment between nationals and foreign workers, but most of countries set different rules and treatment even don't maintain or follow the basic standards. In many countries, specially middle east and developing countries there are laws but no implementation.

Chapter One

Introduction

1.1 Introduction

Bangladesh stands in 6th position as overseas workers sending and 8th in remittance receiving country in the world¹. Despite being one of the highest remittance receiving country, rights of overseas workers as a human being and worker is unnoticed. Both male and female overseas workers help to increase rural development rate, female employment rate and help to equal distribution of national resources. They are one of the GDP contributors and remittance earners of the country. As per a report by IOM on returning workers in 12 districts of Bangladesh, nearly 70 percent who had returned in February to June are still unemployed.² 29% of them returned as they were asked to leave the country they were working in, 23% were worried about COVID-19 situation, 26% were returned as their family asked to do so, and 9% of them returned as they were worried about left stranded.³ UN as well as Bangladesh government introduce separate law for overseas workers, but the situations doesn't change because of the lacking of adequate frameworks. Moreover, measures of the receiving countries are not enough to protect their basic human rights let alone other rights. From the beginning of going abroad as overseas worker to return to country, everywhere they face safety issue, social and economical discrimination. International laws don't instructed countries under which law matters of migrant workers should be dealt. As a result, regulations related to female migrant workers differ from one country to another and the problem related to their protection remain unsolved.

¹ www.thedailystar.com, accessed on 1st September 2022.

² Ibid.

³ Ibid.

1.2 Research Questions

My interest in overseas worker reflects my desire to find the answer of following questions:

- 1) What are the gaps in implementing the rights of overseas workers?

To learn the answer of the question, we must first look for the answers to few related questions , which are listed below:

- a) What are the rights of overseas workers given in national and international instruments?
- b) What are the role of international organizations?

1.3 The Objective of the Study

The legal position and the role of international organizations in dealing with the matters related to overseas workers, is the subject of this thesis. The main goal of the study is to inform the reader about the gaps in current legal protection measures for overseas workers, role of international organizations and the legal measures that the system should have. The following is a list of study's specific goals:

- To know the present legal rights of the overseas workers.
- To learn the rights and protection measures under the law of receiving countries.
- To learn about the rights and protection measures under Bangladeshi law.
- To learn the protected rights under international laws.
- To learn about the role of international organizations.
- To recommended the measures that should be taken for effectively protect the rights of overseas workers.

1.4 Methodology of the Study

The method used in this paper is largely qualitative. In some cases, quantitative method is used to determine the percentage and numbers of individuals in some cases. I was unable to apply quantitative method effectively due to time restrictions. To get a full understanding of the subject, in this paper I used document study, observational study, descriptive study and case study methodologies. Only online papers, journal, reports and books were explored in this research. Primary sources are used to determine the legal rights of overseas workers under the existing international and national law. But mostly secondary sources are used in conducting the research and reaching a satisfactory conclusion.

1.5 Scope of the Study

The paper primary focuses on describing the existing legal rights of overseas workers, role of international organizations and protection measures by Bangladesh and receiving countries. The paper examines the existing international conventions to access the legal standing of their rights according to current international laws. The research also discuss the current national law to check whether it is keeping up with international standards and able to protect their rights. In addition, this paper examines the role of international organizations from legal perspectives. Furthermore, the legal issues related to the protection of the rights of overseas workers are examined from the perspective of Bangladesh.

1.6 Limitations

In this research, international conventions which are only related to the rights of overseas workers are discussed. Although national laws are discussed, but not in detail. Only online resources are used to complete the paper. There are no interviews with any parties involved as overseas workers in this study. The study is fully related to the legal rights of overseas workers and the role of international organizations in context of Bangladesh. Aspects from other countries are not addressed.

Chapter Two

Overseas Workers: Who, Contributions and Legal Frameworks of Asian and Middle Eastern Countries.

2.1 Definitions

In general sense, overseas worker is a person who moves to another country or area in order to find employment. Encyclopaedia Britannica address migrant labour as casual and unskilled workers who move about systematically from one region to another offering their services on a temporary, usually seasonal basic. IOM defined “Labour Migrants” as those who move for the purpose of employment. Migrant for employment means a person who migrates from one country to another (or who has been migrated from one country to another) with a view to being employed other than on his own account and includes any person regularly admitted as a migrant for employment.⁴ UN convention defines migrant worker as a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a citizen.⁵ OEMA defines, migrant worker or worker means any citizen of Bangladesh who, for wages,-

- a) Is in the planning process to migrate for work or is departing to any foreign country for work;
- b) Is employed in any trade or profession in any foreign country; or
- c) Has returned to Bangladesh at the end of the tenure of employment or without having completed the tenure of employment in a trade or profession from a foreign country.⁶

All the definitions clearly stated that for being classified as overseas workers one have to migrate to another country for the purpose of employment, not for any other reasons like study, traveling or staying. It can also be said that people are counted as overseas workers based on their purpose to migrate. Also all the definitions include both male and female as labour migrants because the definitions addressed every worker as person not on the basis

⁴ International Labour Organisation, instruments (6,67)

⁵ Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990, article 2(1).

⁶ Overseas Employment and Migrants Act 2013, section 2(3).

of gender. So, women who migrate to another country for work can also be counted as labour migrant under the definitions.

2.2 Contributions

Bangladesh is the eighth largest remittance receiving country in the world which is the second largest source of country's foreign income. According to data from Bangladesh Bank, average 29% of foreign currency inflow in Bangladesh in FY(1982-2020) contributed by remittance. Overseas workers impact greatly in the rural economy and empowerment of rural women. 13 million nationals of Bangladesh from different countries send over 235 billion as remittance since 1976.⁷ Every year 2.2 million young people are joining the workforce and due to lacking of job opportunities most of them choose to go abroad which ultimately alleviates the burden of unemployment.⁸ In many cases, overseas worker is the only bread earner of the family. They mainly migrated for changing the economic condition of their family. They contribute in alleviating the poverty in rural areas, increasing household incomes which resulted upgrading the living standards of that family as well as per capita income of Bangladesh which resulted in upgrading the status of the country from lower middle-income country to least developed country. In case of successful migration, they not only help to change their family conditions but also effect positively to the society. For example, it encourages others to go abroad, gain economic solvency, and empower themselves. Overseas worker helps to change the whole scenario of rural economy by ensuring equal distribution of national resources which ultimately help in developing country's economic condition and strengthen it.

2.3 Legal Frameworks of Asian and Middle Eastern Countries

Middle East countries are one of the destination countries for the overseas workers of Bangladesh. Though nowadays in some Asian countries demand for professional and skill worker for example nurse, technician etc are created but still for unskilled, lower and medium skill worker middle east is a desirable place due to culture and religion similarities. But for skill and professional people, countries like Japan, Malaysia, Singapore etc desirable and attractive place due to alluring salary and facilities. In most of the cases,

⁷ www.thedailystar.com last accessed on 1st September 2022.

⁸ Ibid.

except domestic workers all the legal rights and obligations for overseas workers are conducted under labour law of that country. Legal frameworks of some Asian and Middle Eastern countries are discussed below.

2.3.1 Laws of Malaysia

Malaysia is one of the member country of ILO and committed to personally protect the rights of workers. The Employment Act 1955 is the main legal instrument for protecting the minimum rights of both local and foreign workers except domestic workers. The Act ensures the right of proper and overtime wages, deduction of wages, maximum working hours, leaves and holidays and also maternity leave for female workers. According to the Act anyone is not allowed to work more than 12 hours per day and 104 hours of overtime per month.⁹ Any person work more than 8 hours per day and 48 hours per week will be paid as per overtime wage rate for extra hours. Each year a worker will get 12 paid holidays, 14 paid sick leave and if work for one year or more then 8 paid leave.¹⁰ On failure of providing such benefits, the employer can be brought before the labour court. Workmen's Compensation Act, 1952 is protecting the rights of injured foreign workers who work in government industries and in a place where less than five people works. Malaysian law also permits foreign workers to form and join trade union. The Occupational Safety and Health Act, 1994 ensures the workplace safety of workers in construction, manufacturing, agriculture, mining, transport and storage, hotel and restaurant sectors.

2.3.2 Laws of Japan

Due to labour shortage in different sectors, Japan recently has started to recruit skilled workers in different sectors from Bangladesh. In Japan the laws and policies related to foreign workers are different. Japan's labour and employment laws are based on the principal of integration. Under this principle, foreign nationals who are living in the country are given similar basic status like their own nationals by the host country. In Japan based on the residential status they are permitted to stay in the country for a period and on expiry of that period it is illegal to stay there.

⁹ Evelyn Devadason, Wai Meng Chan, "Policies and Laws Regulating Migrant Workers in Malaysia: A Critical Appraisal", *Journal of Contemporary Asia*.

¹⁰ Ibid.

2.3.3 Laws of Jordan

In Jordan, rights of private and domestic sector overseas workers are dealt by separate law where private sector workers are dealt under Labour Law, 1996 and domestic worker by Regulations No 90/2009.¹¹ Under labour law it is permitted to collect recruitment fees but prohibited under domestic workers law. There must be a written contract for employment in Arabic for both sectors.¹² Working hours and rest period in a week for private and domestic workers are eight hours per day and one day per week¹³. Minimum wages for private sector is fixed but not for domestic worker. Other benefits like annual leave, ability to join trade union, right to file complain in court, sponsorship and changing employers are same for the both sectors.

2.3.4 Laws of Kingdom of Saudi Arabia

In KSA, private sector overseas workers are regulated by Labour Law and domestic workers by Ministerial Decision No.310.¹⁴ Both the law deals with their workplace rights. Both the laws directs employer to make a written contract in Arabic as well as pay recruitment fee but for domestic workers don't give such directions but forbids to collect from wages. Though minimum wage is not fixed but working hours is eight hours per day, for domestic workers 15 hours day with total rest period of nine hours and weekly paid holiday is one day per week. Annual leave is 21 days in first five years and for domestic workers 30 days every two years.¹⁵ Overseas workers get end of service gratuity after certain period of time by the rule of both law. But migrant workers are not allowed to join worker's committee which functions are like trade union.

2.3.5 Laws of United Arab Emirates

UAE excludes domestic workers from the coverage of Labour Law rather the issues are dealt by Immigration Department of the Ministry of Interior and other sector workers are dealt by labour law.¹⁶ In 2011, UAE banned on collecting any fees or money in the process of recruiting domestic workers by private recruiting agencies. The law in UAE is

¹¹ Jordan, "Regulatory Frameworks Governing Migrant Workers", ILO.

¹² Jordan, "Regulatory Frameworks Governing Migrant Workers", ILO.

¹³ Ibid.

¹⁴ Saudi Arabia, "Regulatory Frameworks Governing Migrant Workers", ILO.

¹⁵ Ibid.

¹⁶ NGO Submission to the 45th Session of the Committee on the Elimination of Discrimination against Women, "Women migrant workers in UAE: not quite in portrait", Migrant Forum Asia.

discriminatory towards women as it discourages women to file complain and pursue cases. As most of the female overseas workers works as domestic workers, and the matter is dealt by ministry it keeps them in vulnerable position in enforcing their rights by law for the lacking of proper legal documents.

Chapter Three

Overseas Workers: Legal Frameworks of Developed Countries

3.1 Introduction

Due to shortage of labour, good treatment, salary and other benefits most of the educated people prefer to go different European countries. For keeping the wheel of economy it is necessary to maintain the flow of economic activities. To maintain the position in competitive economy, every develop country needs worker, which can't be supplied due to low birth rate. So, the only way to keep balance is to allow foreign nationals to work in different sectors. Labour migration is also necessary to expand economic activities and meet the demand of job market. Rights and benefits given by different developed countries are discussed below.

3.2 Laws of United States

America is one of the member country of UN and ILO with veto power. In the legal system of America, it doesn't need to pass separate law with the consistence of international law. Ratified treaties are directly implemented to the country. So, all the overseas workers enjoy the rights given under international law and ratified by the state. They enjoy all the human rights and employment rights given under international law. For fixing minimum wages, working hours, paid leaves employment environment, health and safety international standards are followed. Also by H-2B visa program, which allows employer to temporarily bring workers for low wage work have to pay average minimum wages to the workers.

3.3 Laws of Germany

Germany eases the immigration law for foreign skilled workers to meet the demand of job market. In comparison to other countries, average salary, paid sick leaves and holidays, welfare benefits, social security benefits are far better than other countries. Workers are not discriminated from availing the benefits of employment based on gender, race, religion and treated equally. Every person who is working 18 hours in a week are secured against unemployment. They reap the benefits from the firs day of unemployment and paid for the period of 6 months upto 18 months. Retired workers also gets pension benefits from the state which was contributed by employer. About 90% of people in Germany have healthcare insurance. This insurance covers all the costs for health and medical issues. Most

of tech companies provide 30 days leave in a year . All the sectors allow maternity as well as paternity leave for workers. Companies also provide transport allowance or vehicles, lunch allowance, free snacks and drinks are also provided by the employer.

3.3 Laws of Sweden

Any person with work permit can stay and work in Sweden . Every employee is entitled to get 25 days of vacation per year with 12 % of their gross wages. Female employee will get 14 weeks of maternity leave, 7 weeks before and 7weeks after the childbirth, father will get 10days leave within 60 days of childbirth. An employer has to pay 31.42% of an employee's wages for social safety benefits, for example pension, health, workplace injury insurance. The average minimum wages in Sweden is \$3700 per month. Working hours is 40 hours per week, and overtime work can't exceed 50 hours per month. Unemployment benefits are also given to the workers prior to fulfilling some conditions.

3.4 Laws of Italy

Unlike some other EU included countries minimum wages in Italy is not fixed it depends on the role or type of work. Employees are paid for local and national banks holidays. Working hours is 40 hours per week. Employees can get 22 days vacation and for managerial position works it is 30 days. Social security benefits are available only for those workers who are legally permitted to live inside the country.

3.5 Laws of Canada

Canada is one of the easiest country to get work permit for skilled workers. It gives four types of work permit visa. Employment rights and benefits are given equally to the citizens as well as foreign workers. Employer must have to pay for work, ensures workplace safety and respect the terms and conditions of the contract. They can't be forced to do such duties for which the employee is not hired and in time of illness.

Chapter Four

Overseas Workers: Legal Frameworks of Bangladesh

4.1 Introduction

Overseas workers played a very important role to develop rural economy and women empowerment. In most cases, they are the only bread earner of the family. Most of them don't have any resources or decent work to support their family as most of their economical conditions is not so good, don't have good academic backgrounds, some of them have the responsibility to support their family. Middle east is the most preferable destination of overseas workers from Bangladesh . For this reason Bangladesh as well as receiving countries developed laws for safeguarding their rights.

4.2 Laws of Bangladesh

Before 2013 the whole migration process was conducted by ordinance and policies. But in 2013, Overseas Employment and Migration Act was passed which mainly deals with migration process and civil rights of overseas workers. As the constitution of Bangladesh is applicable for everyone, rights reserved in it also applicable on overseas workers as the citizens of Bangladesh.

4.2.1 Constitution of Bangladesh

Constitution of Bangladesh is the supreme law of Bangladesh. Rights reserve by it is mainly made by considering UDHR. Article 26- 44 of the constitution of Bangladesh deals with the fundamental human rights. It ensure right to life everyone and all forms of forced labour is prohibited and punishable. Everyone has freedom of movement, assembly, association, thought and consciences subject to reasonable restrictions imposed by the authority to maintain public order, peace and tranquillity. Everyone can move freely within the territory of the country, can join public meetings, and can give speech freely. People are equal before law and equally protected by law irrespective of gender, social , economical position etc. Every citizen has the right to practice their religion freely and any discrimination based on religion is not allowed. Citizens can choose any lawful occupation based on their abilities and have equal opportunity in public or government employment. They have the authority to hold and dispose any property and any lawful authority can't acquire any

property forcefully from the owner. For better protection of rights, any law inconsistent with fundamental human rights is to be void as said in article 26.

4.2.2 Overseas Employment and Migrants Act

OEMA mainly deals with migration process of the workers and the responsibilities of recruitment agencies. It is only applicable to overseas workers not any person employed outside the territory by the government or leave the country any other reasons rather than working outside. As per the provision of the Act, registration is required for working outside territory as migrant workers. The middleman or agency need to provide legally enforceable written contract stipulating all the conditions, facilities by the employer to the overseas workers. The departure should be made by legally approved port or airport or any other means. Trafficking of overseas workers, sending them overseas by unlawful manner, collecting documents for example demand notes, visa by unlawful way are punishable offence under the Act. This Act also gives right to the overseas workers to file any civil suit to restore their rights.

4.2.3 The Expatriates Welfare and Employment Overseas Employment Policy

The policy deals with six areas of migration to smooth the migration process and protect the rights of overseas workers. It gives directions towards safe migration, protect workers and their family members, ensure welfare and access to facilities, conducted migration of female workers, and proper planning towards labour migration. It also provides specific directions for different ministry directly or indirectly related to migration, for ensuring their safety. It also recommends the government to make special arrangements for the training and development of female overseas workers.

Chapter Five

Overseas Workers: International Legal Frameworks and Role of International Organization

5.1 Introduction

International laws are those treaties, custom and laws in which sovereign states are the parties, have the obligation to abide them and in case of violation bound to take proper steps according to law. Generally different international organizations for example UN, ILO, EU have the authority to make the international laws for ensuring the rights of human beings and ratified states have the obligation to abide them. UN and ILO made different laws for the welfare of human being and as well as for migrant workers. Some are applicable to all the people irrespective of being an overseas worker and nationality, but to everyone as a human being.

5.2 International Conventions Related to the Rights of Overseas Workers

UN and ILO specifically made conventions which are only deal with overseas workers. These conventions only deals with overseas workers rights, their working conditions and also re-ensure the basis rights written in UDHR. It directs the state to treat them equally in workplace like their national and any type of discrimination in workplace based on their identity is prohibited. They also deals with the rights of their family members, basic healthcare, education as well as social, cultural and economical rights.

5.2.1 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

ICRMW is indiscriminately applicable to all migrant workers and their family members ,but not applicable to the person sent or employed by international organizations and sent or employed by state outside it's territory.¹⁷ It gives the right to leave and enter any state. It re-ensure right to life, prohibits cruelty or inhuman treatment. No one should be treated as slave and compulsory labour is forbidden by it. Every overseas workers have freedom of expression and thought. It restricts the authority from arbitrary arrest, in case of arrest must be treated with humanity and equally before law. In the workplace they will enjoy equal benefits like nationals and can form, join and reap benefits from trade union. They can also choose their remunerated

¹⁷ Ajare 'Deji, " Rights of Migrant Workers under International Law".

activities. Documented overseas workers will get equal access to all social, cultural, economical, political activities and services.

5.2.2 ILO Convention 97 Migration for Employment

This convention deals with all types of assistance and rights of migrant workers starting from their departure as workers to their benefits from social security services.¹⁸ As per this convention, states has to provide free assistance to facilitating their employment, departure, journey and reception. Legal guidelines related to employment, remuneration, trade union, injury or death , paid leaves and holidays are also given in the convention.

5.2.3 ILO Convention 143 On Migrant Workers

This convention mainly deals with the duties of member states towards illegal migrant workers. It gives the responsibility on member states to identify, verify the transit of illegal migrant workers as well as take preventive measures.¹⁹

5.2.4 ILO Convention 189 on Concerning Decent Work for Domestic Workers

It protects the rights of domestic overseas workers. The term domestic work means work performed in or for a household or households. Domestic worker means any person engaged in domestic work within an employment relationship. It requires to follow guidelines related to recruitment of domestic and make legally enforceable contract of their work before departure.²⁰It gives ratified states the responsibility to protect human rights of all domestic workers and directs states to take effective protection measures against all forms of abuse, torture and violence. In article 12, it also directs to pay the salary to the worker once in a month.

5.3 Role of International Organizations

ILO and UN are the organizations which are responsible for making international laws and treaties. There are different treaties which ensures the legal, political, economical, social and cultural rights of overseas workers. The guidelines for making national laws for workers are provided by the international laws. Torture is forbidden by international laws, but the

¹⁸ Ajare 'Deji, Rights of Migrant Workers under International Law".

¹⁹ Ibid.

²⁰ Ibid.

anticipated overseas workers who for different reasons have to migrate to the desire country through illegal means sometimes they risked their life, tortured by smugglers for money. Upon arriving at the country, they are tortured by the employer, specially domestic workers. But the international organizations and the respective countries only arrest those workers send back to their own countries. No strict measures by international or respective authority for the smugglers to arrest and punish them under law. Most of the workers migrate for unemployment and leading a better life, the origin countries don't take step to solve the problem of smuggling. In many countries, the government programmes for sending workers abroad is not adequate. Many choose to go abroad by registered agencies, who in most of the cases knowing the fact it will be risky to send workers in travel visa as if they don't find any work with the period on the expire of the period they will face legal problems. International organizations specially ILO, didn't provide guidelines to deal with such agencies. Right to move freely is given to everyone but many workers aren't allow to move from workplace specially domestic workers. In the Middle East countries female domestic workers are tortured physically and mentally. Even died from torture, but no effective measure are taken by ILO which can stop or reduce such incidents. Moreover such incidents are increasing day by day. In European countries minimum wages are fixed but in most of the Asian and Middle Eastern countries the rate is not fixed. Any guidelines are not provided by the ILO. As well as Middle Eastern countries don't follow the standards of working hours, in practice workers are forced to work more than the stander hours for work and even not paid properly. Most of them are paid in regular rate for overtime. Many domestic workers are not even paid for their services. No guidelines are provided to retrieve the arrears payment after returning to the origin country. There are no check and balance system by ILO to hold responsible the countries. Workplace safety is not maintained , as most of the workers have to hazardous place and under risk without proper safety measures. Workers died or injured on duty even don't get compensation. ILO just made a the law but no measures are taken to implement the laws. In case of died worker, the cost of bringing the dead body back to the is also carried by victim family. No health and social safety benefits are provided by many Asian and Middle Eastern countries. For them overseas workers are just employer tools to do their work as per their command. As right to life is a basic right, but due to the lackings of taking proper safety measures by the employer they lost their life. They even arrest arbitrary by the state authority of the host countries. European countries allow all workers to join trade union but in middle east countries it is not allowed for overseas workers. Thus they can't raise their voices and demand their rightful claim, as well as present their problems. ILO didn't make any alternative way to present their demands or fails to ensure

that every workers can avail the chance to join trade union though it is rightful under international law.

Chapter Six

Recommendations and Conclusions

6.1 Findings

There are several lacking in law, policies and social security services for overseas workers. In international law their rights are reserved, but the responsibility of ensuring their rights are not fixed. Also in case of violation, guidelines regarding the process of getting justice also not given. The laws of Bangladesh only guarantee their right to institute civil suit, not criminal. There is no law to ensure justice in criminal cases, not even given fixed proceed to pursue criminal cases. In most of the countries, don't fixed minimum wages for the migrant workers and overtime payment. Most of the countries treat domestic workers under ministerial decision not under labour law or specific enforceable law. This ministerial decisions don't give any guidance related to criminal cases and compensation in case of workplace injuries or death. Upon arriving to Bangladesh being victim of violence, torture, there is no social reintegration programs for overseas workers. Due to mistreatment by employer, workers suffer physical and mentally and need treatments. There is no such projects by government to treat their physical and mental health. In case of sexual abuses, they are abandoned by the family and need rehabilitation and support. Only BRAC conducts project for their rehabilitation, accommodation and no initiative from government. In case of pregnant workers by the employer, no instruments is here for forcing the employer to bear the cost of the child.

6.2 Recommendations

There are urgent necessary to upgrade and amend the existing laws in both national and international levels. International community needs to ensure every workers sending and receiving countries ratify the conventions and takes effective measures to ensure them. Many countries for example, Lebanon doesn't ratified some documents related to migration. International community must need to ensure every ratified countries take effective steps, for example making national law, ordinance, policies and enforce the law. International community needs to make a fully combined laws relating to their rights, workplace environment, protection measures, procedure to institute a suit and punishment. Government needs to define the crimes, proceedings of criminal justice to give justice to the overseas workers. Need to make proper coordination with the authority of different countries to ensure access to criminal and civil justice. Receiving countries need to make laws to prevent any

discrimination in getting justice and facilitate the proceedings. As well as Bangladesh needs to recognize their right to file criminal complaint. Receiving countries have to ensure fair process for enforcing the rights of overseas workers. Government needs to make it mandatory to have contract paper, received skill development training to boost their abilities. Need to raise awareness among people regarding human trafficking, general information regarding migration, consequences of going abroad through illegal ways. Take proper steps to collect compensation for their workplace injuries, death, bearing the costs of treatment in case of injury as well as their due salaries. Strengthen the monitoring system and quick response system to prevent crimes against workers. Ensure equal opportunity and access to the all the training programs. Make sure the training centre is nearer with good communication ways. Response quickly in rescuing migrant worker who is suffering from any kinds of degrading or inhuman treatment especially by Bangladeshi embassy in different countries. For the victims of torture or any other degrading treatment give free mental health services. Conducted free social reintegration programs, specially for them who are abandoned by their families as well as free accommodation facility. Help failed migrant workers financially as well as to make the cost lower and reasonable for migration. Conduct one stop information and service centre in every upzillas in Bangladesh with quick response to facilitate the process. For the betterment of the workers and enforcing their rights, primarily it is necessary to take proper steps to follow the recommendations.

5.3 Conclusion

Comparing to the female population of the country, female migration rate is very low. Due to social, cultural barriers and vulnerability female are discouraged to migrate. Due to recent horrible incidents with female migrant workers in middle east they are more discouraged to migrate. In the recent situation it is impossible to provide job for everyone especially for unskilled workers. Overseas workers with proper training and knowledge are asset to the country. As in different countries demand of workers as nurse, domestic helper is increasing. The government needs to take the opportunity to make burden into asset. Migration can be a better option. But government must take the opportunity with precautions, ensuring and protecting the rights of overseas workers.

Bibliography

Books

- 1) Antoine Pecoud, “ Migration and Human Rights. The United Nations Convention on Migrant Workers’ Rights”, Cambridge University Press,2009.
- 2) Pong-Sul Ahn, “ Migrant Workers and Human Rights. Out- Migration from South Asia”, ILO.

Laws

- 1) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- 2) ILO Convention 97 On Migration for Employment.
- 3) ILO Convention 143 on Migrant Workers.
- 4) ILO Convention 189 Concerning Decent Work for Domestic Workers.
- 5) Overseas Employment and Migrants Act.
- 6) The Constitution of Bangladesh.
- 7) The Expatriates Welfare and Overseas Employment Policy.

Articles

- 1) European Parliament, “ Current challenges in the implementation of the UN International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families”.
- 2) ICMC, “ Strengthening Protection of Migrant Workers and their Families with International Human Rights Treaties”.
- 3) Ajare ‘Deji, “Rights of Migrant Workers Under International Law”.
- 4) Susan Martin,” The Legal and Normative Framework of International Migration,” Global Commission on International Migration.
- 5) “ Making Gender Responsive Migration Laws” UN Women.
- 6) Saudi Arabia,” Regulatory Framework Governing Migrant Workers” ILO.
- 7) Jordan,” Regulatory Frameworks Governing Migrant Workers” ILO

- 8) Sevil Sonmez, “ Human Rights and Health Disparities for Migrant Workers in the UAE”.
- 9) Asian Descent Work Decade, “ Protecting Migrant Workers”.
- 10) MFA members in Bangladesh, “ CEDAW and Female Labour Migrants of Bangladesh.”
- 11) Daniel Costa,” Frequently asked questions about the H-2B temporary foreign worker program”.
- 12) ILO,”Protecting the Rights of Migrant Workers: A shared Responsibility”.
- 13) ILO,” Rights, Labour Migration and Development: The ILO Approach”.
- 14) Aleksandra Alund, “Negotiating Solidarity: Collective Actions for Precarious Migrant Workers’ Rights in Sweden”, Department of Social and Welfare Studies, Linkoping University.
- 15) Brain Burgoon, “ Globalization and Working Time: Working Hours and Flexibility in Germany”.

