

**LEGAL PROTECTION OF BANGLADESHI MIGRANT
WORKERS IN MALAYSIA: AN ANALYTICAL STUDY**

BY

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**A thesis submitted in fulfilment of the requirement for the
degree of Doctor of Philosophy in Law**

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International Islamic University Malaysia**

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ABSTRACT

The safety movement of migrant workers working overseas with legal protection has always been in the midst of threats to their rights due to the lack of efficient legal regimes and cooperative agreements among the states. This compelling situation forces the international community to create regulatory frameworks that effectively suppress migrant workers' protection. Due to the industrial revolution and economic growth, Malaysia has become one of the most important hubs for migrant workers, especially in south and southeast Asian nations. In addition, the number of Bangladeshi legal migrant workers has sharply increased in recent years. The researcher, therefore, aims to conduct an in-depth study to identify, examine, analyse deficiencies, and propose viable solutions in contemporary international law relevant to the protection of migrant workers, regional agreements, and arrangements by the sending and receiving countries. The study also incorporates discussion on relevant national and international legal instruments, namely the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), the Universal Declaration of Human Rights (UDHR), the International Labour Organization (ILO) Convention, the Bangladesh Overseas Employment and Migrants Act 2013, the Prevention and Suppression of Human Trafficking Act 2012, the Emigration Ordinance 1982, and Malaysian Employment Laws. The primary focus of the research is doctrinal, and the researcher employs multidimensional methods of legal research, predominantly qualitative in nature. The researcher uses an analytical approach to examine the efficacy of the aforesaid contemporary international and domestic legal frameworks. The analysis also evaluates various definitions of migrant workers in international law, Malaysian employment law, and Bangladesh labour law. The study conducted a thorough analysis of existing legal means and concluded that both Malaysia and Bangladesh should implement a regulatory framework to effectively suppress such legal protection. Nevertheless, the Bangladesh Overseas Employment and Migrants Act 2013 plays a vital role in maintaining all legal procedures for export labour migration overseas. The Prevention and Suppression of Human Trafficking Act 2012 also imports factors to protect the legal rights of migrant workers. Furthermore, the protection of migrant workers' rights under Malaysian domestic laws is significantly richer. The Federal Constitution also gave equal rights to all the citizens who legally stay and work in Malaysia. In addition, the Employment Act 1955 (West Malaysia), the Workmen's Compensation Act 1952, the Worker's Minimum Standard of Housing and Amenities Act 1990, the Occupational Safety and Health Act 1994, and the Minimum Wages Order 2012 are available to protect the rights of migrant workers in Malaysia. Hence, the researcher suggests that it would be more effective to supplement the aforesaid international conventions with regional agreements, which can provide more pragmatic solutions to address issues relating to the definitions of legal protection for migrant workers. This study has assessed the effectiveness of current migrant worker laws in Bangladesh and Malaysia, recommending the implementation of selected amended laws in Malaysia and the need for amendments to some of Bangladesh's overseas immigrant laws. This research should help address the legal rights of migrant workers in Bangladesh and Malaysia; besides, it has reviewed traditional and contemporary laws pertinent to this area of academic inquiry.

Keywords: Legal Protection, Migrant Workers, International Legal Instruments, Bangladesh Employment Laws, Malaysian Employment Laws

خلاصة البحث

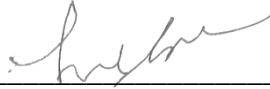
لقد كانت حركة العمال المهاجرين العاملين في الخارج في ظل الحماية القانونية دائماً في خضم التهديدات لحقوقهم بسبب الافتقار إلى الأنظمة القانونية الفعالة والاتفاقيات التعاونية بين الدول. هذا الوضع الملزم يجبر المجتمع الدولي على إنشاء أطر تنظيمية تقمع بشكل فعال حماية العمال المهاجرين. بسبب الثورة الصناعية والنمو الاقتصادي، أصبحت ماليزيا واحدة من أهم المراكز للعمال المهاجرين، وخاصة في دول جنوب وجنوب شرق آسيا. بالإضافة إلى ذلك، زاد عدد العمال المهاجرين القانونيين من بنغلاديش بشكل حاد في السنوات الأخيرة. لذلك، يهدف الباحث إلى إجراء دراسة متعمقة لتحديد وفحص وتحليل أوجه القصور واقتراح حلول قابلة للتطبيق في القانون الدولي المعاصر فيما يتعلق بحماية العمال المهاجرين والاتفاقيات الإقليمية والترتيبات من قبل البلدان المرسل والمستقبل. وتتضمن الدراسة أيضاً مناقشة الأدوات القانونية الوطنية والدولية ذات الصلة، وهي اتفاقية الأمم المتحدة لحماية حقوق جميع العمال المهاجرين وأفراد أسرهم، والإعلان العالمي لحقوق الإنسان، واتفاقية منظمة العمل الدولية، وقانون العمالة في الخارج والمهاجرين في بنغلاديش لعام 2013، وقانون منع وقمع الاتجار بالبشر لعام 2012، وقانون الهجرة لعام 1982، وقوانين العمل الماليزية. ويركز البحث في المقام الأول على المبادئ، ويستخدم الباحث أساليب بحث قانونية متعددة الأبعاد ذات طبيعة نوعية في الغالب. ويستخدم الباحث نهجاً تحليلياً لفحص فعالية الأطر القانونية الدولية والمحلية المعاصرة المذكورة أعلاه. ويقوم التحليل أيضاً بالتعريفات المختلفة للعمال المهاجرين في القانون الدولي وقانون العمل الماليزي وقانون العمل في بنغلاديش. وأجرت الدراسة تحليلاً شاملاً للوسائل القانونية القائمة وخلصت إلى أنه يتعين على كل من ماليزيا وبنغلاديش تنفيذ إطار تنظيمي لقمع مثل هذه الحماية القانونية بشكل فعال. ومع ذلك، يلعب قانون بنجلاديش للتوظيف في الخارج والمهاجرين لعام 2013 دوراً حيوياً في الحفاظ على جميع الإجراءات القانونية لهجرة العمالة المصدرة إلى الخارج. كما يستورد قانون منع وقمع الاتجار بالبشر لعام 2012 عوامل لحماية الحقوق القانونية للعمال المهاجرين. وعلاوة على ذلك، فإن حماية حقوق العمال المهاجرين بموجب القوانين المحلية الماليزية أغنى بكثير. كما أعطى الدستور الفيدرالي حقوقاً متساوية لجميع المواطنين الذين يقيمون ويعملون بشكل قانوني في ماليزيا. بالإضافة إلى ذلك، فإن قانون العمل لعام 1955 (غرب ماليزيا)، وقانون

تعويض العمال لعام 1952، وقانون الحد الأدنى لمعايير السكن ووسائل الراحة للعمال لعام 1990، وقانون السلامة والصحة المهنية لعام 1994، وأمر الحد الأدنى للأجور لعام 2012 متاحة لحماية حقوق العمال المهاجرين في ماليزيا. وعلاوة على ذلك، يقترح الباحث أنه سيكون من الأكثر فعالية استكمال الاتفاقيات الدولية المذكورة أعلاه باتفاقيات إقليمية، والتي يمكن أن توفر حلاً أكثر عملية لمعالجة القضايا المتعلقة بتعريفات الحماية القانونية للعمال المهاجرين. لقد قامت هذه الدراسة بتقييم فعالية قوانين العمال المهاجرين الحالية في بنغلاديش وماليزيا، وأوصت بتنفيذ قوانين معدلة مختارة في ماليزيا والحاجة إلى تعديل بعض قوانين المهاجرين في الخارج في بنغلاديش. من المفترض أن يساعد هذا البحث في معالجة الحقوق القانونية للعمال المهاجرين في بنغلاديش وماليزيا؛ بالإضافة إلى ذلك، فقد استعرض القوانين التقليدية والمعاصرة ذات الصلة بهذا المجال من البحث الأكاديمي.

الكلمات المفتاحية: الحماية القانونية، العمال المهاجرون، الأدوات القانونية الدولية، قوانين العمل في بنغلاديش، قوانين العمل الماليزية.

APPROVAL PAGE

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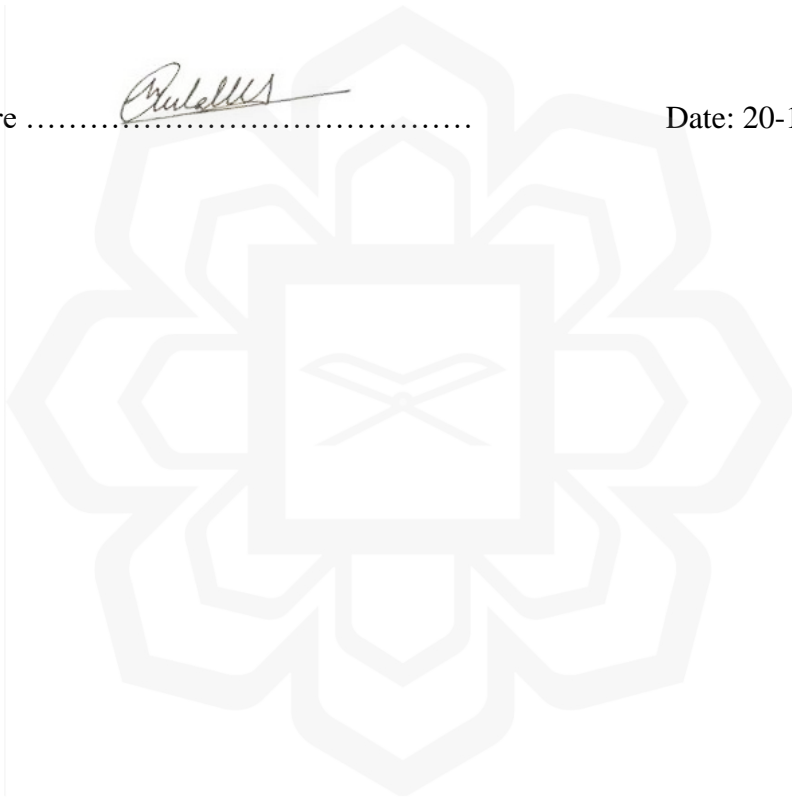
DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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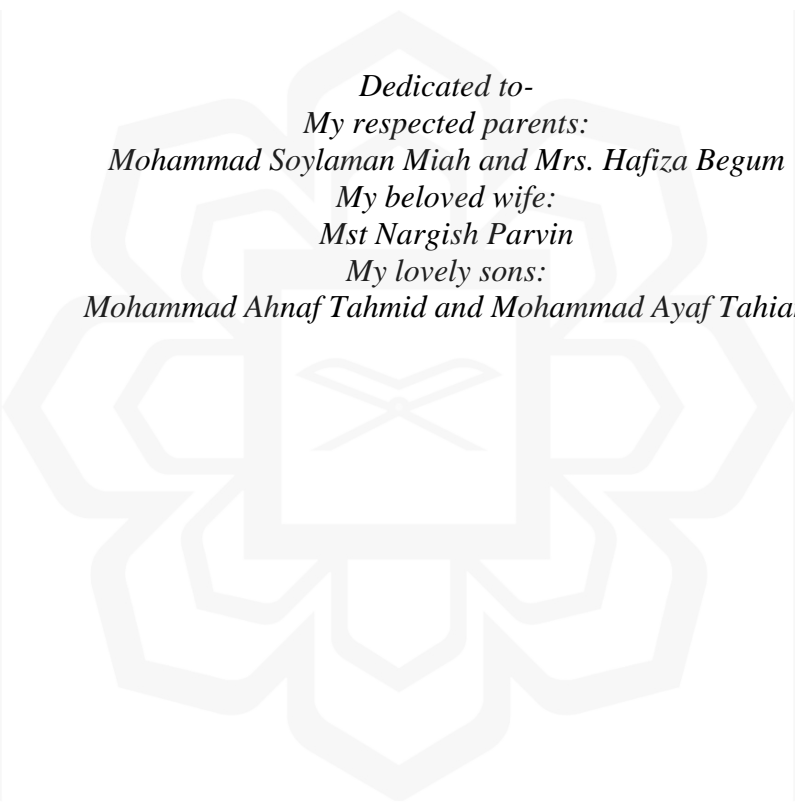
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Dedication



Dedicated to-
My respected parents:
Mohammad Soylaman Miah and Mrs. Hafiza Begum
My beloved wife:
Mst Nargish Parvin
My lovely sons:
Mohammad Ahnaf Tahmid and Mohammad Ayaf Tahian

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Kamalam alp Raman & Others v Eastern Plantation Agency Johore Sdn Bhd, Ulu Tiram Estate, Ulu Tiram, Johore & Anor — [1996] 4 MU 674
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Public Prosecutor V Davis Ak Mering & Anor — [2021] MLJU 3078
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Sumami v Yow Bing KI,vong & Anor — [2008] 1 MU 608
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A. INTERNATIONAL CONVENTIONS

Arab Charter on Human Rights 2004
Cairo Declaration on Human Rights in Islam 1990
Convention on the Elimination of All Forms of Discrimination against Women 1979
Committee on Migrant Workers 2002
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European Convention on Human Rights 1950
European Charter of Fundamental Rights 2000
Forced Labour Convention 1930
International Labour Organization 1991
ILO Migration for Employment Convention, 1949
International Covenant on Civil and Political Rights 1966
International Covenant on Economic, Social and Cultural Rights 1966
International Convention on the Rights of the Child 1989
International Convention on the Elimination of All Forms of Racial Discrimination 1969
International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984
Migrant Workers (Supplementary Provisions) Convention 1975
United Nations Department of Economic and Social Affairs 1948
United Nations International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families 1990
United Nations Charter 1945
Universal Declaration of Human Rights 1948

B. NATIONAL LEGISLATIONS (BANGLADESH)

Bangladesh Overseas Employment and Migrants Act of 2013
Bangladesh Passport Order 1973
Bangladesh Association of International Recruiting Agencies 1984
Emigration Ordinance 1982
Penal Code 1870
Passport (Offences) Act 1952
Prevention and Suppression of Human Trafficking Act 2012
The Constitution of Bangladesh 1972

C. NATIONAL LEGISLATIONS (MALAYSIA)

Courts of Judicature Act 1964
Children and Young Persons Act 1966
Employment (Termination and Lay-Off Benefits) Regulation 1980
Employees Provident Fund Act 1991
Employees' Social Security Act (SOCSSO) 1969

Employment Act 1955 (West Malaysia), Sabah Labour Ordinance, Sarawak Labour Ordinance
Factories and Machinery Act 1967
Firearms (Increased Penalties) Act 1971
Industrial Relations Act 1967
Minimum Wages Order 2012
Malaysian Maritime Enforcement Agency Act 2004
Mutual Assistance in Criminal Matters Act 2002
Occupational Safety and Health Act 1994
Penal Code 1936 [Revised 1997]
Trade Union Act 1959
Workmen's Compensation Act 1952
Worker's Minimum Standard of Housing and Amenities Act 1990
Wages Council Act 1947



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Arab Charter on Human Rights, 2004
Cairo Declaration on Human Rights in Islam, 1990
Declaration of Philadelphia, 1944
Employment Injury Benefits Convention, 1964
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Invalidity, Old-Age and Survivors' Benefits Convention, 1967
Maintenance of Migrants' Pension Rights Convention, 1935
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Maternity Protection Convention, 2000
Medical Care and Sickness Benefits Convention, 1969
Social Protection Floors Recommendation, 2012
Social Security (Minimum Standards) Convention, 1952
Universal Declaration of Human Rights, 1948
Universal Islamic Declaration of Human Rights, 1981

LIST OF ABBREVIATIONS

ACHR	Arab Charter on Human Rights
AMR	All Malaysia Reports
ASEAN	Association of Southeast Asian Nations
ATIPSOM	The Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act
BAIRA	Bangladesh Association of International Recruiting Agency
BDT	Bangladeshi Taka
BMC	Bangladesh Migrant Centre
BMET	Bureau of Manpower, Employment and Training
BOEP	Bangladesh Overseas Employment Policy
BOESL	Bangladesh Overseas Employment Services Limited
BSB	Bangladesh Statistical Bureau
BWMA	Bangladesh Women Migrants' Association
CAT	International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984
CDHRI	Cairo Declaration on Human Rights in Islam
CEDAW	The Convention on the Elimination of All Forms of Discrimination against Women
CESCR	The Committee on Economic, Social and Cultural Rights
CJA	Court of Judicature Act 1964
CMW	Committee on Migrant Workers
CPC	Criminal Procedure Code (Malaysia)
CRC	The International Convention on the Rights of the Child 1989
CLA	Civil Law Act 1956 (Act 67)
CLJ	Current Law Journal
CYPA	Children and Young Persons Act 1966
EA	Employment Act 1955 (Act 265)
ECHR	European Court of Human Rights
EIS	Employment Insurance System
EPF	Employees' Provident Fund
EPFA	Employees Provident Fund Act 1991(Act 452)
ER	Employment (Termination and Lay-Off Benefits) Regulation' 1980
ESCR	Economic, social and cultural rights
ESSA	Employees Social Security Act 1969 (Act 4)
EU	European Union
FCM	Federal Constitution of Malaysia
FGD	Focus Group Discussion
FMA	Factories and Machinery Act 1967
FWCS	Foreign Worker Compensation Scheme
FWCMS	Foreign Workers Centralised Management System
FWHSS	Foreign Workers Hospitalisation and Surgical Insurance Scheme
GOB	Government of Bangladesh
GCC	Gulf Cooperation Council
ICCPR	International Covenant on Civil and Political Rights 1966
ICESCR	International Covenant on Economic, Social and Cultural Rights 1966

ICERD	International Convention on the Elimination of All Forms of Racial Discrimination 1969
ICMC	International Catholic and Migration Commission
ICR	Industrial Cases Reports
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ILO	International Labour Organization
ILC	International Labour Conference
ILR	International Law Reports
IRA	Industrial Relations Act 1967 (Act 177)
MLJ	Malayan Law Journal
MFLM	Multilateral Framework on Labour Migration
MOEWOE	Ministry of Expatriates' Welfare and Overseas Employment
MOH	Ministry of Health
MOHR	Ministry of Human Resources
MOUs	Memorandum of Understandings
MWO	Minimum Wages Order 2012
NGO	Non-Government Organisation
OEMA	Overseas Employment and Migrants Act 2013
OIC	Organisation of Islamic Cooperation
OSHA	Occupational Safety and Health Act 1994
PBUH	peace be upon him (Prophet Muhammad)
PKB	Probashi Kallayan Bank
PSHTA	The Prevention and Suppression of Human Trafficking Act 2012
RMMRU	Refugee and Migratory Movements Research Unit
RMP	The Royal Malaysia Police
SIRC	State Islamic Religious Councils
SAARC	South Asian Association for Regional Cooperation
SOCISO	Social Security Organisation
SWT	subhanahu wa ta'ala
TIP	Trafficking in persons
TUA	Trade Union Act 1959
UDHR	Universal Declaration of Human Rights 1948
UIDHR	Universal Islamic Declaration of Human Rights 1981
UN/DESA	United Nations Department of Economic and Social Affairs
UNC	United Nations Charter
UNCAT	The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UNCHR	The Office of the United Nations High Commissioner for Refugees
USA	United States of America
USD	United States Dollar
WCA	Workmen's Compensation Act 1952 (Act 273)
WICA	Work Injury Compensation Act (WICA 354) Act 25 of 1975
WMSHA	Worker's Minimum Standard of Housing and Amenities Act 1990

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE RESEARCH

In the present era, migration has emerged as a prominent feature of globalisation. Human migration refers to the relocation of individuals from one place to another, often involving the transition between countries, with the intention of settling temporarily or permanently in the new destination. It typically entails long-distance movements from one country or region to another. Migration is a significant global issue that impacts the entire labour market. Moreover, a growing influx of migrant workers from developing and undeveloped nations has entered the labour markets of industrialised countries, largely attributable to rapid economic expansion.¹ They aspire to improve their and their families' standard of living and escape poverty by securing employment in affluent countries with high demand for unskilled or semiskilled labour. The advent of the industrial period prompted people to move about, and as a result, the global labour market is increasing day by day.

According to the United Nations Department of Economic and Social Affairs (UNDESA), the ILO estimates 169 million migrant workers in 2019.² This figure represents an increase of 5 million individuals (equivalent to 3.0 percent) compared to the estimate for 2017, and a substantial rise of 19 million individuals (equivalent to 12.7 percent) when contrasted with the estimate for 2013.³ The United Nations International

¹ International Labour Organization (ILO), "International Labour Standards on Migrant workers," <http://www.ilo.org/global/standards/subjectscovered-by-international-labour_standards/migrant-workers/lang--en/index.htm> (accessed 12 November 2018).

² Bautista, Alexis Nadine Estrada, "Migration Matters" (2022).

³ ILO, "Global Estimates on International Migrant Workers, Results and Methodology," third edition, (2021), <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_808935.pdf> (accessed 4 April 2019).

Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) refers to article 2(1), which states that migrant workers can be understood as “anyone who plans to participate, is engaged, or has engaged in remunerative activity in a state in which he or she is not a national.”⁴ Article 2(2) of the ICRMW delineates various categories of migrant workers, encompassing individuals commonly referred to as “frontier labourers” who reside in a neighbouring country but frequently visit their country of origin. The term “seasonal migrant workers” pertains to individuals whose employment is contingent upon seasonal conditions. Additionally, the convention recognises “seafarer migrant workers,” “offshore migrant workers,” “itinerant migrant workers,” “project-tied migrant workers,” “self-employed workers,” and “specified-employment workers” as distinct categories within the framework of migrant labour.⁵

According to the International Labour Organization (ILO), the term “migrant worker” is defined as follows: it refers to any worker who engages in migratory movements within the countries and territories specified in clause (a) of Paragraph 1, or who moves from those countries and territories into or through the countries and territories described in clauses (b) and (c) of Paragraph 1.⁶ This definition encompasses individuals who are either already employed, actively seeking employment, or moving for prearranged employment. Additionally, migrant workers and those seeking employment are also included, “A person who migrates from one nation to another intends to find employment in a manner that is not their own.” Furthermore, this characterisation includes any individual who frequently seeks employment as a migrant.

⁴ “International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW),” Adopted by General Assembly resolution 45/158, 1990, <<https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx>> (accessed 3 April 2019).

⁵ Ibid.

⁶ Gächter, August, “Migrant Workers and discrimination: realities, threats, and remedies,” *Revista Tecnológica-ESPOL*, vol. 34, no. 1 (2022): p. 92-112.

It is important to note that this explanation applies regardless of whether the worker has accepted a job offer or entered into a contractual agreement. Where applicable, the term “migrant worker” also refers to any worker returning temporarily or finally during or after employment.⁷

Additionally, globalisation provides extra motivation for improving the quality of the labour force across borders, while also providing protection for all migrant workers and their families under international law and regional legal frameworks.⁸ The scope of international law regarding the protection of migrant workers is extensive. However, the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), signed on December 18, 1990, and entering into force on July 1, 2003, stands as the most comprehensive and unique legal instrument. The Committee on Migrant Workers (CMW) monitors and implements the convention and is one of the seven United Nations-related human rights bodies to protect and promote the rights of all migrant workers and members of their families.⁹ The main objective of the ICRMW is to protect the rights of migrant workers in employment, to discourage and eliminate irregular migration for employment, and to protect the rights of the migrant worker’s families.

The United Nations Convention is a comprehensive global agreement that protects the rights of migrant workers. It highlights the correlation between migration and human rights, which is progressively becoming a pivotal policy issue globally. The primary objective of the convention is to safeguard the rights of migrant workers and

⁷ ILO, “Protection of Migrant Workers (Underdeveloped Countries) Recommendation” 1955 (No. 100) 1955, <https://www.ilo.org/Dyn/Normlex/En/F?P=Normlexpub:12100:0::No:12100:P12100_Ilo_Code:R100> (accessed 4 April 2019).

⁸ Ghai, Yash, “Migrant Workers, Markets, and the Law,” *In Global history and migrations*, p. 145-182. (Routledge, 2018).

⁹ Committee on Migrant Workers (CMW), “Monitoring the protection of the rights of all migrant workers and members of their families” 2004, <<https://www.ohchr.org/EN/HRBodies/CMW/Pages/CMWIndex.aspx>> (accessed 2 April 2019).

their families. Its presence establishes a moral benchmark and provides direction and encouragement for the advancement of migrant rights in every nation.

Moreover, the international convention draws on the principles and standards of the Universal Declaration of Human Rights (UDHR) of 1948 and International Labour Organization (ILO) Convention.¹⁰ As of March 2019, 54 states have ratified this global convention to protect the rights of all migrant workers and members of their families.¹¹ In addition, from the South Asian Association for Regional Cooperation (SAARC), only Bangladesh and Sri Lanka signed and ratified the ICRMW Convention¹², and from the Association of Southeast Asian Nations (ASEAN), only Indonesia and the Philippines signed and ratified this convention, and Cambodia signed this convention but did not ratify it.¹³

Established on October 29, 1919, the International Labour Organization (ILO) serves as a specialised agency of the United Nations (UN), dedicated to promoting social justice and advancing decent work through the development and implementation of international labour standards.¹⁴ The ILO plays a significant role in shaping international labour legislation. The organisation inside the UN system possesses a distinctive tripartite framework, where all standards, policies, and projects necessitate deliberation and endorsement from government representatives, employers, and workers. The three primary entities of the ILO uphold the framework: the International

¹⁰ Baccini, Leonardo, and Mathias Koenig-Archibugi, “Why do states commit to international labour standards? Interdependent ratification of core ILO conventions” 1948–2009, *World Politics*, vol. 66, no. 3 (2014): p. 446-490.

¹¹ Office of the United Nations High Commissioner for Human Rights (OHCHR), “Status of Ratification” ICRMW, <<http://indicators.ohchr.org/>> (accessed 19 March 2019).

¹² Wickramasekara, Piyasiri, “Migration legislation and regulations in South Asia: An unfinished agenda?” In *South Asia Migration Report*, (2020): p. 111-139. (Routledge India, 2020).

¹³ Thaqib Bin Shaker, Muhamad Nur, “Assessing the role of non-governmental and civil society organisations in Association of Southeast Asian Nations (ASEAN) labour migration policy,” (Master’s thesis, Sosyal Bilimler Enstitüsü, 2018).

¹⁴ “Mission and Impact of the ILO” 2019, <<https://www.ilo.org/global/about-the-ilo/mission-and-objectives/lang--en/index.htm>> (accessed 20 March 2019).

Labour Conference (ILC), which convenes annually to establish global labour standards; the governing body, acting as the executive council and determining the agency's policies and budget; and the International Labour Office, the permanent secretariat responsible for managing the organisation and executing its activities. Most commonly used to protect migrant workers are the ILO Migration for Employment Convention, 1949 (Revised) (No. 97), and the Migrant Workers' (Supplementary Provisions) Convention, 1975 (No. 143). The ILO Conventions promote and provide specific protection for migrant workers and nationals in the field of their social security.¹⁵ Most of the labour-sending and receiving countries of ASEAN and SAARC are members of the ILO.¹⁶ None of the ASEAN and SAARC member states ratified the ILO Convention, 1949 (Revised, No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) except the Philippines and Malaysia (Sabah), which ratified only the ILO Convention, 1949 (Revised, No. 97).¹⁷

In addition, Bangladesh has a long history of international migration and overseas remittances. In 1942, a number of labourers, most of whom were originally from the Sylhet region, relocated to the port towns of London and Liverpool in the United Kingdom (UK).¹⁸ Labour migration has emerged as a crucial means of sustenance for the population of Bangladesh. The extraordinary positive impact of skill transfer and the promotion of various community development activities greatly enhances social growth and empowerment. Many people view Bangladesh as a nation rich in human resources, especially given its sizable labour force. After independence

¹⁵ Van Ginneken, Wouter, "Social protection for migrant workers: National and international policy challenges," *European Journal of Social Security*, vol. 15, no. 2 (2013): p. 209-221.

¹⁶ ILO NORMLEX, "Information System on International Labour Standards Ratification of Countries" 2019, <<https://www.ilo.org/dyn/normlex/en/f?p=1000:11001:::NO:>> (accessed 4 April 2019).

¹⁷ Sale, Jonathan, "Harmonisation of labour laws: an arduous journey for ASEAN," *Labour & Industry: a journal of the social and economic relations of work*, vol. 30, no. 1 (2020): p. 34-65.

¹⁸ Mahmood, Raisul Awal, "International migration, remittances and development: untapped potentials for Bangladesh," *BIISS journal*, vol. 12, no. 4 (1991): p. 526-557.

on December 16, 1971, the movement of diasporas increased progressively.¹⁹ When oil prices spiked in the 1970s, many people from Bangladesh began making the journey to the Middle East in search of better economic opportunities.²⁰ Subsequently, this trend extended to the newly industrialised nations in Southeast Asia, such as Malaysia, Singapore, South Korea, and Hong Kong. The trend of people migrating temporarily for work began in the middle of the 1970s and accelerated between the 1980s and the 2000s.²¹ On the other hand, 2005 and subsequent years have shown significant growth. More than half a million people per year, on average, leave their home countries in search of jobs, either temporarily or permanently.²²

According to the Bureau of Manpower, Employment, and Training (BMET), in 2021, a total of 6,17,209 Bangladeshi employees relocated abroad, up from 2,17,669 in 2020.²³ The Ministry of Expatriates' Welfare and Overseas Employment of Bangladesh reported that the net migration rate for Bangladesh in 2021 was 2.16 per cent of the 1000 population, a 2.17 per cent decline from 2020, and annual remittances transferred to our basket were almost \$22.1 billion in 2021, the seventh highest in the world and the third highest in South Asia.²⁴ The BMET centre has categorised Bangladeshi expatriate employees into the following five categories: professional, skilled, semi-skilled, less-skilled, and others. According to data from the Bangladesh Statistics Bureau (BSB), nearly half of all migrant workers in Bangladesh have lower levels of

¹⁹ Etzold, Benjamin, and Bishawjit Mallick, "Bangladesh at a Glance, Country Profile: Focus migration," (2015).

²⁰ Noland, Marcus, and Howard Pack, "The Arab economies in a changing world." (Peterson Institute, 2011).

²¹ De Haas et al., "International migration: Trends, determinants, and policy effects," *Population and Development review*, vol. 45, no. 4 (2019): p. 885-922.

²² Bureau of Manpower Employment and Training (BMET), "Remittances from 1976-2017 of Bangladesh, Dhaka:" (2018), <<http://www.bmet.gov.bd/BMET/statisticalDataAction>> (accessed 4 May 2019).

²³ Azad, Md Anowarul, "Typology of International Migration in Globalization Challenges for Realizing Bangladeshi Migrant Worker's Rights and Their Contribution to Social Development," *Open Journal of Social Sciences*, vol. 11, no. 1 (2023): p. 143-164.

²⁴ Ibid.

education and training (workers, cleaners, housemaids, et cetera). This is the case, just 2 per cent of people working abroad are professionals (professors, teachers, engineers, doctors, nurses, et cetera). In addition, 34 per cent of all foreign workers are skilled professionals (such as those in manufacturing or the garment industry), while 15 per cent are semi-skilled (tailors, masons, et cetera). Recently, the government of Bangladesh has become increasingly aware of the necessity of preparing its workers for overseas jobs. Contract workers make up the vast majority of Bangladeshis living and working abroad.²⁵

Since the early 1990s, Bangladesh's successive governments have acknowledged the significance of labour migration to the country's overall economy.²⁶ This realisation led to the implementation of several significant legal and institutional measures. These include the establishment of a dedicated Ministry of Expatriates' Welfare and Overseas Employment, the creation of the Wage Earners' Welfare Fund, and the formulation of the Overseas Employment Policy. Furthermore, Bangladesh signed the International Convention on Migrant Workers and All Members of Their Families (ICRMW) in 1991 and subsequently ratified it. The country also progressively eased restrictions on female labour migration and introduced the Probashi Kallayan Bank (PKB) as a welfare bank for migrants. Moreover, the government has authorised microfinance institutions to act as the ultimate beneficiaries of remittances.²⁷ Despite the fact that Bangladesh has established some significant legislation to protect the rights of migrant workers and prevent human trafficking, there are still certain legal and

²⁵ "Statistical Bureau of Bangladesh (SBB) 2016, Dhaka:" <http://bbs.portal.gov.bd/sites/default/files/files/bbs.portal.gov.bd/page/d6556cd1_dc6f_41f5_a766_042b69cb1687/PocketBook2016.pdf, (2017)> (accessed 17 March 2019).

²⁶ Gardner, Katy, "Lives in motion: the life-course, movement and migration in Bangladesh," *Journal of south Asian development*, vol. 4, no. 2 (2009): p. 229-251.

²⁷ C R Abrar, "Reviewing Initiatives for Migrant Well-being," *The Daily Star*, 25th Anniversary Special Part - 5, 05 February, 2016, <https://www.thedailystar.net/supplements/25th-anniversary-special-part-5/reviewing-initiatives-migrant-well-being-212644>.

practical impediments that restrict the impact of existing legislation in the country. Section 2(3) of the Overseas Employment and Migrants Act, 2013 defines a migrant worker as a Bangladeshi citizen who works abroad for monetary compensation.²⁸ It is important to note that Bangladesh made a positive decision in August 2011, when it ratified the ICRMW. Bangladesh accepted responsibility for ensuring that migrant workers who had their rights violated had access to an effective remedy and for implementing the necessary legislative, administrative, and judicial procedures by ratifying the ICRMW Convention.²⁹

In order to safeguard the rights of migrant workers, Bangladesh enacted several laws and regulations.³⁰ These include the Overseas Employment and Migrants Act (OEMA) 2013, the Prevention and Suppression of Human Trafficking Act (PSHTA) 2012, the Emigrant Ordinance Act (EOA) 1982, the Women and Children Repression Prevention Act 2000 (amended 2003), the Penal Code Act 1860, the Children Act 2013, the Bangladesh Passport Order Act 1973, the Passport (Offence) Act 1952, the Extradition Act 1974, the Bangladesh Labour Code 2006, and finally the Constitution of the Government of the People's Republic of Bangladesh.³¹ Potential migrants and their families, as well as a number of government departments and agencies in Bangladesh, private recruiting agents and their local and international middlemen, and a number of international organisations, are all involved in the labour recruitment process in Bangladesh. There are five main ministries in the government that are responsible for dealing with international labour migration: the Ministry of Expatriates

²⁸ The Overseas Employment and Migrants Act (OEMA), 2013, Sec 2(3).

²⁹ Ridwanul Hoque, "Emigration fraud and justice for migrant workers," *The Daily Star*, Dhaka, 18 December, 2012, <https://www.thedailystar.net/news-detail-261521>.

³⁰ Devadason, Evelyn Shyamala, and Chan Wai Meng, "Policies and laws regulating migrant workers in Malaysia: A critical appraisal," *Journal of contemporary Asia*, vol. 44, no. 1 (2014): p. 19-35.

³¹ Rahman, Atwar, and Muhammad Hassan, "Protection of Migrant Workers in Bangladesh: Legal Barriers and Way Forward," *Journal of Judicial Administration Training Institute*, vol. 17 (2017).

Welfare and Overseas Employment; the Ministry of Home Affairs; the Ministry of Foreign Affairs; the Ministry of Finance; and the Ministry of Civil Aviation and Tourism. Prior to 2001, the Ministry of Labour and Employment was responsible for overseeing international labour migration. However, in December 2001, the Bangladeshi government established a new ministry to address the aspirations of Bangladeshis living abroad and cater to migrant workers' needs and concerns. The EOA of 1982 entrusted the Ministry of Expatriates' Welfare and Overseas Employment with the responsibility of implementing the rules established in 2002.³² The ministry's main objectives are to promote, monitor, and regulate the migration sector. Its primary focus is on facilitating the creation of international employment opportunities. Additionally, the ministry aims to address the challenges faced by international workers and ensure their well-being and protection.

Furthermore, the BMET is the executing agency of the Ministry of Expatriates' Welfare and Overseas Employment with respect to processing labour migration. In 1976, the government established the BMET to ensure that the national economy receives the greatest possible advantage from labour migration.³³ The BMET, in its capacity as the implementing agency, has been responsible for implementing the Emigration Ordinance of 1982 since its first passage into law.³⁴ The BMET is responsible for a diverse range of tasks, including government oversight and regulation of the staffing industry. It also undertakes the systematic collection and analysis of labour market data. Moreover, the BMET handles the mandatory registration of

³² Siddiqui, Tasneem, Rozana Rashid, and Benjamin Zeitlyn, "Information campaigns on safe migration and pre-departure training, Sussex: Development Research Centre on Migration, Globalisation and Poverty," (2008).

³³ Khoda, Manzoor E., and M. Shahzada Akram, "Good Governance in the Labour Migration Process: Challenges and the Way Forward" (2017).

³⁴ Hamada, Yuko, "National governance in international labour migration," *Migration and Development*, vol. 1, no. 1 (2012): p. 50-71.

individuals seeking employment abroad or in their home country. The BMET plays a crucial role in creating and implementing training initiatives that align with specific labour market demands, both domestically and internationally. The BMET is responsible for planning pre-departure briefing sessions, resolving legal challenges, developing apprentice in-plant programs within existing labour industries, and diligently executing labour migration coordination.³⁵ In addition, the government established Bangladesh Overseas Employment Services Limited (BOESL) as a limited company in 1984 with the goal of performing the function of direct recruitment for overseas migration.³⁶ Moreover, the Bangladesh Association of International Recruiting Agencies (BAIRA) is an association of private recruiting agencies of migrant workers in Bangladesh. The Emigration Ordinance, which passed in 1982, is the most significant regulatory tool for effective labour migration.³⁷

Malaysia has historically been an important destination for migrants in this region. Migrant labour was a major tenet of British colonial strategy during the latter half of the nineteenth century and the early decades of the twentieth century.³⁸ This was in line with the UK's role as a provider of goods to the industrialised West.³⁹ Later in the 1970s and 1980s, a variety of export-oriented manufacturing businesses that are also connected with labour-intensive production has been the leading sector in the expansion of the economy.⁴⁰ In addition, Malaysia classifies migrant workers into two categories: those with legal status (documented) and those without legal status (undocumented).

³⁵ Ainul, Sigma, Eashita Haque, K. G. Santhya, and Ubaidur Rob, "Assessment of overseas labor migration systems in Bangladesh" (2022).

³⁶ Ibid.

³⁷ Sikder, Mohammad Jalal Uddin, "Bangladesh," *Asian and Pacific Migration Journal*, vol. 17, no. 3-4 (2008): p. 257-275.

³⁸ Chiswick, Barry, and Timothy J. Hatton, "International migration and the integration of labour markets," *In Globalization in historical perspective*, p. 65-120. (University of Chicago Press, 2003).

³⁹ Ibid.

⁴⁰ Kaur, Amarjit, "International migration and governance in Malaysia: Policy and performance," *UNEAC Asia Papers*, vol. 22 (2008): p. 4-18.

Legal migrants entering the country possess valid and up-to-date documentation, while undocumented immigrants either lack any valid documentation prior to entering the country or have expired or confiscated documents. The newly independent Malaysian government had migration goals that were quite similar to those of post-war colonial immigration policy. Tightening entrance criteria under the reunification of family's clause, the Immigration Act of 1959 (which superseded the 1953 Ordinance) banned the immigration of wives (and children) of local citizens who had been living away from their spouses for a continuous period of five years. The Employment Restriction Act of 1968, which took effect after December 1954, made the presence of work permits or labour contracts a requirement for noncitizens to be admitted to the labour market.⁴¹

In Malaysia, migrant workers have been one of the most significant contributors to the country's economic growth for several decades. This is mostly attributable to the country's bright employment prospects.⁴² The Universal Declaration of Human Rights (UDHR) of 1948 asserts the genuine entitlement of migrant workers to specific human rights and protections due to their vulnerable condition.⁴³ However, migrant workers in Malaysia often face exploitation, trafficking, and labour market disparities.⁴⁴ Despite the existence of these legal frameworks, allegations persist that the authorities, government agencies, and businesses are failing to uphold the rights of migrants. Workers who are not Malaysian citizens but who are employed in the country have the right to employment protection under Malaysia's employment laws, these include the Employment Act (EA) 1955 (West Malaysia), Sabah Labour Ordinance, Sarawak

⁴¹ Ibid., 10.

⁴² Malaysia Employer Federation, "BNM Annual Reports and Ministry of Human Resources," <<http://www.mef.org.my/kc/statistics.aspx>> (accessed 12 November 2018).

⁴³ The People's Movement for Human Rights Education, <<https://www.pdhre.org/rights/migrants.html>> (accessed 12 November 2019).

⁴⁴ Aun, Lee Hwok, and Adrian Pereira, "Can Malaysia Eliminate Forced Labour by 2030?" ISEAS–Yusuf Ishak Institute, <https://www.iseas.edu.sg/wp-content/uploads/2022/11/TRS2_23.pdf> (2023) (accessed 10 January 2023).

Labour Ordinance, Workmen's Compensation Act (WCA) 1952, Worker's Minimum Standard of Housing and Amenities Act 1990, Children and Young Persons Act 1966, Industrial Relations Act (IRA) 1967, Trade Union Act (TUA) 1959, Occupational Safety and Health Act 1994, Wages Council Act 1947, Employment (Termination and Lay-Off Benefits) Regulation 1980, Employees Provident Fund Act (EPFA) 1991, Employees' Social Security Act (SOCSO) 1969, Factories and Machinery Act 1967, and Minimum Wages Order 2012.

In addition, the World Bank report states that over the last ten years, the labour migration movement within ASEAN member states has increased daily. In 2015, ASEAN countries received approximately \$62 million in remittances, which accounted for approximately 10 per cent of the GDP in the Philippines, 7 per cent in Vietnam, and 5 and 3 per cent in Myanmar and Cambodia, respectively.⁴⁵ The ASEAN, as a regional organisation, has taken various initiatives to protect migrant workers' rights and enhance their legal framework. These include the ASEAN Declaration on Strengthening Social Protection and Regional Framework, the ASEAN Declaration and Consensus on the Protection and Promotion of the Rights of Migrant Workers, the ASEAN Labour Ministers' Work Program 2016-2020, and the work plans of subsidiary bodies such as the ASEAN Human Rights Declaration.

The ASEAN Forum on Migrant Labour has also made significant contributions, including its recommendations and other relevant developments. Most of the laws and policies adopted by ASEAN are non-binding, and only two ASEAN member states have ratified the ICRMW Convention and the ILO Migrant Workers Convention to protect and promote the rights of migrant workers.

⁴⁵ Moe Thuzar, "A consensus between ASEAN countries is a relief but the 2017 ASEAN Consensus does not carry legal weight," *The Straits Times*, 23 April, 2018, Opinion, www.straitstimes.com

1.2 STATEMENT OF PROBLEM

The primary issues concerning the international protection of migrant workers, Bangladesh as a labour-sending country, and Malaysia as a labour-receiving country, stem from the absence of appropriate laws and policies, as well as the inadequate implementation of international instruments. Hence, ensuring the protection of migrant workers and members of their families is one of the key challenges in the international arena, as well as in Bangladesh and Malaysia.

The signing and ratification of international laws and their implementation, such as the United Nations International Convention on the Protection of the Rights of All Migrants and Members of Their Families (ICRMW) and the International Labour Organization (ILO) Migrant Workers' Conventions, is a vital issue to protect and promote the rights of labour migration in Bangladesh and Malaysia.⁴⁶ Rudnick mentions a lack of protection rights and claims that some national regulatory frameworks discriminate against such workers in order to protect their fundamental rights.⁴⁷

As a labour-sending country, Bangladesh signed and ratified the ICRMW. Neither Bangladesh nor Malaysia signed and implemented the ILO's Migrant Worker's Conventions No. 97 and 143. As a labour-sending country, it is highly expensive for Bangladesh to ratify and implement international migrant worker conventions and governmental budgets and arrange similar staff. Additionally, the recruitment process for migrant workers in Bangladesh is highly expensive due to the involvement of

⁴⁶ Iredale, Robyn, Nicole Piper, and Amelia Ancog, "Impact of ratifying the 1990 UN Convention on the Rights of All Migrant Workers and Members of Their Family: case studies of the Philippines and Sri Lanka," *Asia Pacific Migration Research Network*. (Australian Centre for Population Research, Australian National University, Canberra, 2005).

⁴⁷ Rudnick, Anja, "Working gendered boundaries: temporary migration experiences of Bangladeshi women in the Malaysian export industry from a multi-sited perspective." (Amsterdam University Press, 2009).

multiple stages and middlemen. The issue stems from the purported high degree of cooperation between government circles and the export industry (recruitment agencies), necessitating the establishment of a “good governance” environment through extensive reforms.⁴⁸

Furthermore, the Bangladesh government’s monitoring system for recruiting agencies is very poor, and there is no accurate information on how many documented migrant workers go abroad with proper and safe channels without human trafficking and no institutional system to train migrant workers before travelling.⁴⁹ However, the irregular status of labour migration and human trafficking is one of the key challenges for Bangladesh and Malaysia.⁵⁰ The human resource development of the BMET serves as the primary tool for enhancing individuals’ effective skills and knowledge, transforming the population into a valuable asset.

Nevertheless, in Bangladesh, overpopulation poses a significant barrier to the creation of skilled migrant workers.⁵¹ Migrant workers not only send their savings back to Bangladesh but also make significant contributions to the development and economic growth of their host countries.⁵² However, it is disheartening to observe that their host countries frequently neglect these workers, leaving them vulnerable to exploitation by intermediaries. Furthermore, unscrupulous agents compel migrant workers to embark on illegal journeys, thereby intensifying their vulnerability and suffering.⁵³ According to Philip Martin and Martin Ruhs, reducing migration costs is crucial to safeguarding

⁴⁸ Ibid., 13.

⁴⁹ Bossavie, Laurent, “Low-skilled temporary migration policies: The case of Bangladesh,” (2023).

⁵⁰ Kaur, A, “7 Patterns and governance of labour migration in ASEAN: regional policies and migration corridors,” *Handbook of Migration and Globalization*, (2018): p. 105-124.

⁵¹ Azad, Md Anwarul, 6.

⁵² Forqan Uddin Ahmed, “Problems and prospects of Bangladeshi migrant workers,” *The Daily Asian Age*, 15 January, 2019, Opinion, www.dailyasianage.com

⁵³ Ibid.

these issues.⁵⁴ In Malaysia, the major issue is the adequacy of the current legal system for providing employment benefits for migrant workers, and at present, only two statutes on employment schemes manage both local workers and migrant workers, respectively. There is also some discrimination because the Workmen's Compensation Act (WCA) of 1952 provides very low financial benefits to protect migrant workers, while local workers receive better financial benefits and protection under the ESSA.⁵⁵ The Employment Act (EA) of 1955 also provides protection to local workers in the event of layoffs. For example, during a layoff, the employer must release any migrant workers working in the same capacity as local workers before releasing any local workers.⁵⁶

Moreover, only local workers are eligible for the inadequate benefits under the Employee Social Security Act (ESSA), whereas migrant workers do not receive any such benefits.⁵⁷ Additionally, the Workmen's Compensation Act (WCA) does not contain any direct provisions pertaining to benefits for migrant workers. The Employment Provident Fund Act (EPFA) covers the employer's contribution to migrant workers at only RM 5 per month, while the migrant workers' contribution depends on their working hours and percentage.⁵⁸ A significant number of migrants who are employed in low-skilled and semi-skilled industries continue to be subjected to exploitation and abuse at the hands of their employers, despite the fact that they are in possession of legal status. According to Yaacob, N. F., the housing issue is one of Malaysia's most prevalent issues, and many migrant workers have lived in cramped and

⁵⁴ Martin, Philip, and Martin Ruhs, "Labour shortages and US immigration reform: Promises and perils of an independent commission," *International Migration Review*, vol. 45, no. 1 (2011): p. 174-187.

⁵⁵ Devadason, Evelyn Shyamala, and Chan Wai Meng, 8.

⁵⁶ *Ibid.*

⁵⁷ Lee et al., "Assessment on welfare of labourers in construction project site in Malaysia," *In AIP Conference Proceedings*, vol. 2712, no. 1. (AIP Publishing, 2023).

⁵⁸ Joshua Purushotman, "An unfair pay cut through the EPF Bill," *The Sun Daily*, 17 April, 2017, <https://www.thesundaily.my/node/170642>.

crowded converted containers for a long time, despite the fact that they have laws.⁵⁹ Additionally, reforming the social security of migrant workers in Bangladesh and Malaysia can promote equal protection, integrate labour migration, and streamline their mobility without negatively impacting the social-economic conditions in both countries.⁶⁰ The insufficiency of existing laws and policies, along with the absence of effective safeguards for their labour rights throughout the recruitment process and during employment, are responsible for this.⁶¹

Furthermore, the ratification of the UN and ILO Conventions, as well as regional cooperation, are two of the biggest challenges facing both Bangladesh and Malaysia in protecting migrant workers.⁶² Some key issues to labour migration policy in Bangladesh are the common governance challenges related to fair recruitment, high cost for labour migration, corruption, lack of institutional capacity, lack of policy coordination, and development linkage between two or more countries, lack of international cooperation, and the literal and bilateral agreement between Bangladesh and Malaysia.⁶³

1.3 RESEARCH QUESTIONS

1. What are the existing legal protections for migrant workers under international laws?

⁵⁹ Yaacob, N. F, "Sinar Harian 150 Pekerja Asing Di Berhimpit Dalam Kontena," *Sinar Harian*, 7 January, 2021, <https://www.sinarharian.com.my/article/118052/edisi/150-pekerja-asing-berhimpit-dalam-konten>.

⁶⁰ Olivier, Marius, and Avinash Govindjee, "Protecting and Integrating Migrant Workers in ASEAN Social Security Systems," *Institutions and Economies*, (2016): p. 59-76.

⁶¹ Harkins, Benjamin, Daniel Lindgren, and Trainee Suravoranon, "Risks and rewards: outcomes of labour migration in South-East Asia, Kuala Lumpur, Malaysia:" ILO Regional Office for Asia and the Pacific, (2017).

⁶² Azad, Md Anowarul, 6.

⁶³ Wickramasekara, P, "Labour migration in South Asia: A review of issues, policies, and practices," *International Migration Working Paper*, (2011): p. 108.

2. What are the contemporary Bangladeshi labour laws and challenges in regards to the protection of migrant workers?
3. What are Malaysia's labour laws and appropriate legislative provisions related to the protection of migrant workers?
4. How can Bangladesh and Malaysia develop a comprehensive national legal framework and policy to legally protect migrant workers?

1.4 RESEARCH OBJECTIVE

The research will highlight the protection of migrant workers under several international laws, such as the ICRMW, the ILO, the International Human Rights Convention (IHRC), and the national legal framework of sending countries such as Bangladesh and Malaysia as labour-receiving countries to protect the rights of migrant workers. Based on the above discussion, the research seeks to accomplish the following objectives:

1. To examine the protection of migrant workers under existing international laws
2. To investigate contemporary Bangladeshi labour laws and challenges in protecting migrant workers
3. To evaluate Malaysia's labour laws and appropriate legislative provisions for protecting migrant workers
4. To propose a comprehensive national legal framework and policy for Bangladesh and Malaysia pertinent to the protection of migrant workers within the legal system

1.5 HYPOTHESIS

The study is based on the following four hypotheses:

Hypothesis 1:

International legal instruments and national legal frameworks exist to protect and promote the rights of migrant workers; however, the implementation of these laws and policies often poses significant challenges, thereby hindering effective protection for migrant workers.

Hypothesis 2:

Despite Bangladesh being a signatory member of the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) and the International Labour Organization (ILO), the absence of institutional systems and good governance for monitoring labour migration and ensuring fair recruitment processes has resulted in inadequate protection of migrant workers' rights.

Hypothesis 3:

Despite Malaysia's enforcement of various laws, including the Employment Act and constitutional principles of equality of treatment and free movement, to safeguard migrant workers, some argue that certain provisions are discriminatory. Furthermore, foreign workers often do not receive the same benefits and facilities as local workers.

Hypothesis 4:

Bangladesh and Malaysia can develop a comprehensive national legal framework and policy by adhering to international legal instruments such as the ICRMW, ILO, and other relevant treaties, enhancing cooperation with trade unions and NGO's, and establishing bilateral and multilateral agreements. This framework would tackle labour migration issues, ensure the protection and promotion of migrant workers' rights, and benefit both sending and receiving countries.

1.6 LITERATURE REVIEW

There are several writers and researchers who have written books and articles basically relating to the rights of migrant workers, the UN Migrant Worker's Convention, international humanitarian law, the ILO Convention for Migrant Workers, and relevant international treaties. Some of the scholars also touch on the issue and challenges of labour migration in the ASEAN and the SAARC regions. Many researchers focus on international laws, regional legal frameworks, and Bangladesh and Malaysia's domestic laws relating to the protection of migrant workers. All of the literature is relevant to this research, and it deals with the same issue very closely.

According to Triandafyllidou, the governance of labour migration and globalisation are related to international rules and regulations, as well as the standards of law and policy that make it the law for states to protect and promote the rights of workers who migrate, and there is not a single person or group that nations can go to in order to carry out migration governance.⁶⁴ The author especially emphasises the global government's focus on labour migration and the implementation of relevant international law at the state level to protect the rights of migrant workers. Castles stated that the lack of ratification of these international instruments, particularly the United Nations International Conventions on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMRW) and the International Labour Organization (ILO) Convention, is the main obstacle to protecting the rights of migrant workers.⁶⁵ Furthermore, to ensure the safety of all migrant workers, the most recent and

⁶⁴ Noushad, A. P, "Handbook of Migration and Globalisation," Editor: Triandafyllidou, Anna (Robert Schuman Centre for Advanced Studies, European University Institute, Italy), Handbook on Globalisation, 2018: p. 512, *Edward Elgar Publishing Company, Great Britain, IASSI-Quarterly*, vol. 37, no. 3-4 (2018): p. 522-524.

⁶⁵ Edelenbos, Carla, "Committee on Migrant Workers and Implementation of the ICRMW, in Migration and Human Rights:" *The United Nations Convention on Migrant Workers' Rights*, vol. 100. (Cambridge: Cambridge University Press, 2009).

effective convention is the ICRMW. It is generally acknowledged that the United Nations (UN) Convention places a strong focus on the protection of the rights of all migrant workers, including all members of their families. In situations like these, certain nations have a responsibility to establish standards for migrant workers and their family members.⁶⁶

Moreover, Ockert Dupper recommends reformation in national legal policy; regional or international legal instruments have played a significant role as blueprints.⁶⁷ The writer emphasises that in the content of the ICRMW, one of the most glaring shortcomings is the exclusion of irregular migrant workers from the reach of the instruments. Under the UN Convention, their protection is limited and, in many cases, inadequate. In terms of legal enforcement, it was pointed out that both the UN and the ILO systems of supervision and enforcement are inadequate and ineffective. While commenting on international legal protection, Leslie Holmes⁶⁸, discussed in his edited book the laws and policies pertinent to human rights in Europe and Asia. The researcher believed that human trafficking activities clearly violate articles 3-7, 13, and 23 of the UDHR of 1948. These studies have aided the author's comprehension of the international legal framework, which has evolved into the world's major nations' legal systems.

In addition to the established UN Conventions, two core ILO guidelines cover the central issues of migrants' mobility, namely the Migration of Employment Convention (1949)⁶⁹ and the Migrant Workers (Supplementary Provisions) Convention

⁶⁶ Preamble of the ICRMW, <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers>> (accessed 10 May 2022).

⁶⁷ Dupper, Ockert, "Migrant workers and the right to social security: An international perspective," *Stellenbosch Law Review*, vol. 18, no. 2 (2007): p. 219-254.

⁶⁸ Holmes, Leslie, ed, "Trafficking and human rights: European and Asia-Pacific perspectives." (Edward Elgar Publishing, 2010).

⁶⁹ ILO, "Migration of Employment Convention (Revised) 1949, No. 97," entered into force 22nd January 1952, <<https://normlex.ilo.org/>> (accessed 10 May 2022).

(1975).⁷⁰ The ILO adopted specific recommendations associated with the revision of the Migration for Employment Convention in 1939, establishing the foundational convention known as the Migration for Employment Convention.⁷¹ The International Labour Organization (ILO) established the Provisions for Migrant Workers (The Supplemental Provisions) Convention, 1975, also known as the Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, in 1975, with the aim of protecting the rights of migrants. However, in contrast to the ICRMW, this rule does not apply to migrant workers⁷² further expanding the migrant worker standards set by the previous conventions.

The ICRMW is comprehensive, encompassing both the recruitment process and the rights of migrant workers upon admission. However, it does not always align with the standards set by previous ILO Conventions. In particular, it follows the “equality of treatment” principle, which protects the rights of migrant workers from discrimination but without establishing minimum standards, as the ILO Migrant Workers’ Conventions partly do.⁷³ In addition, situations characterised by monetary insecurity and elevated unemployment rates prompt governments to prioritise their citizens over foreign workers. The main obstacle is the absence of a legal framework for executing national and international instruments, and the UN and ILO Conventions are never again suitable given the attributes of temporary international migrant workers’ relocation.⁷⁴ These recognise and acknowledge the equal and respectful treatment of all migrant workers

⁷⁰ ILO, 1975 Convention reaffirms principles laid down in 1949 Convention, <<https://normlex.ilo.org/>> (accessed 10 May 2022).

⁷¹ ILO Convention No. 66, <<https://normlex.ilo.org/>> (accessed 10 May 2022).

⁷² ILO, “Migrant Workers (Supplementary Provisions) Convention 1975, No. 143,” entered into force 9th December 1978, <<https://normlex.ilo.org/>> (accessed 10 May 2022).

⁷³ Pécoud, Antoine, and Paul De Guchteneire, “Migration, human rights and the United Nations: an investigation into the obstacles to the UN Convention on Migrant Workers’ Rights,” *Windsor YB Access Just*, vol. 24 (2006): p. 241.

⁷⁴ *Ibid.*

and their families, irrespective of their race, colour, sex, and other characteristics. The UN and the ILO Conventions acknowledge the fundamental human rights of migrant workers. The United Nations (UN), founded in 1945, is the main international organisation dedicated to maintaining international peace and security, developing friendly relations among nations, and promoting social progress and a standard of living for all human rights.⁷⁵ An international legal framework firmly entrenches this principle, ensuring comprehensive guarantees for the rights of all individuals.⁷⁶ The main objective of the UN Conventions is to protect human rights universally. The UN, along with its other international organisations, has established some means of protecting the basic rights of migrant workers.⁷⁷

Additionally, Bangladesh has ratified the ILO Migrant Workers' Conventions of 1949 (Revised, No. 97),⁷⁸ and the Migrant Workers' (Supplementary Provisions) Convention of 1975 (No. 143),⁷⁹ and only two ASEAN member states have ratified these conventions.⁸⁰ Since 1930, the ILO has been providing universal legal protection to migrant workers through these two core conventions. The ILO intends to guide migrant workers' temporary procedures and provide special guarantees.⁸¹ The ICRMW was signed and ratified by only a few labour-sending countries in South and Southeast Asia. Castles and Stephen point out the lack of ratification of UN Conventions by

⁷⁵ Smith, Rhona KM, "International human rights law." (Oxford University Press, 2022).

⁷⁶ Noor Shuhadawati binti Mohamad Amin, "Migrant workers' rights to social security in Malaysia: a reform-oriented analysis," (PhD Thesis, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia, 2017): p. 17.

⁷⁷ Ibid.

⁷⁸ ILO, "Ratifications of C097 - Migration for Employment Convention (Revised)" 1949 (No. 97), <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312242:NO> (accessed 10 May 2022).

⁷⁹ ILO, "Ratifications of C143 - Migrant Workers (Supplementary Provisions) Convention" 1975 (No. 143), <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312288:NO> (accessed 10 May 2022).

⁸⁰ Viana et al., "Rights and Obligations of a Country Due to Unilateral Resignation from ASEAN Membership," *International Journal of Multicultural and Multireligious Understanding*, vol. 7, no. 4 (2020): p. 371-383.

⁸¹ Gerry Rodgers, Eddy Lee, Lee Swepston and Jesmien Van Daele, "The International Labour Organization and the quest for social justice" 1991-2009, (2009): p.75-76.

labour-receiving countries in the ASEAN region, including Malaysia.⁸² The UN and the ILO Migrant Workers' Convention play a significant role in protecting and promoting migrant workers' rights. Unfortunately, Malaysia, a prominent migrant worker-receiving country in ASEAN, did not sign and ratify the most important ILO Conventions. According to Bates, the absence of any regional approach, such as literal, bilateral, or multilateral treaties, will be critical in securing the interests of migrating workers.⁸³ There are a number of regional and international instruments to protect the rights of migrant workers. Bates also states further that there is no cooperation between two regional organisations regarding sending and receiving labour migration. The author also asserts that a literal and bilateral agreement can protect migrant workers at the national, regional, and international levels.

Moreover, Wickramasekara urges South and Southeast Asian countries to sign and ratify international instruments to protect and promote the legal rights of migrant workers.⁸⁴ Andrees et al. contend that the rights of migrant workers are one of the most important concerns on the agenda for decent work that the International Labour Organization (ILO) has.⁸⁵ The governments of sending and receiving countries, workers associations, and NGOs should collaborate to implement the ILO Declaration. The authors of this research emphasise the critical role of the ILO Declaration in safeguarding migrant workers' rights and upholding their fundamental rights in the workplace. Additionally, the study highlights the significance of the eight core ILO Conventions that aim to safeguard the rights of both migrant workers and nationals.

⁸² Castles, Stephen, "International migration at the beginning of the twenty-first century: global trends and issues," *International Social Science Journal*, vol. 68, no. 227-228 (2018): p. 151-162.

⁸³ Bates, Caroline, "Dignity and Freedom Across Borders" (2009).

⁸⁴ Wickramasekara, Piyasiri, "Asian labour migration: Issues and challenges in an era of globalization," Geneva: ILO, (2002).

⁸⁵ Andrees, Beate, Alix Nasri, and Peter Swiniarski, "Regulating labour recruitment to prevent human trafficking and to foster fair migration: Models, challenges and opportunities," Geneva: ILO, (2015).

Cholewinski et al., highlight the UN International Convention on the Protection of the Rights of Migrant Workers and All Members of Their Families (ICRWM), which was adopted in 1990 and entered into force in 2003.⁸⁶ However, the ratification of the international instrument is one of the vital issues to protect and promote the rights of labour migrants and their fundamental rights in both labour-sending and receiving countries. The UN Migrant Workers' Convention is especially for all migrant workers and members of their families. Piper and Iredale emphasised the proper implementation of the ICMRW in 1990, which entered into force on July 1st, 2013, after 13 years.⁸⁷ The goal of this convention is to protect all migrant workers and their families, as well as respect all migrant workers' human rights. Nevertheless, the writer acknowledges several obstacles that hinder the ratification of these conventions. These obstacles include concerns about potential impacts on the labour market, the loss of skilled manpower, and a lack of cooperation between sending and receiving countries.

Additionally, there may be challenges related to a lack of expertise in the fields of international and human rights law. In his article "The Politics of the UN Convention on Migrant Workers Rights," Antoine Pécoud argues that only 54 states have ratified this international instrument to protect migrant workers' rights, suggesting that the lack of ratification of UN Conventions and the ILO core Migrant Workers' Convention may prevent migrant workers' rights.⁸⁸ The major problem with ratification is political.

The above literature is very important to this research because it is capable of finding the magnitude of the UN Migrant Workers' Convention and the ILO Convention to protect and promote the rights of all migrant workers and members of

⁸⁶ Cholewinski et al., "Migration and Human Rights: The United Nations Convention on Migrant Workers' Rights." (Cambridge University Press, 2009).

⁸⁷ Iredale, Robyn, and Nicola Piper, "Identification of the Obstacles to the Signing and Ratification of the UN Convention on the Protection of the Rights of All Migrant Workers," *In ideas* (2003).

⁸⁸ Pécoud, Antoine, "The Politics of the UN Convention on Migrant Workers' Rights," *Groningen Journal of International Law*, vol. 5, no. 1 (2017).

their families. It is crucial to mention that numerous scholars have emphasised the significance of ratifying the United Nations (UN) and International Labour Organization (ILO) Migrant Worker's Conventions. They argue that establishing a global migration governance framework is crucial to addressing the issues and challenges faced by migrant workers. Many view this approach as a potential solution for ensuring comprehensive protection and promotion of migrant workers' rights on a global scale. Therefore, this literature aids the research, as its primary goal is to examine the extent of implementation and the challenges associated with ratifying the UN and the ILO Migrant Workers' Conventions in the major labour-sending and receiving countries.

According to Rother, the ten ASEAN Member States (AMS) adopted the ASEAN Declaration on the Protection and Promotion of Migrant Workers' Rights (Cebu Declaration) in 2007 in Cebu, Philippines.⁸⁹ Lavenex addresses regional institutions, migration governance, and the issue of how to protect migrant workers' rights and control the flow of undocumented migrants across this region.⁹⁰ The UN has developed instruments to enhance global cooperation on labour migration. The relationship between states, regional and international levels, and multilateral institutions plays a vital role. In today's world, regional migration governance plays a crucial role in safeguarding and promoting labour migration, as well as in the implementation of laws and policies.⁹¹

Based on the literature reviewed, it is evident that addressing the lack of the ASEAN Declaration and obligation to protect and promote the rights of labour

⁸⁹ Rother, Stefan, "ASEAN Forum on Migrant Labour: A space for civil society in migration governance at the regional level?" *Asia Pacific Viewpoint*, vol. 59, no. 1 (2018): p. 107-118.

⁹⁰ Lavenex, Sandra, "Regional migration governance- building block of global initiatives?" *Journal of Ethnic and Migration Studies*, vol. 45, no. 8 (2019): p. 1275-1293.

⁹¹ Ibid.

migration is of significant importance. The literature has identified several relevant factors contributing to this issue. By understanding and addressing these factors, appropriate measures can be taken to strengthen the protection and promotion of the rights of migrant workers within the ASEAN region, especially in Malaysia. The ASEAN's principles and obligations to protect the rights of migrant workers are non-binding to their member states. This research also finds that the social security system for migrant workers is basically irregular in ASEAN countries. Ratification of the UN and the ILO Migrant Worker's Conventions in ASEAN countries is a big issue to protect labour migration across this region.

Furthermore, Rahman mentions the social and economic development in SAARC countries over the last few decades, as well as labour migration.⁹² Labour migration plays a vital role in this region's economic development and provides more work opportunities. Ozaki emphasises the flow of labour migration from South Asian countries and their remittances.⁹³ Bangladesh, like other south Asian countries, shows that there are almost 35.1 million people from the SAARC member states alone who have left for foreign employment, and most of their destinations are the Gulf Cooperation Countries (GCC) and Malaysia.

As a regional organisation, the SAARC should implement proper laws and policies to protect a large number of out-migration. Wickramasekara and Baruah have emphasised the importance of a fair recruitment process, good government, and international cooperation in protecting and promoting labour migration rights.⁹⁴ The fair recruitment process in both labour-sending and receiving countries is on the

⁹² Rahman, Maliha Mahru, "Impact of labour force participation on economic growth in South Asian countries" (2018).

⁹³ Ozaki, Mayumi, "Worker migration and remittances in South Asia" (2012).

⁹⁴ Wickramasekara, Piyasiri, and Nilim Baruah, "Fair recruitment for low-skilled migrant workers: issues and challenges," *Safeguarding the Rights of Asian Migrant Workers from Home to the Workplace*, (2017): p. 23-38.

international agenda, and the ILO has taken some initiative to develop it. According to Abdullah, the SAARC came into existence in 1985.⁹⁵ Today, with a large global population, many countries in South Asia face challenges such as unemployment and poverty. However, the SAARC can play a vital role in this region's economic and social integration by implementing regional and international policies to protect labour migration rights.

Deuja suggests that the SAARC charter and other regional documents do not support the SAARC's commitment to protecting and promoting human rights, with the exception of preventing labour migration trafficking and ensuring the welfare of children. This commitment becomes effective once all SAARC member states sign this agreement.⁹⁶ Pong-Sul-Ahn⁹⁷ has highlighted South Asian countries' working conditions and fundamental rights to labour migration. The literature highlights that a significant proportion of migrant workers in South Asian countries are unskilled or low-skilled. This gap in legal frameworks and policies poses challenges and vulnerabilities for migrant workers in the region. There is a need for Bangladesh to develop and implement appropriate measures, in line with international standards and best practices, to safeguard the rights and well-being of migrant workers in South Asia.

Moreover, in relation to international and regional migration, it is considering the interest of individuals from one country or region in another country or region in having a good life or financial stability.⁹⁸ However, the impact of labour migration from one country to another has basically expanded from the very beginning, especially in

⁹⁵ Abdullah, Abu Yousuf, "South Asian hope SAARC, will it survive?" Life and Hope Foundation, Dhaka, (2011).

⁹⁶ Deuja, Surya, "Establishing a robust regional human rights mechanism in south Asia," *Asian Human Rights Defender*, vol. 6, no. 1 (2010).

⁹⁷ Ahn, Pong-Sul, ed, "Migrant workers and human rights: Out-migration from South Asia," *International Labour Organization, Sub regional Office for South Asia*, (2004).

⁹⁸ Hammar, Tomas, and Kristof Tamas, "Why do people go or stay?" In *International migration, immobility and Development*, pp. 1-19. (Routledge, 2021).

the low and semi-skilled employment sectors.⁹⁹ In addition, Bangladesh is one of the world's major contributors to the supply of migrant workers. Every year, foreign workers are deliberately relocating abroad to seek work and earn money. The major countries for short-term labour migration from Bangladesh include Saudi Arabia, Qatar, the UAE, Bahrain, Kuwait, Oman, Malaysia, and Singapore. Since 1976, Saudi Arabia alone has accounted for nearly half of the total number of migrant workers from Bangladesh, while Malaysia was the second-highest country for labour migration before the Asian financial crisis in 1997. Bangladesh also started labour migration to the GCC and ASEAN countries, along with the UK, USA, and other European countries. Gradually, Bangladesh began to send semi-skilled and unskilled migrant workers to Malaysia in various sectors such as plantations, construction, manufacturing, agriculture, and other service sectors.

Despite being an important development actor, migrant workers' vulnerabilities, particularly in times of crisis, remain largely unaddressed in the policy and academic domains.¹⁰⁰ As a large migrant worker-sending country, Bangladesh practises only a few laws to protect them, and the implementation of such laws is another problem. Furthermore, increasingly rigid immigration controls, arbitrary recruitment practices, and employer-tied visa sponsorship largely exclude them from the protections of national labour law.¹⁰¹

Additionally, in Bangladesh, social protection for migrant workers is insufficient to protect their basic rights. Social insurance provides workers with protection against

⁹⁹ Paoletti, Sarah, "Human rights for all workers: The emergence of protections for unauthorized workers in the inter-American human rights system," *Human Rights Brief*, vol. 12, no. 1 (2004): p. 2.

¹⁰⁰ Serra Mingot, Ester, and Valentina Mazzucato, "Providing social protection to mobile populations: Symbiotic relationships between migrants and welfare institutions," *Journal of Ethnic and Migration Studies*, vol. 44, no. 13 (2018): p. 2127-2143.

¹⁰¹ Rashid, Syeda Rozana, Anas Ansar, and Abu Faisal Md. Khaled, "The pandemic has added to my miseries: Bangladeshi migrant workers' social protection revisited," *Asian Journal of Comparative Politics*, vol. 8, no. 1 (2023): p. 273-290.

crises; social assistance provides support in crises; and labour market regulations indicate basic rights and work standards. Some private agencies used deception or fraud during the recruitment process for migrant workers. It is more difficult to prove the aim of exploitation or awareness of the consequences of exploitation in order to classify these occurrences as human trafficking. The latter encompasses a wide range of activities, such as social protection laws, bilateral social security agreements, employer-employee relations, and workers' capacity to invest in social and cultural ties at home. According to Ashraful Azad, migrant workers face many problems due to a lack of legal framework implementation, which makes them more vulnerable and structurally dependent on substandard working and living conditions abroad.¹⁰² The occurrence of trafficking in "legal" migration channels and the growing awareness of labour trafficking may prompt governments in the countries of origin and destination to take action against it more seriously. The government's use of the term "human trafficking" appears to be more serious than their treatment of terms like "cheating," "fraud," and "irregular migration."

In addition, four channels control the recruitment process of Bangladeshi migrant workers: the BMET, the BOESL, private recruiting agencies, and individual arrangements. Abuse of migrant workers primarily stems from a lack of interconnection between government and private agencies. The main issues of concern are the recruitment procedure and weaknesses in the policies of both the labour-sending and receiving countries.¹⁰³ Norliza Dolhan's article, "Human Trafficking and Human Security in Southeast Asia: A Case Study of Bangladeshi Foreign Workers in Malaysia," asserts that domestic laws restrict the free movement and freedom of foreign

¹⁰² Azad, Ashraful, "Recruitment of migrant Workers in Bangladesh: elements of human trafficking for labour exploitation," *Journal of human trafficking*, vol. 5, no. 2 (2019): p. 130-150.

¹⁰³ Ahmed, Shamsun Naher, "The impact of the Asian crisis on migrant workers: Bangladesh perspectives," *Asian and Pacific Migration Journal*, vol. 7, no. 2-3 (1998): p. 369-393.

workers, and do not fully cover their wages and treatment.¹⁰⁴ Since gaining independence in 1957, Malaysia has successfully diversified its economy from one that was initially agriculture and commodity-based to one that now plays host to robust manufacturing and services sectors that have propelled it to become a leading exporter of electrical appliances, electronic parts, and components.¹⁰⁵

The scholar also stated that Malaysia has successfully curtailed high poverty rates, reduced income inequalities, and reduced unemployment.¹⁰⁶ This situation has drawn attention and played a role in attracting foreign workers to seek economic opportunities in Malaysia.¹⁰⁷ The Federal Constitution of Malaysia (FCM) has fully guaranteed its citizens' basic human rights, including the prohibition of all kinds of forced labour.¹⁰⁸ Article 6 of the Constitution also states that all are equal before the law, regardless of their basic human rights. Protecting the rights of migrant workers in Malaysia is essential to ensuring the country's economic expansion.¹⁰⁹

In Malaysia, there are several laws and regulations to safeguard the legal rights of all migrant workers. The Employment Act (EA 1955)'s primary objective is to protect migrant workers from abuse by their employer by providing basic benefits such as salaries, sick and annual leave, overtime benefits, and so on. However, in most cases, all legal benefits do not fully apply to migrant workers, except in terms of termination notice. The EA of 1955 is the main employment statute that provides all basic benefits

¹⁰⁴ Dolhan, N., & Idris, N. A, "Human Trafficking and Human Security in Southeast Asia: A Case Study of Bangladeshi Foreign Workers in Malaysia," *Journal of Nusantara Studies (JONUS)*, vol. 6, no.1 (2021): p. 136-155.

¹⁰⁵ Hamzah et al., "Malaysia as attraction of international foreign workers," *Journal of Critical Reviews*, vol. 7, no. 8 (2020): p. 797-804.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Dato' Mohd Hishamudin Yunus, "Judicial Activism- The Way to Go/," *Malaysia Law Journal Articles*, vol. 6, no. 18 (2012): p. 38-70.

¹⁰⁹ Aziz, Saidatul Nadia Abdul, and Salawati Mat Basir, "Protection of migrant workers under the ICMW: incompatibility with Malaysian laws and position in ASEAN." *Hasanuddin Law Review*, vol. 7, no. 3 (2021): p. 150-168.

to migrant workers, regardless of their nationality. Moreover, the Trade Union Act (TUA 1959) has certain limitations for migrant workers. Under this Act, all migrant workers' have the right to join any trade union or organise the same functions as local workers. Nevertheless, this Act is fully applicable only to Malaysia, not any migrant workers. The Trade Union Act (TUA) 1959, which stifled labour unions' freedom to freely organise employees in workplaces (ILO Convention No. 87) and bargain on their behalf (ILO Convention No. 98), also contributes to the challenges.¹¹⁰ Additionally, the Industrial Relations Act (IRA) 1967 emphasises the positive relationship between employees, employers, and trade unions to settle all types of labour disputes that arise and mutually agree to solve all employment-related problems with minimal government intervention. Individual employees or the trade union collectively can resolve all employment-related disputes under the IRA.

Moreover, Ramasamy Nagiah stated that Malaysian trade unions are still facing serious difficulties due to “neoliberal policies and changing employment structures.” The Employee Social Security Act (ESSA) 1969 provides basic social security protection against various contingencies, such as workplace injury, maternity issues, health care, physical sickness, invalidity, and retirement. In addition, the SOCSO covers illnesses caused by employment, medical benefits, injuries resulting in temporary or permanent disability, continuous attendance allowance, dependents' benefits and rehabilitation, and certain incidents involving death, including repatriation and burial.¹¹¹ The Workermen's Compensation Act (WCA) 1952, which governs migrant workers in Malaysia, provides benefits for employment injuries at the workplace. Furthermore, the

¹¹⁰ Ramasamy, Nagiah, “The future of the trade union movement in Malaysia,” In MTUC/ACILS National Workshop on MTUC: the way forward, Genting Highlands, Malaysia, (2008): p. 21-22.

¹¹¹ Ibrahim, Muhammad Safwan, and Rodziana Mohamed Razali, “Perceptions of the Rights and Welfare of Foreign Workers in Peninsular Malaysia,” *Pertanika Journal of Social Sciences & Humanities*, vol. 31, no. 2 (2023).

Employment's Provident Fund Act (EPFA) 1991 provides old-age benefits to both local and migrant workers.

Additionally, protecting the rights of migrant workers' is crucial from an Islamic perspective. According to the findings of a number of studies, despite the fact that Islamic law does not explicitly prohibit the practice of slavery, the religion expresses its desire in a number of verses in the *Quran* and *Sunnah* to gradually eradicate the institution of slavery and gradually replace the rights of slaves in order to teach them to behave in a humane manner and eventually liberate them. This study presents a detailed discussion to defend workers' rights in terms of modern slavery, forced labour, and their fundamental human rights while they are at work. The discussion revolves around the topic of modern slavery. From an Islamic point of view, where the topic at hand is the history of, as well as the prohibition of, modern slavery and forced labour in Islamic form, the subject begins with the age of ignorance (*jahilliyyah* period) and continues until the death of the Prophet Muhammad (PBUH).

According to Farheen Baig Sardar Baig highlighted her book on the treatment of migrant workers in Islam in an Islamic context, stating that "Islam does not distinguish between the treatment of local and foreign workers."¹¹² Islam does not allow any discrimination against workers in terms of their sex, colour, religion, race, or any other identity they hold. Treatment is one of the fundamental rights, and Islam encourages masters to provide this right to servants in the workplace. Islam teaches us kindness towards workers, whether they are local or foreign. According to the *Quran*, there is a verse regarding the relationship between master and servant that Allah (SWT) says: "You are the one from the other."¹¹³ The verse signifies that master and slave would

¹¹² Sardar; Farheen Baig Baig, "Rights of workers from the Islamic perspective," *The Malaysian Current Law Journal Sdn Bhd*, (2013).

¹¹³ An-Nisa: Verse No. 25.

behave like brothers, and they are equal. When the Prophet Muhammad (PBUH) lived in Medina, he established the brotherhood between Arab masters and slaves, and Islam has established the requirement of treating master and slave with care.¹¹⁴ However, the study takes a comprehensive approach as it explores the concept of “legal protection” for migrant workers in Bangladesh and Malaysia. Unquestionably, this research is investigating legitimate guarantees and examining the current legal protection, procedures and fundamentals.

This study is also a significant attempt to promote and protect the legal rights of migrant workers in Bangladesh and Malaysia. The current study investigates whether the framework provides them with adequate legal protection. Moreover, the study analyses the existing legal framework and conducts interviews amongst Bangladesh migrant workers to evaluate the necessity and propose amendments and reforms, if necessary, of the existing laws and policies in the countries to minimise the pains of the migrant workers. Additionally, knowing migrant workers’ needs in the area of laws and policy will benefit both the labour-sending countries and the receiving countries immensely in the long run, as the nation relies greatly on foreign workers. The identified deficiencies can be useful to assist in the legal reform endeavour. Notably, this study hopes to improve the existing laws by providing basic protection to these vulnerable migrant workers in the future. The study can also be used as a reference for other students and researchers interested in conducting academic investigations in this field.

1.7 RESEARCH METHODOLOGY

The research methodology is designed to provide a strategic framework for the critical examination of research approaches, aiming to evaluate the effectiveness, structure, and

¹¹⁴ M Mukarram Ahmad and Fr Taeschner, “Encyclopedia of Islam,” *New Edition*, vol. 2 (2005): p. 575.

protocols of different methodologies in contributing to knowledge enhancement. It facilitates discourse on the methodological aspects of research rather than the thematic content. The study, which employs a doctrinal research methodology, examines legal doctrines primarily through the analysis of legal principles and frameworks. This approach combines straightforward analyses of existing laws with interpretative insights, laying the groundwork for both descriptive accounts and theoretical advancements. The research engages with primary sources such as international legal instruments, including the UN charter, treaties, face-to-face interviews, FGD's, and case law, alongside secondary sources like journals, textbooks, library research, and internet materials. Content analysis plays a crucial role in this methodology, systematically analysing communication elements to elucidate connotations, perspectives, and objectives embedded in legal texts. The empirical component involves qualitative interviews with experts in international law, focusing on concept authentication and understanding their insights to enrich the understanding of the subject matter.

The qualitative study utilises purposeful sampling to select scholars and experts in international law, aiming to gather comprehensive perspectives on the use of force in international law. Interviews are conducted through various means, including face-to-face, email, and video calls, ensuring accessibility and minimising logistical constraints. The researcher selects interviewees based on their expertise, contributions to the field, and supervisory recommendations. Efforts are made to engage with individuals representing diverse intellectual ideologies and civilisations to capture a broad spectrum of viewpoints.

Despite initial challenges in securing responses from some organisations and individuals, the methodology remains focused on soliciting informed opinions and insights from key stakeholders involved in labour migration issues. Through meticulous

data collection and analysis, the research aims to enhance understanding of international legal frameworks governing the use of force and their implications for contemporary legal practice. This research draws from various sources to fulfil its objectives and address the hypothetical questions posed. The study employs a qualitative research methodology, incorporating exploratory, analytical, and combined approaches. Both doctrinal and non-doctrinal legal research methods are utilised for data analysis and collection.

The doctrinal legal approach involves systematic, interdisciplinary, and critical analysis of legal principles, doctrines, and rules derived from existing laws, including legislation, case law, and international conventions. This approach is employed to analyse laws and policies related to labour migration and the rights of migrant workers under various international conventions, such as the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), the Universal Declaration of Human Rights (UDHR), International Labour Organization (ILO) Conventions, and others. The study also examines relevant legal provisions within Bangladesh's Overseas Employment and Migrants Act (OEMA) 2013 and Malaysia's employment laws, assessing whether these frameworks effectively protect the rights of migrant workers. Furthermore, it incorporates analysis of scholarly works, articles, theses, and reports from organisations such as the ILO and the ICRMW, comparing Bangladesh and Malaysia's legal frameworks with international standards to identify gaps.

The non-doctrinal legal approach focusses on empirical research, examining how laws and policies are applied in real-world contexts. This study evaluates the effectiveness of such laws and policies in addressing existing issues, considering ethical and jurisprudential perspectives. Field studies and surveys were conducted to assess the

practical implementation of international and national laws protecting migrant workers' rights. Primary data was predominantly collected from Bangladeshi migrant workers, with additional insights from lawyers and experts in Bangladesh. The data collection methods included Focus Group Discussions (FGD) and face-to-face interviews with about 150 Bangladeshi migrant workers. The data was collected from Bangladesh and Malaysia. In Bangladesh, FGD's and face-to-face interviews were conducted in the Neya Palton and Mohakhali areas of Dhaka city, where many employment recruiting agencies are located. In Malaysia, FGD's and face-to-face interviews were conducted in Gombak, Rawang, Sentul, Kotaraya, Pudu, Selayang, Cyberjaya, Puchong, and Chow Kit of Selangor State, where many Bangladeshi migrant workers reside or work. Participants' names, ages, and company affiliations are kept anonymous due to the sensitive nature of the interview questions related to Malaysian laws.

The study utilised both primary and secondary data sources: primary Sources and secondary sources. The data was collected through Focus Group Discussions (FGD), face-to-face interviews, and fieldwork conducted in collaboration with international conventions such as the ICRMW and the ILO, national laws such as the Bangladesh OEMA and Malaysian employment laws, articles, books, library research, international declarations, recommendations, reports from the ICRMW and the ILO, and other relevant publications and theses. Online sources, including newspapers, journals, and search engines, were also consulted. In addition, several emails were sent to Malaysian lawyers and migration experts, accompanied by a CPS certification letter regarding the protection of migrant workers under domestic laws. However, no responses were received. By combining doctrinal and non-doctrinal approaches and drawing from both primary and secondary sources, this research provides a comprehensive analysis of the legal protections available to Bangladeshi migrant

workers in Malaysia, identifying gaps and proposing solutions to enhance their rights and safety.

1.8 SCOPE AND LIMITATION OF THE STUDY

While attempts have been made to study migrant workers, their rights, abuse of their rights, and relevant international laws to protect the rights of migrant workers in Bangladesh as a sending country and Malaysia as a receiving country, the research only covers national and international laws, policies, and practices to protect documented migrant workers. The national employment laws of Bangladesh and Malaysia will not be discussed, which are related to local workers. There are many foreign citizens who work and live in Bangladesh without legal documents, and there is no accurate information on how many foreigners work and live in the country. So, the study also does not cover this area in Bangladesh.

The research mainly examines the issues and challenges faced by migrant workers in terms of their recruiting process, arranging employment visas, and working outside as migrant workers, especially in Malaysia. The main goal of this study is to investigate the overall protection system for documented Bangladeshi migrant workers in Malaysia, as well as relevant national and international legal frameworks. As previously stated, the study examined the Bangladesh Overseas Employment and Migrants Act 2013, the BMET, the regulations governing recruitment agencies, the registration of migrant workers procedures and policies, the clearance process for migration, employment contracts, the labour welfare wing and agreement on migration, the rights of migrant workers, the offences, penalties, and trials, as well as the laws of NGO's and trade unions that are related to safeguarding and promoting the rights and welfare of migrant workers. To protect and promote the rights and welfare of migrant

workers in Malaysia, the research deeply analyses Malaysia's labour laws, such as the Employment Act (EA) 1955, Trade Union Act (TUA) 1959, Workmen's Compensation Act (WCA) 1952, Worker's Minimum Standard of Housing and Amenities Act (WMSHA) 1990, Children and Young Persons Act (CYPA) 1966, Industrial Relations Act (IRA) 1967, Occupational Safety and Health Act 1994, Wages Council Act 1947, Employment (Termination and Lay-Off Benefits) Regulation 1980, Employees Provident Fund Act (EPFA) 1991, Employees' Social Security Act (SOCSO) 1969, Factories and Machinery Act (FMA) 1967, and Minimum Wages Order (MWO) 2012. The study focuses on several governmental agencies, authorities, and corporations in both Bangladesh and Malaysia.

This research also addresses international laws aimed at protecting migrant workers, such as the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), the International Labour Organization (ILO) Migrant Workers' Convention No. 97, Convention No. 143, and other ILO core conventions pertaining to migrant workers. Additionally, relevant international and national human rights treaties are taken into consideration. It is relevant to the reminder that the ICRMW, which was signed in 1990 and entered into force in 2003, is the only international treaty to ensure the minimum standards of all migrant workers and members of their families.

There are some limitations to this research, such as the collection of primary and secondary data from other jurisdictions. This study's primary limitation is the scarcity of available materials, particularly textbooks specifically designed for migrant workers, as well as the legal frameworks in Bangladesh and Malaysia. The lack of comprehensive and up-to-date literature on this subject poses a challenge. Consequently, the researcher had to heavily rely on online sources, libraries, and a

variety of materials, including case laws, journals, articles, periodicals, and newspapers, to gather relevant information.

Moreover, the findings of this research are not generalisable to all workers' issues because this research only analyses the protection of migrant workers and only applies to documented migrant workers. Furthermore, gathering data from various government departments, authorised persons of the NGO's, labour organisations, and private companies presents significant challenges, as some are considered security-related and highly confidential. Throughout the data collection stage, most government and non-government authorities inform us that revealing the required data is highly confidential due to migrant workers' sensitive nature. General information on the current law, policies, and practices related to the protection of migrant workers is also difficult to obtain because most of the officials interviewed do not have full knowledge of the labour migration laws.

In addition, this research will be used to collect and analyse recent documents, reports, articles, and activities of international organisations that work continuously to protect migrant workers and regional bodies such as Bangladesh and Malaysia. Nevertheless, this problem is partly alleviated by the use of databases, supplied materials, and information obtained through the use of the internet. Consequently, the secondary sources of information on the international migrant worker's convention, law, and regional organisation further constrain the research.

1.9 THEORETICAL FRAMEWORK

Migration studies and politics are complex phenomena, and as a result, a comprehensive theory of migration remains elusive due to the field's diverse nature. Instead of pursuing a grand theory, this study focuses on discrete theoretical perspectives relevant to

international human rights, immigration, asylum policy, and compliance with international law. By exploring these perspectives, it aims to understand state compliance with international human rights commitments, particularly concerning the legal protection of migrant workers. In this context, compliance denotes the alignment between state behaviour and legal principles or standards.¹¹⁵ It encompasses both adherence to the provisions of international agreements and the measures taken by states to implement these agreements domestically.

Implementation strategies may include incorporating international standards into domestic legislation, developing regulations and enforcement rules, and establishing relevant institutions. Compliance studies do not always establish a direct causal link between legal norms and state behaviour, but they do acknowledge a correlation between these norms and state actions. Various factors, such as consent, ratification, and the incorporation of treaties into domestic law, can influence state compliance with international human rights commitments.¹¹⁶ Consent forms the basis of compliance, as states are obligated to obey laws and rules to which they have explicitly or tacitly consented. The act of ratifying a treaty expresses a state's willingness to adhere to its terms, even in the absence of explicit consent. The *pacta sunt servanda* principle emphasises that states are bound to fulfil the duties established by treaties they have ratified.¹¹⁷

Moreover, normative considerations, such as the perceived legitimacy of international norms and the sense of obligation to comply with them, may drive compliance. Constructivist theories highlight the role of socialisation in shaping state

¹¹⁵ Weidlich et al., "Process compliance analysis based on behavioural profiles," *Information Systems*, vol. 36, no. 7 (2011): p. 1009-1025.

¹¹⁶ Goodman, Ryan, "Human rights treaties, invalid reservations, and state consent," *In International law of human rights*, p. 417-446. (Routledge, 2017).

¹¹⁷ Schmalenbach, Kirsten, "Article 26: *Pacta sunt servanda*," *In Vienna Convention on the Law of Treaties: A commentary*, p. 465-492. (Springer Berlin Heidelberg, 2018).

behaviour, suggesting that states internalise international norms through interaction and may comply with them to maintain their legitimacy and reputation within the international community.¹¹⁸ Rationalist perspectives, on the other hand, emphasise state interests and incentives as determinants of compliance. Realist scholars view compliance as contingent upon the alignment of treaty obligations with state interests, whereas institutionalists argue that regimes can independently influence state behaviour by providing incentives for compliance.

Liberal theories highlight the importance of domestic institutions and policies in promoting compliance with international commitments. Democratic regimes, with their emphasis on individual rights and the rule of law, are expected to be more inclined to comply with international human rights standards. The effectiveness of international regimes, including the human rights regime, is measured by their ability to induce behavioural change among states and achieve their objectives.¹¹⁹ Assessing effectiveness, however, is complex due to the multitude of factors influencing state behaviour and the difficulty of attributing causal effects to international norms and agreements.

In the context of the legal protection of Bangladeshi migrant workers in Malaysia, understanding compliance with international human rights commitments is crucial. By analysing the factors influencing state behaviour, including consent, normative considerations, and domestic institutions, policymakers can formulate strategies to improve the protection of migrant workers' rights and ensure adherence to international legal standards. This interdisciplinary approach acknowledges the

¹¹⁸ Thies, Cameron G, "State socialization and structural realism," *Security Studies*, vol. 19, no. 4 (2010): p. 689-717.

¹¹⁹ Nowak, Manfred, "Introduction to the international human rights regime," vol. 14. (Brill, 2021).

complexity of migration governance and the importance of integrating legal, political, and sociological perspectives in addressing migrant workers' rights issues.

In addition to understanding the factors influencing state compliance with international human rights commitments, it is essential to consider the role of international regimes in shaping state behaviour. International regimes, characterised by sets of implicit or explicit principles, norms, rules, and decision-making procedures, provide the framework within which states interact and cooperate in specific issue areas.¹²⁰ In the case of human rights, the international regime embodies a commitment by states to ethical principles and norms that guide their behaviour towards migrants and asylum seekers. These regimes serve as mechanisms for regularising behaviour and controlling its effects, thereby influencing state practices in the protection of human rights. Within the international human rights regime, the concept of legitimacy plays a crucial role in eliciting state compliance. Legitimacy refers to the perceived validity or justification of international norms and rules, which determines their “compliance-pull” on governments. The international community perceives norms as legitimate, and states are more likely to comply, as non-compliance may damage their reputation and credibility. Therefore, the legitimacy of international human rights norms serves as a binding force that increases the likelihood of state compliance and adherence to treaty obligations.

Moreover, the effectiveness of international regimes in promoting compliance with human rights standards is a key consideration. Effectiveness encompasses both the extent to which states comply with regime norms and rules and the achievement of the regime's objectives.¹²¹ Assessing effectiveness involves evaluating the impact of the

¹²⁰ NuNes, Isabel Ferreira, “International regimes as an Analytical Tool,” *Moita, L. and Pinto, LV, coord., Espaços Económicos e Espaços de Segurança. Lisboa: UAL/OBSERVARE* (2017): p. 15-39.

¹²¹ Shany, Yuval, “Assessing the effectiveness of international courts: a goal-based approach,” *American Journal of International Law*, vol. 106, no. 2 (2012): p. 225-270.

regime on changing domestic laws and practices related to human rights, as well as its contribution to enhancing cooperation among states in addressing human rights issues. Despite the challenges associated with measuring effectiveness, it is essential for policymakers to understand the influence of international regimes on state behaviour and their role in promoting human rights protection for migrant workers.¹²² By strengthening the effectiveness of the international human rights regime, policymakers can enhance the legal protection of migrant workers in Malaysia and other host countries, thereby upholding their rights and ensuring their dignity and well-being.

1.10 SUMMARY OF THE RESEARCH

In certain instances, the phenomenon of labour mobility has led to the emergence of temporary job opportunities at an accelerated pace. The issue of temporary migrations is closely associated with the concept of fundamental human rights, since the overall population within this social stratum resides without proper governance, leading to frequent violations of their human rights and the right to employment.

The study's findings indicate a deficiency in the effective enforcement of both international and national legislation and policies aimed at safeguarding the rights of migrant workers. The governments of Bangladesh and Malaysia should propose a comprehensive legislative framework and policy to protect and advance the rights of migrant workers. This research extends beyond a mere critical analysis of the presented issues; it also encompasses the resolution of challenges faced by migrant workers, specifically within the context of Bangladeshi and Malaysian national legislation. The research findings make a valuable contribution to the existing body of information and literature about the legal protection of migrant workers in Bangladesh and Malaysia.

¹²² Donnelly, Jack, and Daniel J. Whelan, "International human rights." (Routledge, 2020).

This study's significance is underscored by the notable lack of empirical research on this specific subject matter. The present study emphasises the various obstacles and issues encountered by migrant workers, as well as their legal protection, within the contexts of Bangladesh and Malaysia. Furthermore, this study aims to identify and rectify the procedural gap in the enforcement authorities and the legislative lacuna in order to benefit both Bangladesh and Malaysia.



CHAPTER TWO

INTERNATIONAL LEGAL FRAMEWORKS FOR THE PROTECTION OF MIGRANT WORKERS

2.1 INTRODUCTION

In the past century, the UN and various legal experts have displayed a keen interest in safeguarding the rights of migrant workers as they engage in employment outside their home countries. Recognising the unique challenges faced by migrant workers, efforts have been made to establish legal frameworks and protections to ensure their rights are upheld. This focus on migrant workers' rights reflects the growing recognition of the importance of ensuring fair and just treatment for individuals who contribute to the economies of host nations while being away from their homelands. Experts view this specific topic as extremely essential, particularly because it provides appropriate legal tools for the lawful protection and aid of migrant workers.¹

In this chapter, the primary objective of the study is to examine the extent of legal protections available to migrant workers. Additionally, the researcher explores the recognition of migrant workers' legal rights in various international agreements, including the UN Convention, the ILO Convention on Migrant Workers, and the UDHR. In addition, enhancing migrant workers' safety within current international laws and policies entails two interconnected and synergistic elements.² Moreover, this chapter also analyses the UDHR (hereafter) and several international human rights treaties. The analysis in this section focusses on the legal protections provided to

¹ Tzehainesh Teklè, "Labour Law and Worker Protection in Developing Countries, Labour law and worker's protection in the South: An evolving tension between models and reality," *Hart Pub Limited*, (2010): p. 40.

² Almutairi, Abdullah Moied S, "Protecting the rights of temporary foreign 'low-skilled' workers in the Saudi construction industry: a case for legal reform," (PhD diss., Brunel University London, 2017).

migrant workers in Bangladesh and Malaysia, considering the international legal frameworks and conventions. However, this chapter focusses on the ILO's Migration for Employment (updated) Convention, 1949 (No. 97),³ the subject of discussion is the Migrant Workers' (Supplementary Provision) Convention, 1975 (No. 143)⁴ and two ILO Recommendations for migrant workers' and the ICRMW.⁵ To illustrate these points, the study uses Bangladesh and Malaysia as case studies.

2.2 UNITED NATIONS INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES (ICRMW)

2.2.1 Overview of ICRMW content and implementation

During the 20th century, various international agreements and legal instruments were developed to address and protect the rights of migrant workers for their employment. However, during the economic crisis of the 1970s, international society realised that another legal instrument was expected to protect the rights of migrant workers, both documented and undocumented, and members of their families. The ICRMW, adopted in December 1990, aims to protect the rights of migrant workers and the members of their families.⁶ This realisation came about as a result of the fact that migrant workers were frequently liable to be negated and discriminated against.⁷ To date, 57 state parties

³ Migration for Employment (Revised 1949) Convention, (ILO No. 97), adopted 1 July 1949, entered into force 22 January 1952, < https://normlex.ilo.org/dyn/nrmlx_en/f?> (accessed 15 May 2022).

⁴ Convention on Migration in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (ILO No. 143), adopted 24 June 1975, entered into force 9 December 1978, < https://normlex.ilo.org/dyn/nrmlx_en/f?p> (accessed 15 May 2022).

⁵ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), adopted 18 December 1990, entered into force on 1 July 2003, < <https://www.ohchr.org/en/migration?>> (accessed 20 May 2022).

⁶ ICRMW, Resolution 45/158 on 18 December 1990 and entered into force on 1st July 2003, < <https://www.ohchr.org/en/migration?>> (accessed 20 May 2022).

⁷ Instance Migration for Employment Convention (revised), 1949 (No. 97), Inspection of Emigrants Convention, 1926 (No. 21), ILO Migrant Workers' (Supplementary Provisions) Convention, 1939 (No. 66) (withdrawn), ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), < https://normlex.ilo.org/dyn/nrmlx_en/f?p> (accessed 15 May 2022).

have signed it as of this writing, and 11 have signed but not ratified.⁸ On the other hand, a substantial number of its nations of origin, like Mexico and the Philippines, have acknowledged its validity.⁹ The primary objective of the convention is to guarantee the full enjoyment of all fundamental human rights for migrating workers and their families.¹⁰ It protects migrant workers and their families from being abused or compelled to labour, as well as from being subjected to torture, inhumane living and working circumstances, and other forms of ill treatment.¹¹ It ensures the protection of fundamental rights such as freedom of thought, conscience, religion, and the right to express oneself.¹²

The ICRMW encompasses a significant portion of the fundamental provisions found in various ILO treaties. In fact, in certain aspects, the ICRMW goes beyond the scope of these conventions, providing additional protections for migrant workers. This comprehensive convention aims to address and safeguard the rights of migrant workers and their families, ensuring their well-being, fair treatment, and access to justice. The ILO Conventions No. 97 and 143, as well as the ICRMW, are examples of complementary international treaties. The ILO Convention No. 143 of 1975 was the first international migratory workers document that attempted to address these specific challenges, incorporating laws intended to stop illegal labour migration and covert migrations, as well as protections against abuse of migrant workers in all kinds of

⁸ “Status of Ratification,” International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), <<http://indicators.ohchr.org/>> (accessed 2 February 2020).

⁹ “The Convention has been ratified by five OSCE nations:” Azerbaijan, Bosnia and Herzegovina, Kyrgyzstan, Tajikistan, and Turkey. However, it should be kept in mind that labour migration is still a dynamic phenomenon, and future destination countries may very well be countries like Mexico, which now receives migrant labour from Central American nations like Guatemala, <<http://indicators.ohchr.org/>> (accessed 10 February 2020).

¹⁰ ICRMW, Art 9.

¹¹ Ibid, Art 10 and 11.

¹² Ibid, Art 12 and 13.

workplaces.¹³ Concurrent with the approval of the ILO Migrant Workers' Convention, a movement for an international human rights convention began, and Mexico and Morocco decided to form a group to draft the specifications for what would become the ICRMW Convention.

The UN human rights standards and norms, along with the mechanisms for their implementation, represent a distinctive instrument. States, by consenting to periodic reporting, underscore their unequivocal commitment to these standards. The UN itself stands as a remarkable achievement for all of humanity, and it continues to evolve, offering opportunities for improvement. When deliberating on the reformation of UN Human Rights mechanisms, particularly in the context of treaty monitoring bodies, it is crucial for stakeholders to be well-informed about the ICRMW. This convention holds special significance as it extends vital protections to a diverse range of individuals, including men, women, and children, safeguarding their rights in an expansive manner. The convention defines the rights of migrant workers under two main headings: "The human rights of migrant workers and members of their families" (Part III), reaffirming the human rights of all migrants who disregard their legal status; and other rights of migrant workers (Part IV), which lists additional rights that are normally targeted for regular migrant workers only.

In addition, the convention aims to ensure that migrant workers and members of their families enjoy the rights of life.¹⁴ It protects migrant workers and their families from torture, inhuman living and working conditions, and ill treatment, and prevents them from being exploited or forced to work.¹⁵ The convention guarantees fundamental rights such as conscience, religion, and opportunities for expression.¹⁶ Moreover, the

¹³ Cholewinski et al., 24.

¹⁴ ICRMW, Art 9.

¹⁵ Ibid, Art 10 and 11.

¹⁶ Ibid, Art 12 and 13.

convention safeguards the rights and protections of migrant workers throughout their journey from their home countries, during their stay and work in their destination countries, and throughout all stages of resettlement in their country of origin. Articles 33 and 37 guarantees that migrant workers have access to information on their rights. The ICRMW has strengthened and completed various provisions under the basic UN human rights treaties, and in fact, many of them provide protection for migrant workers. The ICRMW guarantees many rights for migrant workers and members of their families; however, the focus is on protecting migrant workers from misuse in terms of rights and equal treatment with nationals, as the research demands.

Part II of the ICRMW declares “non-discrimination” with respect to rights. Article 7 stipulates that there should be no discrimination against migrant workers and their families in order to respect and uphold international human rights instruments. Migrant workers and members of their families staying in the territory of the state shall also be provided all rights under this convention without any distinction of “any kind, such as sex, race, colour, language, or marital status.”¹⁷ The article concentrated on the various forms of human rights that international instruments and the ICRMW provide. Many international instruments only provided human rights to migrant workers; however, the ICRMW also included members of migrant workers’ families. Typically, previous instruments protecting migrant workers provided rights without any restrictions. Nevertheless, the ICRMW mentioned more fields of distinction not to discriminate against migrant workers, such as political opinion, marital status, economic position, nationality, ethnic or social origin, birth or other status, and age. The convention extends explicit guarantees of certain freedoms, such as the freedom of religion and the freedom to express one’s opinions. It also firmly upholds the rights to

¹⁷ Ibid., 48, Art 7.

privacy, personal freedom, and security. Importantly, it provides robust safeguards against any form of violence, physical abuse, intimidation, or threat, irrespective of whether these actions are perpetrated by government entities or private individuals or entities. Article 16 of the ICRMW, in Part III, protects migrant workers and members of their families “the right to liberty and security.”¹⁸ It also provides the state with effective protection against violence, physical injury, threats, and intimidation, whether by public officials or private groups or institutions.¹⁹ According to the UDHR, “no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.”²⁰ In addition, many provisions revolve around migrants’ rights, irrespective of their legal status, to provide protection against brutality and abuse.²¹ Article 10 prohibits torture or ruthless, inhuman, or despicable treatment or punishment, while forced or compulsory labour and slavery or servitude are also prohibited by article 11. It prohibits arbitrary or illegal interference with privacy and reputation.²²

Moreover, specific rights ensure the fair treatment of migrant workers in situations involving apprehension, detention, or legal proceedings. If deemed necessary, these rights include the provision of assistance from a mediator. As a result, the ICRMW delineates a comprehensive scope of potential abuses against migrant workers, whether inflicted by public officials or private individuals, groups, or institutions, and particularly addresses threats and intimidation. Article 16(4) of the Convention stands as a bulwark against arbitrary arrest or detention, whether on an individual or collective basis, safeguarding both migrant workers and the members of their families. At the time of their arrest, the convention mandates informing them in a language they understand

¹⁸ Ibid., 49, Art 16(1).

¹⁹ Ibid, Art 16(2).

²⁰ Universal Declaration of Human Rights (UDHR), 1948, Art 5.

²¹ Martin, Susan, and Rola Abimourched, “Migrant rights: international law and national action,” *International Migration*, vol. 47, no. 5 (2009): p. 115-138.

²² ICRMW, Art 14.

about the grounds for their arrest and any charges against them. This provision seeks to ensure transparency and protect the rights of migrant workers during legal proceedings.²³ If they face any criminal charges, the law will not discriminate against them in terms of judicial power, trial time, or release.²⁴

Furthermore, migrant workers' and members of their families have an enforceable right to compensation if any unlawful arrests or detentions are entitled to them.²⁵ Article 16 of the ICRMW stands as a robust safeguard, providing protection to migrant workers and the members of their families concerning physical abuse as well as unlawful arrest or detention. This comprehensive coverage distinguishes it from other conventions or declarations that may address only limited aspects of abuse. The UN Convention serves as a comprehensive international treaty that protects the rights of migrant workers. It underscores the intrinsic connection between migration and human rights, a topic of growing significance in global policy discussions. The convention's fundamental objective is to safeguard the rights of migrant workers' and the members of their families, setting a moral standard and serving as a guiding force to propel the advancement of migrant rights within each participating country.

Additionally, migrant workers have the right to equal treatment with nationals in several crucial areas. This includes equal access to unemployment benefits, opportunities for alternative employment, and participation in public work schemes aimed at addressing unemployment challenges. Moreover, the convention ensures their protection against unjust dismissal, granting them the right to seek legal redress in cases of infringement upon their terms and rights. Equal treatment extends to documented migrant workers, placing them on the same footing as native workers in terms of

²³ Ibid., 50, Art 16(5).

²⁴ Ibid, Art 16(6).

²⁵ Ibid, Art 16(9).

housing, access to healthcare services, education, and vocational training. This commitment to equitable treatment underscores the principles of fairness and non-discrimination enshrined in the convention.²⁶ Therefore, migrant workers' and members of their families are well protected in terms of equality of treatment with nationals of the country of employment. Other ILO and UN Conventions related to migrant workers also provide the right to equality with nationals. The ICRMW specifies every sector of equal treatment and protects migrant workers from abuse. All individuals have the right to transfer their income out of the country at the end of their employment or upon termination. Moreover, migrant workers with documented or regular status are endowed with additional rights, including parity with nationals concerning vocational training, access to residence, and interaction with social and welfare services. Proactive measures should be implemented to facilitate family reunification and ensure equitable treatment for migrant workers' families in areas such as education, social services, and welfare.

In addition, the convention contains supplementary provisions that address critical issues such as the effective repatriation of migrant workers, the eradication and prevention of clandestine migration, and the issue of undocumented migrant workers. These provisions empower authorities to impose sanctions on individuals involved in clandestine movements or the exploitation of irregular migrant worker statuses, thereby reinforcing the commitment to safeguarding migrant workers' rights and well-being.²⁷ The convention's primary goal is to ensure the minimum rights of legal, undocumented, and irregular migrant workers and their families. Despite this, the number of ratifications of the convention is small, and no high-migration target countries have signed it. This raises questions about the convention's adequacy and effectiveness.

²⁶ Ibid., 51, Art 43.

²⁷ ILO, "International Standards on Labour Migration," <<https://www.ilo.org>> (accessed 12 May 2019).

Article 64(2) states that, due regard shall be paid not only to labour needs and resources but also to the social, economic, cultural, and other needs of migrant workers' and members of their families involved, as well as to the consequences of such migration for the communities concerned.

Furthermore, article 45 grants comparable rights to migrant workers' family members. Article 50 underscores that in the unfortunate event of a migrant worker's death or the dissolution of a marriage, states should carefully consider granting permission for the families of documented migrant workers to remain. It is important to note that while the convention explicitly emphasises the principle of equality, it does not comprehensively address certain aspects related to women.²⁸ Many migrant women work in the informal sectors of the economy, notably domestic work, which often renders them vulnerable and less capable of resisting abuse. This vulnerability is compounded by the weakness of administrative structures in these contexts. In such cases, simply ensuring equal treatment with nationals may prove insufficient in protecting migrant workers' rights and well-being.²⁹

In general, the link between the rights of migrant workers and human rights law standards is considered by the ICRMW. This is clear from the preamble, which implies the International Bill of Rights and other fundamental human rights conventions.³⁰ Generally, the ICRMW overlaps and repeats other conventions and established rights. Moreover, it fundamentally builds on those rights. There are also special circumstances under human rights laws.³¹ The situation underscores an urgent need to safeguard the rights of all migrant workers. This calls for a collective commitment from both workers

²⁸ ICRMW, Art 45.

²⁹ Cholewinski et al., 24.

³⁰ Rehman, Javaid, "International human rights law," no. 64, p. 684. (Pearson education, 2010).

³¹ Diakité, M. Arthur Robinson, "A Brief Look at The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families," *In International Human Rights Monitoring Mechanisms*, Brill Nijhoff, (2009): p. 117-131.

and employers to abide by and uphold the laws and practices of the respective countries involved. As previously discussed, migration and human rights concerns emerge at various phases of the migration process. In pursuit of this objective, the ICRMW endeavours to establish fundamental minimum standards pertaining to migrant workers and their families.

2.2.2 Committee on Migrant Workers (CMW)

The first assembly of the CMW, which is an independent body of experts that monitors and implements the ICRMW by its state parties, was held in March of 2004.³² Each and every state party is obligated to provide the committee with periodic reports detailing the manner in which the rights are being implemented.³³ The initial reporting requirement for states is set for one year after the resolution is granted, and subsequent reporting is required every five years. Upon reviewing each report, the committee will provide its findings, along with any concerns and recommendations, to the state party in the form of concluding observations.³⁴ Under certain conditions, the committee can also take into account individual complaints or messages from individuals alleging violations of their rights under the convention.³⁵ Having once been violated in conformity with article 77 of the Convention, 10 state parties have adopted this method.³⁶ Furthermore, the committee organises dedicated days for open debate and possesses the authority to issue statements on matters relevant to its functioning, as well as interpretations of the provisions outlined in the convention.³⁷ The commission

³² ICRMW, “Adopted by General Assembly resolution 45/158” 1990, <<http://www.ohchr.org/EN/HRBodies/CMW/Pages/CMWIntro.aspx>> (accessed 7 January 2020).

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid, Art 77.

³⁷ Ibid.

referred to typically conducts two sessions annually and convenes regularly in Geneva.³⁸

2.3 PROVISIONS OF THE UN MIGRANT WORKERS CONVENTION

The ICRMW is an all-encompassing international instrument that addresses all aspects of migration, including but not limited to: recruitment policy and departure system in sending countries; rights of migrant workers in transit countries; rights of migrant workers in receiving countries; and rights of returning migrant workers (articles 1 and 2). It is made up of nine sections, the first two of which define migrant workers and nationality and include a non-discrimination clause that makes discrimination based on a person's "race," "belief," "age," "marital status, birth or other status," or "financial position" illegal. The original foundation of the international conventions protecting human rights.³⁹ This component was also done to imitate the common and comparable grounds on which people who migrate for jobs are sometimes subjected to prejudice in the workplace.

The rights of migrant workers that are applicable generally are outlined in Part III of the ICRMW (i.e., those that apply to all migrant workers as well as those of their families, regardless of the status of the migrant workers themselves). In Part IV, major rights are specified in a manner that is tailored primarily to persons who are in regular situations in the workplace. Part V of the ICRMW addresses the special rights of migrant workers, while Part VI highlights the responsibility of states to ensure safe, fair, humane, and lawful working conditions for migrant workers. The primary objective of

³⁸ Ibid., 54, Art 77.

³⁹ Article 1 of the ICRMW states that no one's "sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, age, economic position, property, marital status, birth or other status" shall be used to discriminate against them when exercising their rights under the ICRMW, < <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers>> (accessed 10 May 2023).

the ICRMW is to ensure that all migrant workers, regardless of their legal status, are recognised as individuals who deserve to be treated with dignity and respect in the workplace. Furthermore, the convention emphasises the importance of providing equal opportunities for migrant workers to thrive and prohibits discrimination based on their immigration status. The following sections (VII-IX) of the Convention delve into its application, general rules, and potential limitations or constraints.

Additionally, by promoting fair and inclusive practices, the ICRMW aims to create an environment where migrant workers can fully exercise their rights and contribute to society without facing prejudice or discrimination. The right to life, along with other rights already recognised by the International Bill of Human Rights, are essentially reaffirmed in the UN Migrant Workers' Convention. Article 6, (ICCPR)⁴⁰, the right to not be subjected to torture at any time (article 7, ICCPR)⁴¹, and freedom of thought, conscience, and religion as a fundamental human right (article 18, ICCPR). In addition to this, it builds on rights and privileges that have already been addressed wholeheartedly or partially by earlier treaties.⁴²

Similar approaches can be applied to this strategy, including the need for international human rights legislation to be codified and expanded to encompass the specific circumstances faced by various vulnerable groups, such as women migrant workers, children engaged in labour, and individuals with disabilities. To effectively safeguard their rights and address their unique challenges, the legal framework must incorporate tailored protections and considerations for these groups.⁴³ Since all migrant

⁴⁰ International Covenant on Civil and Political Rights (ICCPR), 1966, Art 6.

⁴¹ Ibid, Art 7.

⁴² The "International Bill of Human Rights," consists of the Universal Declaration of Human Rights (UDHR, 1948), the International Covenant on Civil and Political Rights (ICCPR, 1966) with its two Optional Protocols and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), <<https://www.ohchr.org>> (accessed 10 June 2022).

⁴³ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979), the Convention on the Rights of Children (CRC, 1989), the Convention on the Rights of Persons with Disabilities (CRPD, 2006), <<https://www.ohchr.org>> (accessed 10 June 2022).

workers and members of their families are concerned about the same existing human rights, many of the international human rights conventions specifically focus on migrant workers. The international description of the roles and responsibilities of migrant workers, the ICRMW, provides a broad classification of a migrant worker based on the performance of a “remunerated activity.” This includes people in their own countries who are preparing to work in a country where they are not citizens for pay, people who are currently working in such a country, as well as those who may never work there since they are either not citizens of the host country or are planning to return home.⁴⁴ What is more, the ICRMW gives meanings to explicit classes of migrant workers, for example, “occasional labourers” and “project-tied specialists,” as well as “individuals from the family” who likewise appreciate rights under the convention.⁴⁵

Moreover, the ICRMW covers certain classes of migrant workers, for example, “outskirts labourers” and “self-employed people”, which are prohibited under the specific ILO Conventions.⁴⁶ Notably, the convention aims to protect and advance the rights of workers who travel for employment by introducing several legal provisions. This serves to bridge the gap between the legal framework and the effective enjoyment of rights, ensuring that migrant workers are able to fully exercise their rights without being subjected to discrimination or being hindered in any way. States, upon signing, ratifying, or acceding to the ICRMW, have the option to declare reservations regarding any provisions they find inconsistent or in conflict with their existing legislation or policies. The ICRMW enumerates the most significant civil, political, and human rights.

⁴⁴ Article 2(1) of the ICRMW, “The term migrant worker,” refers to 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 national, < <https://www.ohchr.org/en/instrument>> (accessed 20 July 2022).

⁴⁵ Article 2(2) for the specific groups of migrant workers; Article 4 defines “members of the family” of ICRMW, < <https://www.ohchr.org/en/instrument>> (accessed 20 July 2022).

⁴⁶ Bourgeault, Ivy L., Denise L. Spitzer, and Margaret Walton-Roberts, “Complexities of health and care worker migration pathways and corresponding international reporting requirements,” *Human Resources for Health*, vol. 21, no. 1 (2023): p. 2.

The ICRMW also addresses the specific legal requirements pertaining to migrant workers.

2.3.1 Rights to free movement

According to article 8 of the ICRMW, migrant workers and their families have the right to freely enter, remain within, and depart any state, as well as to return to their country of origin.⁴⁷ The rights guaranteed here are especially important for migrants and all members of their families.⁴⁸ However, the language used in the convention's key clauses is generic and does not highlight any one basic need of migrant workers. Article 39 of the ICRMW provides additional details regarding the rights of legally employed migrants and their dependents. It stipulates that they have the right to freely relocate and remain in any country. This provision recognises the importance of ensuring the freedom of movement and residence for migrant workers and their families, enabling them to exercise their rights and contribute to their host countries' societies and economies. These items may be restricted if the legislation allows for the imposition of such restrictions⁴⁹ vital to protect others' privileges and prospects, as well as national security, open requests, health, ethics, and where they are consistent with other treaty rights.

Furthermore, the convention respects the sovereignty of each state party to establish its own specific requirements and regulations concerning the admission of migrant workers and their family members. The article fails to elucidate the degree of freedom of movement in connection with the right to work. This inquiry pertains to the

⁴⁷ The International Covenant on Civil and Political Rights (ICCPR), Art 12. See also the Protocol 4 to the European Convention on Human Rights (ECHR) 1950, <http://chr.coe.int/Documents/Convention_ENG> (accessed 20 January 2020).

⁴⁸ ICRMW, Art 8.

⁴⁹ Ibid, Art 9.

ability of migrant employees to transition their employment from one company or factory to another.

Nevertheless, it has been verified that migrant workers and their family members have the autonomy to choose their residence, either at their workplace or elsewhere. Article 79 of the ICRMW acknowledges the right of states to determine their own conditions for the entry and stay of migrants, as long as these conditions are consistent with the principles and obligations set forth in the convention. This provision recognises the need for flexibility in addressing the specific migration challenges and circumstances of each country while ensuring the protection and promotion of the rights of migrant workers and their families.

2.3.2 Right to liberty and securities

All migrant workers and family members have their rights and freedoms guaranteed under article 16 of the ICRMW. The primary responsibility that comes with this article is to ensure that no one is arbitrarily arrested or imprisoned and that any restrictions on one's freedom are accepted in line with the procedures that have been established by law.⁵⁰ This specific clause also tackles the issue of arbitrary collective detention of migrant workers, especially when discriminatory actions target a specific national group. Articles 16 and 17 of the ICRMW guarantee certain rights and protections for all migrant workers and their families in the event of arrest or other restrictions on their freedom, including arbitrary detention. These provisions safeguard migrant workers from unjust or discriminatory treatment, ensuring the upholding of their rights in such circumstances. For instance, if a migrant workers or members of his or her family is

⁵⁰ Also provided for by Article 9. See also Article 5, ECHR. Linked closely with this right is the right to life as well as the right to be free from torture, degrading and inhumane treatment provided by Articles 9 and 10, ICRMW as well by Articles 6 and 7, ICCPR, < <https://www.ohchr.org/en/instrument>> (accessed 20 July 2022).

detained, he or she should be told immediately, as soon as feasible, and in a language he or she understands of the grounds for the detention and the charges against him or her.⁵¹ For the most part, articles 16 and 17 only reiterate the responsibilities that were already incorporated in other instruments while recognising many of the rights that were formerly recognised, for example, the ICCPR and the ECHR. Migrant workers or members of their family have the right to question the legality of their incarceration in front of a court. This is because they are considered detainees under the law⁵², which includes the ability to seek monetary compensation in the event of an unlawful arrest or detention.⁵³

In addition, migrant workers and their families should be treated with dignity and respect and given enough protection while incarcerated in order to preserve their dignity and sense of social identity.⁵⁴ Migrant workers who have been suspected of a crime and members of their families should be held in a facility that is different from that used for convicted individuals.⁵⁵ Furthermore, it is mandatory to separate children under the age of 18 from adults.⁵⁶ Interestingly, article 17(3) also mandates the separation of migrants and their families arrested for immigration law violations in transit or at their place of employment from those found guilty or awaiting trial.⁵⁷ However, to the degree that it is useful, state governments are required to adhere to this pledge. Under article 17(7), migrant labourers and their families have the same human rights as citizens while in confinement of any kind. Moreover, article 16(2) of the Convention guarantees the security of all migrant workers and their families, placing

⁵¹ ICRMW, Art 16.

⁵² Ibid, Art 16(8).

⁵³ Ibid, Art 16(9).

⁵⁴ Ibid, Art 17(1).

⁵⁵ Ibid, Art 17(2).

⁵⁶ Ibid, Art 17(4).

⁵⁷ Ibid, Art 17(3).

them on an equal footing with regard to security. It entitles them to protection by the state from physical harm, threats, and intimidation, whether inflicted by public or private actors. Given the broad scope of this article, it is reasonable to infer that the protections provided to individuals and communities also extend to migrant workers and their families, shielding them from xenophobic activities. This provision emphasises the importance of safeguarding the well-being and safety of migrant workers, recognising their vulnerability to various forms of discrimination, hostility, and violence.

2.3.3 Diplomatic protection

This article stated that all migrant workers and members of their families have the right to seek the protection and assistance of the consular or diplomatic authorities of their country of origin or of a representative country of interest whenever the rights recognised in the present convention are impaired. It is crucial to promptly inform the person involved in the expulsion of their right to appeal the decision. Article 22 of the ICRMW states that the authorities of the expelling state have an obligation to facilitate the exercise of this right. This provision guarantees that the authorities of the expelling state inform individuals facing expulsion about their right to challenge the decision and provide them with the necessary assistance to effectively exercise this right.⁵⁸ Presently, according to all migrant workers and members of their families, the ICRMW unequivocally ensures the privilege to look in order to receive assistance and protection from the authorities who are consular or diplomatic.⁵⁹ Moreover, article 23 of the ICRMW recognises the right of migrant workers to seek assistance in the event of

⁵⁸ Ibid., 60, Art 23.

⁵⁹ General provisions on the rights to consular assistance are set out in Article 36 of the Vienna Convention on Consular Relations, (1963), <https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf> (accessed 10 May 2023).

expulsion. It ensures that appropriate procedures are in place to safeguard their rights and well-being during the expulsion process. Furthermore, article 16(7) of the Convention outlines the grounds for expulsion and emphasises the rights of migrant workers in cases of arrest and detention. It stipulates that those authorities must promptly inform migrant workers of their arrests and detentions upon request. Additionally, migrant workers and their family members have the right to communicate with these authorities without delay. This provision aims to protect the rights of migrant workers, ensuring their access to legal counsel and proper representation in such situations.

2.3.4 Protection of identity documents

The most vital convention-specific rights of the ICRMW, article 21 ensure the safety of foreign workers by preventing the unlawful use, destruction, or retention of their identity documents.⁶⁰ It states that it is forbidden for anybody to abolish a migrant worker's passport or any other related documents, whether they belong to the worker or a member of their family. Moreover, no one is permitted to seize or destroy identity papers, such as those that permit entry into or stay in a country other than their own or work permits, unless a government official acting in accordance with legal authority does so and delivers the person with thorough documentation of the deletion.

2.3.5 Rights of collective expulsion

Human rights documents from the past often include provisions for mass exclusion.⁶¹

However, the ICRMW establishes ground-breaking procedural protections for all

⁶⁰ ICRMW, Art 21.

⁶¹ See, *inter alia*, Articles 13, ICCPR and Article 32 of the Convention and Protocol relating to the Status of Refugees (1951/1967), which lays down procedural standards surrounding expulsion; See Article 3, CAT, Article 16 of the International Convention for the Protection of All Persons from Enforced

migrant workers and their families, stipulating these protections for the first time in this convention. This contains, among other things, the option to have one's own case evaluated, combined expulsion decisions that must be made by a knowledgeable authority in compliance with the law and must be communicated to migrant workers and their families in a language they can understand, the chance to discuss the expulsion and present counter arguments, as well as the chance to resolve any wage or benefit disputes prior to or after departure.⁶² The provisions of article 56 in ICRMW are applicable to all regular migrant workers and their families. These provisions include the principle that a migrant worker's right to housing and a work permit should not be arbitrarily revoked as a consequence of a mass expulsion. Additionally, article 56(3) implies that the duration of a migrant worker stay in the state of employment should be considered when deciding whether or not to issue a mass expulsion order. This suggests that the length of time a migrant worker has been in the host country should be taken into account as a factor in such situations.⁶³

2.3.6 Right to be informed by the state of origin

Migrant workers and members of their families must be given information in a language they can understand regarding their rights and responsibilities under the convention, as well as the terms of their entrance and any necessary state administrative procedures, free of charge and upon request.⁶⁴ Under normal circumstances, migrant workers and their family members have the right to receive complete information regarding all entry requirements, including those related to their stay, authorised employment activities,

Disappearance (ICPED, 2006), Article 33 of the Refugee Convention as well as Article 1 of Protocol 7, ECHR for the principle of *non-refoulement*, < <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-relating-status-refugees>> (accessed 10 February 2023).

⁶² ICRMW, Art 22.

⁶³ Ibid, Art 56.

⁶⁴ Ibid, Art 33.

and the obligations they must fulfil in the state of employment. This information should be provided no later than the time of confirmation. Additionally, they have the right to know whom to contact if they wish to request any modifications or changes to these terms. The aim is to ensure that migrant workers are fully aware of their rights, responsibilities, and the processes for seeking any necessary adjustments or accommodations. Article 2 of the ILO Migrant Workers' Convention No. 97 contains a provision that is analogous to this one for migrant workers who have proper documentation.⁶⁵

2.3.7 Rights to family reunification

The UN Conventions related to the status of migrant workers recognise the importance of families for migrant workers. According to these conventions, state parties must acknowledge the family as the fundamental and essential unit of society, deserving protection from both society and the state. Consequently, states are obligated to take the necessary measures to ensure the protection and preservation of family unity for migrant workers and their families. This provision emphasises the significance of maintaining and safeguarding the well-being and cohesion of migrant workers' families during their migration experience.⁶⁶ However, the section only requires states to take action “they judge appropriate” and “come within their competencies.” Furthermore, this article applies to all migrant workers and their families in a typical setting. Several of the essential rights previously recognised by other core treaties are those related to the economic, social, and cultural rights of the ILO Migrant Workers' Convention, the CRC, and the ICRMW.⁶⁷ It is indeed important to acknowledge that the protections

⁶⁵ ILO Migrant Workers Convention (MWC), Art 2.

⁶⁶ ICRMW, Art 44.

⁶⁷ Provisions on the facilitation of family reunification can also be found in Article 13, ILO Convention No.143, Art 10, CRC, < <https://normlex.ilo.org/>> (accessed 20 March 2023).

provided to migrant workers and their families may be more limited compared to those granted to individuals in a regular situation. This protection distinction arises from the specific circumstances and challenges faced by migrant workers, and it is consistent with the interpretations made by other human rights treaty-based bodies. While migrant workers enjoy certain rights and protections under international conventions such as the ICRMW, it is recognised that these rights may be subject to certain limitations or different applications based on the specific context of labour migration. This approach recognises the need to address the unique vulnerabilities and complexities associated with the migration process while still upholding the fundamental principles of human rights. Therefore, to ensure a comprehensive understanding of the protections afforded to migrant workers and their families, it is crucial to consider the specific provisions and interpretations provided by relevant international human rights bodies.

2.3.8 Right to receive medical facilities

The UN Convention on the protection of migrant workers guarantees the right to get emergency medical treatment for all migrant workers and their dependents.⁶⁸ The ICRMW includes provisions that ensure that migrant workers and their families receive emergency medical care. The principle of equal treatment grants this right, ensuring that no regulations relating to their stay or employment can deny it.⁶⁹ According to the ICESCR, article 12 of the ICESCR guarantees the right to health care but states that “the right to access health care facilities shall be greater than the right to access health care services.” “To respect the right to health care, states must ensure that all citizens, including those in prison or jail, members of minority groups, refugees, and undocumented immigrants, have free and unfettered access to primary, rehabilitative,

⁶⁸ ICRMW, Art 28.

⁶⁹ Ibid.

and hospice care.”⁷⁰ Under articles 43 and 45 of the ICRMW, regular migrant workers and their families are guaranteed equal access to social and health services as citizens, provided they meet the qualifications set forth by the relevant programs. This provision guarantees equal access to essential social and health services for migrant workers and their families, thereby promoting equality and non-discrimination in these areas.⁷¹

2.3.9 Right to access education

Children of migrant workers have the right, as stated in article 30 of the UN Migrant Workers’ Conventions, to receive elementary and secondary education at no cost, on an equal footing with children of citizens of the host country.⁷² When it comes to educational institutions, legally employed migrant workers have the same access rights as native-born citizens. This includes the right to enrol in schools, colleges, universities, and other educational programs. They should have equal opportunities to pursue vocational training and receive career counselling services to enhance their skills and employment prospects. Ensuring equal access to education and training opportunities for migrant workers is important for their integration, professional development, and overall well-being. It promotes their ability to acquire knowledge, skills, and qualifications necessary for their career advancement and contributes to their overall social and economic integration into the host society. By providing migrant workers with the same educational and training opportunities as native-born citizens, it supports

⁷⁰ Committee on economic, social and cultural rights (CESCR), General Comment No. 14, The right to the highest attainable standard of health, 11 August 2000, UN doc. E/C.12/2000/4, (2000): para. 34, < <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/Health/GC14.pdf>> (accessed 15 March 2023).

⁷¹ ICRMW, Art 43 and 45.

⁷² Committee on Migrant Workers (CMW), General Comment No. 1, para 57. This right is also more limited than, for example, the right to education under CRC, which entitles all unaccompanied and separated minors to ‘have equal access to formal and informal education, including vocational training at all levels’ (CRC, General Comment No. 6, paras 40-41), < <https://www.ohchr.org/en/migration?>> (accessed 15 March 2023).

their empowerment, helps break down barriers, and promotes inclusivity and equal treatment in the labour market. This not only benefits the individual migrant workers but also contributes to the overall development and diversity of the workforce in the host country. If they qualify, the migrant workers' dependents can enrol in the same schools as citizens and benefit from the same basic and vocational education and training.⁷³

The ICRMW has incorporated a few legal measures that are intended to preserve the rights of migrant workers' connections with their individual states of origin. For instance, article 31 obligates state parties to protect the cultural rights of migratory workers and their families, ensuring that this protection does not interfere with their ability to maintain social ties to their home country. Article 45(3) requires state parties to make every effort to promote the education of the native language and culture of the child of a migratory worker with a regular status.⁷⁴ Likewise, regular migratory workers and their families retain the choice to participate in public affairs and vote in the elections of their state of origin.⁷⁵

2.3.10 Right of equality at work

Under article 25 of the ICRMW, every migrant workers and their family members are entitled to enjoy the same basic rights as nationals in all aspects of employment. These rights include provisions related to working hours, overtime, rest periods, annual leave with pay, health and safety at the workplace, termination of employment, and the minimum age for employment. This ensures that migrant workers receive equal treatment and protection in employment matters, without discrimination based on their

⁷³ ICRMW, Art 45.

⁷⁴ Ibid, Art 43.

⁷⁵ Ibid, Art 41.

migrant status.⁷⁶ The ILO Migrant Workers' Conventions No. 97 and No. 143 also have comparable legal provisions. According to the state's social security system, every single migrant worker and the members of their families are entitled to benefits under article 27, a treatment no different than that accorded to nationals, regardless only to the extent that they meet the requirements established by the applicable legislation of that state and the necessary bilateral and international agreements. Furthermore, article 45 of the mentioned document highlights the comparable entitlements extended to the family members of migrant workers. In article 50, in the event of the death or dissolution of a marriage, governments may contemplate granting permission for the families of documented migrant workers to continue residing. Article 54 grants additional social rights to legal migrant employees, including protection against deportation, unemployment benefits, and the opportunity to find alternative employment if they lose their current position.⁷⁷

According to article 64(2), it is imperative to consider not only the labour requirements and resources but also the social, economic, cultural, and other necessities of migrant workers and their families. Additionally, the potential impact of such movements on the affected communities should also be taken into account. The treaty specifically pertains to the rights of equality; nonetheless, it fails to encompass certain fundamental aspects concerning women.⁷⁸ Indeed, Malaysia clearly lacks comprehensive social protection and unemployment benefits for migrant workers, a situation Bangladesh similarly observes with regard to returning migrant employees.

⁷⁶ Ibid., 67, Art 25(1, A and B).

⁷⁷ Ibid, Art 27 and 54.

⁷⁸ Ibid, Art 45.

2.3.11 Rights to form and join trade union and other related associations

Local legislation in the country where they reside guarantees migrant workers and their families the freedom to form and join unions and other groups. The aim of this right is to safeguard their diverse economic, social, cultural, and other interests. It is important to note that, while exercising this freedom, it is necessary to adhere to the norms and regulations of the respective organisations or unions at all times. This provision ensures that migrant workers have the opportunity to collectively advocate for their rights and address their specific needs within the framework of local laws and regulations.⁷⁹ The ILO treaties for migrant workers have established the right to freedom of organisation; however, this provision is more limiting⁸⁰ and, recognising that “all employees and employers, without difference whatsoever,” the Convention on the Freedom of Association and the ICRMW to organise shall be permitted to form labour unions and, pursuant to the norms of the relevant organisations, to join groups representing their interests without prior approval.⁸¹

The ICRMW stipulates that all migrant workers and members of their families must be in a regular working condition in order for the right to organise a union or association to apply.⁸² In many instances, migrant workers and their families residing in the host country are denied the opportunity to organise, form, or engage in any association. Consequently, the ICRMW provides limited safeguards against such

⁷⁹ Ibid., 68, Art 26.

⁸⁰ Article 2(a) of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998) and Article 2 of the ILO Freedom of Association and Protection of the Right to Organise Convention (No. 87), < <https://www.ilo.org/about-ilo/mission-and-impact-ilo/ilo-declaration-fundamental-principles-and-rights-work>> (accessed 25 March 2023).

⁸¹ ILO Convention No. 87 (1948) (emphasis added), Art 2, < <https://normlex.ilo.org/>> (accessed 25 March 2023).

⁸² Article 26 is rather restrictive compared to the approach by ILO, which has stated that Freedom of Association is a fundamental principle at work under Article 2(a) of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998). Article 2, ILO Convention No. 87 follows and states that “Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization,” < <https://normlex.ilo.org/>> (accessed 25 March 2023).

challenges. There are additional international mechanisms that safeguard the rights of migrant workers to engage in trade unions, while the ICRMW comprehensively addresses matters pertaining to trade unions or associations, wherein migrant workers can assert their economic, social, and cultural interests or rights.

2.3.12 Right to transfer of earning

The ICRMW acknowledges the importance of settlements for migrant workers and their families, and article 32 guarantees that all migrants have the right to transfer earnings and benefits to a beneficiary of their choosing and investments in a manner consistent with the laws of the countries in question.⁸³ All individuals possess the right to transfer their income abroad upon the close of their employment or termination. Documented or regular-status migrant workers enjoy additional privileges, including equal access to vocational training, residence, and social and welfare services. Article 47 makes it clear that ordinary migrant employees have the right to transfer their earnings and investments back to their home country or to another country if they so choose. This article also obligates the relevant states to promote such interactions. In spite of this, the number of nations that have ratified the convention is low, and no countries with a high migration target population have signed the agreements. This situation raises pertinent questions about the convention's suitability and effectiveness.

⁸³ ICRMW, Art 32.

2.4 BRIEF CONSIDERATIONS ON THE IMPLEMENTATION OF THE UNITED NATION MIGRANT WORKERS CONVENTION IN STATES PARTIES

At present, 55 state parties have ratified the UN Migrant Workers' Convention, 13 state parties have signed, and 130 state parties have taken no action.⁸⁴ However, just roughly half of the state parties have signed the treaty⁸⁵ and submitted a preliminary report to the CMW, making it challenging to evaluate the ICRMW's global implementation. Nevertheless, the CMW's concluding observations that are disseminated following discussions with various state parties throughout the sessions provide insight into both positive developments and ongoing difficulties. For instance, a number of the state parties have recently passed their own legislation pertaining to migration in general⁸⁶, putting into practice a number of human rights accords in regard to migrant workers that are either documented or undocumented⁸⁷, or procedures pertaining to the migration of workers⁸⁸, along with the adoption of a definition of migrant worker consistent with that of the convention.⁸⁹

Among the other significant Acts adopted by state parties are measures aiming to; regularise undocumented immigrant employees⁹⁰ combat and punish the practice of human trafficking⁹¹, include employment discrimination, racism, and xenophobia, and all legislative efforts to shift the burden of proof to the defendant once the plaintiff has

⁸⁴ OHCHR, "Status of Ratification," International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), <<http://indicators.ohchr.org/>> (accessed 1 February 2020).

⁸⁵ Ibid.

⁸⁶ Zolberg, Aristide, "The archaeology of remote control," *Migration control in the North Atlantic world: The evolution of state practices in Europe and the United States from the French revolution to the inter-war period*, (2003): p. 195-222.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Desmond, Alan, "From Complementarity to Convergence: The UN Global Compact for Migration and the UN Migrant Workers Convention," *VRÜ Verfassung und Recht in Übersee*, vol. 55, no. 1 (2022): p. 83-104.

⁹⁰ Ibid.

⁹¹ Chuang, Janie, "The United States as global sheriff: Using unilateral sanctions to combat human trafficking," *Mich. J. Int'l L.*, vol. 27 (2005): p. 437.

established a prima facie case.⁹² In addition, when it comes to protecting the rights of migrant workers, the committee encourages bilateral or multilateral agreements between the parties and various states.⁹³

Finally, the committee has taken note of certain initiatives related to the protection of migrant workers from state parties who are working abroad or planning to do so, such as the establishment of mobility places for potential migrant workers⁹⁴, bringing up concerns, and providing access to any and all information,⁹⁵ in addition to safeguarding the rights of all migrant workers and providing them with support.⁹⁶ Despite the fact that most state parties can perceive some positive developments comparable to the ICRMW's implementation, there are a few issues that the CMW frequently raises. Most thoughts focus on the difficulty of gathering and disaggregating data on mobility, which is the primary problem highlighted.⁹⁷

The principal issue referenced in most concluding observations is the issue of getting information on movement, and the information it receives is once in a while disaggregated properly. Repetitively, the state parties supply general statistics on labour migration in their domain, but neglect to give all related data and indications on their entrance to essential services, exact information on the number of undocumented migrant workers and members of their families in the region of the state party, and the number of their own nationals abroad.⁹⁸ A second issue that came up in many of the concluding remarks is that public authorities, such as the police, judges, examiners, the

⁹² Schuman, Mark A, "The Politics of Presumption: St. Mary's Center v. Hicks and the Burdens of Proof in Employment Discrimination Cases," *John's J. Legal Comment*, vol. 9 (1993): p. 67.

⁹³ Pécoud, Antoine, "The UN Convention on Migrant Workers' Rights and international migration management," *Global Society*, vol. 23, no. 3 (2009): p. 333-350.

⁹⁴ Edelenbos, Carla, 19.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Piper, Nicola, "Gendering the politics of migration," *International Migration Review*, vol. 40, no. 1 (2006): p. 133-164.

⁹⁸ Martin, Susan, and Rola Abimourched, 50.

labour department, migration authorities, social workers, and other specialists, often did not have enough information or training on the convention and its provisions. This includes data that is available to migrant workers and the state employees who are responsible for managing them and their families.⁹⁹

In addition, the convention's usefulness as an instrument of international law is seriously hampered by a lack of public awareness of its provisions. The convention acknowledges the right of all migrant workers and their family members to seek effective judicial remedies in cases of rights violations. If the convention infringes upon their rights, they have the right to file complaints and seek legal redress. Thirdly, it is commonly acknowledged in the concluding observations that it is difficult for migratory workers and family members of discrimination victims to exercise their legal rights to a compelling remedy in the state parties.¹⁰⁰ Article 83 of the convention explicitly recognises and guarantees this right to access justice. It emphasises the importance of providing migrant workers and their family members with the means to pursue legal action and have their complaints addressed in a fair and impartial manner.

2.5 INTERNATIONAL LABOUR ORGANIZATION (ILO) CONVENTIONS CONCERNING MIGRANT WORKERS

The primary objective of the global economy should be to enhance the well-being, livelihoods, security, and opportunities of individuals, families, and communities worldwide.¹⁰¹ The Philadelphia declaration upholds the dignity of labour, emphasising the notion of work as a means to recognise workers as individuals rather than as commodities. The ILO migration guidelines provide both migrant sending and

⁹⁹ Bach, Stephen, "International migration of health workers: labour and social issues," Geneva: International Labour Office, (2003).

¹⁰⁰ Edelenbos, Carla, 19.

¹⁰¹ ILO: "A Fair Globalisation: Creating Opportunities for All, Report of the World Commission on the Social Dimension of Globalisation," Geneva, (2004): p. 143.

receiving nations with the necessary tools to monitor migration movements and ensure sufficient legal safeguards for migrant workers who are particularly vulnerable. The ILO Migration for Employment Convention No. 97 of 1949 is one of the pioneering international instruments that provides comprehensive solutions to the challenges faced by migrant workers.¹⁰² This is because employees and their families are typically affected by labour migration. The ILO's migratory worker tools ensure protection and services for workers and their families at every point in the migration procedure. It is important to remember that the ILO Migrant Workers' Conventions do not infringe on the right of any member state to decide whether or not to allow a foreigner to enter its territory, and that it is up to each state to determine how it intends to classify potential migrant workers or to refuse their entry. It focuses on promoting fair treatment, protection of rights, and improved working conditions for migrant workers.

Additionally, the ILO (Supplemental Provisions), No. 143 of 1975¹⁰³ and the ILO Migrant Workers' (Revised), No. 97 of 1949¹⁰⁴ further contribute to the protection of migrant workers' rights by providing supplemental provisions and addressing various aspects of migration and employment. These conventions serve as crucial frameworks for addressing the unique needs and rights of migrant workers globally.¹⁰⁵ In addition, 45 states have ratified Convention No. 97, while 19 states have ratified Convention No. 143.¹⁰⁶ These agreements extend beyond communication, encompassing refugees and displaced persons who work outside their home countries. Protecting the rights and

¹⁰² Wickramasekara, Piyasiri, "Asian labour migration: Issues and challenges in an era of globalization," Geneva: ILO, (2002).

¹⁰³ Hasenau, Michael, "Part I: The Genesis of the Convention: ILO Standards on Migrant Workers: The Fundamentals of the UN Convention and Their Genesis," *International migration review*, vol. 25, no. 4 (1991): p. 687-697.

¹⁰⁴ ILO: Lists of Ratifications by Convention and by Country: International (3rd ed., International Labour Office, 2002): p. 63, <<https://webapps.ilo.org/public/english/standards/relm/ilc/ilc91/pdf/rep-iii-2.pdf>> (accessed 10 April 2023).

¹⁰⁵ ILO Recommendations No. 86 and No. 151 <<https://webapps.ilo.org>> (accessed 10 April 2023).

¹⁰⁶ 19 OSCE countries have ratified at least one of these instruments, <<https://www.osce.org/files/f/documents/b/a/19246.pdf>> (accessed 10 April 2023).

promoting the well-being of all migrant workers, including those forced to leave their home countries due to displacement or refugee status, is the focus. These agreements aim to ensure that, regardless of their specific circumstances, migrant workers are afforded the necessary rights, protections, and support in their employment situations.

While the ILO instruments concerning migrant workers do not cover all migrant-related activities, the standards valued in these instruments give a significant structure to direction on what should constitute the fundamental components of a comprehensive migrant worker's policy, the assurance of migrant workers, and measures to encourage and control migration movement. In summary, these agreements advocate for measures aimed at regulating the conditions under which labour migration takes place, combating undocumented migration and trafficking, and implementing measures to detect and prevent the unlawful employment of migrants to eliminate abuses. They also include provisions for cooperation among states, as well as with employers' and workers' associations, to address these issues effectively and ensure the protection and well-being of migrant workers.

Moreover, the instruments call for measures identifying the support of free service to help migrants, the provision of data collection, steps against misleading promulgation, and the exchange of their profits. They characterise parameters for recruitment and agreement conditions, the interests of migrants in work preparation and promotion, family reunification, and appeals against unjustified termination of employment or ejection. They contain extraordinary provisions on access to social benefits, medical facilities, and sensible housing. In essence, the convention calls for the implementation of a provision that promotes and ensures equal treatment and opportunities for regular migrant workers and nationals in various aspects of employment and occupation. These areas include access to employment, fair

compensation, social security benefits, trade union rights, cultural rights, personal freedoms, employment taxes, and access to legal proceedings. The aim is to establish a level playing field where migrant workers are afforded the same rights and protections as national workers in these key areas. This provision seeks to eliminate any discriminatory practices or barriers that may hinder equal treatment and opportunities for migrant workers.

It should be noticed that Conventions No. 97 and 143 consider various exemptions regarding the classes of migrants secured by the instruments, notably seafarers (secured by a wide scope of specific conventions), frontier labourers, and short-term individuals from the liberal profession and specialists, as well as the independently employed. Convention No. 143 does indeed exclude trainees and specific short-term assignments from its scope. By adopting such a provision, states can ensure that migrant workers are not subject to unjust treatment or exploitation and that they have access to the same rights and benefits as their national counterparts. This helps to create a fair and inclusive work environment that upholds the principles of equality and non-discrimination.¹⁰⁷ However, these exclusions currently apply to Part II of the convention, which addresses equality of treatment between regular migrants and nationals in terms of employment opportunities. They do not prohibit these classifications of migrant labourers from the basic level of security identifying with fundamental human rights accommodated in Part I of Convention No. 143.

According to the framework established by the ILO, international labour standards are legal instruments that are delineated by the constituents of the ILO, namely governments, employers, and employees. The aforementioned entities

¹⁰⁷ Convention No. 143, Art. 14(a), however, permits limited restrictions on equality of opportunity in access to employment (Textbox VII.1), with respect to access to employment and protection against loss of employment, see also ILO, 1999: paras. 381-401 and 577-597, < <https://normlex.ilo.org/>> (accessed 20 May 2019).

encompass a set of established norms and guidelines, commonly referred to as conventions and recommendations. Conventions are legally binding agreements that require ratification by certain nations, while recommendations serve as non-binding principles that embody fundamental ideals.

In addition, the objective of the ILO Multilateral Framework on Labour Migration (MFLM) is to provide non-binding principles and recommendations that promote a rights-based approach to labour migration. Its purpose is to support governments, social partners, and stakeholders in their endeavours to effectively regulate labour migration and safeguard the rights of migrant workers.¹⁰⁸ The document presents a comprehensive compilation of recommendations and principles that are firmly grounded in human rights principles. It serves as a global compendium of exemplary strategies for labour migration that have been developed by governments and social partners worldwide. During the 92nd session of the ILC, participants engaged in a constructive dialogue regarding the many origins of migrant workers. Following this exchange, a general discussion took place, wherein the participants unanimously endorsed the objective of strategically organising migrant workers within the global economy. The document presented here is the ILO Action Plan pertaining to the subject of labour migration. The Action Plan centres its attention on enhancing the multilateral framework concerning the rights of labour migrants.¹⁰⁹

Moreover, in 2005, the ILO convened a tripartite gathering involving representatives from several nations to deliberate upon and endorse the ILO's Multilateral Framework for Labour Migration (MFLM). This framework, titled "non-binding principles and guidelines for a rights-based approach to labour migration," was

¹⁰⁸ ILO, "Conventions and Recommendations" 2006, <https://www.ilo.org/global/topics/labour-migration/publications/WCMS_178672/lang--en/index.htm> (accessed 20 May 2019).

¹⁰⁹ Ashgar Ali Ali Mohamed, "Foreign Workers: The law and practice in Malaysia," (CLJ Publication, 2013).

the subject of discussion during the meeting. The establishment and distribution of the framework were officially endorsed by the ILO Council in 2006. This document aims to serve as a comprehensive resource for enhancing, fortifying, implementing, and assessing immigration policies and practices at the national, provincial, and international levels. Its primary goal is to strengthen migrant rights governance, promotion, and protection while also fostering a nexus between migrants and societal advancement.¹¹⁰ The framework contains the specific Conventions No. 97 and 143, along with the Recommendation No. 86 and 151, as well as the ICRMW. The framework encompasses nine significant domains and includes 15 extension principles, each accompanied by rules that confer functional implications.¹¹¹ Furthermore, it demonstrates a commendable performance in addressing the needs of the entire populace, managing migration flows, safeguarding migrant workers' rights, fostering migration initiatives, improving diplomatic relations, and facilitating greater global engagement.

2.6 OTHER ILO INSTRUMENTS RELEVANT TO MIGRANT WORKERS

In addition to the particular ILO principles protecting the rights of migrant workers, other significant ILO instruments are applicable. Some of the relevant provisions in the more broadly endorsed ILO key conventions, just as in other even less ratified conventions, are not limited to nationals or to those migrants with regular resident and work status. It is essential to consider these standards when searching for directions for the development of comprehensive labour migration strategies. It is important to note that, unless otherwise specified in the relevant ILO instruments, all conventions and

¹¹⁰ ILO, "International labour migration: A right-based approach." (International Labour Office, 2010), <<https://www.ilo.org/>> (accessed 20 May 2019).

¹¹¹ Ibid.

recommendations adopted by the International Labour Conference (ILC) apply to both nationals and non-nationals. These instruments aim to ensure equal rights and protections for all workers, regardless of their nationality, while also respecting the sovereign right of states to regulate access to their territory and national labour market. This approach reflects the recognition that all workers, irrespective of their nationality, should be entitled to fundamental labour rights and decent working conditions. This approach promotes the principle of non-discrimination and upholds the notion that all individuals, regardless of their national origin, should have access to basic human rights. A few principles and rights at work that come from the ILO Constitution and that have been communicated and created in eight core ILO Conventions¹¹² are considered to be principal for the protection of human rights for all labourers, including migrant workers, by the international level and the ILO. They concern freedom of association and the right to collective bargaining (Section VII.2.3 below), freedom from forced labour and child labour, and non-discrimination in employment and occupation (Section VII.2.1 below).

Furthermore, following the adoption of the 1998 ILO Declaration on Fundamental Principles and Rights at Work, migrant workers' rights are not just a matter of fundamental rights found in the eight core ILO Conventions. The ILO recognises that international labour standards pertaining to various areas such as social security, maternity protection, employment policy, regulation of private and public employment agencies, occupational safety and health, conditions of work, protection of wages, and labour inspection are equally vital for promoting decent work for all migrant

¹¹² Forced Labour Convention 1930 (No. 29) and the Abolition of Forced Labour Convention 1957 (No. 105); the Freedom of Association and Protection of the Right to Organize Convention 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention 1949 (No. 98); the Equal Remuneration Convention 1951 (No. 100) and the Discrimination (Employment and Occupation) Convention 1958 (No. 111); and the Minimum Age Convention 1979 (No. 138) and the Worst Forms of Child Labour Convention 1999 (No.182), <<https://www.ilo.org/>> (accessed 20 May 2019).

workers. The ILO has identified these standards as critical components in ensuring the well-being and fair treatment of migrant workers across different sectors of employment.

In addition, the ILO emphasises the importance of upholding these standards to advance the concept of decent work for all migrant workers. The ILO instruments that promote equality of treatment between migrant workers and nationals in the field of social security are particularly applicable.¹¹³ Considering the expansion of private employment agencies responsible for recruiting migrant workers, the Private Employment Agencies Convention, 1997 (No. 181) has become one of the most relevant ILO guidelines for migrant workers today. Convention No. 181 requires ratifying states to receive measures to give satisfactory protection to and prevent abuses of migrant workers enlisted or put in their region by private employment agencies. These measures will incorporate laws or guidelines that accommodate punishments, including the prohibition of those private employment agencies that take part in fake practices and misuses in article. 8(1). Also, the Protection of Wages Convention 1949 (No. 95), merits specific consideration as it accommodates the settlement of wages due upon the end of an agreement and denies “any deduction of wages with the view of guaranteeing a direct or indirect payment for the purpose of obtaining or retaining employment.” Thus, any deduction from wages for payment to expense charging agencies to get or hold employment would be in opposition to the convention.¹¹⁴

Furthermore, the MFLM’s disregard for peripheral development management has led to a variety of security issues. These include the exploitation of migrant workers, the emergence of irregular migration patterns, the proliferation of clandestine

¹¹³ Razavi, Shahra, “Making the right to social security a reality for all workers.” *The Indian Journal of Labour Economics*, vol. 65, no. 2 (2022): p. 269-294.

¹¹⁴ ILO, “2003a: for a more detailed explanation on the application of Article 9 of Convention No. 95, see, paras. 268-271, <<https://normlex.ilo.org/>> (accessed 10 March 2023).

channels for human trafficking, and concerns within the countries of origin. In response to these challenges and following an earnest exchange of perspectives from diverse backgrounds, the 92nd session of the ILC in 2004 engaged in a comprehensive discussion on migrant workers. During this session, a unanimous consensus emerged regarding the need to prudently organise migrant labour within the global economy. This consensus led to the establishment of the ILO Action Plan on Labour Migration, which is dedicated to enhancing the multilateral framework surrounding the rights of labour migrants.¹¹⁵

In 2005, the ILO convened a tripartite meeting involving representatives from around the world. During this gathering, participants engaged in discussions and ultimately endorsed the ILO's MFLM: Non-binding principles and guidelines for a rights-based approach to labour migration. Subsequently, in 2006, the ILO Council officially sanctioned the creation and dissemination of this framework. The framework is designed to serve as a comprehensive guide, offering direction for enhancing, fortifying, implementing, and assessing national, regional, and international labour migration arrangements and practices. Its overarching goal is to improve migrant rights management, advancement, and protection while fostering a connection between migration and development.¹¹⁶ The framework aligns with specific ILO Conventions, namely Convention No. 97 and Convention No. 143, along with Recommendation No. 86 and Recommendation No. 151. Additionally, it takes into account the ICRMW. The framework comprehensively addresses nine key areas and comprises 15 supplementary principles, each supported by operational guidelines that imbue them with practical significance.¹¹⁷ Moreover, the MFLM aims to provide comprehensive guidance and

¹¹⁵ Stalker, Peter, "Protecting migrant workers: Governance of labour migration in Asia and the Pacific," (2008).

¹¹⁶ Ibid.

¹¹⁷ Ibid.

strategies in response to increasing demands for effective measures. Its ultimate objective is to enhance the benefits of labour migration for all stakeholders involved. The framework frequently garners significant attention and consideration from policymakers in the realm of migration, both at the national, regional, and international levels. It delineates principles, regulations, and best practices concerning labour migration arrangements. These are derived from the relevant international instruments and a global survey of the labour migration policies and practices of ILO constituents. Furthermore, the framework addresses the promotion of decent work for all, efficient migration management, the protection of migrant workers, the advancement of migration, the enhancement of relationships, and the promotion of international cooperation. In addition, the ILO's MFLM deals with non-binding principles and guidelines for labour migration. It comes from extensive research, much like the collection and review of labour migrations around the world.¹¹⁸ The MFLM draws its principles from relevant international instruments and local guidelines, including the international agenda for migration management. The framework encourages governments and their social partners to adopt and implement its articulated principles and guidelines.

In its overarching aim to advance the cause of decent work for all, the multilateral framework seeks to foster collaboration and dialogue among the tripartite constituents of the ILO, along with the international labour office, in coordination with other international organisations. The framework aims to facilitate the development and implementation of more effective labour migration strategies, encompassing areas such as employment, rights, and the protection of migrant workers. The principles

¹¹⁸ Shah et al., "Modern Slavery and Forced Labour: An Overview of International Law, the Malaysian Law and Islamic Law Perspectives," *AHKAM: Jurnal Ilmu Syariah*, vol. 21, no. 2 (2021).

within the framework underscore that the human rights of every migrant worker should receive the utmost attention and protection, regardless of their status. Specifically, the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its subsequent developments should guarantee the rights of all migrant workers. The eight fundamental conventions and relevant UN Conventions on human rights encapsulate these rights. However, there are a few guidelines: (i) All parties involved should value and apply national laws and practices that promote and uphold human rights to every migrant worker, as mandated by the government; (ii) These national laws and policies should also adhere to other pertinent ILO standards. These standards include those related to work areas, mandatory and competent job assessments, standardised savings, maternity guarantees, wage guarantees, and health-related benefits, which are applicable to the construction, agricultural, hotel, and cafe industries: (i) The government should enlighten migrant workers about their human rights and obligations, assisting them in safeguarding their rights; (ii) Establish a robust framework for migrant workers' human rights, and equip all migrant worker-related administrations with human rights training; and (iii) Adopt, execute, and enforce policies that guarantee every migrant worker's right to freedom of association, prevent forced labour, uphold the minimum age for employment, and prevent workplace discrimination.

Furthermore, there are two conventions and two recommendations, particularly regarding migrant workers. These are the Migration for Employment Convention (revised) 1949 (NO. 97) and its associated recommendation, the Migration for Employment Recommendation (revised) 1949 (No. 86); the Migrant Workers (Supplementary Provisions) Convention 1975 (No. 143); and its supplementary recommendation, the Migrant Workers Recommendation. 1975 (No. 151).

2.6.1 Migration for Employment Convention (Revised) (No.97) of 1949

There are two ways to describe the ILO's goals for migrant workers: to regulate the conditions under which the migration process takes place and to provide specific protection for workers in vulnerable groups.¹¹⁹ Migrant workers have been addressed in specific conventions, recommendations, and general labour rights instruments. A notable example is the Migration for Employment Convention (No. 66), which was adopted shortly before the outbreak of World War II in 1939. While this instrument did not come into force due to the war, it marked an initial step towards the subsequent adoption of the 1949 Convention of the same name. In 1949, the main ILO Conventions primarily centred on migrant workers entering the destination countries' labour markets. In this regard, one significant convention was the 1949 Employment for Migration Convention (revised). The primary aim of this convention was to facilitate and regulate the post-World War II labour movements from Europe to various parts of the world. In contrast to the original interpretation of the Migration for Employment Convention, this instrument evolved over time to better respond to the needs and demands of migrant workers.

The 1949 Convention further developed guidelines for ensuring equal treatment of migrant workers and encouraged recognition of these principles. The convention accomplished this by allocating specific sections to address three discretionary extensions. Convention No. 97 encompasses a variety of provisions aimed at assisting migrant workers. For example, upon ratification by member countries, it mandates the sharing of relevant data with other ILO member states and organisations. This measure advances efforts against deceptive propaganda and streamlines migrants' departure,

¹¹⁹ Hoehtker, Dorothea, "Historical perspectives on the International Labour Review 1921–2021: A century of research on the world of work 1," *International Labour Review*, vol. 161, no. 4 (2022): p. e12-e48.

journey, and protection, thereby promoting their rights and welfare.¹²⁰ Similarly, Convention No. 97 includes guidelines for ensuring equal opportunities and treatment for migrant workers. However, it is important to note that this criterion applies only when the treatment disparity is “either regulated by law or regulations or is subject to the control of administrative authorities.” The convention aims to rectify and address unequal treatment that receives official sanction or oversight from legal or administrative bodies.¹²¹

The Revised Migration for Employment Convention 1949, in its available provisions, obliges member states to provide information on their national laws and concessions on displacement and migration, especially data on these issues comparable to work; to provide help and advice for employment migration; to stop misleading propaganda; to facilitate the journey and reception of temporary work; and to provide clinical work for migrants and their families for labour migration. Additionally, member states must ensure equal treatment for both migrant workers and their family members across various domains. These domains include areas such as compensation and other working conditions, the freedom of association, the freedom of settlement, social security, and legal procedures, among others. This commitment underscores the importance of ensuring equitable treatment and rights for migrant workers and their families in multiple aspects of their lives while in the host country.

In addition, articles 1 and 2 of Convention No. 97 talk about the information provided to migrant workers by the international labour office and member states, where article 1 focuses on available information on national policies, provisions, conditions of work, the livelihood of migrant workers, and agreements. Besides, article 2 protects and assists migrant workers with accurate information and states that “each member for

¹²⁰ Migration for Employment Convention (Revised), 1949, Art 4.

¹²¹ Ibid, Art 6(1, a).

which this convention is in force undertakes to maintain, or satisfy itself that there is maintained, an accurate and free service to assist migrants for employment, and in particular to provide them with accurate information.”

Migrant workers from Bangladesh often encounter misleading information presented by agents, and upon arriving in Malaysia, employers may present them with a different contract containing less favourable conditions. Despite article 2 confirming that migrant workers receive adequate free service and assistance for employment, Bangladeshi migrant workers end up spending a significant amount of money to facilitate their migration to Malaysia. This situation highlights the challenges and vulnerabilities faced by many migrant workers, who are often subjected to deceptive practices and financial burdens in pursuit of better employment opportunities. Moreover, articles 4 and 5 of this revised convention facilitate migrant workers and their family members’ medical care during departure, journey, and reception in the destination country. Article 4 states that “measures shall be taken as appropriate by each member, within its jurisdiction, to facilitate the departure, journey, and reception of migrants for employment.” Article 5(a) emphasises the importance of ensuring that migrant workers and their family members are in good health both at the time of departure and upon arrival in the destination country.

Furthermore, article 5(b) underscores the need to provide migrant workers with adequate medical attention and maintain good hygienic conditions throughout their journey and upon arrival in the destination country. This commitment implies that migrant workers should have access to free medical care in the destination country, aligning with the provisions set forth in article 2 and article 5, which prioritise their health and well-being. The most attractive and specific article is in article 6 of this convention regarding migrant workers benefits in their destination countries after

coming. It talks about many important matters, such as no discrimination on remuneration, working hours, overtime and holiday pay, trade unions, collective bargaining benefits, and accommodation.

The law, regulations, and administrative authorities will confirm that these equal treatments and benefits apply to national workers with no “discrimination in respect of nationality, race, religion, or sex, to immigrants lawfully within its (member state) territory.” This article also provides social security under 6(b), which includes “legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment, family responsibilities, and any other contingency that, according to national laws and regulations.” The discrimination must not be in employment taxes, dues, contributions, or legal proceedings under sub-sections 1(c) and 1(d) of article 6 of the Migration for Employment Convention (revised) of 1949. The good thing is that migrant workers can join and contribute to trade unions under article 6. Moreover, Convention No. 97 with the host country guarantees migrant workers and seeks to avoid any oppression.¹²² It, along with Recommendation No. 86, includes a step-by-step refinement of standards related to previous instruments. They respond more meticulously and generically to the demands and protections of migrant workers.¹²³

Convention No. 97 serves as a comprehensive framework for regulating labour migration while safeguarding the rights and well-being of migrant workers. Its key provisions include ensuring transparency and accuracy in providing information to migrant workers about migration procedures and wage arrangements, as well as encouraging them to make well-informed decisions. The convention strongly advocates

¹²² Arowolo, Grace Ayodele, “Protecting the Rights of Migrants: The Challenges and the Prospects,” *JL Pol’y & Globalization*, vol. 105 (2021): p. 92.

¹²³ Touzenis, Kristina, and Ryszard Cholewinski, “The human rights of migrants-Editorial introduction,” *International Journal on Multicultural Societies*, vol. 11, no. 1 (2009): p. 1-18.

for equal treatment of migrant workers, prohibiting discrimination based on nationality, race, religion, or sex, and ensuring that migrant workers enjoy the same rights and benefits as local workers, fostering fairness in labour markets.

Likewise, Convention No. 97 addresses the safety and security of migrant workers by implementing measures to provide support and assistance to workers and their families in unforeseen circumstances, such as illness or emergencies, thereby protecting workers from exploitation and precarious conditions.¹²⁴ Recommendation No. 86 reflects an increasingly comprehensive approach towards member states. Article 6 ensures that migrant workers are treated “without discrimination in respect to nationality, race, religion, or sex.”¹²⁵

The 1949 Migration for Employment Recommendation (Revised) (No. 86) is a non-binding instrument that extends and further elaborates on the convention’s provisions. It places increasing emphasis on member countries and their responsibilities. This recommendation provides clarity on various aspects related to migrant work. In essence, these recommendations focus on offering support and establishing procedures for migrant workers, ensuring equal treatment and opportunities, and facilitating their return to their home countries. It aims to empower migrants to manage their affairs autonomously. This includes initiatives like introducing intermediaries in recruitment processes and facilitating family reunification management. In June 1971, the ILC received a goal to assess existing conventions and draft new conventions to fill any gaps and ensure that migrant workers have equal rights in law and practice in all employment and social issues.¹²⁶

¹²⁴ International Labour Office, “International labour migration: A rights-based approach,” <www.ilo.org/global/publications/ilo-bookstore/WCMS_125361/lang--> (accessed 20 May 2021).

¹²⁵ ILO Convention (No. 97), Art 6.

¹²⁶ ILO, “Record of Proceedings of the Fifty-Sixth Session of the International Labour Conference, Geneva, 1971,” The major labour-sending nations were seen as a driving force in drafting a resolution at the International Labour Conference in 1971, which prompted then to request that the ILO priorities

2.6.2 Migrant Workers (Supplementary Provisions) Convention (No. 143) of 1975

The ILO instrument was received during a period of increased migration, and the illegal work of traffickers and migrant workers has become an important issue for international motivation. This has resulted in a two-fold convention: combating human trafficking and illegal employment, and ensuring migrant workers by guaranteeing equal treatment. Nonetheless, when a state chooses to accept only one part, they should provide detailed information on the action taken if they later complete estimates related to the unratified part.¹²⁷ Moreover, Convention No. 143 divides into two basic parts: migration under oppressive conditions and the development of equality of opportunities and treatment of migrant workers under their guidance.¹²⁸ Countries that ratify the convention may choose to accept one part or both of it.¹²⁹ In this way, the evolving desire to control the flow of migrants is reflected in the preamble to the convention, which states, “avoid the excessive, uncontrolled, or unassisted increase of migratory movements because of their negative social and human consequences.”¹³⁰

Convention No. 143 expands upon the principles of equality and equal treatment. Article 10 of the Convention emphasises that states should commit to enhancing and ensuring “equality of opportunity and treatment in respect of employment and occupation, social security, trade union and cultural rights, and individual and collective freedoms for persons who are lawfully within their

research of the concern. These problems included equal opportunity and treatment, hiring practices, and illegal migration. There were also economic and social issues for both the origin and destination nation, < <https://libguides.ilo.org/conference/56-60>> (accessed 10 May 2023).

¹²⁷ Valticos, Nicolas, “International labour law.” (Springer Science & Business Media, 2013).

¹²⁸ ILO, “Migrant Workers: General Survey by the Committee of Experts on the Application of Conventions and Recommendations: Report III, Part 4B,” (International Labour Conference, 66th Session, 1980a, Geneva), <<https://www.ilo.org/international-labour-standards/ilo-supervisory-system-regular-supervision/applying-and-promoting-international-labour-standards/committee-experts-application-conventions-and-recommendations-ceacr>> (accessed 10 May 2023).

¹²⁹ World Campaign for Human Rights, “The Rights of Migrant Workers” (1996), <<https://www.ohchr.org/>> (accessed 10 May 2023).

¹³⁰ The Preamble of the Migrant Workers (Supplementary Provisions), Convention (No. 143) of 1975, <<https://normlex.ilo.org/>> (accessed 10 May 2023).

territory, whether as migrant workers or as members of their families.” However, it is noteworthy that only 19 countries have ratified Convention No. 143. Some initial reasons for this limited ratification have been identified, such as the requirement for migrant workers to be free to choose their employment after their scheduled working hours and for their living arrangements to be considered.

Additionally, the convention calls for the harmonisation of opportunities and treatment between migrant workers and national workers, as well as for migrant workers to fully enjoy the rights associated with their status.¹³¹ Moreover, the first part of the convention is labelled “Migration in Abusive Conditions” and begins with an explicit reference to human rights in article 1, requiring states to gather to consider “basic human rights of all migrant workers”,¹³² whether legal or not, and accept necessary and appropriate estimates to eliminate undercover multifunctionality of workers and illegal immigration. Nations are obliged to impose sanctions on organisations that use illegal immigrants and must file inquiries against individual traffickers. Article 9¹³³ stipulates that the rights and benefits of residents and illegal migrants (including their families) in previous employment, such as social security and other due remuneration, must be treated equally. Furthermore, member states are expected to enact laws and regulations to address the identification and penalisation of illicit employment involving migrant workers, in consultation with workers and employers’ associations.

Consequently, the early provisions of the convention typically provide equal treatment to all migrant workers, regardless of their migration status (regular or irregular). However, irregular migrant workers become eligible for equal treatment

¹³¹ Sivakumaran, Sandesh, “The rights of migrant workers one year on: transformation or consolidation,” *Geo. J. Int’l L*, vol. 36 (2004): p. 113.

¹³² ILO Convention No. 143(n 3), Art 1.

¹³³ Ibid, No. 143(n 3), Art 9.

only in relation to their previous employment. In addition, the second part of the convention, titled “Equal Opportunity and Treatment,” delineates the rights of migrant workers and their family members who are lawfully residing within a state’s territory. This section underscores the state party’s obligation to tailor national practices in a way that fosters equal treatment between its own citizens and migrant workers in various aspects, including employment and occupation, social security, cultural rights, trade union rights, and individual and collective freedoms.¹³⁴

Furthermore, the convention lays out arrangements for “migrant workers,” which are characterised by the ultimate objective of the convention: achieving equal opportunities through active involvement with employers and workers’ associations, the enactment of appropriate legislation, and the implementation of guided projects in collaboration with migrants and strategies aimed at ensuring equal treatment. Although the well-being of these rights depends on the fact that basic expert competence is available, article 14¹³⁵ tends to be a guide to development opportunities and the privilege of business decisions. Additionally, this categorisation of migrant workers emphasises both family reunification and the potential for restrictions on the free choice of employment as part of the broader framework for addressing migrant labour issues.¹³⁶ The Migrant Workers (Supplementary Provisions) Convention is a complement to the Migrant Workers Recommendation No. 151.

Additionally, the recommendation aims to ensure equal treatment for irregular migrant workers and equal opportunities and treatment for regular migrant workers. In the context of equal treatment for undocumented migrants, similar to the

¹³⁴ Ibid., 90, Art 10.

¹³⁵ Ibid, Art 14.

¹³⁶ Triandafyllidou, Anna, “Temporary migration: category of analysis or category of practice?” *Journal of Ethnic and Migration Studies*, vol. 48, no. 16 (2022): p. 3847-3859.

1974 Convention, article 8(1) of the recommendation restricts its scope to past employment but includes provisions for the involvement of trade unions and related activities. These provisions are similar to how citizens are treated. The recommendation also covers the elaboration of social provisions for migrant workers and their needs during the adaptation to their new country, family reunification, welfare insurance for migrant workers, access to social services, and the treatment of migrant workers in cases of job loss, termination, and their return to their home country.

2.7 GENERAL RECOGNITION OF LEGAL PROTECTION IN INTERNATIONAL INSTRUMENTS

International human rights law is found in the International Bill of Rights, which contains the nonbinding UDHR (however, the greater part of its arrangements is commonly perceived as establishing International Customary Law) and two general human rights treaties, the ICCPR and the ICESCR.¹³⁷ Therefore, migrant workers, as non-nationals, are commonly qualified for the same human rights as residents. Additionally, there are a few other UN instruments that have the potential to protect migrants from discrimination and abuse on grounds other than their non-national status. It ought to be emphasised that these instruments ensure every single individual pays little, regardless of their nationality and legal status.¹³⁸

The ICERD, adopted in 1969, is currently one of the most widely ratified human rights conventions under the UN. It obligates state parties to prohibit racial

¹³⁷ Both the ICCPR and ICESCR have been ratified by nearly all OSCE countries, with the exception of Andorra (signed ICCPR but not ratified; ICESCR), the Holy See (ICCPR; ICESCR), and the United States (signed ICESCR but not ratified), < <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>> (accessed 10 May 2023).

¹³⁸ Carrera, Sergio, “Whose Pact? The Cognitive Dimensions of the EU Pact on Migration and Asylum,” *The EU Pact on Migration and Asylum in light of the United Nations Global Compact on Refugees*, vol. 1 (2021).

discrimination based on race, colour, descent, or national or ethnic origin within their jurisdiction. State parties must also implement suitable legal measures to tackle and penalise any activities that stem from these discriminatory practices. The ICERD emphasises the importance of promoting equality, non-discrimination, and the elimination of racial discrimination in all aspects of society. The CEDAW of 1979 combines the provisions of existing UN instruments concerning discrimination based on sex and applies to residents and non-residents. Other human rights instruments of importance to migrant workers incorporate the CAT of 1984 and the CRC of 1989.

2.7.1 United Nations Charter (UNC) 1945

The 1945 Charter of the United Nations, also known as the UN Charter, laid the foundation for the UN, an intergovernmental organisation.¹³⁹ The UNC made a public pledge to protect its citizens' rights by outlining a wide range of principles pertaining to the promotion of "higher standards of living," the solution of "economic, social, health, and related problems," and the "universal respect for and observance of human rights and fundamental freedoms for all without regard to race, sex, language, or religion."¹⁴⁰ Since it serves as a charter, all parties must adhere to its provisions. In addition, all treaty duties are subordinate to UN obligations, as stated in article 103 of the charter.¹⁴¹ It also aims to promote and encourage respect for human rights and fundamental freedoms for all individuals, without discrimination based on race, sex, language, or religion. By working towards these goals, the UN strives to create a more

¹³⁹ UN, "Introductory Note," <<http://www.un.org/>> (accessed 9 February 2020).

¹⁴⁰ Christopher N.J. Roberts, "William H. Fitzpatrick's Editorials on Human Rights" (1949), *Quellen zur Geschichte der Menschenrechte [Sources on the History of Human Rights]*. Human Rights Working Group in the 20th Century, <<https://www.geschichte-menschenrechte.de/william-h-fitzpatrick-editorials-on-human-rights-1949/>> (accessed 4 February 2020).

¹⁴¹ UN, "Chapter XVI: Miscellaneous Provisions," <<https://www.un.org/en/sections/un-charter/chapter-xvi/index.html>> (accessed 2 February 2020).

just, peaceful, and inclusive world for everyone. During the San Francisco Conference, the charter underwent extensive review, commencing on April 25, 1945, and becoming available for signature on June 26, 1945.¹⁴² The UN has the fundamental purpose of fostering international cooperation to address global challenges of an economic, social, cultural, or humanitarian nature.

2.7.2 Universal Declaration of Human Rights (UDHR) 1948

The UDHR is a historic document that was adopted by the UN general assembly at its third session on December 10, 1948, as Resolution 217 at the Palais de Chaillot in Paris, France. Of the then 58 members of the UN, 48 voted in favour, none against, eight abstained, and two did not vote.¹⁴³ Some legal scholars have argued that because countries have constantly invoked the declaration for more than 50 years,¹⁴⁴ it has become binding as a part of customary international law.¹⁴⁵ However, in the USA, the Supreme Court in *Sosa v. Alvarez-Machain* concluded that the declaration “does not of its own force impose obligations as a matter of international law.”¹⁴⁶ Courts in other countries have also concluded that the declaration is not in and of itself part of domestic law.¹⁴⁷ Everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or status.¹⁴⁸ Additionally,

¹⁴² “United Nations Conference on International Organization Proceedings,” Hoover Institution, <<https://www.hoover.org/library-archives/collections/united-nations-conference-international-organization-proceedings-1945>> (accessed 10 February 2020).

¹⁴³ “A/RES/217(III)” UNBISNET, <[https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_217\(III\).pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_217(III).pdf)> (accessed 10 February 2020).

¹⁴⁴ Henry J Steiner and Philip Alston, “International Human Rights in Context: Law,” *Politics, Morals*, (2nd ed). (Oxford University Press, Oxford, 2000).

¹⁴⁵ Hurst Hannum, “The universal declaration of human rights in National and International Law,” p.145.

¹⁴⁶ *Sosa v. Alvarez-Machain*, 542 U.S. (2004): p. 692, 734.

¹⁴⁷ Posner, Eric, “The case against human rights, Eric Posner,” *The Guardian*, 4 December, 2014, <https://www.theguardian.com/news/2014/dec/04/-sp-case-against-human-rights>.

¹⁴⁸ UDHR, Art 2.

states commit to ensuring that the rights recognised in the human rights treaties they have ratified are enjoyed by individuals without any form of discrimination. They have an obligation to implement the relevant provisions of these conventions and ensure equal treatment for all. Over time, the grounds for non-discrimination have expanded beyond the original scope, reflecting the evolving understanding and commitment to equality since the establishment of the UN. This broader perspective recognises the importance of eliminating discrimination based on various grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or any other status.

The UN charter foresaw that respect for human rights and for fundamental freedoms implies that no distinction should be made as to race, sex, language, or religion. These four non-discrimination grounds were substantially expanded upon in the UDHR, along with eight additional grounds on which state parties cannot discriminate.¹⁴⁹ In the 42 years between the adoption of the UDHR and the adoption of the Convention on Migrant Workers, a total of 19 grounds have been defined on which states parties to the respective conventions should not discriminate.¹⁵⁰ Some of the grounds are to be found only in specific instruments, such as “descent” in the Convention on the Elimination of All Forms of Racial Discrimination and “disability” in the Convention on the Rights of the Child.¹⁵¹ The declaration was essential in establishing the fundamental rights of individuals, encompassing the rights of all individuals “without any form of discrimination, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status”.¹⁵² In addition, the UDHR asserts that every individual has an inherent right to

¹⁴⁹ Ibid., 94, Art 2.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Ibid.

freedom and equality, upholding their dignity and rights from the moment of birth.¹⁵³ According to article 2 of the UDHR, all individuals possess the inherent entitlement to the complete range of rights and freedoms outlined within this declaration. This entitlement is not subject to differentiation based on any kind of distinction, including but not limited to race, colour, sex, language, religion, political or other viewpoint, birth, or other status.¹⁵⁴ Articles 4 and 5 of the UDHR provide safeguards for migrant workers against the practices of slavery and servitude, as well as cruel, inhuman, or degrading treatment or punishment. The practice of subjecting migrant labourers to forced labour persists in Malaysia, even though both the Bangladesh Constitution and the Federal Constitution of Malaysia (FCM) expressly prohibit modern slavery. Forced labour refers to the coercive practice wherein migrant workers are compelled to engage in labour without their prior consent or are deceived into performing tasks through the dissemination of false information, all while being subjected to the imminent risk of punishment.

The UDHR and modernity employs an approach that intricately connects to the cessation of contemporary enslavement. The need for governments and other institutions lies in directing their efforts towards the efficient acknowledgment of social and economic rights, with the aim of safeguarding persons against contemporary forms of enslavement. Regardless of the urgency of the situation, governments must provide social protection mechanisms that allow individuals to access dignified employment. Governments will be expected to address all factors that grant immunity from culpability.¹⁵⁵ Numerous countries have yet to implement domestic legislation

¹⁵³ Ibid., 95, Art 1(n 23).

¹⁵⁴ Ibid.

¹⁵⁵ Brown, Gordon, "The Universal Declaration of Human Rights in the 21st century: A living document in a changing world" (Open Book Publishers, 2016), <<http://library.oapen.org/handle/20.500.12657/31244>> (accessed 28 July 2022).

explicitly condemning torture due to certain limitations. Furthermore, in instances where laws prohibiting torture are in place, there is often a lack of substantial action taken to effectively prevent such acts. Furthermore, there is a dearth of comprehensive worldwide data on the impacts of torture, and information that accurately identifies the regions where human rights violations occur most frequently and the specific populations most harmed. Ultimately, erroneous beliefs that torture was a viable and efficacious means of establishing accountability and promoting equity undermined the hostile endeavours to employ such practices.¹⁵⁶ This law holds universal applicability, encompassing both citizens and non-citizens without distinction.¹⁵⁷

Moreover, the UDHR encompasses fundamental individual rights and freedoms, alongside the primary international human rights treaties and their corresponding optional protocols.¹⁵⁸ The declaration, a seminal document in the annals of human and civil rights, comprises 30 articles that delineate an individual's "basic rights and fundamental freedoms," asserting their universal nature as inherent, inalienable, and applicable to all humanity. All individuals and nations establish the UDHR as a universal benchmark, obligating them to acknowledge that all humans are "born free and equal in dignity and rights." While the UDHR lacks legal enforceability, it holds significant recognition as the fundamental embodiment of universal human rights, and many of its ideas are acknowledged as customary law.¹⁵⁹ The foundation of international human rights law is the fundamental idea that every individual has the

¹⁵⁶ Chuang, Janie A, "The International Organization for Migration and New Global Migration Governance," *Harv. Int'l LJ*, vol. 63 (2022): p. 401.

¹⁵⁷ David Weissbrodt, "The human rights of non-citizens," p 35. (OUP Oxford, 2008).

¹⁵⁸ OHCHR, "The Core International Human Rights treaties" (2014), <http://www.ohchr.org/Documents/Publications/CoreInternationalHumanRightsTreaties_en.pdf> (accessed 17 August 2022).

¹⁵⁹ Elias Fornale, "The protection of Human Rights of Irregular Migrants: The Case of Morocco." (Peter Lang, 2013).

inherent right to assert and exercise their own human rights.¹⁶⁰ The Universal Islamic Declaration of Human Rights (UIDHR) is a document created by Islamic Councils in Paris¹⁶¹ and London.¹⁶² This declaration of human rights stands as the second foundational document promulgated by the Islamic Council to herald the commencement of the 15th century in the Islamic calendar. The first of these documents was the Universal Islamic Declaration, which was proclaimed during the International Conference on the Prophet Muhammad (PBUH) and His Message, convened in London from April 12 to 15, 1980.¹⁶³

The UIDHR was conceived with the primary objective of rekindling awareness about the ideal human rights code established over 1400 years ago. The Islamic context deeply roots human rights in the belief that Allah (SWT), and Allah (SWT) alone, is the ultimate source of all human rights and the bestower of the law. Given its divine origins, no government, ruler, parliament, or authority holds the capacity to diminish or infringe upon the human rights bestowed by Allah (SWT).¹⁶⁴ Under this declaration, it is unequivocally stated that no individual shall be subjected to mental or physical torture, degradation, or intimidation. Furthermore, neither the person in question nor anyone connected to or cherished by them shall be threatened with harm. No one should be coerced into confessing to a crime, nor should they be compelled to consent to any action that is detrimental to their well-being or interests.¹⁶⁵ Both the

¹⁶⁰ Kate Parlett, "The individual in the international legal system: continuity and change in international law," vol. 75. (Cambridge University Press, 2011).

¹⁶¹ Salem Azzam, "Universal Islamic declaration of human rights," *The International Journal of Human Rights*, vol. 2, no. 3 (1998): p. 102- 112.

¹⁶² Halliday, Fred, "Relativism and universalism in human rights: The case of the Islamic Middle East," *Political Studies*, vol. 43, no. 1 (1995): p. 152-167.

¹⁶³ The Forward of the UIDHR, <<https://www.un.org/en/udhrbook/foreword.shtml>> (accessed 10 May 2022).

¹⁶⁴ Mohamed, Ashgar Ali Ali, "Foreign workers: The law and practice in Malaysia," *CLJ Publication*, (2013).

¹⁶⁵ UIDHR, VII, Right to Protection Against Torture, <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> (accessed 15 May 2023).

UDHR and the UIDHR unequivocally extend certain rights to both local and migrant workers. These rights encompass life, liberty, and personal security, as well as fundamental freedoms and the right to a just and fair trial. Importantly, no form of discrimination, regardless of factors like race, colour, gender, language, religious beliefs, political opinions, national or social origins, property ownership, birth, or any other status, confers these rights. Regarding attitudes towards workers, the UIDHR states: “Islam bestowed upon humanity an exemplary set of human rights over fourteen centuries ago. Regardless of whether an individual is free, entrusted, subject to external governance, or otherwise constrained by external powers, no distinctions are to be made based on the political, jurisdictional, or international status of the country in which they reside.

These rights are designed to bestow honour and dignity upon all of humanity while eradicating exploitation, oppression, and injustice.”¹⁶⁶ The UIDHR derives its principles from the *Quran* and *Hadith*, and it subsequently formulates laws and regulations in accordance with these sources. The UIDHR covers a wide range of human rights guarantees, including equality, justice, work, education, and participation in public affairs. It emphasises the inherent value of work in Islam and underscores the necessity of treating workers justly and generously.¹⁶⁷

Article III of UIDHR states that (a) “all persons are equal before the law and are entitled to equal opportunities and protection of the law; (b) all persons shall be entitled to equal wage for equal work; (c) no person shall be denied the opportunity to work or discriminated against in any manner or exposed to greater physical risk by reason of religious belief; colour, race, origin, sex, or language.”

¹⁶⁶ The Forward of the UIDHR, < <https://www.un.org/en/udhrbook/foreword.shtml> > (accessed 25 March 2023).

¹⁶⁷ Ibid.

Every person has the right to food, shelter, clothing, education, and medical care consistent with the resources of the community. This community obligation extends in particular to all individuals who cannot take care of themselves due to some temporary or permanent disability.¹⁶⁸ Furthermore, Islam is a fundamentally just and equal religion. It firmly upholds the belief that each individual and community possesses inherent and inalienable rights to freedom across its various dimensions, be they physical, cultural, economic, or political. These rights are not to be infringed upon or revoked. When these rights face threats, individuals and communities have the right to utilise all available methods to safeguard and maintain these freedoms. Moreover, any oppressed individual or community holds a legitimate right to seek support from other individuals and communities in their struggle to safeguard these fundamental rights.¹⁶⁹

Consequently, it grants its citizens absolute and equal rights before justice. The superiority of one person over another is based solely on Allah (SWT)'s consciousness, pure character and noble morals, not skin colour, race, language, or nationality. Therefore, people have no reason to override others. The righteous have no special privilege over others. Consequently, in terms of equal pay for equal work, Islam promotes equal job opportunities, freedom from discrimination, and recognising everyone as a descendant of a common ancestor.¹⁷⁰ History has demonstrated that Islam has risen above class divisions to attain a position of remarkable grandeur and admiration. This spirit of universal equality inherent in Islam possesses the power to resonate with people's hearts, leading them to embrace Islam collectively.¹⁷¹ Examining the arrangement of various articles in the UIDHR can provide a deeper understanding

¹⁶⁸ UIDHR, "Right to Social Security," < <https://www.un.org/en/about-us/universal-declaration-of-human-rights#>> (accessed 15 January 2023).

¹⁶⁹ Ibid.

¹⁷⁰ Berween, Mohamed, "The fundamental human rights: An Islamic perspective," *The International Journal of Human Rights*, vol. 6, no. 1 (2002): p. 61-79.

¹⁷¹ Ibid.

of the authors' intentions and stance. Through this internal examination, it becomes apparent that, despite recognising discrimination as unacceptable, there are instances where differential treatment is supported under different provisions. Consequently, it underscores the contention that the guarantee of equality and equal protection, as articulated in article 3(a), does not encompass discrimination based on gender and religion.¹⁷² Article XVII declares that "Islam honors work and the workers and orders Muslims not only to treat the worker justly but also generously, and it is not only to be paid his earned wages promptly, but it is also entitled to adequate rest and leisure." Islam emphasises the importance of respecting each person's individual dignity and uniqueness. To realise this principle, relevant norms, principles, and institutions must be effectively implemented within an interconnected framework.

The preamble explicitly states that the UIDHR does not prioritise subjective opinions or impose labour constraints. Instead, it grants every individual the right to form free associations and participate either individually or collectively. Furthermore, it calls for immediate consent regarding the compensation of appointed representatives. UIDHR also explicitly prohibits child labour. Ultimately, it aligns with the right of every individual to freely determine their occupation and employment.¹⁷³

2.7.3 The International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966

The ICESCR is a multilateral treaty adopted by the UN general assembly on December 16, 1966, through GA. Resolution 2200A (XXI), and came into force on January 3, 1976.¹⁷⁴ It commits its parties to work towards the ESCR to the self-governing and trust

¹⁷² Mayer, Ann Elizabeth, "Islam and human rights: Tradition and politics." (Routledge, 2018).

¹⁷³ UIDHR, XXI (b), Rights to Education, < <https://www.un.org/en/about-us/universal-declaration-of-human-rights#>> (accessed 15 January 2023).

¹⁷⁴ International Covenant on Economic, Social and Cultural Rights (ICESCR), <<http://www.refworld.org/>> (accessed 15 January 2020).

territories and individuals, including labour rights and the right to health, the right to education, and the right to an adequate standard of living.¹⁷⁵ As of January 2020, the covenant has 170 parties.¹⁷⁶ A further four countries, including the USA, have signed but not ratified the covenant. The ICESCR (and its Optional Protocol) is part of the International Bill of Human Rights, along with the UDHR and the ICCPR, including the latter's first and second Optional Protocols.¹⁷⁷ The covenant is monitored by the UN Committee on Economic, Social, and Cultural Rights.¹⁷⁸ According to article 8 of the CESCR, individuals possess the entitlement to establish, operate, and affiliate with national and international trade unions or organisations without encountering any sort of restriction. This article also asserts the right to strike in accordance with the legislation of the respective country. Furthermore, the provision of social security, including insurance, to all individuals is stipulated in article 9 of the current covenant.

2.7.4 The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965

The ICERD, as a human rights instrument, commits its members to the elimination of racial discrimination and the promotion of understanding among all races.¹⁷⁹ The convention also requires its parties to outlaw hate speech and criminalise membership in racist organisations.¹⁸⁰ The convention also includes an individual complaint mechanism, effectively making it enforceable against its parties. This has resulted in a limited jurisprudence on the interpretation and implementation of the convention. The

¹⁷⁵ EISIL, "International Covenant on Economic, Social and Cultural Rights," <<http://www.eisil.org/>> (accessed 12 January 2020).

¹⁷⁶ UN, "Treaty Collection: International Covenant on Economic, Social and Cultural Rights, UN" 3 January 1976, <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=_en> (accessed 10 January 2020).

¹⁷⁷ Fact Sheet No. 2 (Rev.1), "The International Bill of Human Rights" UN OHCHR, June 1996, <<https://www.refworld.org/docid/479477480.html>> (accessed 12 February 2020).

¹⁷⁸ ICESCR, <<http://www.ohchr.org/>> (accessed 12 February 2020).

¹⁷⁹ ICERD, Art 2(1).

¹⁸⁰ Ibid, Art 4.

convention was adopted and opened for signature by the UN general assembly on December 21, 1965¹⁸¹, and entered into force on January 4, 1969. As of April 2019, it had 88 signatories and 182 parties.¹⁸² The ICERD serves as an additional global mechanism aimed at safeguarding the rights of migrant workers, who frequently encounter instances of racial discrimination.¹⁸³ The agreement lacks explicit provisions to address discrimination based on nationality, particularly concerning an individual's residence status.

Nonetheless, it does address instances of discrimination against migrant workers grounded in factors such as race, colour, descent, national origin, or ethnic status. Article 1, paragraph 2 of the ICERD¹⁸⁴ stated: "This convention shall not apply to distinctions, exclusions, restrictions, or preferences made by a state party to this convention between citizens and non-citizens."¹⁸⁵ In this convention, any distinction, exclusion, restriction, or preference made on the basis of race, colour, descent, or national or ethnic origin shall be referred to as "racial discrimination," which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life.¹⁸⁶

The ICERD gave importance to human rights and stated in the preamble that "all human rights are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination." Furthermore,

¹⁸¹ United Nations General Assembly Resolution 2106 (XX), 21 December 1965, <https://treaties.un.org/doc/source/docs/A_RES_2106-Eng.pdf> (accessed 5 January 2020).

¹⁸² Parties to the "International Convention on the Elimination of All Forms of Racial Discrimination," *United Nations Treaty*, <<https://indicators.ohchr.org/>> (accessed 5 February 2020).

¹⁸³ Martin, Susan, and Rola Abimourched, 50.

¹⁸⁴ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted 21 December 1965, entered into force 4 January 1969, 660 UNTS 195, <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>> (accessed 5 February 2020).

¹⁸⁵ ILO Convention No. 143(n 3), Art 1(2).

¹⁸⁶ ICERD, Art 1.

in order to effectively address and eliminate all forms of racial discrimination within the boundaries and jurisdiction of the state parties, the ICERD mandates the condemnation of racial separation and apartheid.¹⁸⁷ These rights encompass various aspects, including the right to engage in gainful employment, the freedom to choose one's occupation, the assurance of fair and favourable working conditions, equal compensation and treatment, unrestricted movement, the ability to peacefully assemble and associate, the right to form and join trade unions, access to public health services and medical care, as well as safeguards for personal security and protection against violence.

2.7.5 The International Covenant on Civil and Political Rights (ICCPR) 1966

In accordance with article 49 of the covenant, the UN general assembly adopted the ICCPR, as a multilateral treaty on December 16, 1966, and it has been in force since March 23, 1976.¹⁸⁸ According to article 49, the covenant would enter into force three months after the date of deposit of the thirty-fifth instrument of ratification or accession. Articles 7 and 8 of the international legal frameworks provide safeguards for migrant workers, aiming to prevent and address instances of abuse, including acts such as inhumane or humiliating torture, treatment or punishment, slavery or servitude, slave trade, and forced or obligatory labour. The covenant commits its parties to respecting the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights, due process, and a fair trial.¹⁸⁹ Each state party to the present covenant undertakes to respect

¹⁸⁷ Ibid., 103, Art 3.

¹⁸⁸ ICCPR, "Office of the United Nations High Commissioner of Human Rights," <<https://indicators.ohchr.org/>> (accessed 28 January 2020).

¹⁸⁹ Fact Sheet No. 2 (Rev.1), "The International Bill of Human Rights" *UN OHCHR. June 1996*, <<https://www.refworld.org/docid/479477480.html>> (accessed 12 February 2020).

and ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.¹⁹⁰ The ICCPR is part of the International Bill of Human Rights, along with the ICESCR and the UDHR.¹⁹¹ As of September 2019, the covenant has 173 parties and six more signatories without ratification.¹⁹²

Furthermore, it is important to note that migrant workers are afforded protection from unlawful incarceration, as stipulated by the state law, “no one shall be subject to custody solely based on their failure to fulfil a contractual obligation.”¹⁹³ The human rights committee explicitly asserts that both citizens and non-citizens should have unrestricted access to all rights enshrined in the ICCPR.¹⁹⁴ Being a component of the International Bill of Human Rights, the ICESCR, and the UDHR are also considered essential documents in the history of international law and human rights. The ICCPR is considered to be a groundbreaking text. This covenant has two distinct constraints. Firstly, it provides citizens with the entitlement to exercise their political rights, including the right to vote. Secondly, it prevents migrants from fully taking advantage of opportunities for diversification, such as the privilege of residence.¹⁹⁵

2.7.6 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979

Internationally, the UN general assembly enacted a Convention in 1979 called the CEDAW. The first implementation took place on September 3, 1981. As of today, 189

¹⁹⁰ Ibid., 104, Art 2(1).

¹⁹¹ Ibid.

¹⁹² OHCHR Dashboard, “Status of ratification,” <<https://indicators.ohchr.org/>> (accessed 28 January 2020).

¹⁹³ ICCPR, Art 11.

¹⁹⁴ OHCHR, No 36.

¹⁹⁵ Constant, Amelie F., Olga Nottmeyer, and Klaus F. Zimmermann, “The economics of circular migration,” International handbook on the economics of migration, (2013): p. 55-74.

states have ratified it, giving it the status of an international bill of rights for women.¹⁹⁶ According to article 29, which deals with dispute settlement for issues arising out of the interpretation or implementation of the convention, it was rejected by 38 of the over 50 countries that have ratified the convention with reservations and declarations.¹⁹⁷ The convention's structure is quite similar to "both in terms of the breadth of its substantive duties and its international monitoring systems" and "the CEDAW."¹⁹⁸ The term "discrimination against women" as defined in the present convention refers to any distinction, exclusion, or restriction made based on sex that has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise of human rights and fundamental freedoms by women. This definition applies to women regardless of their marital status and is based on the principle of equality between men and women. Discrimination against women can occur in various spheres, including political, economic, social, cultural, civil, or any other field. The aim of the convention is to address and eliminate such discrimination, ensuring that women have equal rights and opportunities as men in all aspects of life.¹⁹⁹

In addition to the aforementioned treaties, it is noteworthy that the ICRMW holds a prominent position among the UN fundamental human rights treaties. The UN ratified the convention on December 18, 1990, and it came into effect on July 1, 2003. The convention encompasses a scholarly article that focuses on the matter of gender equality in employment, specifically addressing women's entitlement to comparable job opportunities, the eradication of job discrimination, equitable remuneration for work of equal worth, the freedom to choose one's profession and occupation, and the provision

¹⁹⁶ UN, "United Nations Treaty Collection," <<https://un.org/>> (accessed 2 February 2020).

¹⁹⁷ UN, "Declarations, Reservations and Objections to CEDAW," <<https://un.org/>> (accessed 12 February 2020).

¹⁹⁸ Henkin, Louis, "Human Rights," p. 221. (Foundation Press, 2009).

¹⁹⁹ CEDAW (1979), Art 1.

of equal benefits in terms of social security, health, and safety.²⁰⁰ The CEDAW contains the most stringent criteria for women's rights, and national law should adopt them. It requires the UN member states that have ratified it to set in place mechanisms to fully realise women's rights.²⁰¹

Moreover, international human rights treaties duly acknowledge the entitlements of migrant workers and their family members, which the convention recognises, encompassing a range of distinctive privileges.²⁰² Nonetheless, states still accord substantial weight to considerations of nationality when determining an individual's status as a national, and certain human rights standards, such as the prohibition of discrimination, remain applicable.

2.7.7 The International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1984

The CAT is an international human rights treaty supervised by the UN. Its primary goal is to prevent and prohibit the use of torture and other forms of cruel, inhuman, or degrading treatment or punishment on a global scale. The convention sets out specific obligations for state parties to prevent, investigate, and prosecute acts of torture, as well as to provide assistance and support to victims. The UNCAT plays a crucial role in promoting and safeguarding human rights by combating and eradicating torture and other forms of cruel treatment or punishment.²⁰³

The convention mandates that states implement effective measures to prevent torture in any territory under their jurisdiction, and it prohibits states from transporting

²⁰⁰ Ibid., 106, Art 11.

²⁰¹ "Status of Ratification Interactive Dashboard of CEDAW" 1979, <<https://indicators.ohchr.org/>> (accessed 2 February 2020).

²⁰² International Catholic and Migration Commission (ICMC), "Strengthening Protection of Migrant Workers and their Families with International Human Rights Treaties," (2006): p. 59.

²⁰³ United Nations Treaty Collection: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, <<https://indicators.ohchr.org/>> (accessed 5 February 2020).

individuals to any country where there is probable torture. The text of the convention was adopted by the UN general assembly on December 10, 1984²⁰⁴ following ratification by the 20th state party.²⁰⁵ It came into force on June 26, 1987. The convention's entry into force has accepted the absolute prohibition against torture and other acts of cruel, inhuman, or degrading treatment or punishment as a principle of customary international law.²⁰⁶ As of February 2020, the convention has 169 state parties.²⁰⁷

2.7.8 The International Convention on the Rights of the Child (CRC) 1989

The UNCRC is a human rights treaty that outlines the civil, political, economic, social, cultural, and other rights of children. The UN adopted it on November 20, 1989, and after the required number of nations ratified it, it entered into force on September 2, 1990. Moreover, the convention defines a child as any human being under the age of eighteen, unless national legislation establishes an earlier age of majority. International law binds nations that ratify this convention. All children have the right to fundamental rights such as life, health, education, protection from exploitation and abuse, and participation in decisions that impact them, as outlined by the UNCRC. It is a comprehensive framework that aims to promote and protect the rights and well-being of children globally.²⁰⁸

The UN Committee on the Rights of the Child, comprising members from around the world, monitors compliance. Once a year, the committee submits a report to

²⁰⁴ Ibid., 107.

²⁰⁵ Convention Against Torture, <<https://indicators.ohchr.org/>> (accessed 5 February 2020).

²⁰⁶ CAT, "General Comment No. 2: Implementation of Article 2 by States Parties (PDF)," *Committee against Torture*, <<https://indicators.ohchr.org/>> (accessed 5 February 2020).

²⁰⁷ OHCHR, "Status of Ratification Interactive Dashboard of CAT" 1984, <<https://indicators.ohchr.org/>> (accessed 15 January 2020).

²⁰⁸ "Convention on the Rights of the Child," Office of the High Commissioner for Human Rights, <<https://www.indicators.ohchr.org/>> (accessed 15 January 2020).

the third committee of the UN general assembly, which also hears a statement from the CRC chair, and the assembly adopts a resolution on the rights of the child.²⁰⁹ The UN committee on the rights of the child requires governments of ratified states to report to it and appear before it periodically to examine their progress in implementing the convention and the status of child rights in their country. Their reports, as well as the committee's written views and concerns, are available on the committee's website. The UN general assembly adopted the convention and opened it for signature on November 20, 1989 (the 30th anniversary with regard to its announcement on the rights of the child).²¹⁰ So far, 196 countries have joined, including every UN member except the USA.²¹¹ On May 25, 2000, two non-binding protocols were adopted as additional components of the UNCRC. These protocols are known as the first optional protocol and the second optional protocol.

The first optional protocol to the UNCRC focuses on the involvement of children in armed conflicts. It sets a minimum age for recruitment into the armed forces and prohibits the compulsory recruitment of children under the age of 18. It also establishes safeguards to protect children from being involved in hostilities. Furthermore, the second optional protocol to the UNCRC deals with child sales, child prostitution, and child pornography. It aims to prevent and combat these forms of exploitation by criminalising these Acts and promoting measures for child victims' protection, recovery, and reintegration. Over 170 countries have signed both protocols, demonstrating a global commitment to addressing these issues and protecting the rights of children. While non-binding, they serve as important instruments in raising

²⁰⁹ Child Rights Information Network (2008), "Convention on the Rights of the Child Archived," <<https://www.indicators.ohchr.org/>> (accessed 5 February 2020).

²¹⁰ United Nations General Assembly Session 44, Resolution 25, "Convention on the Rights of the Child A/RES/44/25," <<https://www.indicators.ohchr.org/>> (accessed 5 February 2020).

²¹¹ "UN convention on the rights of the child," <<https://www.indicators.ohchr.org/>> (accessed 5 February 2020).

awareness and promoting action to safeguard children's rights in specific areas. Third voluntary protocol for the communication of complaints was approved in December 2011, and it was made available for signature on February 28 of the following year. It became effective on April 14, 2014. State parties shall respect and uphold the rights outlined in the present convention for every child within their jurisdiction, regardless of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political opinion, national, ethnic, or social origin, property, disability, birth, or other status.²¹²

This development reflects a growing recognition of the vulnerability that individuals of all genders and ages face due to various characteristics. It acknowledges the need to protect and provide remedies for instances of discrimination. Over the years, the significance of non-discrimination has been a prominent topic of discussion at numerous global summits and conferences. Several of these are directly related to the prohibition of discrimination, such as general comment 15 of the Human Rights Committee, (1986) on "The Position of Aliens Under the Covenant," General Comment 14 of the Committee on Economic, Social, and Cultural Rights, (2000) on "The Right to the Highest Achievable Standard of Health," and General Recommendations 30 and 31 of the Committee on the Elimination of Racial Discrimination, (2004) on "Discrimination Against Non-Citizens," (2005).

New instruments build on older ones and, subject to agreement among UN member states engaged in the writing of new treaties, broaden to take into account shifting settings. For instance, grounds like "parental status," "sexual orientation," and "pregnancy" that have not yet been included in international human rights agreements

²¹² CRP (1989), Art 2(1).

are currently being included in a growing amount of national law as well as national and regional judicial decisions.

2.8 PROTECTION OF THE RIGHTS OF MIGRANT WORKERS UNDER REGIONAL FRAMEWORK

The South Asian Association for Regional Cooperation (SAARC) was established with the signing of the SAARC Charter in Dhaka on December 8, 1985. The SAARC comprises eight member states: Afghanistan, Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan, and Sri Lanka. On January 17, 1987, the association established its secretariat in Kathmandu.²¹³ The SAARC declaration acknowledges and specifies that labour migration is a critical issue and challenge that requires a proper and collective plan of action to protect and promote their rights and implement law and policy. Today, a large number of the world's population, almost one-fifth of the world's population, or a large number, faces many challenges, such as large population pressure, poverty, underdevelopment, unemployment, and low economic production.²¹⁴

In addition, the SAARC charter and the human rights body did not specify any legal framework to protect the rights of migrant workers. Article 21 of the SAARC Declaration states that all SAARC member states agree to cooperate and ensure the development and implementation of laws and policies to protect migrant workers' rights. Under item No. 21 of the declaration, the SAARC heads of states and governments have agreed to collaborate and cooperate on the safe, orderly, and responsible management of labour migration from South Asia to ensure the safety, security, and wellbeing of their migrant workers in the destination countries outside the

²¹³ SAARC- Secretariat "About SAARC" (2018), <<http://www.saarc-sec.org/about-saarc>> (accessed 4 April 2019).

²¹⁴ B.Sia, M. A, "About SAARC Secretariat" (2017), <<http://www.saarc-sec.org/about-saarc-secretariat>> (accessed 4 April 2019).

region. According to the SAARC report, there are almost 35.1 million people who live and work outside, and most of them are unskilled or low-skilled workers.²¹⁵ However, ratification of international law is a vital issue for SAARC member states to protect the rights of migrant workers; only Bangladesh and Sri Lanka signed and ratified the ICRMW Migrant Workers' Convention, and no country in SAARC signed and ratified the ILO Migrant Workers' Convention.

The SAARC ministerial forum takes several steps on labour migration, preceded by the secretaries-level forum to approve the Action Plan and monitor its implementation to protect and promote the rights of migrant workers. Hence, a lack of common identity leads to the failure of SAARC. Likewise, the SAARC has suffered because of tension between India and Pakistan, particularly over the disputed territory of Kashmir. Moreover, the Association of Southeast Asian Nations (ASEAN) is a regional intergovernmental organisation that was established on August 8, 1967, in Bangkok, Thailand, with the aim of promoting intergovernmental cooperation and providing facilities to all the member states.²¹⁶

The level of development in ASEAN is rapidly increasing. The phenomenon of international relocation has emerged as a significant and indispensable component of progress in numerous nations, including those in Southeast Asia. Furthermore, there has been a notable rise in both economic and social expenditures within the home sector, as well as at the network and national levels, pertaining to countries involved in the sending and receiving of migrant workers. Between 1990 and 2015, intra-ASEAN migration increased from 1.5 million to 6.9 million; 87 per cent of migrant workers in ASEAN are either unskilled or low-skilled; and 91 per cent of intra-ASEAN labour

²¹⁵ Titumir, Rashed Al Mahmud, "Numbers and narratives in Bangladesh's economic development." (Singapore: Palgrave Macmillan, 2021).

²¹⁶ Association of Southeast Asian Nations, "Overview and Establishment" (1999), <<https://www.asean.org/asean/about-asean/overview>> (accessed 30 March 2019).

migrants' destinations are Malaysia, Thailand, and Singapore.²¹⁷ According to UNDESA figures, some 20.2 million ASEAN nationals live outside their country of birth. Some 6.9 million of them have migrated within the region. Women account for 47.8 per cent of all migrants within ASEAN.²¹⁸ The ASEAN Declaration on the Protection of Migrant Workers and Family Members (DPPMW) in crisis situations calls for the inclusion of migrant workers and their families in ASEAN crisis preparedness, response, and recovery frameworks, facilitating their timely access to sustained safety, health care, and psychosocial support. Malaysia has ratified ASEAN's DPPMW. The ASEAN Declaration commits to the exclusion of cohorts of unauthorised labourers and their respective dependents.²¹⁹ The DPPMW's preamble explicitly acknowledges its duty to safeguard and advance the rights of migrant workers within the ASEAN community. The ASEAN member states are affirming their commitment to promoting the complete potential and dignity of migrant workers in terms of justice, freedom, and stability, both in the countries of origin and destination.²²⁰

Furthermore, it is imperative that both sending and receiving countries promptly address the situation of undocumented migrant workers who are not at fault, driven by humanitarian considerations.²²¹ According to article 8, it is the responsibility of governments to actively encourage equitable and suitable safeguards for employment, remuneration, and sufficient provision of decent working and living conditions for migrant workers. Prior to this, it is imperative for the host nations to fulfil their commitments and foster an environment of harmony and tolerance towards migrant

²¹⁷ Marius Olivier, "Social protection for migrant workers in ASEAN: Developments, challenges, and prospects," International Labour Organization, (2018).

²¹⁸ Ibid.

²¹⁹ Philip S Robertson Jr and Fair Labour Association, "Migrant workers in Malaysia-issues, concern and points for action," (2009).

²²⁰ ASEAN Declaration and Consensus on the Protection and Promotion of the Rights of Migrant Workers (DPPMW), Art 1.

²²¹ Ibid, Art 2.

workers.²²² As a regional organisation, the ASEAN takes proactive steps to safeguard the rights of migrant workers and enhance their legal framework. These initiatives include the ASEAN Declaration on Strengthening Social Protection and Regional Framework and Plan of Action, the ASEAN Declaration and Consensus on the Protection and Promotion of the Rights of Migrant Workers, the ASEAN Labour Ministers' Work Program 2016-2020, the work plans of the subsidiary bodies, the ASEAN Human Rights Declaration, and other developments, such as the work and recommendations of the ASEAN Forum on Migrant Labour.

Most of the laws and policies adopted by ASEAN are non-binding, and only two ASEAN member states have ratified the ICRMW Convention and the ILO Migrant Workers' Convention to protect and promote the rights of migrant workers. As previously mentioned, although the ASEAN's DPPMW does not explicitly outline equivalent regulations, it does affirm its commitment to advancing the protection of migrant workers in accordance with relevant legal frameworks, regulations, and residency policies. Hence, it is imperative to acknowledge that the disparities in labour conditions between countries are contingent upon their adherence to the ILO's Migrant Workers' Convention. Consequently, the measures implemented by both sending and receiving nations to safeguard the rights of migrant workers should not be disregarded.

The ASEAN declaration urges nations of origin and destination to protect the dignity of migrant workers by identifying their responsibilities in the following areas: (i) safeguarding against exploitation, discrimination, and violence; (ii) governance of the labour movement; and (iii) combating human trafficking. Following the ratification of the declaration, the establishment of a committee for its implementation aimed to

²²² Ibid., 113, Art 6.

foster initiatives in these sectors.²²³ The committee is presently drafting an ASEAN document for the protection and promotion of migrant workers' rights. The ASEAN organises an Annual Forum on Migrant Labour (AFML) as one of the committee's suggested initiatives. This forum provides a transparent platform for the evaluation, discussion, and sharing of best practices and ideas among governments, workers' and employers' organisations, and civil society stakeholders regarding critical issues confronting migrant workers in Southeast Asia.²²⁴ The Forum aims to formulate recommendations to enhance the execution of the principles outlined in the ASEAN declaration.

2.9 CONCLUSION

International conventions such as the ICRMW, the ILO, and regional declarations play a crucial role in safeguarding and advancing the rights of migrant workers and their families, while also establishing a legal framework that facilitates the long-term and sustainable management of labour migration. These instruments address the various concerns faced by migrant workers, including their entry, stay, departure, and return to their workplaces and countries of origin. This creates a framework that prioritises the individual's well-being and rights. This chapter discusses the existence of international and national legal frameworks aimed at establishing guidelines and safeguards for migrant workers and members of their families. The UN and ILO Conventions have made significant progress in establishing global norms aimed at improving working conditions and ensuring migrant workers' legal protection. However, it is important to note that some concerns raised by member states regarding the ratification and

²²³ The ASEAN DPPMW, <
https://www.webapps.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=41>
(accessed 17 March 2023).

²²⁴ Ibid.

implementation of these conventions may stem from misinterpretations of their substance, general intent, and purpose. Clarifying and addressing these concerns is crucial for a proper understanding and interpretation of the conventions and their provisions. The integration of this approach can be synergised with the progress of international agreements, using the institutional capacities of the UN and the ILO for mutual advantage. Another approach is to advocate for the use of principles and guidelines outlined in the ILO's Multilateral Framework on Labour Migration (MFLM), a comprehensive instrument designed to address the challenges of contemporary migration.

Furthermore, the ILO has demonstrated a significant commitment to promoting decent employment by formulating two conventions and two recommendations addressing legal constraints and labour migration issues. The UN and ILO instruments establish a legal framework that reinforces national policies and practices for migrant workers who are not citizens of the host country, as well as their family members. While the investigation did not identify direct cause-and-effect barriers to the ratification of international legal instruments, it recognises that obstacles may arise from political decisions. The decision to ratify international conventions is ultimately a political one, influenced by a variety of factors and considerations specific to each country.

The SAARC and the ASEAN, as regional organisations, play a vital role in protecting the rights of migrant workers by implementing literal and bilateral agreements between the two regional organisation. By doing so, states can better understand the significance of these instruments in protecting the rights and well-being of migrant workers and work towards creating an inclusive and fair system of international migration governance.

CHAPTER THREE

PROTECTION OF THE RIGHTS OF MIGRANT WORKERS UNDER BANGLADESH EMPLOYMENT LAWS

3.1 INTRODUCTION

The phenomenon of labour migration has become a prominent global concern, particularly with regards to its impact on the labour market. Bangladesh stands as one of the significant countries involved in labour migration, primarily as a labour-sending nation. Annually, a huge number of Bangladeshi migrant labourers willingly depart from their home country in pursuit of employment prospects elsewhere, encompassing both temporary and permanent labour migration. A primary reason for their migration is the provision of financial assistance to their families in Bangladesh through remittances.

In addition, migrant workers play a vital role in supporting the economic systems of both the receiving nations and their countries of origin. Migrant workers provide significant contributions to the labour market, effectively addressing skill shortages and providing support to diverse businesses in foreign countries. Moreover, the remittances provided by Bangladeshi migrants make a substantial contribution to the economic development and progress of Bangladesh. These financial transfers frequently function as a source of income, helping with investment and alleviating poverty within their families.

Nevertheless, it is vital to acknowledge the various challenges and concerns encountered by Bangladeshi migrant labourers, including exploitative practices, insufficient legal protections, and obstacles to exercising their rights. Ensuring the rights and welfare of migrant workers is important, and efforts should be made to establish

fair and morally sound migration practices that effectively protect their rights throughout the entire migration process.¹ Labour migration plays a crucial role in the development of the national economy. Every year, more than half a million people from Bangladesh migrate to foreign countries for both long-term and short-term employment opportunities.

This phenomenon began in the 1970s and increased during the 1980s and 2000s. Notably, there has been a significant flow in this trend since 2005.² According to the Bangladesh government, a total of 6,087 individuals from Bangladesh boarded on their first international migration in 1976, seeking employment opportunities abroad subsequent to the country's independence on December 16, 1971. In 2017, the number of migrant workers who legally crossed the national boundary exceeded one million.³

Additionally, human trafficking is a horrible form of organised crime that affects every country around the globe, including Bangladesh. Migrant workers from Bangladesh are equally vulnerable to falling victim to criminal activity. In mid-2015, the jungles of Thailand and Malaysia revealed a mass grave containing the remains of individuals who had succumbed to human trafficking from Bangladesh. This significant event gathered global attention and received widespread media coverage.⁴ According to the IOM report, it is estimated that around 12.5 million migrant labourers from Bangladesh are presently engaged in employment across 165 nations.⁵ A significant

¹ Siddiqui, Tasneem, "International labour migration from Bangladesh: A decent work perspective," Policy Integration Department Working Paper 66, (2005).

² Sahu, Mrutujanaya, "Contemporary Labour Migration from South Asia to the GCC States: Emerging Challenges and Prospects," *Manpower Journal*, vol. 56 (2022).

³ Ibid.

⁴ Engaging Youth to Fight Human Trafficking, Commonwealth Blog 'Your Commonwealth', <<http://www.yourcommonwealth.org/social-development/human-rights/engaging-youth-to-fight-humantrafficking/>> (accessed 10 September 2022).

⁵ Policy Brief - The Implementation of Bangladesh's Overseas Employment and Migrants Act (OEMA 2013), and the Prevention and Suppression of Human Trafficking Act (PSHTA 2012), <<https://Publications.Iom.Int/Books/Policy-Brief-Implementation-Bangladeshs-Overseas-Employment-And-Migrants-Act-2013>> (accessed 10 September 2022).

number of Bangladeshi migrant workers seek employment opportunities in industrialised nations, which is considered an important demand for unskilled or semi-skilled labour. Their primary motivation is to enhance their quality of life and alleviate themselves from underprivileged conditions.⁶ These persons are referred to as “migrant workers” because they work or have worked in remunerated activities at a location where they do not hold the nationality of the country where they work. Alternatively, these individuals are considered foreign workers because they are not citizens of the nation in which they are employed.

In the early 1990s, successive governments in Bangladesh acknowledged the significance of labour migration to the country’s overall economy. A significant number of Bangladeshi professionals, students, and workers have established homes in more than 162 nations around the world since the middle of the 1970s, where they pursue further education and find employment, according to the Population Division, Department of Economic and Social Affairs, United Nations report about “International Migration Stock 2017.”⁷ Bangladesh is now widely recognised across the globe due to the vast number of its citizens who have sought employment in other countries as labour migrants.⁸

Moreover, the UDHR states that, because migrant workers are in a vulnerable position, they genuinely deserve certain safeguards and rights as human beings.⁹ Nevertheless, they are frequently exploited and subjected to trafficking and to

⁶ ILO, “International Labour Standards on Migrant workers,” <<http://www.ilo.org/global/standards/subjectscovered-by-international-labour-standards/migrant-workers/lang--en/index.htm>> (accessed 12 September 2022).

⁷ Skeldon, Ronald, “International migration, internal migration, mobility and urbanization: Towards more integrated approaches,” In United Nations expert group meeting on sustainable cities, human mobility and international migration population division department of economic and social affairs United Nations Secretariat New York, (2017): p. 7-8.

⁸ Gröschl, Jasmin, and Thomas Steinwachs, “Do natural hazards cause international migration?” *CESifo Economic Studies*, vol. 63, no. 4 (2017): p. 445-480.

⁹ The People’s Movement for Human Rights Education, <<https://www.pdhre.org/rights/migrants.html>> (accessed 12 September 2022).

disparities in the labour market. They also have very little protection.¹⁰ The dawning of such an understanding had led to the establishment of some significant legislative and institutional measures that, among other things, resulted in the creation of a distinct Ministry of Expatriates' Welfare and Overseas Employment; the formation of the Wage Earners' Welfare Fund; and the establishment of several other organisations. The design of the framework for the Overseas Employment Policy, the OEMA of 2013, and the PKB were established, and the ICRMW was ratified. Restrictions on female labour migration were gradually lifted, and microfinance institutions were permitted to act as the final stop for remittance transfers.¹¹ Bangladeshi migrant workers are entitled to the protection of their rights under the Bangladesh employment laws, which include the OEMA of 2013 (Act No. 48 of 2013), the Prevention and Suppression of Human Trafficking Act 2012 (hereafter "the PHSA"), and the Constitution of the Government of the People's Republic of Bangladesh.

By enacting legislation to protect the rights of migrant workers and combat human trafficking, Bangladesh has taken important steps. However, both legal and practical challenges hinder the effectiveness of these laws. The study aims to explore the existing legal system in Bangladesh, specifically the Employment Act, and evaluate its adequacy in safeguarding the rights of migrant workers. By examining the challenges faced by survivors of human trafficking, the study seeks to shed light on the areas where the current legal framework falls short. Furthermore, the thesis endeavours to propose potential solutions and recommendations to overcome these legal hurdles. By identifying the gaps and limitations in the current system, it aims to provide a path forward that addresses the shortcomings and ensures better protection for migrant

¹⁰ Shamir, Hila, "A labor paradigm for human trafficking," *Ucla L. Rev.*, vol. 60 (2012): p. 76.

¹¹ C R Abrar, "Reviewing Initiatives for Migrant Well-being," *The Daily Star*, 25th Anniversary Special Part - 5, 5 February, 2016, <https://www.thedailystar.net/supplements/25th-anniversary-special-part-5/reviewing-initiatives-migrant-well-being-212644>.

workers. The objective here is to contribute to an understanding of the challenges faced by survivors of human trafficking and to advocate for comprehensive legal reforms that better safeguard the rights and well-being of migrant workers in Bangladesh. Through a critical assessment of the existing legal framework, the discussion aims to pave the way for improvements that can enhance the protection and support provided to migrant workers in the country.

3.2 DEFINITION OF MIGRANT WORKERS

Human migration, in its broadest meaning, embraces the phenomenon of people relocating from their place of origin to a different region for various purposes, such as seeking employment opportunities, establishing long-term or short-term residence, or a combination of both. Migration can contain either internal or international dimensions. Migration across international borders has developed into a common problem throughout the world. Migration is becoming more widely understood to be a tool for both the nations of origin and the countries to which migrants are moving, rather than just the movement of people from one place to another.

The World Migration Report 2018 estimated that there were 244 million international migrants in the world in 2015.¹² It represents 3.3 per cent of the total population.¹³ Individuals who are currently in the process of moving for employment purposes, individuals who have already begun working in a foreign country, and individuals who have returned to Bangladesh either upon conclusion of their prior employment abroad or prematurely from their previous employment abroad are all included in this category.¹⁴ According to the labour law in Bangladesh, the term

¹² McAuliffe, Marie, and Martin Ruhs, "World migration report 2018, Geneva." International Organization for Migration, (2017): p. 1-32.

¹³ Ibid.

¹⁴ Overseas Employment and Migrants Act (OEMA 2013), Sec 2(3).

“migrant worker” refers to a Bangladeshi citizen who engages in work abroad in exchange for monetary compensation.

As per the definition provided by the ILO, a “migrant worker” refers to an individual who relocates from one nation to another with the purpose of engaging in employment under the supervision or direction of an entity other than themselves. This concept also includes individuals who are consistently permitted to work, namely as migrants, for the purpose of employment. The ILO Convention deliberately excluded certain categories of employees from the definition of a migrant worker during its drafting in 1949.¹⁵ People who engage in unauthorised entry into a foreign nation, those who work in border regions, work in artistic or professional occupations who temporarily visit a country, individuals employed in the maritime industry, self-employed, primarily seeking training or education, on specific business or assignment for their organisation in another country for a predetermined duration, and individuals who are obligated to leave the country upon completion of their duties or responsibilities. The majority of these groups are currently involved in the ICRMW, which was ratified in 2000. This publication provides the most up-to-date understanding of migration trends, examining the viewpoints of both the countries from which migrants originate and the countries that receive them.

Furthermore, the migration phenomenon in Bangladesh has shown consistent growth throughout the year, which has proven beneficial for the country’s development, as well as the continuous rise in remittance inflows on an annual basis.¹⁶ In addition, migrant workers can be classified into various categories, such as travelling employees, immigrants specifically recruited for a particular project, frontier employees who reside in a neighbouring state and commute daily or on a weekly basis, seasonal employees,

¹⁵ ILO, Convention (1949), No. 2, Art 11(2).

¹⁶ Ibid.

seafarers employed on ships registered in a different state from their own, employees working on offshore facilities under the jurisdiction of a different state, and self-employed individuals.¹⁷

3.3 HISTORY OF LABOUR MIGRATION FROM BANGLADESH TO OTHER COUNTRIES

Bangladesh holds a land area of 1,47,570 square kilometres, which accounts for around 0.03 per cent of the total global land surface, with a population of 144.03 million individuals, it ranks as the eighth most densely populated country worldwide, with a density of 976 persons per square kilometre.¹⁸ The high population density in a confined geographical area is a significant challenge for the country's capacity for flexible advancement. Like several other South Asian nations, Bangladesh is currently grappling with a surplus of manpower, which includes a diverse spectrum of professionals, skilled workers, semi-skilled labourers, and less-skilled labourers.¹⁹

Nevertheless, Bangladesh is often recognised as a nation with a surplus of labour, wherein a significant proportion of the workforce possesses limited to moderate levels of competence, and annually, the job market receives an influx of more than two million individuals.²⁰ Hence, Bangladesh faces challenges in providing sufficient employment opportunities for its citizens. Therefore, many individuals seek opportunities abroad for employment in pursuit of a more promising future. Migration has emerged as a significant avenue for Bangladesh's population to sustain their

¹⁷ UN, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), (2000), Art 2(2).

¹⁸ Bangladesh Bureau of Statistics (BBS) Report (2012), < <https://bbs.portal.gov.bd/sites/default/files/>> (accessed 10 October 2022).

¹⁹ Islam, Md Nurul, "Migration from Bangladesh and overseas employment policy," Bureau of Manpower, Employment and Training (BMET), (2010): p. 1-25.

²⁰ Mustahsin ul Aziz, "Skilling up Bangladesh's Youth for a Changing Job Market," *World Bank Blog*, <<https://blogs.worldbank.org/endpovertyinsouthasia/skilling-bangladeshs-youth-changing-job-market>> (accessed 8 July 2021).

livelihoods. The phenomenon under consideration has a notable positive influence on social development and empowerment. The transfer of skills and the facilitation of numerous efforts aimed at supporting community development enable this. Official records of migration data for Bangladeshi employees engaged in contractual employment in the Middle East have been maintained since 1976.²¹ Following the completion of independence in 1971, there was a notable increase in migration due to political factors that extended beyond the Middle East and encompassed surrounding nations as well as the EU. The phenomenon of international migration in Bangladesh has emerged as a strategy for securing livelihoods in response to the unstable political and socio-economic conditions.²²

Moreover, in 1976, the number of Bangladeshi migrant workers engaged in overseas employment was limited to a mere 6,000. Subsequently, there has been a substantial rise in the number of individuals temporarily excluded from their home country for work purposes, as well as those who have permanently immigrated.²³ Between the years 1990 and 1995, a considerable number of 1.2 million individuals from Bangladesh made the decision to depart from their home country in order to establish residence and engage in employment opportunities overseas.²⁴

The 1970s surge in oil prices prompted some Bangladeshi immigrants to predominantly migrate to the central and eastern regions of Asia. Over time, this migration expanded to encompass the newly industrialised nations in Southeast Asia, including Malaysia, Singapore, South Korea, and Hong Kong. The temporary labour movement witnessed a significant increase between the 1980s and 2000s, following its

²¹ Bossavie, Laurent, 14.

²² Ibid.

²³ Benjamin Etzold and Bishawjit Mallick, "Bangladesh at a Glance, Country Profile: Fair migration," (2015).

²⁴ Ibid.

inception in the 1970s.²⁵ Between 2005 and 2010, there was a notable increase in the emigration of individuals from the country, with approximately 30,00,000 people leaving. Notably, a significant inflow of migrant workers from Bangladesh occurred in 2008, with a total of 8,75,000 individuals migrating.²⁶ The National Population and Housing Census revealed that 2.8 million individuals from Bangladesh were living abroad in 2011. Subsequently, in 2014, a total of 4,26,000 individuals relocated to foreign countries with the intention of engaging in temporary employment agreements.²⁷

According to Bangladesh government records, a comprehensive analysis reveals that a total of 6,087 individuals embarked on international employment opportunities following their freedom on December 16, 1971.²⁸ In 2017, there were more than one million immigrants who legally crossed the border.²⁹ Since the mid-1970s, a significant number of Bangladeshi professionals, students, and labourers have resided, pursued education, and engaged in employment across over 162 nations globally.³⁰

Moreover, there is widespread speculation that a significant number of individuals from Bangladesh travel to the Middle East through illegal channels.³¹ Furthermore, the global financial crisis contributed to a significant contraction in the

²⁵ Jones, Gavin, and Hsiu-hua Shen, "International marriage in East and Southeast Asia: Trends and research emphases," *Citizenship studies*, vol. 12, no. 1 (2008): p. 9-25.

²⁶ Ridwanul Masnun, "Problems and possibilities of migration business in Bangladesh" (2019), <http://dspace.bracu.ac.lx1/xmlui/bitstream/handle/10361/12224/16264038_pdf?sequence=1&isAllowed=y> (accessed 22 January 2021).

²⁷ Etzold, Benjamin, and Bishawjit Mallick, 6.

²⁸ BMET Report (2018), <<http://www.old.bmet.gov.bd/BMET/statisticalDataAction>> (accessed 2 August 2021).

²⁹ Ibid.

³⁰ Al Masud, Sheikh Mohammad Maniruzzaman, and Rohana Binti Hamzah, "International Migration and Development: A Bangladesh Perspective," *European Journal of Social Sciences Studies*, (2018).

³¹ Tasneem Siddiqui, "Migration as a livelihood strategy of the poor: The Bangladesh case," *Regional Conference on Migration, Development and Pro-Poor Policy Choices in Asia*, (2003): p. 23.

labour market during the first seven months of 2009.³² As previously stated, the substantial increase in emigration has positioned Bangladesh as a significant recipient of migration on a global scale.³³ In typical scenarios, it observes an annual influx of one million individuals who travel internationally to engage in both long-term and short-term employment opportunities.³⁴ On the other hand, except for the GCC countries, Malaysia and the USA emerged as significant destinations, attracting a considerable inflow of 1,98,000 immigrants during the period from 2005 to 2010.³⁵

Subsequently, a considerable number of labourers migrated from Bangladesh to engage in the construction sector in Singapore. In 2014, Singapore emerged as the third-most prominent destination for migrant workers engaged in short-term contractual employment.³⁶ Furthermore, Libya as a destination for Bangladeshi labourers has diminished since the onset of the conflict in 2011. The UN reported that in 2013, over 7.8 million individuals from Bangladesh were residing in 89 different countries worldwide. Notably, the primary destinations for Bangladeshi migrants were Saudi Arabia, with a population of 1.3 million, followed by the UAE with 1.1 million, Malaysia with 3,50,000, Kuwait with 2,79,000, and the UK with 2,40,000.³⁷

Moreover, between 1976 and 2017, approximately 12 million workers from Bangladesh migrated to various destinations worldwide, with the GCC countries

³² Kazi Shck Lavlu Mozumdar, Md Shajahan Kabir, and KB Hossain, "Trends in international migration and remittance flows: Case of Bangladesh," *Journal of the Bangladesh Agricultural University*, vol. 7, no. 2 (2009): p. 387-394.

³³ Ahmed, Md Shoaib, "Migrant workers remittance and economic growth: evidence from Bangladesh," *ASA University Review*, vol. 4, no. 1 (2010): p. 1-13.

³⁴ BMET (2018), < <https://bmet.portal.gov.bd/sites/>> (accessed 20 June 2022).

³⁵ Chacko, Elizabeth, and Marie Price, eds. (*Un) Settled Sojourners in Cities: Challenges of "Temporariness" among Migrants and Asylum Seekers*. Taylor & Francis, 2023.

³⁶ Kaur, Amarjit, "Managing labour migration in Malaysia: Guest worker programs and the regularisation of irregular labour migrants as a policy instrument," *Asian Studies Review*, vol. 38, no. 3 (2014): p. 345-366.

³⁷ Anwar Islam, "Ageing, the elderly and social change in Bangladesh in Ageing in Asia-Pacific," *Ageing, the elderly and social change in Bangladesh*, p. 176-193. (Routledge, 2018).

serving as the primary recipients of these migrants.³⁸ To date, Saudi Arabia has emerged as the primary destination for Bangladeshi migrant workers, boasting the highest number of individuals from Bangladesh seeking employment opportunities. During a certain temporal interval spanning from 1976 to 2017, approximately 3.4 million Bangladeshi workers migrated to Saudi Arabia, constituting nearly 30 per cent of the whole immigrant population.³⁹

Within the corresponding time frame, a total of 2.4 million individuals, constituting 20.6 per cent of the workforce, migrated to the UAE, while 1.4 million individuals, accounting for 11.8 per cent of the workforce, relocated to Oman. A total of 9,00,000 individuals, accounting for 7.7 per cent of the total, chose Malaysia as their destination. Similarly, 7,00,000 individuals, representing 6 per cent of the total, opted for Singapore. Additionally, 7,00,000 individuals, comprising 5.9 per cent of the total, selected Qatar as their preferred destination. Furthermore, a total of 6,00,000 individuals, accounting for 5.1 per cent of the population, migrated to Kuwait.⁴⁰

Bangladesh's labour migration experienced a significant decline during the global economic crisis, which spanned from 2008 to 2009.⁴¹ This decline coincided with the implementation of restrictive policies by Saudi Arabia and the UAE, which limited Bangladeshi employee recruitment. Subsequently, labour migration from Bangladesh has witnessed a resurgence starting in 2015. In accordance with the designated calendar year (January to December), the nation dispatched an excess of one million labourers to

³⁸ Mohammed Maksudur Rahman, "Economic and Socio-Politic Effect of Migration on Bangladesh," Hayka, Kpbmupa, Oilitecnieo, (2020): p. 107.

³⁹ Ginu Zacharia, "South Asian Migration to Gulf Countries-History, Policies, Development." (Taylor & Francis Incorporated, 2017).

⁴⁰ Ibid.

⁴¹ Martin, Philip, "Recession and migration: A new era for labour migration?" *International migration review*, vol. 43, no. 3 (2009): p. 671-691.

diverse recipient countries in 2017, establishing a historical milestone.⁴² Additionally, the phenomenon of global migration from Bangladesh has shown continued growth and progression since 1976.⁴³ In the initial decade spanning from 1976 to 1985, approximately 41,000 individuals from Bangladesh pursued international labour migration annually.⁴⁴ Subsequently, this figure experienced a significant increase, reaching an average of 1,37,000 individuals per year during the following decade from 1986 to 1995. Furthermore, in the third decade, from 1996 to 2005, this number further escalated to 2,40,000 individuals annually.⁴⁵ Finally, in the fourth decade from 2006 to 2015, there was a notable surge, with the number of individuals engaging in global labour migration reaching 5,52,000.⁴⁶

In 2008, a notable influx of 8,75,055 Bangladeshi individuals embarked on international migration for employment purposes.⁴⁷ After a brief decline between 2009 and 2013, the aforementioned instance has exhibited a consistent and noteworthy growth trajectory since 2014, reaching a high of 10,08,525 in 2017.⁴⁸ Between the years 2009 and 2013, Bangladesh had a notable increase in labour migration.⁴⁹ However, this upward trend was hindered by many factors, including the global economic crisis, political instability in the Middle East, and the imposition of restrictions on the recruitment of Bangladeshi immigrants by certain nations.⁵⁰ These circumstances collectively contributed to a detrimental effect on the overall flow of labour migration

⁴² Mohammad Rezaul Karim, Mohammad Tarikul Islam, and Bymokesh Talukder, "COVID-19's impacts on migrant workers from Bangladesh: In search of policy intervention," *World Development*, vol. 136 (2020): p. 105-123.

⁴³ Wadood, Syed Naimul, "International Migration Theory and Bangladesh: A Brief Overview." *ResearchGate Preprint* (2021).

⁴⁴ Roborgh et al., "BRAC in Bangladesh and beyond: bridging the humanitarian–development nexus through localisation." *Development in Practice*, vol. 34, no. 2 (2024): p. 238-252.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ BMET (2018), < <https://bmet.portal.gov.bd/sites/default/files/>> (accessed 12 May 2023).

⁴⁹ Wang, Shuai, and Ralf Toumi, "Recent migration of tropical cyclones toward coasts," *Science*, vol. 371, no. 6528 (2021): p. 514-517.

⁵⁰ Ibid.

from Bangladesh. The government of Bangladesh has expressed its intention to deploy a significant number of migrant workers, estimated at one million, into the international labour market in 2017.⁵¹ It is unsurprising that the expansion of overseas migration of Bangladeshi workers has persisted since 1976.⁵² Nevertheless, the local community of the Bangladeshi diaspora includes individuals who have emigrated to foreign nations, as well as their offspring who are native-born in the respective host countries.

A significant number of Bangladeshi migrants have provided support and accommodation to their family members in their country of migration. Moreover, a considerable number of individuals have transitioned away from employment in the manufacturing industry and have instead pursued entrepreneurial endeavours, such as establishing and managing their own restaurants, corner stores, and various other enterprises. From 1991 onwards, there was a notable increase in the number of female immigrant workers originating from Bangladesh. Previously, the majority of these flows were characterised by informality, lack of documentation, or irregularity.

In addition, before 2003, the number of female migrant workers was generally obsolete. During the years 1991-2003, the annual normal labour export was less than 2,000 (accounting for less than 1 per cent of absolute immigrants). Women's mobility has rapidly expanded, with 1,18,000 people (accounting for 16 per cent of all immigrants) in 2016. The dominance of male immigrants can be attributed to a number of factors, including the absence of female workers, policy directions about the women's movement that did not appear until the mid-1990s, concerns about insecurity and sexual abuse, and, most importantly, social variables related to male centrality that undermine the migration of women.⁵³ Male migrants have increasingly sought out new

⁵¹ BMET (2017), < <https://bmet.portal.gov.bd/sites/default/files/>> (accessed 12 May 2023).

⁵² Ibid.

⁵³ Blanchet, Thérèse, Abdur Razzaq, and Hannan Biswas, "Documenting the undocumented: female migrant workers from Bangladesh." (Pathak Shamabesh, 2008).

destinations like Singapore and Malaysia. However, female migrant workers continue to face limited labour possibilities, mostly in the GCC countries.⁵⁴

3.4 SAFE MIGRATION AND HUMAN TRAFFICKING CASES

The protection of migrant workers faces a significant obstacle in the form of human trafficking, which is intricately connected to the phenomenon of the labour movement. The correlation between the employer-employee relationship and the inherent vulnerabilities associated with workplace hazards and exploitation frequently contribute to cases of labour trafficking. The relationship between labour migration and human trafficking necessitates prioritising addressing and preventing human trafficking as a significant barrier to protecting the well-being of migrant workers. The majority of cases of labour trafficking concern the relationship between an employer and an employee, including the inherent hazards and risks present in the work environment.⁵⁵ Human trafficking, a modern manifestation of slavery, has become increasingly prevalent in recent decades. Researchers have linked this phenomenon to the presence of exploitative labour and living situations that undermine the inherent worth and value of human dignity.⁵⁶

The ILO established the Forced Labour Convention 1930 (No. 29) to define forced or compelled labour within this specific framework. It defines labour as “any form of work or service that is extracted from an individual through the imposition of penalties, fear, and without the voluntary consent of the person involved.” Furthermore,

⁵⁴ Kapiszewski, Andrzej, “Arab versus Asian migrant workers in the GCC countries,” *In South Asian migration to gulf countries*, p. 66-90. (Routledge India, 2017).

⁵⁵ Hamid, Zuraini Ab, Siti Fazilah Abdul Shukor, and Ashgar Ali Ali Mohamed, “Rights of migrant workers under Malaysian employment law,” *JE Asia & Int'l L*, vol. 11 (2018): p. 359.

⁵⁶ ILO, “General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, Report of the Committee of Experts on the Application of Conventions and Recommendations” (2012), <https://www.ilo.org/ilc/ILCSessions/101stSession/reports/reports-submitted/WCMS_174846/lang-en/index.htm> (accessed 10 August 2022).

three essential elements in article 1(3) of the Forced Labour Protocol serve to expressly confirm the existing definition. There are three key elements to consider when discussing the concept of forced labour: work or service, the threat of penalties, and involuntariness. Work, or service, refers to all types of labour performed across various activities, industries, and sectors, including those within the informal economy. The threat of penalties covers a range of punitive measures employed to coerce individuals into working. Finally, involuntariness is defined as the use of deceptive promises to persuade employees to accept the obligation to work.

The ILO has long recognised the relationship between workforce movement and trafficking. The Migrant Workers' Convention (No. 143) of the ILO holds the distinction of being the inaugural international legal instrument to introduce preventive measures against human trafficking, dating back to the year 1975. The 2014 International Labour Conference saw the most recent amendment to the ILO Convention No. 29, initially ratified in 1930. This amendment saw the adoption of a new forced labour protocol, which aimed to tackle various concerns, including the problem of human trafficking. The agreement specifically addresses the relationship between migration and human trafficking, as well as the existence of migrant labour.

Additionally, principle 11 of the MFLM of the ILO explains the connection between labour migration and human trafficking. Before 2000, researchers formulated various definitions of human trafficking, taking into account regional and international circumstances.⁵⁷ In 2000, the UN implemented a convention with the goal of eliminating the global phenomenon of human trafficking. This protocol is required to provide uniformity by addressing the diverse regional definitions associated with this illegal practice. The convention, which came into effect in December 2003, aims to

⁵⁷ Rahman, Majeed A, "Human Trafficking in the era of Globalization: The case of Trafficking in the Global Market Economy," *Transcience Journal*, vol. 2, no. 1 (2011): p. 54-71.

suppress, penalise, and prevent the global trafficking of women and children.⁵⁸ Bangladesh is one of the major countries for international labour migration. The phenomenon of people moving from their nation of origin to another country in pursuit of economic opportunities is usually known as “labour migration.”

Nevertheless, this phenomenon of movement also entails a possible risk in the form of human trafficking, whereby individuals are vulnerable to falling victim to exploitation and trafficking. The phenomenon of labour migration has contributed to the increasing attractiveness of Bangladesh as a destination for human trafficking. A significant number of Bangladeshi migrant workers fall victim to deceptive recruitment practices, such as the illegal collection of funds from these employees. Additionally, a significant number of male and female migrants face unfair activities that bear similarities to human trafficking. An important number of these individuals have experienced instances of physical or sexual aggression, intimidation, limitations on their movement, or non-remittance of wages during their stay in a foreign nation.

According to the TIP of 2016, published by the Office to Monitor and Combat Trafficking in Persons within the USA Department of State, it is evident that Bangladesh serves as both an origin and transit country for individuals who fall victim to human trafficking.⁵⁹ There is evidence to suggest that certain Bangladeshi labourers employed throughout the Middle East, Southern and East Africa, South and Southeast Asia, Europe, and the USA are subjected to working conditions that align with the characteristics of forced labour.⁶⁰ A substantial number of migrant workers are exposed to the risk of debt bondage due to their decision to incur debt in order to cover excessive recruitment costs prior to their departure from their country of origin. The above-

⁵⁸ Ibid., 131.

⁵⁹ TIP report (2018) of the U.S. Department of State Office to Monitor and Combat Trafficking in Persons, p. 88, < <https://www.state.gov/documents/organization/258876.pdf> > (accessed 21 September 2022).

⁶⁰ Ibid.

mentioned fees are imposed by authorised recruitment agencies that are associated with the BAIRA in adherence to established regulatory provisions. Nevertheless, it is important to note that there are also instances in which unlicensed sub-agents engage in the unlawful practice of charging fees. Contract switching is an additional appearance of recruitment fraud, whereby an agency or agent engages in deceptive practices by making promises regarding specific working conditions to an applicant. However, once the candidate has begun employment, the agency or agent delivers different conditions than those initially promised.

3.5 PROTECTION OF THE RIGHTS OF MIGRANT WORKERS UNDER THE BANGLADESH CONSTITUTION

The Bangladesh Constitution clearly or tacitly acknowledges the fundamental civil and political rights of migrant workers and family members. The Preamble to the constitution clearly articulates the state's objective of establishing a society that is devoid of exploitation, founded on the principles of the rule of law, and upheld by the recognition and protection of essential human rights and freedoms.⁶¹ Article 19 of the constitution ensures the provision of equal opportunity, whereas article 20 recognises the right, obligation, and matter of honour associated with respect for one's effort. Article 27 of the Bangladesh constitution, situated in Part III, relates to the fundamental rights that are legally enforceable. This constitutional provision ensures equality before the law, defining its significance in more clear terms. Article 34 of the law clearly prohibits the practice of forced work, rendering it illegal and criminalised. The High Court Division of the Supreme Court is vested with the authority to interpret and enforce fundamental rights as prescribed in article 44 of the constitution, in accordance with the

⁶¹ Preamble of the Bangladesh Constitution, < <http://bdlaws.minlaw.gov.bd/act-367.html>> (accessed 18 May 2022).

provisions outlined in article 102, clause 1. The rights granted by the Bangladesh constitution appear to align with the stipulations and fundamental concepts outlined in the ICRMW. However, simply attaching a right to the constitution does not ensure its protection and implementation.

3.6 PROTECTION OF THE RIGHTS OF MIGRANT WORKERS UNDER NATIONAL LAWS

The global issue of human trafficking has led to the implementation of particular legislation in many jurisdictions with the aim of criminalising this phenomenon. The aforementioned legislation specifically aims to confront and address the pressing problem of human trafficking. In addition, Bangladesh has enacted multiple legislative measures to address the issue of human trafficking. The legal framework serves the identical purpose of defining and protecting the rights of both individuals and groups. Its functions include granting authority to address acts of cruelty, imposing limitations on the distribution of economic, political, and social resources, establishing institutional frameworks, and articulating a society's fundamental principles and convictions. The examination of human trafficking in Bangladesh reveals two underlying realities: firstly, it is a prevalent criminal activity characterised by serious violations of human rights, and secondly, it leads to the emergence of individuals who require intervention and protection.

In addition, combating human trafficking generally includes three primary dimensions. The criminal justice system plays a crucial role in identifying, apprehending, and prosecuting traffickers, ensuring they face appropriate penalties for their illicit actions. Secondly, diligent activities are undertaken to offer all-inclusive help and aid to those who have been trafficked, including provisions for essential care, rehabilitation, and ways for sustainable livelihoods. The said aspect is of the utmost

importance in facilitating the process of rehabilitation for those who have experienced a painful event, hence aiding their successful reintegration into the broader social fabric. Finally, it is imperative to address the underlying determinants of trafficking in order to effectively prevent its recurrence. This may entail tackling issues such as poverty, inequality, limited access to education, and social vulnerabilities that render people disposed to trafficking. By addressing these three dimensions, societies can strive towards effectively combating the issue of human trafficking.

3.6.1 The Overseas Employment and Migrants Act 2013

According to Section 3 of the Act, the government of Bangladesh, or its duly authorised representatives, has the responsibility of overseeing and regulating all aspects relating to the recruitment and departure of migrant workers from Bangladesh seeking employment opportunities beyond the borders of the country. Consequently, it is mandated that no one shall engage in or promote the emigration of fellow citizens for the purpose of seeking employment abroad, unless such actions are in accordance with the provisions outlined within this Act.⁶² Following an individual's migration, Section 20 requires the presentation of additional documentation alongside the issued clearance. The relevant authorities of the respective nation may require supplementary documents such as a letter of appointment for an overseas job, a work permit, or a no objection certificate. Additionally, this provision includes the submission of either (a) evidence representative of recruitment for employment abroad by an individual, organisation, or institution duly authorised by the government pursuant to an agreement established with any nation, or (b) evidence substantiating employment through recruitment. These

⁶² OEMA, Sec 4.

methods could be utilised as means of protecting and monitoring migrant workers, thus mitigating the risk of their exploitation as victims of human trafficking.

3.6.1.1 Application of the principle of equality

Discrimination based on gender, language, birth, colour, age, ethnicity, national origin, political opinions, religion, ideology, family, marital status, social identity, or regional affiliation in relation to the employment of migrant workers abroad, their return, the provision of services, or any other action specified within this agreement shall not be accepted.⁶³ The designated port or location, as determined by the government through an official notification in the Official Gazette, will function as the designated point of departure for individuals seeking work opportunities abroad.⁶⁴

3.6.1.2 Restrictions relating to migration

1. The government has the authority to impose restrictions on migration to a country if it deems such measures to be contrary to the public or state interest, or if they pose a threat to the health and safety of Bangladeshi people.⁶⁵
2. In the interest of public welfare or human resources protection, the government has the authority to enact temporary actions that restrict the mobility of individuals or specific groups of citizens.⁶⁶

⁶³ Ibid., 135, Sec 6.

⁶⁴ Ibid, Sec 7.

⁶⁵ Ibid, Sec 8.

⁶⁶ Ibid.

3.6.1.3 Recruitment agents, licence, and such others

Sections 9 - 18 of the OEMA of 2013 provide an in-depth analysis of several aspects pertaining to recruitment agencies, licences, and other pertinent subjects. Section 9(1) of the aforementioned legislation prohibits individuals from participating in any form of recruitment-related activity unless they have obtained the requisite licensure.⁶⁷ Section 15 of the Act imposes individual duties on the recruitment agent to protect migrant workers. The provision mandates the recruitment agent to fulfil several responsibilities, such as job description, wage details, minimum working hours, and health insurance facilities provided by the company. However, awareness of the migrant workers' jobs, salaries, and other benefits provided by the company is very important. Due to their lack of education and awareness about laws, many respondents are unfamiliar with Section 15 of the OEMA of 2013.⁶⁸ Some respondents during FGD said that the recruitment agent provides the migrant workers false information regarding the job offer from the overseas company, as well as their basic wages, overtime facilities, details of workplace conditions, health insurance, including sick and other leave, et cetera.⁶⁹

In addition, protecting the rights and welfare of migrant workers, assisting in the registration process under Section 19, obtaining the appropriate migration clearance, employing the migrant worker in the designated role, ensuring fair wages and additional benefits, promoting a favourable work environment in accordance with the terms and conditions specified in the employment contract, and establishing and maintaining effective communication channels with the migrant worker are among these responsibilities. The majority of respondents assert that they are unable to obtain this

⁶⁷ Ibid., 136, Sec 8.

⁶⁸ Anonymous migrant workers, Interview by Author, Neya Paltan, Dhaka, Bangladesh, 25 December, 2022.

⁶⁹ Anonymous migrant workers, Interview by Author, Mohakhali, Dhaka, Bangladesh, 10 January, 2022.

information while seeking jobs in Malaysia. The company and the employee do not have an official contractual agreement in place before they travel.⁷⁰ Before leaving the country, few respondents are completely unaware of their job, salaries, overtime, healthcare facilities, sick and annual leave, workplace conditions, and other benefits during their employment with the company.⁷¹ All of these tasks must be completed in accordance with the terms and conditions.⁷²

In addition, Section 18 of the Act provides a justifiable provision for obtaining remuneration from a recruitment agency. The government may use the funds provided as security to meet financial obligations for migrant employees affected by adverse circumstances, and to compensate recruitment agents for their expenses in repatriating workers sent overseas. In the event that the funds obtained from the confiscated surety are inadequate to address the damages incurred by the affected migrant worker or to ensure their repatriation from overseas, the government possesses the authority to compel the responsible recruitment agent to provide suitable compensation.

The government has the option of using the measures outlined in the Public Demands Recovery Act of 1913 to pursue legal action against a recruitment agent who fails to fulfil their financial obligations as stipulated in sub-Section 3.⁷³ Moreover, this gap in awareness and the absence of a formal contract significantly compromises the workers' ability to protect their rights once they reach their destination. The lack of transparency from recruitment agents exacerbates the vulnerability of these workers, leaving them susceptible to exploitation and harsh working conditions. It is evident that

⁷⁰ Anonymous migrant workers, Interview by Author, Neya Paltan, Dhaka, Bangladesh, 25 December, 2022.

⁷¹ Anonymous migrant workers, Interview by Author, Mohakhali, Dhaka, Bangladesh, 10 January, 2022.

⁷² OEMA, Sec 15.

⁷³ Ibid, Sec 18.

comprehensive educational initiatives and stricter enforcement of the Act are necessary to safeguard migrant workers' rights effectively.

3.6.1.4 Registration of migrant workers, migration clearance, and such others

According to Section 19(1), any person or migrant workers who have the intention to immigrate under this legislation are required to complete the registration process with the Bureau, providing details of their respective trade or profession. The Bureau is obligated to maintain comprehensive records of all registered workers in accordance with the stated procedure and, if deemed appropriate, to transcribe these documents into official registers. Moreover, under Section 19(2), it is permissible for a worker to register either in Bangladesh or with the Bangladesh embassy in the country of their employment. However, it is essential for them to possess the necessary trade and profession documentation if they have failed to do so within the specified deadline mentioned in paragraph 3. This paragraph stipulates that the employers are required to select employees randomly from a computerised database maintained by the Bureau, any other government-established organisation or company, as well as recruiting firms. The selection process is based on the registration of individuals according to their trade or profession, as outlined in the aforementioned paragraph.⁷⁴

Furthermore, migrant workers have the opportunity to secure employment through publicly accessible advertisements in print media, subject to the government's previous consent or the consent of the delegated authorities, on the condition that no eligible employees are already registered in the database. In this particular scenario, it is vital for the advertisement to clearly indicate that no charges or monetary obligations would be incurred by the individual until the point of their successful employment.⁷⁵

⁷⁴ Ibid., 138, Sec 19.

⁷⁵ Ibid.

The permitting of migrant clearance holds considerable significance in safeguarding migrant workers from the dangers associated with human trafficking. In accordance with the provisions outlined in Section 20, it is obligatory for the Bureau to apply an official seal to the passport of each individual who has been duly registered pursuant to Section 19. The seal must display the unique registration number that has been assigned to the migrant worker. Furthermore, it is mandated that the Bureau provide a migration clearance electronic card to the migrant worker. The card should include key migration facts, such as the migrant worker's thumb impression and biometric data, in addition to other relevant details. The implementation of these procedures plays a vital role in guaranteeing the accurate identification and documentation of migrant workers, thus enhancing their protection and mitigating the risk of exploitation or trafficking.⁷⁶

3.6.1.5 Employment contract

Section 22 of the OEMA of 2013 contains the following two sections: (1) The recruitment agency is responsible for ensuring that both the worker and the employer sign an employment contract. The contractual agreement should include various essential aspects, such as the worker's remuneration, accommodation arrangements, duration of employment, provisions for compensation in case of death or injury, expenses associated with relocation to and from the foreign country, and any other pertinent particulars,⁷⁷ and (2) The individual responsible for recruitment shall be regarded as the representative of the foreign employer for the contractual agreement outlined in sub-Section 1. Both the employer and the recruitment agent will have joint and several responsibilities for any obligations arising from the contractual agreement.⁷⁸

⁷⁶ Ibid., 139, Sec 20.

⁷⁷ Ibid, Sec 22.

⁷⁸ Ibid.

These laws also mandated that the recruiting agent must disclose to the migrant workers their pre-determined migration cost, as set by the government authority. There must be a contract agreement between a recruiting agent and the migrant workers. Almost all respondents during the FGD stated that the government had fixed the migration cost at BDT 78,300 (USD 783), but the recruiting agent demanded BDT 4,50,000 to 5,00,000 (USD 4,500 to 5,000) per person, which is significantly higher than the rates set by the Ministry of Expatriate Welfare and Overseas Employment.⁷⁹ A few respondents claimed that the governing body does not disclose the migration expenses to any of the participants. All respondents during FGD expressed disappointment with the recruitment agent's practice of coercing them into signing contractual agreements stipulating a payment of only BDT 78,300 (USD 783) when in reality, each individual paid an amount exceeding BDT 4,50,000 to 5,00,000 (USD 4500-5000).⁸⁰

According to Section 22 of the Act, it is important for the employer and the employed worker to sign the employment contract. The comprehensive set of factors to be considered includes the remuneration of workers, their living conditions, duration of employment, provisions for compensation in the event of death or injury, as well as the expenses associated with emigration to and repatriation from a foreign nation, among various other aspects. In order to comply with regulations, the recruitment agent is required to provide copies of the signed contract to both the bureau and the Bangladesh embassy in the host nation. When dispatching workers abroad, it is mandatory for the Bureau or any government-affiliated entity, enterprise, or company to facilitate the execution of an employment agreement between the employer and the employee while also furnishing a duplicate of said contract to the Bangladesh mission situated in the

⁷⁹ Anonymous migrant workers, Interview by Author, Neya Paltan, Dhaka, Bangladesh, 25 December, 2022.

⁸⁰ Anonymous migrant workers, Interview by Author, Mohakhali, Dhaka, Bangladesh, 10 January, 2022.

host country.⁸¹ The majority of respondents from Bangladesh stated that they lack a comprehensive understanding of the nature of communication between employers and employees, and they did not receive clear information about it. A large number of respondents said that they do not have a thorough understanding of the OEMA of 2013, which came into effect in 2013.⁸² During FGD, a large number of participants informed me they are completely reliant on the recruitment agent for matters pertaining to their jobs, the costs of migrating, and other related matters because of a lack of official information from the government. Another group of participants said that they have to deal with a great deal of difficulty, including cases of fraud and inaccurate information concerning their employment agent in Bangladesh.⁸³ This discrepancy in migration costs not only places a substantial financial burden on the workers but also reflects a broader issue of systemic exploitation within the recruitment process.

Furthermore, the lack of transparency and regulation in the fee structure further deepens the economic strain on migrant workers, who often resort to taking loans at high-interest rates to cover these unexpected costs. The need for rigorous monitoring and enforcement of the prescribed migration costs is crucial to protect these workers from financial exploitation. This over-reliance on recruitment agents underscores the critical need for accessible and accurate information regarding the legal requirements and rights of migrant workers. Without such knowledge, workers are at a heightened risk of being misled and mistreated, as they are unable to navigate the complexities of international employment laws effectively. It is imperative that both government bodies and NGOs collaborate to ensure that migrant workers are adequately informed and empowered to make decisions that protect their interests.

⁸¹ OEMA, Sec 22.

⁸² Anonymous migrant workers, Interview by Author, Neya Paltan, Dhaka, Bangladesh, 25 December, 2022.

⁸³ Anonymous migrant workers, Interview by Author, Mohakhali, Dhaka, Bangladesh, 10 January, 2022.

3.6.1.6 Established labour welfare wing and bilateral agreements on migration

The Bangladeshi government retains the discretion to establish a Labour Welfare Wing under the Bangladesh mission in a specific foreign nation to enhance migrant workers' access to the local labour market or safeguard their rights. The Bangladesh mission must establish a specialised department or unit to address the specific needs and concerns of Bangladeshi migrant workers in their respective host nation, in order to establish a labour welfare wing. The wing shall carry out the responsibilities outlined in this legislation and its accompanying regulations.⁸⁴

Moreover, the government has the option to establish a memorandum of understanding or a formal agreement with another nation in order to enhance the process of Bangladeshi citizens migrating for employment abroad. This initiative aims to enhance the overall management of labour migration, streamline the repatriation and reintegration of migrant workers upon their return to their home country, and ensure the protection of the well-being and rights of both migrant workers and their families.⁸⁵ Paragraph 1 establishes several key aspects that any MOU or agreement must guarantee. These include: (a) upholding the rights, safety, and human dignity of all migrant workers, whether they are in their home country or abroad; (b) safeguarding the labour and other human rights of Bangladeshi migrant workers in the relevant country and ensuring that their working conditions adhere to international standards; and (c) guaranteeing the right of migrant workers to return to Bangladesh.⁸⁶

⁸⁴ OEMA, Sec 23.

⁸⁵ Ibid, Sec 25.

⁸⁶ Ibid.

3.6.1.7 Protection of the rights of migrant workers

Right to information: Prior to their departure from their country of origin, migrant workers possess the lawful entitlement to get comprehensive information relating to the immigration process, the terms and conditions of their employment agreement, and the specific details surrounding their prospective job overseas. Furthermore, they have the right to receive information about their legal rights, which is crucial for their safety and welfare.⁸⁷

Legal aid: Migrant workers who have moved from their home countries and become victims of fraudulent activities carried out under the appearance of migration possess the entitlement to avail themselves of legal aid within reasonable means.⁸⁸

Right to file a civil suit: A migrant worker who has suffered harm as a result of a violation of any provision outlined in this Act or the employment agreement may commence a civil lawsuit to seek compensation while still retaining the right to pursue criminal prosecution for any violations under this Act.⁸⁹

Right to return home: Bangladesh's policy stipulates that the migrant workers in foreign countries, whether detained, trapped, or facing difficulties, have the right to formally request repatriation to Bangladesh. They also have the right to receive the necessary assistance from the Bangladesh Mission in their respective host nation.⁹⁰ In the event of an agency's ineffectiveness or engagement in unlawful activities, the government has the authority to mandate a recruitment agency to bear the financial responsibility for repatriating a migrant worker who finds themselves stuck in a foreign country.⁹¹

⁸⁷ Ibid., 143, Sec 26.

⁸⁸ Ibid, Sec 27.

⁸⁹ Ibid, Sec 28.

⁹⁰ Ibid, Sec 29.

⁹¹ Ibid.

Financial and other welfare programmes: The government aims to develop the well-being and progress of migrant workers and their families by potentially implementing policies that facilitate the provision of bank loans, tax incentives, savings programs, investment possibilities, and other resources.⁹²

3.7 OFFENCE AND PUNISHMENT UNDER THE ACT

3.7.1 Penalties for sending migrant workers overseas in an unlawful manner

Any individual or entity, including a staffing agency, who knowingly and deliberately induces another individual to (a) contravene the provisions of this legislation or the associated regulations by facilitating the overseas employment of a person or entering into a contractual agreement on behalf of another person; (b) obtain or attempt to obtain any form of monetary or non-monetary compensation by providing false assurances of overseas employment; (c) disclose personal information without the consent of the concerned party; or (d) employ fraudulent tactics, such as offering inflated salaries, benefits, and amenities, or engaging in any other deceptive practices related to the migration of workers, may be held responsible for forcing or persuading individuals to engage in fraudulent migration or enter into migration contracts.

In the event of a conviction for this offence, either the committer or the individual responsible for recruitment may be subject to a maximum incarceration period of five years and a minimum monetary penalty of one lakh (USD 1000) Bangladeshi taka. Furthermore, it is possible that their licence to engage in professional activities as a recruiting agent will be revoked.⁹³

⁹² Ibid., 144, Sec 30.

⁹³ Ibid, Sec 31.

3.7.2 Penalty for publishing unauthorised advertisements

It is considered a violation of pertinent laws and regulations to engage in the publication of advertisements for overseas employment or migration without obtaining prior government approval. Consequently, individuals or recruiting agents may be subject to fines for engaging in this crime. The normal penalty for this transgression often entails a custodial sentence with a maximum duration of one year. Additionally, the law may impose a fine of at least 50,000 Bangladeshi takas (USD 500), or a higher amount.⁹⁴ The purpose of these sanctions is to discourage individuals and recruitment brokers from participating in unauthorised recruitment practices and to guarantee adherence to the legal obligations established by the government and the bureau. The government wants to handle the hiring process well and protect the rights and interests of migrant workers looking for work by putting these consequences in place. By imposing these consequences, the authorities aim to effectively manage the recruitment process and protect the rights and interests of migrant workers seeking employment.⁹⁵

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

Engaging in fraudulent or illegal practices to obtain a demand note, visa, or work permit from a foreign employer or country, as well as the subsequent resale of these papers within Bangladesh's borders, constitutes a criminal offence. Such actions have the potential to result in a maximum prison sentence of seven years and a minimum fine of 3 lacs (USD 3,000) Bangladeshi taka.⁹⁶

⁹⁴ Ibid., 145, Sec 31.

⁹⁵ Ibid, Sec 32.

⁹⁶ Ibid, Sec 33.

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

It is considered a criminal act to engage in illegal practices to obtain demand notes, visas, or work permits for international employment, and to exchange these documents unlawfully within Bangladesh's borders. Those who participate in these actions are subject to significant legal consequences. Convicted individuals may face a maximum prison term of seven years if they acquire demand notes, visas, or work permits through fraudulent or illegal methods, or engage in the illegal resale of these documents within Bangladesh's borders. Furthermore, the prescribed penalty may include a minimum fine of 3 lack Bangladeshi takas, which is approximately 3,000 USD. It is important to highlight that the legislation reserves the right to establish a larger fine sum as deemed appropriate.⁹⁷

3.7.5 Penalty for other offences

In the event that an individual contravenes any provision of the legislation without stipulating a specific penalty, the effects will be contingent upon the seriousness of the violation. In cases of this nature, the perpetrator may be subject to sanctions that include a potential imprisonment duration of no more than six months as well as a monetary penalty reaching a maximum of 50,000 Bangladeshi Taka (equivalent to USD 500)⁹⁸, or a combination of both punishments. The authorities will consider the seriousness of the violation, its impact on the rights and interests of migrant workers, and its alignment with the overall objectives of the Act when determining the appropriate punishment. The relevant authorities will evaluate the transgression's surrounding conditions and

⁹⁷ Ibid., 146, Sec 34.

⁹⁸ Ibid, Sec 35.

characteristics in order to determine the most appropriate sanction within the parameters specified by the legal framework.⁹⁹

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

If a person or a recruitment agency directly or indirectly helps or encourages someone to break the law, and the law is broken because of that help or encouragement, that person or recruitment agency will be punished the same way as the person or recruitment agency who directly broke the law.¹⁰⁰

3.7.7 Offences committed by a company

If an individual holding the position of director, executive, manager, secretary, or any other employee within a corporation actively participates in a violation of this Act on behalf of the firm, they will be subject to criminal liability for the infraction. Nevertheless, an exemption exists in cases where individuals can substantiate their lack of awareness regarding the breach and demonstrate that they undertook all requisite measures to stop it.¹⁰¹

3.7.8 Trial

This legislation enhances the convenience of legal proceedings. The Code of Criminal Procedure 1898 (Act No. V of 1898) specifies that offences falling within its scope are to be adjudicated by either the Judicial Magistrate of First Class or, in certain situations, the Metropolitan Magistrate. This legislation mandates that all legal proceedings relating to cases under its jurisdiction must conclude within a maximum four-month

⁹⁹ Ibid., 147, Sec 35.

¹⁰⁰ Ibid, Sec 36.

¹⁰¹ Ibid, Sec 37.

period, starting from the initial filing of charges. In the event that the trial fails to conclude within the specified timeframe, the presiding magistrate may seek an extension from the relevant higher judicial authority, namely the Chief Judicial Magistrate's Court or the Chief Metropolitan Magistrate's Court, as deemed necessary. The magistrate must provide a justification for the delay in order to get the extension. In that particular scenario, it will be necessary for him to transmit a status report.¹⁰²

3.7.9 Cognoscibility, compound ability, and so on of offences

In association with the non-cognoscibility, availability, and compound ability of offences delineated in Sections 31, 32, and 35, the offences specified in Sections 33 and 34 have been deemed cognisable, non-boilable, and compoundable. As per Section 40 of the Mobile Courts Act of 2009, the Schedule of the aforementioned Act (Act No. 59 of 2009) is required to include this Act.¹⁰³

3.7.10 Complaints to the government

According to Section 41, individuals who identify themselves as victims of wrongdoing have the right to submit a complaint to the appropriate governmental entity. This complaint may include various allegations, such as fraud, the request for payment of expenses at unapproved rates, or a violation of contractual obligations. Importantly, individuals who choose to pursue a complaint under this section do not forfeit their ability to initiate criminal proceedings against the accused party, including recruitment agents.¹⁰⁴ After receiving a complaint, the government, its designated authority, or a nominated individual must conduct a thorough inquiry within thirty (30) days during regular office hours. If the investigation confirms the complaint's validity within three

¹⁰² Ibid., 148, Sec 38.

¹⁰³ Ibid, Sec 40.

¹⁰⁴ Ibid, Sec 41.

months, the government, its designated authority, or an authorised individual may issue an official order to resolve the complaint directly or through arbitration, specifically using the Salish process. When addressing complaints via the process of arbitration, it is imperative to adhere to certain regulations and guidelines.¹⁰⁵ Transportation departing from or arriving in Bangladesh may be subject to scrutiny by a duly authorised government official with the aim of preventing unauthorised migration or safeguarding the welfare of prospective migrant labourers.¹⁰⁶ The government has the jurisdiction to demand repayment from any individual for any funds unlawfully acquired in violation of the provisions outlined in this legislation after completing any necessary investigation and issuing a written order.¹⁰⁷

Furthermore, in order to protect migrant workers' rights, the government has the option to inform an officer or authority or establish a contractual agreement, thereby delegating specific powers or functions as stipulated by this legislation. If necessary, the entity has the ability to designate an approved representative or delegate authority in a foreign jurisdiction.¹⁰⁸

3.8 THE PREVENTION OF SUPPRESSION OF HUMAN TRAFFICKING ACT, 2012

It was observed that the concept of “labour trafficking” in Bangladesh, which refers to the exploitation of individuals for their employment, was not adequately addressed in the prevailing legislation until recently. Given the absence of a specific criminal offence for “trafficking in persons for labour,” it becomes necessary to pursue legal action against related offences such as “fraudulent recruitment,” “receipt of money by

¹⁰⁵ Ibid., 149, Sec 41.

¹⁰⁶ Ibid, Sec 42.

¹⁰⁷ Ibid, Sec 43.

¹⁰⁸ Ibid, Sec 44.

unauthorised individuals for the recruitment of workers for overseas employment,” and similar transgressions.

Additionally, offences such as “forced labour” and “forgery of travel documents” should be subject to prosecution in lieu of the aforementioned crime. The aforementioned crimes are defined in the EOA of 1982, the Penal Code of 1870, and various other legislative statutes.¹⁰⁹ An example of legislation that criminalises fraudulent activities related to passports is the Passport (Offences) Act of 1952. This Act prohibits the counterfeiting, alteration, or manipulation of passports. Similarly, the Bangladesh Passport Order of 1973 establishes the illegality of leaving Bangladesh without a valid passport or travel document. Consequently, these legislative provisions include minor offences linked to the principal offence of trafficking Bangladeshi migrant labourers.¹¹⁰ In accordance with the stipulations outlined in Section 5 of the Act, the application of Bangladeshi law outside national borders is permissible in situations where either the individuals affected or those responsible for the offence hold Bangladeshi citizenship.¹¹¹ It has been verified that offences relating to human trafficking are extraditable in nature.

3.8.1 Punishment of human trafficking

The Prevention and Suppression of Human Trafficking Act (PSHTA), 2012 defines many forms of punishment for human trafficking, as explained in Chapter 2 (Sections 6-16). Sections 6 and 7 of the legislation explain the criminal sanctions related to trafficking. In instances where the offence is committed as part of an organised criminal initiative, the prescribed penalty is capital punishment. Conversely, for other forms of

¹⁰⁹ Ridwanul Hoque, “Protecting Migrant Workers from Bangladesh: A Study of Legal Compliance with Migrant Workers’ Rights,” *National Human Rights Commission, Bangladesh*, p.104.

¹¹⁰ Ibid.

¹¹¹ The Prevention and Suppression of Human Trafficking Act (PSHTA), 2012, Sec 5.

trafficking, the stipulated punishment is life imprisonment. The recently enacted legislation also encompasses associated offences.¹¹² The efficacy of the measures implemented by Bangladesh's government to protect those affected by trafficking has been insufficient within the preceding year. The government's insufficient protection of adult male victims of trafficking and forced labour, who represent a disproportionately high proportion of victims in the country, continues to be a concerning and ongoing issue. Although lacking a formal structure, those subjected to internal trafficking were frequently directed to shelters by various entities, such as the courts, police, or authorities within the home ministry.

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

Section 21 of the legislation mandates the establishment of a specialised tribunal specifically focused on addressing cases of human trafficking. This provision has been duly ratified, granting the tribunal the authority to promptly adjudicate all trials related to human trafficking. The legislation mandates that the Tribunal shall undertake the following steps:¹¹³

1. The government has the authority to designate a judge at the level of a Sessions Judge or Additional Sessions Judge in any district as the Anti-Human Trafficking Offences Tribunal through publication in the Gazette. This tribunal is responsible for the swift trial of offences under the Act.
2. The government possesses the jurisdiction to designate the Nari O Shishu Nirjaton Daman Tribunal (Tribunal for the Prevention of Torture Against Women and Children) in every district, thereby functioning as the Anti-Human Trafficking Offences Tribunal of said district. Furthermore, the

¹¹² PSHTA, Sec 6-16.

¹¹³ Ibid, Sec 21.

government is responsible for assigning and authorising the tribunal to fulfil its obligations in this particular role.

3. The special jurisdiction to adjudicate disputes relating to violations of the requirements outlined in this Act is vested only in a tribunal established by the same Act.
4. The jurisdiction to prosecute crimes, including human trafficking offences, is with the tribunal in whose territorial authority the crimes or any portion thereof are performed, or where the victims of such crimes are rescued.
5. In the event that a Bangladeshi citizen, a Bangladeshi company, or an individual who habitually resides in Bangladesh but commits an offence outside the territorial boundaries of Bangladesh, the tribunal with jurisdiction over the offender's place of residence, or in the case of a company, the location of its registered office, may exercise its authority to adjudicate the case.

3.8.3 Powers of the tribunal

The tribunal will possess the full jurisdiction and powers typically vested in a Court of Sessions, in accordance with the provisions outlined in this legislation. In order to uphold principles of justice, the tribunal has the authority to issue practical orders mandating individuals or institutions to provide reports, documents, or registers to the tribunal in accordance with the provisions outlined in this legislation.¹¹⁴

¹¹⁴ Ibid., 152, Sec 22.

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

The Act includes Sections 32-40, which provide a comprehensive set of protective measures designed to protect victims and survivors. These measures encompass the following elements:¹¹⁵

1. The procedure for identifying victims,
2. Provisions have been established to facilitate the retrieval, treatment, and reintegration of individuals back into their regular lives, including the establishment of additional safe houses,
3. The law provides compensation for the reasonable expenses borne by the victims and witnesses in connection with the criminal warrant,
4. The provision of complementary legal advice and the disbursement of court-awarded compensation,
5. The provision of protections against victimisation, as well as the preservation of victims' privacy and dignity, are crucial considerations. Additionally, it is vital to acknowledge and uphold the rights of victims to access relevant information.

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

According to Section 27 of the legislation, it is mandated that assets owned by individuals, including both natural and legal entities, who are determined to be involved in human trafficking must be confiscated and frozen. The confiscated assets are allocated to a designated fund that has been established to offer aid and support to the victims of this abhorrent Act. This provision aims to hinder the financial resources of those involved in human trafficking and ensure that the seized assets go towards aiding

¹¹⁵ Ibid., 153, Sec 32-40.

and supporting the victims. Through the Act of collecting and freezing these assets, the authorities have the capability to deconstruct the intricate financial infrastructure that facilitates and sustains the operations associated with human trafficking.¹¹⁶

3.9 THE EMIGRATION ORDINANCE, 1982

The primary regulatory tool in connection with migration was established by the Bangladesh government's promulgation of the EO in 1982. The Ordinance stipulates that only individuals with current and legitimate travel documents can leave the country. A legitimate document is one that is issued by a foreign government, such as an employment visa or work permit from an overseas company or employer.¹¹⁷ After completing the selection procedure by the overseas employer through a government-approved local recruiting agent or organisation, emigration can only be allowed in a later agreement between the two governments.¹¹⁸ The Ordinance also grants the government the power, in the public interest, to prevent people with certain jobs, professions, vocations, or qualifications from leaving the country.¹¹⁹ To facilitate recruiting for overseas work, the government may issue licences to individuals and businesses under the Ordinance,¹²⁰ and terminate or suspend licences and withhold the deposit if it finds that the licensee's behaviour has been inappropriate or in contravention of the law or the specified code of conduct. Nevertheless, such steps cannot be taken until the licensee has had a chance to explain his or her point of view.¹²¹

A maximum fine of BDT 5,000 (USD 50) and a maximum prison sentence of up to one year are possible for those convicted of illegally leaving the country. Additionally, the

¹¹⁶ Ibid., 154, Sec 27.

¹¹⁷ The Emigration Ordinance (EO), 1982, Sec 7(3/A).

¹¹⁸ Ibid, Sec 7(3/B).

¹¹⁹ Ibid, Sec 8(1).

¹²⁰ Ibid, Sec 10.

¹²¹ Ibid, Sec 14(1).

Ordinance includes measures for sanctioning illicit recruitment practices,¹²² and it is against the law for employment agencies to charge more than the allotted amount of money for their services.¹²³ Moreover, there are penalties in place for workers who quit their overseas employers in violation of their employment contracts.¹²⁴ Meanwhile, the proposal is to establish new legislation by revoking the EO of 1982 (Ordinance No. XXIX of 1982) to safeguard the rights and welfare of migrant workers and their families. This new law aims to align with the principles outlined in the ICRMW, as well as other international labour and human rights covenants ratified by the Government of the People's Republic of Bangladesh.¹²⁵

3.10 POSITION OF BANGLADESH IN COMPLIANCE WITH INTERNATIONAL LAWS

The convention issued in 2000, aimed at preventing, suppressing, and penalising trafficking in persons, particularly women and children, stands as a vital international instrument in the battle against human trafficking.¹²⁶ However, it is widely acknowledged that Bangladesh has neither ratified or signed either of these two accords. Furthermore, the protocol against the smuggling of migrants by land, sea, and air in the year 2000,¹²⁷ establishes a legal framework for the fight against the trafficking of people. Besides, Bangladesh has ratified numerous international conventions aimed at safeguarding human rights, including the ICCPR,¹²⁸ the ICESCR, the CEDAW, and the

¹²² Ibid., 155, Sec 20.

¹²³ Ibid, Sec 23.

¹²⁴ Ibid, Sec 24.

¹²⁵ Ibid.

¹²⁶ This supplements the 2000 UN Convention against Transnational Organized Crime (UNTOC), <<https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>> (accessed 10 June 2022).

¹²⁷ Brolan, Claire, "An analysis of the human smuggling trade and the Protocol Against the Smuggling of Migrants by Land, Air and Sea (2000) from a refugee protection perspective," *International Journal of Refugee Law*, vol. 14, no. 4 (2002): p. 561-596.

¹²⁸ UNTOC, "[n]o one shall be required to perform forced or compulsory labour," and so on], <<https://www.unodc.org/>> (accessed 10 June 2022).

CRC.¹²⁹ The agreement incorporates provisions that necessitate Bangladesh to undertake measures aimed at addressing the issues of human trafficking and smuggling.

In addition, the ILO holds the distinction of being the longest-standing institution dedicated to the management and regulation of worker movements. The introductory meeting of the ILC in 1919 brought attention to the matter of ensuring equal treatment for both nationals and migrant workers. Additionally, it emphasised the need for effective coordination of migration policies among states as well as between government entities, employers' organisations, and workers' organisations.¹³⁰ The key ILO instruments relating to migrant workers consist of the Migration to Employment Convention (Revised) 1949 (No. 97), the Migrant Workers' (Supplementary Provisions) Convention, 1975 (No. 143), and the Migrant Workers' Recommendations (No. 151). Convention No. 97 was ratified and became effective in 1952, while Convention No. 143 was ratified and came into force in 1978.

It is important to acknowledge that Bangladesh took a commendable step in August 2011 by officially endorsing the ICRMW. In this context, the ICRMW is a relevant topic that warrants discussion. Bangladesh has acknowledged its obligation to enforce the convention by ratifying it and then establishing the necessary legal, administrative, and adjudicative mechanisms. Additionally, the government has taken steps to provide suitable remedies for migrant workers who have had their rights violated.¹³¹ Bangladesh passed the OEMA of 2013 into law as part of its efforts to comply with this convention. In addition, it is important to note that none of the countries that receive Bangladesh's manpower have accepted the ILO Conventions or

¹²⁹ The Convention on the Rights of the Child (CRC), 1989, < <https://www.ohchr.org/>> (accessed 5 May 2022).

¹³⁰ Sengenberger, Werner, "Decent Work: The International Labour Organization Agenda," *Dialogue and Cooperation*, vol. 2, no. 2001 (2001): p. 39-55.

¹³¹ See Ridwanul Hoque, "Emigration fraud and justice for migrant workers," *The Daily Star*, Dhaka, 18 December, 2012, <https://www.thedailystar.net/news-detail-261521>.

the 1990 UN Convention on migration.¹³² Bangladesh has yet to ratify the ILO Conventions. Despite having signed the UN Convention, the ratification process is still pending.¹³³ Consequently, migrant workers originating from Bangladesh are unable to avail themselves of protection under these international treaties.

3.11 CONCLUSION

Bangladesh has currently established an adequate arrangement of domestic legislative provisions to protect the rights of migrant workers and combat the issue of human trafficking, following the enactment of the PSHTA of 2012 and the OEMA of 2013. Nevertheless, the Acts provided migrants with limited rights and contained inconsistent regulations, affording opportunities for individuals who engaged in misconduct to avoid accountability for their behaviour. In terms of government officials' accountability, the actions taken were inconspicuous. Unfortunately, there have been few significant efforts to implement the obligations outlined in the Acts. In a more precise manner, it should be noted that the government has the authority to restrict emigration for the purpose of seeking employment abroad, save through certain ports or places explicitly specified in a notification issued in the official gazette. The power imbalance between human trafficking victims and traffickers contributes to the notable issue of inadequate enforcement of the Act. As a result, migrant workers face difficulties ensuring their safe passage. Insufficient knowledge of the Act among legal professionals and law enforcement personnel has emerged as a significant obstacle to its successful implementation. Governmental efforts alone cannot achieve the interruption of human trafficking. In order to safeguard migrant workers' rights and ensure their well-being during their migration process, it is critical to address and minimise the potential

¹³² Siddiqui, Tasneem, 118.

¹³³ Ibid.

dangers associated with human trafficking. A collaborative and focused effort is required to successfully implement measures to combat human trafficking and ensure the safety of migration. This undertaking requires the involvement of all relevant stakeholders at various levels. Efforts aimed at addressing human trafficking and facilitating secure migration should adopt a complete approach. This entails improving legislative measures and law enforcement efforts to detect and bring individuals involved in trafficking to justice, as well as promoting knowledge and understanding among migrant workers regarding their entitlements and the hazards associated with unauthorised movement.

Furthermore, legislators must enact a clause that encourages increased involvement of migrant workers in labour unions, allowing them official recognition. The existing framework requires migrant labourers to assert their rights and advocate for the entitlements they rightfully deserve. It is vital for the government to implement consistent monitoring systems in order to protect the welfare of migrant workers. These mechanisms should guarantee equitable remuneration, adherence to conventional working hours, appropriate reimbursement for overtime, and the provision of a secure and favourable living and working environment, among other fundamental factors. Concurrently, it is important to provide migratory employees with the privilege of designating beneficiaries who will receive the contributions they have assiduously accrued. By implementing these measures, it is possible to cultivate an environment of peace and harmony with other nations. It is imperative for the government to adhere to the principles of international law by ensuring equitable and just treatment of all individuals, irrespective of their citizenship status. This dedication will contribute to the nation's overall progress and achievement of its objectives.

CHAPTER FOUR

LEGAL PROTECTION OF MIGRANT WORKERS IN MALAYSIA

4.1 INTRODUCTION

In recent decades, the legalisation of migration workers has emerged as a critical aspect of globalisation, significantly impacting the Malaysian labour market. Consequently, a substantial number of migrant workers from developing and underdeveloped nations, notably Bangladesh and other SAARC countries, are seeking employment opportunities in developed countries. The legalisation of migration workers has become a pressing concern due to the economic and labour demands of the globalised world. As countries strive to meet their workforce needs and address labour shortages, the influx of migrant workers has become a common phenomenon.

Malaysia as a destination country has experienced a significant influx of migrant workers seeking employment opportunities. These migrant workers frequently originate from South Asian countries, such as Bangladesh, as well as other SAARC countries. Economic incentives and the promise of greater opportunities and livelihoods in industrialised countries encourage them to seek work.¹ They seek greater opportunities to improve their lives and stay out of poverty by working in industrialised countries where unskilled or semi-skilled labour is in high demand.²

Furthermore, migrant workers who are or have been engaged in remunerated activities without having Malaysian nationality are referred to as migrant labourers.³ To

¹ International Labour Organization (ILO), <<http://www.ilo.org/global/standards/subjectscovered-by-international-labour-standards/migrant-workers/lang--en/index.htm>> (accessed 12 November 2018).

² Ibid.

³ Ness, Immanuel, "Migration as Economic Imperialism: How International Labour Mobility Undermines Economic Development in Poor Countries," *John Wiley & Sons*, (2023).

put it another way, their non-Malaysian citizenship qualifies them as foreign workers, particularly in this context where employers have hired them. In Malaysia, migrant workers have been among the major contributors to the country's economic development for decades due to its promising employment prospects.

According to a statistical report from the Malaysian Immigration Department, the number of legal foreign workers in Malaysia as of July 31, 2023, was 3 million.⁴ The majority came from Indonesia (34.61 per cent), followed by Bangladesh (28.41 per cent) and Nepal (15.09 per cent). The rest were from different countries: Myanmar, India, Pakistan, the Philippines, Thailand, Vietnam, Sri Lanka, Laos, and China.⁵ They were employed in six major sectors: manufacturing, construction, plantation, services, agriculture, and mining and quarrying. The manufacturing sector employed approximately 35.04 per cent of them, followed by services (22.35 per cent), construction (21.81 per cent), plantations (13.37 per cent), and agriculture (7.42 per cent), with mining and quarrying accounting for less than 1 per cent of their employment.⁶

Migrant workers can be found working in various sectors spanning a wide range of industries. These sectors include construction, agriculture, manufacturing, food processing, electronics, textiles, domestic work, and the entertainment industry, among others. Migrant workers often contribute significantly to the economies of their host countries, filling labour gaps and taking on jobs that may be less desirable or lower in demand among the local population. However, regardless of the specific industry they work in, it is crucial to guarantee adequate protection, fair treatment, and access to their

⁴ International Organization for Migration (IOM), <<https://www.iom.int/countries/malaysia>> (accessed 14 July 2023).

⁵ Ibrahim, M. S., & Razali, R. M, "Perceptions of the Rights and Welfare of Foreign Workers in Peninsular Malaysia," *Pertanika Journal of Social Sciences & Humanities*, vol. 31, no. 2 (2023).

⁶ Ibid.

rights for migrant workers across all sectors. Generally speaking, there are two categories of migrant workers: legal (documented) and illegal (undocumented). Legal migrants possess all essential and valid documents before entering the country, while illegal migrants either lack valid documentation or have their documents expired or confiscated. An estimated 60 per cent of illegal migrants saturate Malaysia's domestic labour market.⁷

Due to poverty, indebtedness, and debt bondage, legal and illegal migrant workers are vulnerable to exploitation and forced to work in horrific working conditions equal to those of slavery, making it impossible for them to escape the host nation. The Global Slavery Index 2016, approximately 45.8 million people in the world are subject to modern slavery.⁸ According to the UDHR, because of their precarious condition, migrant workers are entitled to certain statuses for safeguards.⁹ However, they are often subject to inequalities in the labour market, enjoy very little protection, and are typically exploited and trafficked.¹⁰

Migrant workers in Malaysia are protected from discrimination in the workplace by Malaysian employment legislation, such as the EA of 1955 (West Malaysia), the Sabah Labour Ordinance, the Sarawak Labour Ordinance, the WCA of 1952, the WMSHA of 1990, the CYPAs of 1966, the IRA of 1967, the TUA of 1959, the OSSHA of 1994, the WCA of 1947, the EPFA of 1991, the SOCSO of 1969, the FMA of 1967, and the MWO of 2012. Despite all of these legal frameworks, there are charges that authorities, government agencies, and corporations are not protecting the rights of

⁷ Kong See Hoh, "60% of illegal foreign workers without permanent employment," *The Sun Daily*, 3 July, 2017, <http://www.thesundaily.my/news/2017/07/03/60-illegal-foreign-workers-without-permanent-employment>.

⁸ Ibid.

⁹ The People's Movement for Human Rights Education, <<https://www.pdhre.org/rights/migrants.html>> (accessed 14 November 2019).

¹⁰ Ibid.

migrant workers. They have become the subject of exploitation in forced labour and human trafficking cases.

4.2 LEGAL PROTECTION OF MIGRANT WORKERS: MALAYSIAN LAW

The Constitution, as the nation's highest legal authority, interprets any legislation or policies that do not align with its provisions, potentially rendering them void.¹¹ The Constitution offers individual protection to migrant workers, with specific Sections delineating their constitutional rights and these rights can be best characterised as encompassing the prohibition of the arbitrary deprivation of life or personal liberty¹²; prevention on slavery and forced labour¹³; protection from retrospective criminal laws and repeated trials¹⁴; equality before the law and equal protection of the law, and non-discrimination on the grounds of religion, race, descent, place of birth or gender¹⁵; prohibition of banishment, and the right to freedom of movement¹⁶; the fundamental right to establish associations and engage in peaceful assembly¹⁷; and freedom of religion¹⁸.

In addition, the Industrial Court made reference to article 8(1) of the constitution in order to uphold the principle of equal protection under the law. The court determined that this principle extends to all individuals, including migrant labourers who may not possess work permits or passports. It implemented a similar approach to the IRA of 1967.¹⁹ Articles 8(2), 9, 10, and 12 of the IRA of 1967 apply to residents as they are. In instances where the court has determined that these provisions are unlikely

¹¹ The Federal Constitution of Malaysia (FCM), as amended, Art 4(1).

¹² Ibid, Art 5.

¹³ Ibid, Art 6.

¹⁴ Ibid, Art 7.

¹⁵ Ibid, Art 8(1 and 2).

¹⁶ Ibid, Art 9.

¹⁷ Ibid, Art 10.

¹⁸ Ibid, Art 11.

¹⁹ *Ali Saleh Khalaf v Taj Mahal Hotel* [2014] 4 ILJ 15.

to prohibit individuals who are not residents, migrant workers will surely experience social isolation due to their reliance on factors such as race, place of birth, religion, or gender. Consequently, they may lack secure channels for engagement. However, it is important to note that today, Malaysia has implemented numerous labour laws aimed at safeguarding the rights of migrant workers. The enacted legislation aims to protect the rights of all individuals working in Malaysia, including foreign workers employed in the country.

Moreover, Malaysia's main employment and labour laws include important legislation such as the EA of 1955, the EPF Act, and the IRA of 1967, among others. The "Zaimatulhakma bt Abdul Hamid"²⁰ cases reveal that various sectors within Malaysia, such as agricultural plantations, construction sites, and textile factories, frequently witness instances of forced labour. These industries often subject migrant workers to exploitation and practices that clearly indicate forced labour. These practices include restrictions on their freedom of movement, deceitful wage practices, and passport confiscation. The EA of 1955 provides legal protection for many categories of workers, including employees, manual laborers, supervisors, and individuals engaged in the promotion of machines on behalf of their own companies by mechanical approaches. The IRA of 1967 scope of application encompasses all individuals employed in Malaysia, and this legal framework governs the dynamics of employer-employee relationships.

Moreover, it provides a set of principles for the resolution of conflicts arising between employers and employees. The TUA of 1959 provides the regulatory framework for trade unions in Malaysia. The legislation protects the rights and responsibilities of all individuals who are members of the nation's labour unions.

²⁰ *Zaimatulhakma bt Abdul Hamid lwn Pendakwa Raya* [2022] MLJU 439.

Furthermore, the IRA of 1967 serves as a regulatory framework governing the interactions and dynamics among companies, employees, and labour unions. This includes the development of collective bargaining guidelines and protocols, as well as the management of trade disputes. The IRA of 1967 additionally ensures the right of workers to freely associate. Besides, the legislation enacted in 1991, commonly referred to as the EPF Act, is recognised as the official framework governing the employee provident fund. The legislation requires employers and their employees to make financial contributions to the EPF. The provided EPF exchange rate sets a minimum threshold for the specified amount.

The ESSA of 1969 is a piece of legislation in Malaysia that aims to offer social security benefits to employees.²¹ The entity in question gathers social security funds from both employers and employees through compulsory contributions at a predetermined rate. The EISA of 2017 operates parallel to an insurance scheme, offering certain benefits, such as facilitating re-employment in the event of job loss.²² The Act mandates payment at a predetermined rate.

In general, a “migrant worker” is someone who moves from one country to another in search of work. These phrases classify migrant workers as aliens or non-nationals. This does not, however, imply that migrant workers should have fewer rights under international law. People frequently refer to migrant labourers as “blue-collar workers” because they engage in manual labour. This is in contrast to the term “white-collar workers,” which refers to people who work in offices.²³ The Malaysian EA of

²¹ Merican, Rooshida Merican Binti Abdul Rahim, “Employees’ Rights under the Malaysian Social Security Organisation,” *J. Pol. & L.*, vol. 3 (2010): p. 24.

²² Khoo, Wooi Chen, Kim Leng Yeah, and Shun Yi Hong, “Modeling unemployment duration, determinants and insurance premium pricing of Malaysia: insights from an upper middle-income developing country,” *SN Business & Economics*, vol. 2, no. 8 (2022): p. 116.

²³ Shuhadawati, Noor, Mohamad Amin, Norjihan Abdul, and Zuraini Ab Hamid, “Constitutional Principles in Relation to The Rights of Migrant Workers to Social Security in Malaysia: Adopting the Human Rights Approach,” (2019).

1955 replaces the term “migrant worker” with “foreign employee” to refer to a non-national employee. The word “foreign employee” is defined in the Act as an employee who is not a citizen of the state. Even though the statute does not use the more widely understood phrase “migrant worker,” there is no substantial difference between the two terms other than vocabulary. Both definitions classify a migrant worker as a non-national entity. As a result, the use of a different phrase has no significant impact on the rights of this group of people in the country.

Currently, a number of laws in Malaysia protect migrant workers; the general rule is that if a law does not explicitly forbid its application to migrant workers, it applies to them.²⁴ The flood of legal and illegal foreign workers in Malaysia is a result of industrialisation. The supply of cheap and unskilled workers is more elastic in developing economies. Extreme poverty makes them easy to obtain. Those migrants are forced to accept any type of work in return for any amount of wages. However, this misleads employers into believing that they are treating migrants or foreign workers unfairly by reducing their wages and increasing their working hours.

Recently, Malaysia has outlined its employment law for the benefits and protection of all employees, but some employers still neglect their employees’ basic rights to protection, especially for migrant workers. Regardless of their employment status, forms of exploitation, or legal status, labour trafficking frequently disregards the fundamental rights of employees to protection. Such victims of labour trafficking in Malaysia work in several sectors, including agriculture, construction, domestic service, food service, manufacturing, entertainment, plantations, mining, and quarrying. Indirectly, it depicts victims of human trafficking as “forced labour,” subjected to physical or emotional abuse due to poverty. The low-wage sector often employs the

²⁴ Aziz, Saidatul Nadia Abdul, and Salawati Mat Basir, 30.

victims of labour trafficking illegally and without providing health or security insurance.

4.2.1 Employment Act 1955

As it stands, the Malaysian EA of 1955 does not exhibit discrimination against migrant labour. However, in practice, the effective protection of migrant workers' rights falls short. These individuals often face exploitation, with cases of abuse, debt bondage, and forced labour being distressingly common. Consequently, the entitlement of migrant employees to basic benefits, as outlined in the EA of 1955, the Sabah Labour Ordinance, and the Sarawak Labour Ordinance, is inadequate. It is important to recognise the disparity between the theoretical provisions of the Malaysian EA of 1955 and the actual experiences of migrant workers. While the law may appear to provide equal protection, the prevailing realities reveal significant gaps in ensuring the well-being and rights of these individuals. Measures must be taken to bridge this implementation gap and provide migrant workers with more robust safeguards and comprehensive protection under the law. The statutes are concerned with monetary benefits such as annual leave, sick leave, maternity allowance, and overtime work. Therefore, the EA of 1955 is of a compelling nature, so failure to provide any of those benefits is an offence, and employers could be prosecuted in court if they fail to adhere.²⁵ The EA of 1955 is a legal guideline for employees.

According to Section 2 of the EA 1955, a “foreign employee” is not a citizen, whereas an “employee” is any person or class of people: (a) They are included in any classification in the First Schedule to the extent specified in that; (b) They are subject to the Minister’s order under sub-Section; or (3) or Section 2A. In the First Schedule,

²⁵ Othman, Siti Awanis, and Rohani Abdul Rahim, “Migrant workers in Malaysia: protection of employers,” *Pertanika journal of social sciences and humanities*, vol. 22, no. S (2014): p. 271-282.

item 1 describes the first category of workers as follows: any person, regardless of his occupation, who has gone into an agreement with the administration with an employer under which such individual's wages do not surpass one thousand five hundred ringgit a month.²⁶ The EA of 1995 is one of the basic legal protections for migrant workers in Malaysia. Due to a lack of education and awareness, most of them are unfamiliar with Malaysian employment laws and their legal rights. One survey reveals that the majority of respondents were unaware of the laws governing employment contact with employers and other benefits. Only a small percentage of respondents' expressed concern about their salaries, over time, and other benefits.²⁷

In addition, the interpretation of employees denotes that any person who enters into an agreement with an employer to perform any occupation should be entitled to wages, regardless of whether the person is a Malaysian or non-Malaysian. Furthermore, Section 60L specifies that discrimination is illegal and that businesses should treat their employees equally, regardless of whether they are local or migrant workers. It means that the Director General of Labour (DGL) of Malaysia has the right to investigate and interrogate any complaints made by either local or migrant workers against their employer's discrimination in the workplace.²⁸

The EA of 1955 also protects local workers from retrenchment.²⁹ For example, in the case of retrenchment, employers should first terminate migrant workers in the same capacity as local workers before terminating local workers.³⁰ The evidence suggests that migrant workers do not receive equal protection compared to local workers. Additionally, there are instances where employers fail to pay migrant workers

²⁶ First Schedule of Employment Act (EA) 1955, Sec 1.

²⁷ Anonymous migrant workers, Interview by Author. Gombak, 10 February, 2020.

²⁸ EA, Sec 60L.

²⁹ Marsono, Hamidah, and Jusoff Kamaruzaman, "Retrenchment in Malaysia: Employer's right," *J. Pol. & L.*, vol. 1 (2008): p. 22.

³⁰ Devadason, Evelyn Shyamala, and Chan Wai Meng, 8.

according to the terms specified in their employment contracts. The EA of 1955 primarily aims to protect Malaysians from unemployment by prohibiting employers from terminating local workers to hire migrant workers.³¹ Employers may reduce or withhold their wages and, in certain industries, fail to provide them with designated rest days as mandated by labour laws. These practices not only violate the rights of migrant workers but also contribute to their exploitation and vulnerability in the labour market.

Addressing these issues requires stronger enforcement of labour laws and regulations, as well as increased awareness and advocacy for the rights of migrant workers.³² Some respondents urge that in emergency cases they go to their home countries with 17-day office leaves, but if they stay more than 17 days, the employer deducts their salaries or imposes some other penalties.³³ A large number of respondents said that the agent confiscated their passport, and as a result, they cannot move freely, even though they did not provide any identity cards for the employees.³⁴

Furthermore, Section 60A of the EA 1955 stipulates that migrant workers must work a maximum of eight hours per day, including breaks, for a total of 48 hours per week. Any additional work beyond this limit is considered overtime, necessitating employers to provide overtime payments.³⁵ Long working hours with little wages have infringed employees' rights under this Act. Additionally, Sections 91 and 92 of this Act criminalise employers who fail to pay wages for more than a month, subjecting them to prosecution.³⁶ The ATIPSOM of 2007 underscores the potential penalties for employers

³¹ Low, Choo Chin, "Legal reforms in protecting migrant workers' welfare in Malaysia: Labor law and social security." *Advances in Southeast Asian Studies*, vol. 14, no. 1 (2021): p. 59-80.

³² P. Pattison, "Workers for McDonald's in Malaysia say they were victims of labour exploitation," *The Guardian*, 28 November, 2016, <https://www.theguardian.com/global-development/2016/nov/28/workers-for-mcdonalds-malaysiaclaim-labour-exploitation>.

³³ Anonymous migrant workers, Interview by Author. Chow kit, 10 February, 2020.

³⁴ Anonymous migrant workers, Interview by Author. Sentul, 10 February, 2020.

³⁵ EA, Sec 60A.

³⁶ Hamid et al., "Rights of migrant workers under Malaysian employment law," *JE Asia & Int'l L*, vol. 11 (2018): p. 359.

who fail to pay their employees for over three months or reduce their salaries by more than 70 per cent and people regard this as a form of forced labour.³⁷ Next, Part XIIB of the EA of 1955 contains general provisions regarding foreign employees, but is silent on the migrant workers' right to protection.³⁸ The EA of 1955 aims to give protection to both local and migrant workers.³⁹ However, protection has not entirely been exercised equally for migrant workers, as stated in the Act. The authority's lack of supervision in enforcing the rights of migrants opens the door for employers to treat employees unfairly. Free movement is another big issue for migrant workers. Many respondents reported that, despite possessing a valid employment pass, they are unable to relocate from their place of employment. Frequently, law enforcement authorities inquire about their reason for coming to this location, as it is not their place of employment.⁴⁰ On top of that, the authority does nothing to address the issues.

In early 2018, Penang reported an incidence of domestic worker abuse that resulted in deaths. Her employer treated a domestic worker like a slave and abused her on a regular basis. Her boss brutally beat her until she tragically died from organ failure. Her employer heartlessly abandoned the maid, along with the family dog, to die on the porch.⁴¹ The described situation serves as a distressing example of modern-day slavery, exposing workers to various forms of exploitation, abuse, and violations of their basic human rights. These abuses encompass situations where workers remain unpaid for extended periods, face salary deductions, face inadequate food access, endure deplorable living and working conditions, and face sexual and physical abuse. In addition, employers may force them to work excessive hours, deny them rest days for

³⁷ Ibid., 169.

³⁸ Ibid.

³⁹ Akahsah et al., "Migrant Workers with Social Security in Malaysia: Are they being discriminated against?" *Environment-Behaviour Proceedings Journal*, vol. 5, no. S11 (2020): p. 61-66.

⁴⁰ Anonymous migrant workers, Interview by Author. Selayang, 10 February, 2020.

⁴¹ Ibid.

prolonged periods, and confiscate their personal documents, such as passports. These practices are unacceptable and require immediate attention and intervention to protect the rights and dignity of these workers. Robust enforcement of labour laws, enhanced monitoring and regulation, and the implementation of effective support mechanisms are crucial in addressing this grave issue and eradicating modern-day slavery.⁴² The Ministry of Human Resources finally announced the revision of the EA of 1955 (Amendment 2022) in response to the inadequacy of migrant worker protection, which came into force on January 1, 2023. The existing regulations under the EA of 1955 include several amendments that will have implications for migrant employees' conditions.

Nevertheless, there are certain amendments that will yield benefits for various kinds of labourers, including migrant workers. The Act aims to limit the occurrence of coerced labour, and in the event of a conviction, individuals may face a penalty of up to RM1,00,000, a maximum incarceration term of two years, or both. Due to EA (amendments 2022), the law now applies to all employees, regardless of income or occupation. This is due to the increase in the Act's coverage. This would encompass aspects such as annual leave, sick leave, and statutory deductions. Additionally, it would encompass factors like wage periods, payment timing, methods of wage disbursement, and related matters.

4.2.2 Employment Provident Fund Act 1991

The EPFA of 1991 was passed in order to offer social security in the form of retirement benefits for workers.⁴³ The EPF is a mandatory savings plan for local employees.

⁴² Ibid., 170.

⁴³ Abd Samad, Suhaimi, and Norma Mansor, "Population ageing and social protection in Malaysia," *Malaysian Journal of Economic Studies*, vol. 50, no. 2 (2013): p. 139-156.

Although article 8 of the Federal Constitution ensures equal treatment for all individuals, there appears to be a disparity in the retirement program between local workers and migrant workers. However, migrant workers may choose to contribute to the scheme if they so desire. Provisions concerning contributions to the EPF made by individuals who are not nationals of Malaysia can be found in Part VIIA of EPFA of 1991.⁴⁴ In Malaysia, migrant workers still only receive the bare minimum in retirement benefits, indicating a relatively low level of protection.

According to EPFA, if migrant workers intend to contribute, 11 per cent of their wages will be deducted, and employers should pay a maximum of RM5 after the year 1998, and before the year, employers must comply with the 12 per cent payment.⁴⁵ However, because the EPF scheme is not mandatory for migrant workers, employers cannot force them to make EPF contributions.⁴⁶ The compulsion of payment for migrants is known as forced labour. Aside from that, the EPF contributions for migrant workers are similar to those of local workers. If there is any difference in the amount payable by employers, they are not allowed to register nominees for their fund.⁴⁷ There is indirect discrimination between local and migrant workers, even though EA of 1955 and the Federal Constitution prohibit discrimination against any individual.

Conversely, the UDHR, which guarantees everyone the right to fair rewards regardless of nationality, forbids discrimination among workers. The EPFA of 1991 seems to neglect the fair rights of migrant workers during employment. Under Section 70G of the Act, non-citizens would no longer be required to contribute in the two months before their work permit or Act expires.⁴⁸ Furthermore, the migrant workers'

⁴⁴ Amin Noor Shuhadawati Mohamad, Norjihhan Abdul Aziz, and Zuraini Ab Hamid, "Limitations of Social Security Laws and Policies Vis-A-Vis Migrant Workers in Malaysia," *JMCL*, vol. 44 (2017): p.21.

⁴⁵ *Ibid.*

⁴⁶ Devadason, Evelyn Shyamala, and Chan Wai Meng, 8.

⁴⁷ *Ibid.*

⁴⁸ Employment Provident Fund Act (EPFA), 1991, Sec 70G.

home countries cannot receive their protected social security benefits back. This is due to the fact that Malaysia and the migrants' home countries have not reached any agreements regarding the topic, either bilaterally or multilaterally.⁴⁹ Insofar as migratory employees are concerned, the EPFA will take care of the benefits associated with their retirement savings accounts. Despite this fact, it is important to highlight that specific legal barriers exist for migrant workers, most of which stem from their classification as "migrants."⁵⁰

According to the survey, due to a lack of education and awareness, many respondents were unaware of the Malaysian EPFA of 1991. They did not receive any benefits from those acts. The EPFA of 1991 grants social security rights to migrant workers in Malaysia, but none of the respondents got such types of benefits from their employer.⁵¹ This lack of awareness among the respondents reflects a significant gap in the dissemination of information regarding the rights and protections available under the EPFA of 1991. The absence of benefits, despite the legal provisions, highlights a broader issue of non-compliance by employers, which undermines the social security framework intended to safeguard migrant workers. To address this, there needs to be a concerted effort by both the government and advocacy groups to ensure that workers are informed and that employers are held accountable for adhering to the law.

4.2.3 Workmen's Compensation Act 1952

The WCA of 1952 was enacted to safeguard employees from workplace accidents and occupational diseases.⁵² This Act only focusses on foreign workers, as SOCSO of 1969

⁴⁹ EPFA, Sec 70G.

⁵⁰ Hamid et al, 169.

⁵¹ Anonymous migrant workers, Interview by Author. Rawang, 10 February, 2020.

⁵² Mustaffa, Aminuddin, Cherifi Noura, and Md Mahbulul Haque, "Right of Migrant Workers to Occupational Health and Safety Under Malaysia Laws," *International Journal of Law, Government, and Communication*, vol. 6, no. 26 (2021): p. 48-60.

provides protection for local workers. This Act mandates that employers bear responsibility for any compensation they provide to migrant employees, including medical or rehabilitation expenses. The purpose of the WCA of 1952 is to provide compensation to employees who suffer any type of workplace damage.⁵³ Furthermore, in the event of a temporary disability, foreign workers receive half of their monthly pay, or RM165, while local workers receive a minimum of RM10 and a maximum of RM78.67 each day. Depending on their age, migrant employees receive a compensation cap of RM23,000, while local workers receive a minimum of RM10 and a maximum of RM88.50 a day in the event of a permanent total disability. However, the disparity in remuneration suggests that migrant workers receive less than native labour. According to article 23(3) of the UDHR, every person has the right to exist and receive higher remuneration, yet authorities infringe on migrants' rights based on a variety of factors.⁵⁴ In any case, every human life is precious and entitled to equal protection. No one should be subjected to discrimination in any form of marginalisation or unreasonable, unequal treatment.

Moreover, employers must ensure workers' liabilities for any injuries sustained during employment, and workers have the right to properly request compensation from the employer.⁵⁵ On the other hand, migrant workers are not eligible for compensation unless they have valid insurance.⁵⁶ The WCA of 1952, on the other hand, does not guarantee that migrant employees are eligible for compensation for their injuries, whereas the SOCSO is available to native workers.⁵⁷ Employers fail to compensate migrant workers accordingly, as the regulation is vague regarding the welfare of migrant

⁵³ Merican, Rooshida Merican Binti Abdul Rahim, 165.

⁵⁴ UDHR, Art 23(3).

⁵⁵ Hamid, Zuraini Ab, Siti Fazilah Abdul Shukor, and Ashgar Ali Ali Mohamed, 130.

⁵⁶ Ibid.

⁵⁷ Akahsah et al, 170.

workers. A number of migrant workers from construction, factories, and plantations witnessed that, in the event of a minor injury during employment, they did not receive any compensation, and the employer did not agree to provide any emergency or medical leave.⁵⁸ Thus, this could lead to exploitation of migrant workers, as some employers may refuse to pay medical fees or provide better medical treatment.

In addition, some employers employ the neglect of migrant workers' welfare as a strategy to evade their obligations and deny migrant workers their rights. Employers who fail to provide adequate support, fair treatment, and essential benefits to migrant workers may seek to exploit their vulnerable position and avoid fulfilling their legal and ethical responsibilities. Some respondents in the construction sector told that, without permission from the agent, the employer did not allow any leave for employment injury, and in case of medical leave for 1 or 2 days, the agent deducted salaries from the employees.⁵⁹ This neglect can manifest in various forms, including withholding proper wages, denying access to social protection schemes, disregarding occupational health and safety standards, and creating hostile working environments.

Moreover, such actions not only violate the rights of migrant workers but also perpetuate inequality and exploitation. Governments, employers, and relevant stakeholders must effectively address this issue to safeguard the welfare of migrant workers and uphold their rights. This requires robust enforcement of labour laws, effective oversight mechanisms, and initiatives that promote fair and dignified treatment for all workers, regardless of their migrant status. During FGD and face-to-face interviews with Bangladeshi migrant workers, the researcher enquired about the WCA of 1952 and its provisions for protecting employment injuries. However, only a small number of workers expressed concern about their own employment injuries rather than

⁵⁸ Anonymous migrant workers, Interview by Author. Kotaraya, 10 February, 2020.

⁵⁹ Anonymous migrant workers, Interview by Author. Pudu, 10 February, 2020.

the laws in place.⁶⁰ This indifference towards the legal protections highlights a critical gap in both awareness and enforcement, leaving workers vulnerable to exploitation and neglect. The lack of compensation and refusal of medical leave not only violate the provisions of the FWCA and FWHSS but also indicate a systemic failure to ensure workers' rights are upheld. Strengthening the enforcement of these laws and increasing workers' awareness of their rights are essential steps towards improving their safety and well-being in the workplace.

4.2.4 Industrial Relation Act 1967

The IRA of 1967 aims to establish a framework for governing the interactions between employers, workers, and their trade unions. The IRA of 1967 is a prominent legislative framework that governs employment interactions in Malaysia. It encompasses several provisions, including those pertaining to representation in cases of unjust dismissal, claims for recognition by trade unions, and the facilitation of collective bargaining. Its primary objectives include preventing and resolving conflicts and disputes that may arise from these relationships, as well as comprehensively managing trade disputes and associated issues. The IRA of 1967 intends to: (i) foster and sustain industrial harmony; (ii) offer a kind of regulation of the connection between employers, employees, and trade unions; (iii) prevent or resolve any differences or conflicts emerging from the relationship; and (iv) deal with trade disputes in general.⁶¹ In general, the IRA of 1967 allows both employees and employers to resolve their disputes. Nevertheless, the IRA solely focusses on solving disputes between employers and employees without specific provisions to protect the rights of migrant workers. Section 4 of this Act denotes the

⁶⁰ Anonymous migrant workers, Interview by Author. Cyberjaya, 11 February, 2020.

⁶¹ Preamble, Industrial Relation Act (IRA) 1967, <
https://jpp.mohr.gov.my/files/pdf/acts/010721_Act%20177_final.pdf> (accessed 18 May 2022).

rights of workers and employees, which give more focus to the formation of trade unions. However, these issues are primarily related to their employment visa or work permit, which their employers have historically abused by cancelling their documents, leaving them as illegal migrants.⁶² Migrant workers have the right to access justice against their employers. They are allowed to lodge complaints against the employers with the Labour Department and alert the Labour Court or Industrial Relations Department to be heard at the Industrial Court.⁶³

Additionally, while documented migrants have the opportunity to seek justice, undocumented migrants face a grave disadvantage due to the indefinite denial of their rights. Unfortunately, the majority of migrant workers find themselves in undocumented status due to exploitation by their employers. Consequently, they are unable to file cases to address instances of unjust treatment by their employers. Undocumented migrant workers, left vulnerable and without recourse for any mistreatment they may experience, face an alarming situation due to this stark disparity in access to justice. Some respondents clarified that, in the event of a layoff or business closure, the employer or agent first removes the foreign workers. Even though they have a valid employment pass and are returning to their home country, they cannot stay or work in Malaysia after their removal from employment.⁶⁴ Their lack of legal status and fear of reprisal further exacerbate their challenges in seeking redress for any injustices they endure.

Since the legislation remains silent on granting access to migrant employees, migrant workers without documents encounter difficulties in seeking justice when they suffer harm or exploitation from employers. Thus, a specific regulation is required for

⁶² Ibid., 176.

⁶³ Mohamed, Ashgar Ali, "A critical appraisal of the adjudication process of dismissal under the Industrial Relations Act 1967," *INSAF, Journal of the Malaysian Bar*, vol. 31 (2004).

⁶⁴ Anonymous migrant workers, Interview by Author. Puchong, 11 February, 2020.

the fair treatment of migrant workers, just like local workers. A small number of respondents consistently fear being illegally dismissed from their job by either the agent or the employer, regardless of whether they have an employment contract or not. The IRA of 1967 guarantees all the legal employees to perform their jobs, and in case of termination, the employer provides a valid reason for termination and gives them some time.⁶⁵ This persistent fear among workers, despite the protections outlined in the IRA of 1967, underscores the limited effectiveness of the Act's implementation. The tendency to target foreign workers first during layoffs or business closures further exacerbates their vulnerability and raises questions about the fairness and equity in migrant workers' treatment. Fostering a more just and secure working environment requires actively enforcing these legal safeguards and fully informing workers of their rights.

4.2.5 Trade Union Act 1959

The TUA of 1959 aims to provide union members with social security and rights. The TUA of 1959s primary goal is to regulate the operations and conduct of trade unions in order to foster their systematic and harmonious growth. The legislation establishes rigorous legal and procedural requirements for the establishment and functioning of labour unions in Malaysia. According to the EA of 1955 and the IRA of 1967, in Malaysia, foreign workers can join a trade union at any employer.⁶⁶ The TUA of 1959 encompasses all provisions that are relevant and applicable to migrant workers in Malaysia. The legislation in question affirms the rights of both employees and employers to establish and join labour unions. Additionally, it acknowledges the inclusion of migrant workers in trade union operations. Besides, there is no specific

⁶⁵ Anonymous migrant workers, Interview by Author. Rawang, 11 February, 2020.

⁶⁶ EA, Sec 8, and IRA, Sec 4.

definition of employees and workers that solely focusses on Malaysia. The definition indicates any person, including locals and migrants. Section 8 of the EA of 1955 explicitly declares that no provision in any employment contract can limit an individual's right to join a trade union, engage in activities organised by the trade union, or be associated with any trade union. The investigation revealed that a significant proportion of foreign workers employed in various industries are either unaware of trade unions or have never participated in such activities in Malaysia. This is the case for the majority of the foreign workers. According to the statement of the few respondents, they had never participated in any activity in Malaysia that was associated with trade unions.⁶⁷ Some others responded stated that they had never ever heard of these statutes, which are referred to as "trade union."⁶⁸

Moreover, this provision unequivocally affirms that both local and migrant workers possess the freedom to become members of any trade union operating at their workplace. It also establishes that no one can lawfully deny their participation in trade union activities. Section 2 of the TUA of 1959 defines a trade union is defined as an association or combination of workers or employers.⁶⁹ These workers are specifically those whose place of employment is located in West Malaysia, Sabah, or Sarawak, or employers that employ workers in these regions.

Furthermore, Section 4 of the IRA of 1967 indicates that no person shall interfere with any workmen or employee by retraining or coercing them to exercise their rights in a trade union, the administration and function of a trade union, or acting on behalf of and under the influence of any workmen or employee of any trade union.⁷⁰ Ultimately, it gives full rights to workmen's or employees by not allowing anybody to

⁶⁷ Anonymous migrant workers, Interview by Author. Selayang, 11 February, 2020.

⁶⁸ Anonymous migrant workers, Interview by Author. Gombak, 11 February, 2020.

⁶⁹ TUA, Sec 2.

⁷⁰ IRA, Sec 4.

interfere in the establishment and management of trade unions, regardless of whether employers, outsiders, or other unions are involved, because it may result in disputes. Indirectly, migrants are discriminated against from holding any executive position in a trade union, which in fact violates their rights under article 8 of the Federal Constitution. Nevertheless, Section 28(1) of the IRA of 1967⁷¹ states that migrant workers are disqualified for the election of any executive position in a trade union. The voices of foreign workers in trade unions are rarely heard, and unscrupulous employers frequently refuse their participation.⁷² Migrant employees do not have the right to join a union or get protection under the Act in this regard. This lack of awareness and participation in trade unions highlights a major barrier to the social protection and collective bargaining rights that unions are meant to provide. Without engagement in these unions, migrant workers miss out on crucial support systems that could advocate for their rights and improve their working conditions. The absence of widespread knowledge about the TUA of 1959 further underscores the need for targeted outreach and education efforts to empower workers to take advantage of these legal provisions.

4.2.6 Worker's Minimum Standard of Housing and Amenities Act 1990

The WMSHA of 2019 (Act 446) extended the provision of housing and accommodation for workers across all employment sectors on June 1, 2020. The policy's full enforcement will begin on September 1. One significant revision in Malaysia's labour legislation is the modification made to the WMSHA of 1990.⁷³ The amendments introduced to Act 466 broadened the scope of the existing legislation to encompass a multitude of economic sectors, including plantations, construction, and manufacturing.

⁷¹ Ibid., 179, Sec 28(1).

⁷² Seidman, Gay W, "Beyond the boycott: Labour rights, human rights, and transnational activism," *Russell Sage Foundation*, (2007).

⁷³ Low, Choo Chin, 169.

The revisions were designed with the objective of ensuring adherence to international standards among emerging nations while simultaneously fostering sustainable economic growth and attracting foreign investment.⁷⁴ This is due to inadequate education and restricted awareness, a significant number of the respondents who participated in the survey had no prior experience with the WMSHA of 1990.⁷⁵

In addition, the WMSHA (Amendment) Bill 2019 was enacted in Parliament with the goal of raising the minimum standard of housing and providing basic facilities for workers in all sectors. According to the former human resources minister, M. Kula Segaran, when tabling the bill for the second reading, amendments to the MWSHA of 1990 aimed to ensure that workers in all industries have better housing and accommodations, as well as improved health and safety regulations.⁷⁶ He also added that the existing law only applied to employers in the plantation and mining sectors that provide housing facilities to their workers. Many respondents assert that they resided in accommodations provided by their companies or agents, yet they endured appalling living conditions, including cramped rooms, inadequate ventilation, subpar sanitation systems, unclean water dispensers, unhygienic and filthy cooking spaces, among others.⁷⁷ These deplorable living conditions not only violate the standards set by the WMSHA of 1990, but they also pose serious health risks to workers. Addressing these issues requires urgent intervention and stricter enforcement of housing standards to ensure that workers are provided with safe and humane living conditions. The lack of privacy and basic sanitary facilities further exacerbates their hardships, creating an environment that is detrimental to their physical and mental well-being.

⁷⁴ Ibid., 180.

⁷⁵ Anonymous migrant workers, Interview by Author. Sentul, 12 February, 2020.

⁷⁶ Veena Babulal, "Human Resources Ministry to amend, update labour law," *New Straits Times*, 23 April, 2019, <https://www.nst.com.my/news/nation/2019/04/482422/human-resources-ministry-amend-update-labour-law>.

⁷⁷ Anonymous migrant workers, Interview by Author. Rawang, 12 February, 2020.

4.2.7 Occupational Safety and Health Act 1994

On February 25, 1994, the Malaysian Parliament gazetted the OSHA of 1994.⁷⁸ The Act's principle is "to make further provision for the safety, health, and welfare of persons at work, for protecting others against risks to safety or health in connection with the activities of persons at work, to establish the National Council for Occupational Safety and Health, and for matters connected therewith." The OSHA of 1994 pertains to the protection of employees' well-being, physical health, and overall safety across all types of workplaces. According to the OSHA regulations, employers bear the responsibility of establishing and maintaining a safe and healthy workplace. This entails providing and maintaining secure factories and work systems, providing workers with safety and health guidance and training, and developing health and safety rules.⁷⁹ The OSHA breach is considered a criminal offence, and the penalties accompanying it are more stringent than those for violating the EA of 1955. As per the guidelines set forth by the OSHA, companies that fail to adhere to the prescribed norms and obligations may face penalties of up to RM50,000 in fines and a maximum imprisonment term of two years, or both.⁸⁰

Additionally, the OSHA of 1994 was enacted to safeguard the safety and health rights of migrant employees within their respective workplaces. This Act is applicable to workers in specified sectors, including construction, manufacturing, agriculture, mining, transport, and protection under domestic laws, as well as storage, hotel, and restaurant industries. The Act covers the sectors listed in the First Schedule throughout Malaysia. This legislation does not apply to labour on board ships governed by the Merchant Shipping Ordinance of 1952 [Ord. No. 70 of 1952], the Merchant Shipping

⁷⁸ Amirah et al., "Safety culture in combating occupational safety and health problems in the Malaysian manufacturing sectors," *Asian Social Science*, vol. 9, no. 3 (2013): p. 182.

⁷⁹ OSHA, Sec 15(2).

⁸⁰ Ibid, Sec 19.

Ordinance of Sabah [Sabah Ord. No. 11 of 1960] or Sarawak [Sarawak Ord. No. 2 of 1960], or the armed services.⁸¹ Under this Act, the employer bears ultimate responsibility for ensuring health and safety in the workplace.

It is important to acknowledge that all individuals have a role to fulfil in the management of health and safety. Regardless of their job titles, such as managers, supervisors, or general operators, all employees have an obligation to meet the employer's expectations. This is due to inadequate education and limited awareness, only a few respondents are aware of the OHSA of 1994.⁸² Normally, in factories and construction sites, it is required that all types of safety tools have to be presented or arranged. Failure to arrange sufficient and appropriate safety tools can lead to potentially hazardous situations. Many respondents in the construction sector reported that they lack safety tools when working in risky positions, and their company only provides them with boots and caps, which is insufficient to ensure their safety.⁸³

In addition, this insufficient provision of safety equipment indicates a troubling disregard for worker safety, particularly in high-risk environments like construction sites. The minimal protection offered by boots and caps falls far short of the comprehensive safety measures mandated by the OSHA of 1994, leaving workers vulnerable to serious injuries. Ensuring strict adherence to this Act is essential to prevent accidents and safeguard the well-being of all employees in hazardous occupations.

⁸¹ Occupational Health & Safety Act (OHSA) 1994, <https://en.wikipedia.org/wiki/Occupational_Safety_and_Health_Act_1994> (accessed 18 November 2020).

⁸² Anonymous migrant workers, Interview by Author. Selayang, 12 February, 2020.

⁸³ Anonymous migrant workers, Interview by Author. Chow kit, 12 February, 2020.

4.2.8 Wages Council Act 1947

The WCA of 1947 aims to establish wages councils and enact regulations pertaining to workers' compensation and employment conditions in specific circumstances. Minimum wages have a rich and extensive historical background, originating in New Zealand in 1894 and subsequently expanding to the UK in 1909.⁸⁴ Currently, over 90 per cent of countries worldwide implement minimum wage regulations, albeit in diverse formats and structures. In its Global Wage Report 2012-13, the ILO⁸⁵ encourages the member countries to apply minimum wages as part of the Decent Work Agenda to combat working poverty and give social security to vulnerable workers. The MWO of 2018 mandates that all Malaysian employees receive the minimum pay.⁸⁶ The Minimum Retirement Age Act sets the minimum retirement age at 60 years, but adherence to this age is not required. Legal regulations prohibit employers from terminating employees who have not yet met the specified age requirement.

Furthermore, by definition, minimum wages establish a “legal floor wage” that prohibits employers from paying employees less than the minimum wage rate. All other statutory payments, such as social security contributions, provident fund payments, and overtime labour payments, are based on the “legal floor wage.” The ILO describes minimum wages as a “safety net” that guarantees employees an acceptable basic quality of living. The government may use minimum wages as one of its many tools to combat poverty and wage disparities in the labour market. Since the policy's announcement, the MOHR has conducted a series of consultations and deliberations to ensure its implementation. In order to fully implement this policy, the ministry of human rights

⁸⁴ Neumark, David, and William L. Wascher, “Minimum wages.” (MIT Press, 2008).

⁸⁵ Stockhammer, Engelbert, “Wage-led Growth: An equitable strategy for economic recovery.” (Springer, 2013).

⁸⁶ Devadason, Evelyn S, “Foreign labour policy and employment in manufacturing: The case of Malaysia,” *Journal of Contemporary Asia*, vol. 51, no. 3 (2021): p. 398-418.

held over 100 discussions and consultations with various stakeholders, including employers' and employees' organisations, trade unions, NGO's, state governments, the ILO, the World Bank, and online blogs.⁸⁷ According to the survey, only a small percentage of respondents are unaware of the concept of "minimum wages," because they came to Malaysia very recently, working less than one year. Despite the fact that the majority of foreign workers are extremely concerned about their wages.⁸⁸ Regarding the MWA of 2016, most of the respondents agree that they will receive wages as per government policy, and only a few respondents complain that some agents illegally deduct their wages on several issues, like transportation costs, house rent, electricity bills, and water bills.⁸⁹ However, the practice of illegal wage deductions significantly undermines the intent of the MWO, leaving workers with far less than the mandated amount. This exploitation not only violates the law but also exacerbates the financial struggles of these workers, who often rely on their full wages to support families back home. Greater oversight and stricter enforcement of wage laws are necessary to ensure that all workers receive their rightful earnings without unlawful deductions.

4.2.9 Employment (Termination and Lay-Off Benefits) Regulation 1980

The Employment (Termination and Lay-Off Benefits) Regulations of 1980 state that employees are eligible to receive termination benefits payments when their employment contracts expire, unless the termination is due to employee misconduct. According to Section 14 of the EA of 1955, an employer may dismiss an employee without notice for misconduct that is inconsistent with the fulfillment of his employment's express or implied conditions, downgrade the employee, or impose any other lesser punishment

⁸⁷ Datuk Seri Zainal Rahim Seman, "Malaysia implements minimum wages" *The Star*, 09 January, 2014, <https://www.thestar.com.my/News/Nation/2014/01/09/Malaysia-implements-minimum-wages/>.

⁸⁸ Anonymous migrant workers, Interview by Author. Kotaraya, 12 February, 2020.

⁸⁹ Anonymous migrant workers, Interview by Author. Pudu, 12 February, 2020.

that he deems just and appropriate after a thorough investigation.⁹⁰ The provisions concerning payment based on years of service will not be applicable or payable in cases where an employee has engaged in misconduct and there exist justifiable grounds for their termination. It is important to note that while the IRA of 1967 is applicable across the peninsula, the EA of 1955 and its related legislation vary in different regions. For instance, Sarawak's Labour Ordinance 1952 contains provisions that are largely similar to those outlined in Sabah's Labour Ordinance 1950.⁹¹

4.2.10 Employees' Social Security Act (SOCSO) 1969

Malaysia established the Employees' Social Security Act of 1969 as a piece of legislation to provide social security coverage in specific situations and address related problems. The Social Security Organisation is responsible for enforcing the law. The ESSA of 1969 was designed in Malaysia to provide social security in specific circumstances and address related issues. The Social Security Administration is in charge of enforcing the law.⁹²

In addition, the Ministry of Human Resources has established the SOCSO as a legislative entity. The Ministry of Human Resources founded the SOCSO in January 1971 with the aim of enhancing social security protection through social insurance. The job injury insurance scheme covers accidents that occur while travelling, as well as incidents arising out of and in the course of employment and occupational diseases, whereas the invalidity pension scheme covers invalidity or death due to causes unrelated to work. This includes medical and cash benefits, as well as the provision of artificial

⁹⁰ EA, Sec 14.

⁹¹ Bhag Singh, "Options on Termination," *The Star*, 08 October, 2015, <https://www.thestar.com.my/opinion/columnists/law-for-everyone/2015/10/08/options-on-termination-an-employee-losing-his-job-must-know-whether-he-wants-his-job-back-or-merely>.

⁹² Employees Social Securities Act (ESSA) 1969, <https://en.wikipedia.org/wiki/Employees%27_Social_Security_Act_1969> (accessed 17 January 2020).

aids and rehabilitation to employees, aiming to alleviate their suffering and provide financial guarantees and protection for their families.⁹³ Medical benefits, short-term and stable disability benefits, constant attendance allowance, dependents' benefits, burial benefits, rehabilitation and education benefits, survivors' pensions, and invalidity grants are just a few of the benefits available.⁹⁴ According to the SOCSO, a person who works for a company or industry covered by the ESSA of 1969 is considered an employee. Regardless of the industry or employee's registration with the SOCSO, the employee is the "insured person."⁹⁵ An insured person is defined as someone who is or was employed in an industry covered by the Act.⁹⁶ According to *Liang Jee Keng v. Yik Kee Restaurant Sdn. Bhd.*, an employee remains an insured individual even if they registered with the SOCSO office two days after the disaster and made no contributions at that time.⁹⁷

In 1971, the ESSA of 1969 was enacted to protect employees and their families from financial and social hardships in the event of workplace injuries or deaths. In other words, this Act provides certain benefits⁹⁸ to the workers in the event of sickness or accident at work, including occupational diseases. The Act's applicability and, as a result, the obligation undertaken by the SOCSO on behalf of the employers are quite broad. On the other hand, the SOCSO no longer provides protection for foreign workers; instead, the WCA of 1952 does. The Act funds the SOCSO's social security programs with mandatory contributions from both employers and employees. A contribution is

⁹³ Gomez et al., "Minister of Finance Incorporated: Ownership and control of corporate Malaysia." (Springer, 2017).

⁹⁴ Mansor, Norma, and Nur Fakhri Ab Rashid, "Components of Social Protection: A Comparison between South Korea and Malaysia," (2016): p. 69-90.

⁹⁵ ESSA, Section 2(11). See also Chan Shick Chin, *Personal Injury Law, Practice and Precedents*, Kuala Lumpur, *Malayan Law Journal*, (2004): p. 98.

⁹⁶ *Abdul Rahim bin Mohammad v. Kejuruteraan Besi dan Pembinaan Zaman Kini* [1998] 4 M.L.J. 323, 327.

⁹⁷ *Liang Jee Keng v. Yik Kee Restaurant Sdn. Bhd* [2002] 2 C.L.J. 750.

⁹⁸ ESSA, Sec 15.

the amount that the major employer pays to the organisation on behalf of the insured employee.⁹⁹ In general, the ESSA of 1969 applies to all private-sector industries in Malaysia that employ one or more workers.¹⁰⁰ Because the term “industry” has such a broad definition.¹⁰¹ Since 1983, public sector employees have been exempted because they are covered by the Pension Act of 1980¹⁰² and have access to medical benefits as part of their employment contract.¹⁰³ With the approval of his or her employer, an employee who has never been registered with or contributed to the SOCSO and earns more than RM2,000 per month is offered the option of being covered under the Act. This principle of once-in-always-in means that once an employee has made a contribution, he or she is obligated to make contributions in the future, even if his or her wages surpass that figure.¹⁰⁴

4.2.11 Factories and Machinery Act 1967

Act No. 64 of 1967, the original enactment of the FMA of 1967 (Act 139), became the Laws of Malaysia Act 139 on April 1, 1974.¹⁰⁵ Act No. 64 of 1967, which underwent changes until 1989, aims to establish regulations for factory management those priorities the safety, health, and well-being of individuals within them. It also covers the registration and inspection of machinery, along with other pertinent topics. On February 1, 1970, the Act was published in the Federal Register. An Act to provide for the regulation of factories with respect to matters relevant to the safety, health, and

⁹⁹ Ibid., 187, Sec 2(2).

¹⁰⁰ Ibid, Sec 3.

¹⁰¹ Ibid, Section 2(10).

¹⁰² Act 227(Pension Act of 1980). This Act is to provide for the administration of pensions, gratuities and other benefits for officers in the public service and their dependents.

¹⁰³ Maimunah Aminuddin, *Industrial Relations Act (IRA) & EA*, 6th edn., Kuala Lumpur, *McGraw Hill*, (2007): p. 73-74.

¹⁰⁴ Merican, Rooshida Merican Binti Abdul Rahim, 165.

¹⁰⁵ Blog Archive, “The Factory & Machinery Act (FMA)” 1967, <<http://healthandsafetymanual.blogspot.com/2010/03/factory-machinery-act-1967-act-no.html>> (accessed 2 March 2020).

welfare of personnel in the factory, and the registration and inspection of machinery, and for matters associated therewith, according to the act's principle.¹⁰⁶ It addresses a variety of workplace issues, including safety, cleanliness, ventilation, room temperature, lighting, sanitary convenience, personal protection apparel and appliances, and worker welfare, such as drinking water and washing facilities.¹⁰⁷ According to the FMA of 1967, an occupier of a factory must notify the nearest inspector whenever an accident results in any person's death or serious bodily injury, as well as serious damage to machinery or other property. Failure to do so will result in a fine of not more than RM5,000.¹⁰⁸

4.3 FEDERAL CONSTITUTION

The Federal Constitution of Malaysia denotes the basic human rights of persons living in Malaysia. Article 6 states that no one shall be held in slavery, and all types of forced labour are forbidden in the states. Article 8 implies that all persons are equal before the law, entitled to equal protection under the law, and that no law or appointment under employment shall discriminate against anybody on the basis of religion, race, descent, place of birth, or gender. Whether they are Malaysians or not, everyone is equal before the law and deserves equal treatment.¹⁰⁹ The word "person" means "human being as an individual." It does not represent only one nationality.¹¹⁰ Thus, whoever lives in Malaysia is entitled to obey and exercise Malaysia's supreme law, which is the Federal Constitution. No one should be treated unjustly in the form of employment in Malaysia,

¹⁰⁶ Blog Archive "FMA" (1967), <<https://www.dosh.gov.my/index.php/>> (accessed 18 May 2022).

¹⁰⁷ Ashgar Ali Ali Mohamed, "Dismissal from Employment and the Remedies," Second Edition, 2014: p. 53.

¹⁰⁸ Ibid.

¹⁰⁹ FCM, Art 8(2).

¹¹⁰ Rahel, Mohammed, and Tasnuva Mahbub Chowdhury, "Migrant workers under the domestic law and international labour organization (ILO) convention in perspective of Malaysia," *International Journal of Business and Technopreneurship*, vol. 7, no. 2 (2017): p. 151-166.

regardless of whether they are citizens or non-citizens of Malaysia.¹¹¹ Everyone should be given the same treatment in employment, and no one should be held in forced labour.¹¹² Slavery and forced labour are offences under the Malaysian Penal Code. Section 374 of the Code, for example, provides: “Whoever wrongfully coerces any person to work against their will is punishable by imprisonment for up to one year, a fine, or both.”

In addition, Malaysia has reported several cases of infringement on the rights of migrant workers. The tragic deaths of migrant workers in Malaysia’s¹¹³ construction and manufacturing industries serve as a stark reminder of the misuse of migrant workers’ rights and the government’s inadequate social protection. The exploitation of migrant workers corrupts Malaysian societies and leads other countries to condemn Malaysia for the inadequate protection it provides to migrant workers. However, in reality, this is not the case. The Malaysian constitution enshrines the right to equality and the ban on slavery and forced labour, yet its implementation remains limited. This is because, in practice, migrant employees have less social security protection, particularly under the WCA and the EPFA. There exists a disparity in benefit protection between migrant employees under the WCA and local workers under the ESSA.

The ESSA deprives migrant workers of several benefits that local workers enjoy. One notable difference is that migrant workers are not required to contribute to the EPF retirement benefit. This discrepancy highlights the unequal treatment and limited protection afforded to migrant workers in terms of social security benefits. It is important to address this disparity and strive for equal treatment and access to benefits

¹¹¹ FCM, Art 8(2).

¹¹² Ibid.

¹¹³ Sunam, Ramesh, “Infrastructures of migrant precarity: Unpacking precarity through the lived experiences of migrant workers in Malaysia,” *Journal of Ethnic and Migration Studies*, vol, 49, no. 3 (2023): p. 636-654.

for all workers, regardless of their migrant status. Efforts should be made to ensure that migrant workers receive fair and comprehensive protection under the law, including social security benefits that are comparable to those enjoyed by local workers. This would contribute to promoting fairness, dignity, and equality in the workplace.

Moreover, the Contract Law (CL) of 1950 is the legal framework that regulates contractual agreements entered into by two or more parties. This law specifies that such agreements are formed by the voluntary and free consent of the involved parties and are characterised by the exchange of promises.¹¹⁴ Employers and migrant workers, including those employed as migrant domestic helpers, establish these contractual agreements. The subject of CL covers a broad spectrum of legal principles and regulations. However, within the various requirements outlined in the CL of 1950, certain aspects bear particular relevance to the context of migrant labour. The enforceability of a contract depends on the parties' voluntary consent to the terms and conditions. If an individual with contractual authority forces or unjustifiably influences a migrant worker or subjects them to deception or misrepresentation during the recruitment process due to the specific conditions and context of their employment, the migrant worker has the right to declare the contract null and void.¹¹⁵ If the employer fails to comply with the employment contract's stipulations, the employee has the right to formally request termination of the contract.¹¹⁶

The Federal Court's judgement in the "Ahmad Zahri Bin Mirza Abdul Hamid v. Aims Cyberjaya Sdn Bhd cases"¹¹⁷ provides further insights into the situations where a fixed-term employment contract could effectively be considered a permanent one. Even if the contractual conditions explicitly state a limited period, there is a significant

¹¹⁴ Contract Act (CA), 1950, Act 136, Sec 10(1).

¹¹⁵ Ibid, Sec 19.

¹¹⁶ Ibid, Part VII.

¹¹⁷ *Ahmad Zahri Bin Mirza Abdul Hamid v. Aims Cyberjaya Sdn Bhd* [2020] 5 MLJ 58.

likelihood of deeming employment uninterrupted and extended duration permanent. An individual's status as a foreign worker on a time-limited employment pass should not significantly influence their classification as a fixed-term employee. Any loss or damage resulting from a breach of contract entitles the aggrieved party to compensation.¹¹⁸ This principle applies to both oral and written contracts, and in some cases, it may also cover written contracts that employees have not yet accessed. In some cases, it may also cover written contracts that employees have not yet accessed. In the “Chin Well Fasteners Co Sdn Bhd v Sampath Kumar Vellingiri & Ors”¹¹⁹ case, the court ruled that the employer had violated the Indian embassy-approved employment contract, despite the worker's lack of awareness of it. The CL of 1950 clarifies the implications for agents' obligations to migrant workers. An individual or organisation acting on behalf of another person in a transaction involving a third party is defined as an “agent.” The agent is responsible for enforcing the terms of any agreement within its jurisdiction.

Additionally, the CL of 1950 facilitated the incorporation of British common law into Malaysian law.¹²⁰ Tort laws include a diverse range of legal principles, among which negligence emerges as particularly pertinent to the challenges encountered by migrant workers. Examples of carelessness include operating a vehicle recklessly, resulting in an accident, or maintaining hazardous premises that lead to workers' falls and subsequent injuries. A civil court initiated the negligence claim, providing the plaintiff with a wide range of options. The plaintiff has the right to seek compensation for various forms of harm caused by the accident. The plaintiff can also pursue punitive damages if the opposing party's actions are considered excessively egregious. The study

¹¹⁸ CA, Act 136, Sec 74(1).

¹¹⁹ *Chin Well Fasteners Co Sdn Bhd v Sampath Kumar Vellingiri & Ors* [2006] 1 MLJ 117.

¹²⁰ Kenyon, Andrew T., and Hean Leng, “Reynolds Privilege, common law defamation and Malaysia,” *Sing. J. Legal Stud.*, (2010): p. 256.

has identified a reported case in which a migrant worker has been seeking compensation for negligence since 2008.¹²¹ Subsequently, an Indonesian migrant domestic worker sustained severe injuries in a vehicular collision, resulting in the termination of her employment. Subsequently, the employer opted not to extend her work authorisation. Prior to her work permit expiration, the presiding judge granted the plaintiff special damages, general damages for pain and suffering, and damages for loss of income prior to the expiration of her work permit. The Court of Appeal also decided to compensate the claimant for the financial losses she suffered from her physical impairments. These impairments are expected to hinder her capacity to generate income in the future.¹²²

4.4 RIGHTS OF MIGRANT WORKERS TO ENGAGE IN EMPLOYMENT

Workers who have worked for more than one month are eligible to receive a documented employment agreement that outlines their terms and circumstances.¹²³ The current regulations do not provide explicit guidelines about the timing for the provision of a contract copy to an employee, nor do they mandate that the contract must be comprehensively explained to the employee in a language they understand. However, in contrast to the rights and privileges stipulated in the EA of 1955 and its supplemental laws, it is imperative that the terms and conditions outlined in the employment contract afford workers equal or superior treatment, and it is imperative that the contract incorporate a termination clause.¹²⁴ The EA of 1955 provides migrant employees with legal protection, similar to their counterparts in Malaysia. Any corporation that unlawfully retains the salary of a non-native employee is in violation of legal statutes, and it is imperative that they be held responsible in accordance with prevailing

¹²¹ *Sumami v Yow Bing KI,vong & Anor* [2008] 1 MU 608.

¹²² *Ibid*, 3 CLJ 489.

¹²³ EA, Sec 10(1).

¹²⁴ *Ibid*, Sec 7 and 7A.

legislation. Such a crime will attract a fine of up to RM10,000. It is essential for employers to maintain complete documentation for every employee, including domestic workers. This documentation should contain many aspects, such as mutually agreed-upon vacation and leave entitlements, wage rates, dates of earnings received, and any deductions made.¹²⁵ It is imperative for the employer to furnish the worker with a documented version of the register at the commencement of employment, as well as in the event of any subsequent modifications¹²⁶, and must provide a written salary notice with each payment.¹²⁷ The court will prosecute any employer who breaches the service requirements outlined in the agreement with a foreign employee. Section 41 of the IRA of 1967 deems individuals who intentionally and maliciously breach a contract of service or engage in hiring practices with knowledge or reasonable belief that the work poses a risk to human life, resulting in serious bodily harm or significant property damage, to have committed an offence and may face imprisonment.

Furthermore, employers are prohibited from imposing any conditions in the service contract that dictate the location, manner, or individual to whom earnings must be spent, and any service contract that includes such provisions shall be deemed null and void.¹²⁸ Section 33(2) of the EA of 1955 mandates that employers remunerate their employees, failing which the contractor or agent may initiate civil litigation to reclaim the disbursed wages. Section 29(1) of the EA of 1955 prohibits employers from including the provision of intoxicating spirits as a component of the contractual terms and conditions offered to employees. Employers providing essential services are required to notify their workers of an unjustifiable lockout in a factory or industry. According to the relevant regulations, employers should provide this notice either forty-

¹²⁵ Ibid., 193, Sec 61, Employment Regulations, (1957), Regulation 5.

¹²⁶ Ibid.

¹²⁷ Ibid, Regulation 9.

¹²⁸ Ibid, Sec 26.

two days before the lockout, within twenty-one days of issuing the notice, or prior to the specified date of lockout mentioned in the notice.¹²⁹ Furthermore, in the event of a contract breach, the employer must lawfully reduce the employee's wages and make this payment no later than the final working day of termination.¹³⁰ In the event of an unauthorised deduction of an employee's wages within a certain wage period, it is required that the employer remunerate the employee no later than the seventh day following the conclusion of said wage period.¹³¹

4.5 MIGRANT WORKERS RIGHT TO EQUAL TREATMENT AND OPPORTUNITIES

Section 26 of the FMA of 1967 mandates that employers provide appropriate training and supervision to employees before they engage in any machine or process that poses a risk of physical harm.¹³² Furthermore, it is important to note that the EA of 1955 contains provisions, specifically Sections 34 and 35, that impose restrictions on women's employment during nighttime hours and in underground workplaces.¹³³ According to Section 12 of the EA of 1955, either party involved in an employment contract has the right to terminate said contract by providing written notice to the other party. This notice period should be equal for employers and employees. Nevertheless, the employer may also contemplate terminating the employment agreement if the employee fails to fulfil their obligation of providing wages, regardless of whether they fail to perform their duties or remunerate the employee for at least 24 days within a given month. In such circumstances, Section 16 of the aforementioned Act would consider terminating the contract. Following any lawful deductions, the employer must

¹²⁹ IRA, Sec 43(2).

¹³⁰ Ibid, Sec 20.

¹³¹ Ibid, Sec 19.

¹³² FMA, Sec 26.

¹³³ EA, Sec 34 and 35.

remunerate the employee for their earned wages through a designated bank account or other financial institution as specified by the employee. Alternatively, the employer may provide payment in legal tender or issue a cheque made out to the employee or their designated recipient, upon written request from the employee. It is important to note that this provision does not apply to domestic workers.¹³⁴ Employers are prohibited from making deductions from employees' wages, save for those that are legally prescribed under the EA of 1955. The Director General (DG) must be satisfied with the adequacy of the food, accommodation, services, meals, and benefits provided by the employer.¹³⁵ However, the DG has the authority to launch an investigation when a local employee, or a foreign employee, lodges a complaint alleging discriminatory treatment against a local employee.¹³⁶ Furthermore, Section 60M of the EA of 1955 stipulates that local employees cannot face termination under unfair conditions in comparison to their foreign counterparts.

In addition, the DG possesses the authority to conduct unannounced inspections at any workplace, provided there are reasonable grounds to believe that an investigation is warranted regarding any topic covered by the provisions of this Act.¹³⁷ Furthermore, the DG has the authority to conduct an inquiry and make a decision regarding any dispute arising between an employee and their employer regarding remuneration or other monetary obligations owed to the employee.¹³⁸ In the event that the DG determines that sexual harassment did in fact occur and decides to terminate the employment agreement, the individual who filed the complaint is eligible to obtain remuneration, severance benefits, and compensation.

¹³⁴ IRA, Sec 25(1) and 25A (1).

¹³⁵ Ibid, Sec 24.

¹³⁶ Ibid, Sec 60L (1).

¹³⁷ Ibid, Sec 65.

¹³⁸ Ibid, Sec 69(1).

4.6 MIGRANT WORKERS RIGHT TO FREEDOM OF MOVEMENT AND RESIDENCE

Foreign employees are afforded protection against abuse as well. There have been instances where employers in certain situations have been reported to seize passports from employees under the excuse of security measures, while their true intention is to exercise complete authority over them. This situation exposed the employees to the risk of deportation as a means of enforcing compliance with the employer's requests. Furthermore, because the employer unlawfully retains the employee's passport, the immigration department lacks certainty about the employer's willingness to provide accurate information regarding the current situation. It is important to note that all foreign workers in Malaysia are entitled to legal protection against such incidents.

Moreover, the WMSHA of 1990 safeguards workers operating in non-urban environments like plantations or farms.¹³⁹ The law mandates the establishment of basic housing and childcare requirements for workers and their families.¹⁴⁰ The legal provisions are applicable to any structure used by companies to accommodate employees.¹⁴¹ Within these structures, it is imperative for the employer to provide certain provisions, including but not limited to the provision of unobstructed access to free and ample flowing water, an adequate supply of energy, and the maintenance of the building in a state of sound repair.¹⁴² In addition, it is compulsory for employers to provide employees with health, hospital, medical, and social amenities.¹⁴³ There are no limitations on the capacity of individuals who can use a room, and it is not mandatory for employees to provide their own bedding or other things. Furthermore, there is no mention of meal provision. However, the Court of Appeal decided that the convenient

¹³⁹ The Workers' Minimum Standards of Housing and Amenities Act (WMSHA), 1990, Sec 2.

¹⁴⁰ Ibid, Preamble.

¹⁴¹ Ibid, Sec 5(1).

¹⁴² Ibid, Sec 6(1).

¹⁴³ Ibid, Part III.

location must meet a fair quality standard.¹⁴⁴ According to the court case “Nacap Asia Pacific Sdn Bhd v. Jeffrey Ronald Pearce and Anor”,¹⁴⁵ the court mentions that it is noteworthy to acknowledge that article 9 of the ILO Migrant Workers’ (Supplementary Provisions) Convention 143 of 1975 articulates the following provision: In addition to measures aimed at regulating the migration of workers for employment by ensuring their entry into a country and their admission to employment in accordance with applicable laws and regulations, migrant workers shall be entitled to equality for themselves and their families in situations where these laws and regulations have been disregarded and their status cannot be regularised.

According to Section 5(1) of the WMSHA of 1990, employers explicitly prohibit employers from accommodating or facilitating the accommodation of any worker under their employment or the employment of any other individual in a building they own, possess, or control if the building fails to adhere to the provisions outlined in this Act or any regulations established in relation to it.¹⁴⁶

In the event that an employer offers accommodation for its employees and their dependents at the workplace, it is expected that the firm will supply sufficient and complimentary-supplied water sourced from a community. The buildings should have a sufficient supply of electricity, maintain a well-functioning condition, display a visually appealing state through regular painting, and refrain from any illegal modifications or structural alterations.¹⁴⁷ According to Section 10(1) of this Act, the DG has the authority to request or mandate the employer to establish a nursery facility of

¹⁴⁴ *Kalam alp Raman & Others v Eastern Plantation Agency Johore Sdn Bhd, Ulu Tiram Estate, Ulu Tiram, Johore & Anor* [1996] 4 MU 674. The employer was found to be in breach of Section 18(1, b) of the Housing and Amenities Act, which states that employers “shall make such arrangements and... supply such equipment for the safe transportation of a sick worker.”

¹⁴⁵ *NACAP Asia Pacific Sdn Bhd v Jeffrey Ronald Pearce and Anor* [2010] MLJU 1128.

¹⁴⁶ WMSHA, Sec 5(1).

¹⁴⁷ *Ibid*, Sec 6(1).

sufficient capacity to accommodate the dependents of workers who have resided at the place of employment for a minimum of four years and have at least ten dependents.¹⁴⁸ Moreover, it is imperative that any structure constructed with the intention of not serving as employees' housing refrain from being utilised for such purposes unless an officially sanctioned request is submitted to and authorised by the DG.¹⁴⁹

Furthermore, the employer bears the responsibility of providing a sufficient quantity of milk that adheres to quality standards, along with suitable play equipment.¹⁵⁰ In addition, it is required that in cases where workers reside at their place of employment, the employer allocates cleared land specifically for the purpose of cultivation or a combination of both to be allotted to these workers.¹⁵¹ The company is obligated to build a community hall for employees and furnish necessary amenities for sports and recreational pursuits in cases where 100 or more employees reside at the workplace.¹⁵² Moreover, the Ministry's regulations exempt a labourer in a designated place of employment from any financial obligation to pay for rent, housing charges, nursery services, community halls, sports and recreational amenities, sanitation facilities, or land allocation, all of which the worker receives under the provisions of this Act.¹⁵³ Every employer is required to maintain the accommodations provided for workers in a clean and sanitary condition. The employer must conduct weekly examinations and inspections of the workers' living quarters, nursery, and community hall. The employer may designate an estate hospital assistant or any other authorised individual to carry out this responsibility.¹⁵⁴

¹⁴⁸ Ibid., 198, Sec 10(1).

¹⁴⁹ Ibid, Sec 9(1).

¹⁵⁰ Ibid, Sec 10(3).

¹⁵¹ Ibid, Sec 11(1).

¹⁵² Ibid, Sec 12(1).

¹⁵³ Ibid, Sec 13.

¹⁵⁴ Ibid, Sec 23(2).

4.7 PROHIBITION OF FORCED LABOUR

Forced labour is commonly referred to as slavery, which is an old term, or alternatively as human trafficking, a more contemporary term. In Malaysia, labour trafficking manifests in two distinct forms, namely exploitation and involuntary conduct. These categories are critical in determining whether a given action involves recruiting, transit, transfer, or reception of workers.¹⁵⁵ The connection between employers and employees, alongside the presence of risks and hazards in the workplace, constitute supplementary elements in determining the existence of labour trafficking.¹⁵⁶ The phenomenon of forced labour primarily focusses on the exertion of pressure or coercion by employers upon employees, irrespective of the type of labour involved and the legal or unlawful status thereof.¹⁵⁷

In addition, the absence of fundamental safeguards and entitlements, such as personal security and protection, and the denial of essential provisions such as medical care, sustenance, water, and shelter, constitute what is commonly referred to as “forced labour.” In contrast, forced labour involves practices such as slavery, residual elements resembling slavery, and other manifestations of debt bondage. In recent decades, there has been an association between the concept of human trafficking, also referred to as modern slavery, and the presence of unfavourable working and living situations that do not align with the principles of human dignity.¹⁵⁸ In relation to this matter, the definition of forced or compelled labour, as outlined in the ILO Forced Labour Convention 1930

¹⁵⁵ Mohd Na'eim Ajis, Kamarulzaman Askandar, and Saadon Awang, “International migration and human trafficking in Malaysia: A study on illegal immigrants,” *Asian Social Science*, vol. 11, no. 25 (2015): p. 124.

¹⁵⁶ *Ibid.*

¹⁵⁷ ILO, “A Global Alliance Against Forced Labour: Global Report Under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work” (2005): p. 93. (International Labour Organization, 2005).

¹⁵⁸ ILO, “Report of the Committee of Experts on the Application of Conventions and Recommendations” (2012), <https://www.ilo.org/tIc/ILCSessions/ilostSession/reportsireportssubmitted/WCMS_174846/lang-en/index.htm> (accessed 18 November 2021).

(No. 29), includes any form of employment or service that is rendered to an individual under the condition of potential punishment, lacking voluntary consent.¹⁵⁹ Furthermore, it is evident from article 1, paragraph 3, of the Forced Labour Protocol that the definition is explicitly reinforced through the inclusion of three significant components. These components consist of: (a) work or service, encompassing a wide range of activities, industries, and sectors, including those within the informal economy; (b) threat, which involves the utilisation of various forms of punishment to coerce individuals into engaging in labour; and (c) involuntary, denoting the use of deceitful assurances that lead employees to accept the proposed terms.¹⁶⁰

Moreover, there is a strong correlation between forced labour and human trafficking, as both phenomena involve the exploitation of individuals. In Malaysia, the concept of “exploitation” is defined under Section 2 of the ATIPSOM. According to this legislation, “exploitation” encompasses many forms, such as sexual exploitation, forced labour or services, slavery, servitude, engagement in unlawful activities, and the illicit removal of human organs. International human rights and labour norms prohibit several forms of coercion, including slavery, forced labour, forced marriage, and human trafficking. Typically, intimidation, physical aggression, deceit, or manipulation compel individuals who fall into the victim category to engage in labour, subject them to exploitation, coerce them into marriage, or render them incapable of declining or departing from such circumstances. Section 12 of the FMA of 1967 prohibits anyone from lifting, carrying, or moving loads that pose a risk of bodily harm.¹⁶¹ Moreover, Section 13 of the aforementioned Act mandates the implementation of fire safety

¹⁵⁹ ILO, “What is forced labour, modern slavery and human trafficking,” <<http://www.ilo.org/global/topics/forced-labour/definition/lang-en/index.htm>> (accessed 18 November 2021).

¹⁶⁰ Ibid.

¹⁶¹ FMA, Sec 12.

measures and the provision of exit doors that are not intended for regular use as means of egress.¹⁶² In order to ensure the safety of all those employed or engaged in industrial operations, it is imperative that all machinery, including its components, fittings, and attachments, be constructed with integrity and composed of high-quality materials that are free from any defects. Besides, it is essential that the machinery is suitable for its intended function and undergoes regular and appropriate maintenance.¹⁶³ In addition, under Section 15 of this Act, it is mandatory to enclose all hazardous components of any machinery. Furthermore, it is imperative for the occupier to consistently uphold the maintenance of all safety appliances and apparatus.¹⁶⁴

4.8 MIGRANT WORKERS RIGHTS TO SOCIAL SECURITY PROTECTION

In Malaysia, the implementation of regulations serves to address a range of potential scenarios, including occupational injuries, advanced age, physical impairments or disabilities, medical clearance, medical conditions requiring ongoing care, infectious diseases, and fertility-related matters, among others. Similar to several other nations worldwide, Malaysia's social security system has experienced various transformations since its inception during the colonial era.¹⁶⁵ The existing social security framework contains traditional realms, which pertain to financial application actions conducted under established legal frameworks.¹⁶⁶ In order to observe the regulations set out by Malaysia's social security organisations, employers operating within the pertinent industries are obligated to fulfil the stipulated criteria, which mostly pertain to the provision of benefits for occupational illnesses, accidents, and maternity-related

¹⁶² Ibid., 201, Sec 13.

¹⁶³ Ibid, Sec 14.

¹⁶⁴ Ibid, Sec 21.

¹⁶⁵ Gliniak, Paweł, "From colonial capitalism to crony capitalism. Historical and institutional determinants of the socio-economic model from the Malaysian perspective," *CXII*, vol. 2, no. 2 (2021).

¹⁶⁶ Ibid.

circumstances. The provision of social security is contingent upon a nation's dedication to offering adequate services to its populace in light of several possibilities, such as infectious diseases, medical considerations, maternity, unemployment, deprivation, survivor benefits, advanced age, and work-related accidents.¹⁶⁷ Furthermore, providing financial assistance to compensate for the limited monetary means of those who are unable to engage in employment for reasons such as illness, maternity leave, work-related injuries, incapacity, and reaching adulthood is widely recognised as a fundamental objective of social security. Two primary methods in Malaysia fund current social security systems: the prompt implementation of measures, the dedicated allocation of reserves, and the imposition of taxes.

The principal approach is contingent upon the regulations governing social insurance. Representatives and employers finance this approach through promises, incorporating the concept of "insurance." The objective is to grant the latter party the entitlement to receive various benefits in response to potential conditions, including occupational injuries, advancing age, health ailments, and periods of maternity leave. The key objective of this proposed contribution plan is to facilitate the redistribution of resources over the course of an individual's working life. This would be achieved by implementing a systematic deduction of a predetermined amount of funds from the worker's salary, with the intention of managing and safeguarding these funds for their future use once they cease employment. This approach is applicable not only to the inadequate work injury insurance and benefits within the SOCSO scheme, but also to several other types of schemes. The employer's provident fund scheme and the

¹⁶⁷ Countries like the United Kingdom, Germany, France, and Sweden covered all nine contingencies in their social security schemes. See Social Security Administration, "Social Security Programs throughout the World: Europe 2012," Office of Retirement and Disability Policy: Office of Research, <<https://www.ssa.gov/policy/docs/progdesc/ssptw/2012-2013/europessptwl2europe.pdf> > (accessed 15 November 2021).

employer's liability plan are two important components of the employer's benefits package.

Malaysia established the SOCSO plan, laying the groundwork for the incorporation of social insurance and the management of various risks within the country's social security system.¹⁶⁸ It is imperative for employers and representatives to enrol in the SOCSO programs at the rates prescribed by the ESSA. The primary challenges include work-related trauma and sickness caused by the breadth or magnitude of job responsibilities. Simultaneously, the succeeding policy provided pensions to persons who were rendered unable to engage in gainful employment as a result of genuine disability or a persistently dire condition, characterised by either extreme desperation or significant difficulty in attaining recovery.

According to the ESSA, the principle of representation entails the mandatory responsibility of remitting contributions to the SOCSO, which contains both employers and employees.¹⁶⁹ Commitments can be classified into two primary groups: namely, flaws and work-related injuries. However, it is important to note that the ensuing categories solely involve work-related injuries.¹⁷⁰ Both employers and workers exhibit significant levels of devotion within their respective roles. The decree mainly determines the allocation of responsibilities between employers and employees.

¹⁶⁸ Noor Shuhadawati Mohamad Amin, Ncrjthan Abdul Aziz, and Zuraini Ab Hamid, "Limitations of Social Security Laws and Policies Vis-A-Vis Migrant Workers in Malaysia," *Journal of Malaysian and Comparative Law*, vol. 44, no. 2 (2017): p. 21-38, and 134.

¹⁶⁹ Sec 6(1) of the ESSA reads as follow: "The contribution payable under this Act in respect of an employee shall comprise contribution payable by the employer (hereinafter referred to as the employer's contribution) and contribution payable by the employee (hereinafter referred to as the employee's contribution) and shall be paid to the Organisation," However, the deduction from the employee's salary for the purpose of contribution to SOCSO is in line with s 24 of EA which is lawful for employers to make deductions which are authorised by any other written law. See Sec 24 (2) (d) of EA.

¹⁷⁰ Sec 6(2) of the ESSA states the two types of contributions as follows: "(a) the contributions of the first category, being the contributions payable by or on behalf of the employees insured against the contingencies of invalidity and employment injury; and (b) the contributions of the second category, being the contributions payable by or on behalf of employees insured only against the contingency of employment injury."

However, the specific distribution of responsibilities within succeeding classifications is solely at the discretion of the employer.¹⁷¹

In order to ensure the provision of the FWCS, employers are required to get insurance coverage for all foreign workers under their supervision.¹⁷² Since 1992, Malaysian citizens have been provided compensation for workplace injuries under the state social security system, generally known as the SOCSO, which is administered by the Social Security Organisation.¹⁷³ The SOCSO provides better protection than the WCA because it does not rely on the employer for employee reimbursement. Instead, it offers financial compensation to injured employees, calculating a specific sum from mandatory social security contributions.

Additionally, it facilitates the allocation of continuous benefits to injured employees and the provision of a pension to the relatives of deceased workers.¹⁷⁴ Each employer is required to obtain insurance coverage for themselves and their employees from an insurer as defined in the IRA of 1967 in order to protect against the potential liability they may face under Section 26(1) of the WCA of 1952. Any employer who neglects to get insurance coverage as prescribed in Section 26 shall be deemed to be in violation and, upon conviction, may be subject to a fine, imprisonment, or both, as stipulated in Section 26(6) of this legislation. Furthermore, it is illegal for an employer to deduct any employee wages to cover insurance costs related to their liability.

¹⁷¹ Sec 6(4) and 6(5) of the ESSA. The rate and amount are tabulated in the Third Schedule of the Act according to a scale of comprising of 34 wage groups beginning with wage up to RM30 until wages exceeding RM3000.

¹⁷² Loganathan, Tharani, Zhie X. Chan, and Nicola S. Pocock, "Healthcare financing and social protection policies for migrant workers in Malaysia," *PLoS One*, vol. 15, no. 12 (2020): e0243629.

¹⁷³ The Employees' Social Security Act was passed in 1969. Section 31 prohibits those covered by the Act from seeking compensation or damages for an employment harm under any other legislation. SOCSO was established by the Employees' Social Security (General) Regulations 1971 to administer the system.

¹⁷⁴ SOCSO covered all workers, including international workers, for over two decades. N\ was not repealed, it was not extensively used. However, as the number of foreign employees increased and they were engaged in a broader range of industries, the government exempted them from SOCSO coverage in 1993.

Engaging in such conduct would be a crime, and upon conviction, the employer may be subject to a fine, imprisonment, or both.¹⁷⁵

In accordance with the Employees' Social Security (Exemption of Foreign Workers) (Revocation) Notification 2018, the SOCSO offers safeguarding measures to foreign workers in the event of work-related accidents or occupational illnesses that may arise during the course of their employment. According to the government notification, as of January 1, 2019, companies are required to register their overseas workers with the SOCSO and make contributions to the Employment Injury Scheme under the ESSA of 1969 (Act 4).¹⁷⁶ The contribution rate is 1.25 per cent of the covered individual's monthly earnings, and it is the employer's responsibility to make this payment. Registration can be completed either through the ASSIST portal or by submitting the registration form to the local PERKESO office.

Nevertheless, it is required that foreign employees currently employed in Malaysia with a valid the FWCS be registered with the SOCSO by their respective employers within one day following the expiration of the FWCS. This registration is contingent upon the conclusion of the cooling-off period for the FWCS, which concludes on December 31, 2019. From January 1, 2020, all employers, regardless of their foreign workers' coverage under the FWCS, must register with the SOCSO. Furthermore, it is mandatory for newly arrived foreign workers in Malaysia to register with the SOCSO following validation by the Malaysian Immigration Department at any officially designated point of entry, starting January 1, 2019. According to the specified regulations, a newly employed foreign worker must possess a valid passport and a special pass. Alternatively, if the foreign worker already holds an employment pass,

¹⁷⁵ WCA, Sec 26(5).

¹⁷⁶ Government notification on 27 December (2018), <https://www.perkeso.gov.my/images/pekerja_asinWthrilwarta_kerajaan/Warta_Kerajaan_PAIPdr> (accessed 18 November 2021).

they must also have either a temporary employment visit pass or a legitimate employment pass, depending on the specific circumstances. Workers from other countries will receive several benefits under this program, such as the medical benefit, temporary disability benefit, constant attendance allowance, rehabilitation facilities, permanent disability benefit, dependents' benefit, and funeral benefit. If a non-employment-related injury is the cause of death, it can reimburse the expenses incurred in repatriating the deceased individual's remains to their place of origin. The maximum amount eligible for reimbursement is RM4,500, which is contingent on the submission of an official receipt and subject to prevailing conditions.¹⁷⁷

According to the WCA, the concept of employers' risk conspiracy in the context of workers' compensation law refers to a deliberate scheme in which employers bear the responsibility for any injuries or illnesses that occur within the scope of employment. The lack of consensus among the representatives resulted in the absence of agreement regarding the plan, thereby establishing the employer as the exclusive party responsible for the payment of the installments.

Section 26 of the WCA encompasses the employers' responsibilities, necessitating that each employer be compelled to safeguard themselves against potential hazards arising from work-related injuries or illnesses. The EA of 1955 outlines provisions that allow employees to take both vacation and maternity leave without negatively impacting their wage determination. Both the WCA and the EA are applicable to individuals who are migrant workers. Furthermore, Section (2) of the WCA permits individuals in unlawful employment who suffer injuries to pursue compensation for their lost wages, just as if they were part of a significant managerial

¹⁷⁷ Perkeso, "Social Security Protection for Foreign Workers?" <https://www.perkeso.gov.my/images/pekerja_asing/en/280122_Foreign_Workers_ENG_.pdf> (accessed 17 November 2021).

or apprenticeship agreement at the time of the accident.¹⁷⁸ Considering that all the relevant factors in this particular instance are duly taken into account by the magistrate, judge, or court.¹⁷⁹ This arrangement aligns with the notion of justice as articulated in the constitution of the government. Legal oversight, including the Social Security Law, guarantees equal treatment for all individuals. As stipulated in Section 26, employers are obligated to implement compulsory measures aimed at mitigating the potential hazards of occupational injuries for their employees. To achieve this goal, it established the FWCS, primarily to ensure governmental support and social security for those working on the streets. It is noteworthy that in cases where the incapacity endures for a fundamental duration of around 14 days, there is no requirement to remunerate for the initial four days of the disability.¹⁸⁰

In addition, Section 8 of the WCA delineates the criteria by which compensation is assessed for instances of mortality and impairment resulting from persistent bodily afflictions experienced by labourers.¹⁸¹ As a consequence of the demise, the ward of the deceased will be entitled to receive a solitary payment, which will be calculated based on either the profit generated over a five-year period or RM18,000, whichever amount is lesser. Section 9 of the WCA procedures outlines various methodologies for assessing revenue. It is critical to establish a system for accurately documenting workers' profits, taking into account the precise duration of their employment leading up to an accident.¹⁸² According to the government's constitution, this system is in line with the concept of justice. Legal oversight, such as the SOCSO, makes sure that everyone gets the same care. Furthermore, if an employee needs medical attention at a clinic or

¹⁷⁸ WCA, Sec 2.

¹⁷⁹ Ibid, Sec 2(2).

¹⁸⁰ Ibid, Sec 4(2, a) states that the employer is not liable for the compensation if the workman is not disabled for at least four days.

¹⁸¹ Ibid, Sec 8.

¹⁸² Ibid, Sec 9.

requires outpatient clinical treatment, their unemployment status will be classified as a temporary total disability.

4.9 THE RIGHTS TO FAIR TRIAL FOR MIGRANT WORKERS

Article 5 of the Federal Constitution of Malaysia (FCM) defines separate constitutional norms applicable to non-citizens detained for immigration offences as opposed to individuals detained for other criminal offences. All detained citizens typically appear before a judicial officer 24 hours after their apprehension. Nevertheless, those who are not citizens and are arrested or held in custody based on immigration regulations might be detained for a period of 14 days, after which they are required to be transferred to the magistrate.¹⁸³

In addition, the EA of 1955 outlines the criteria for terminating an employment agreement. Termination may ensue in the event that the contractual agreement's designated period of validity passes.¹⁸⁴ Termination may be executed with or without prior notification from either party. The contractual agreement mutually determines the uniform notification period for both parties. In the absence of explicit stipulations within the contractual agreement, the minimum duration is no less than four weeks.¹⁸⁵ The expected notification period for domestic employees is typically 14 days.¹⁸⁶ Furthermore, the EA of 1955 provides for termination in cases where either party deliberately violates any agreement term.¹⁸⁷ In the event that an employee is confronted with circumstances of risk, violence, or being compelled to operate in an unsanitary work environment, it is permissible for said employee to terminate their employment

¹⁸³ FCM, Article 5(4) and its second provision.

¹⁸⁴ EA, Sec 11(1).

¹⁸⁵ Ibid, Sec 12.

¹⁸⁶ Ibid, Sec 57.

¹⁸⁷ Ibid, Sec 13(2).

contract without providing prior notice to their employer.¹⁸⁸ There are specific practices that are inherently considered deliberate violations. In the event that an employee is absent from work for consecutive two-day periods without a legitimate justification, it is deemed a violation of the employment agreement.¹⁸⁹ If the employer fails to pay the worker's salary according to the terms outlined in the contractual agreement, it is considered a breach of the contract.¹⁹⁰

In addition, employer termination due to misbehaviour refers to the Act of terminating an employee's contract based on behaviour that is deemed to be contradictory with an explicit or implicit provision of the service agreement.¹⁹¹ In order to initiate this process, the employer has the option to temporarily suspend the employee and conduct an investigation lasting a maximum of two weeks. In the absence of substantiated evidence of misconduct, it is imperative to afford the individual the opportunity to resume their employment.¹⁹²

In the event that an employee, who has been in the service of the employer for a minimum duration of 12 months, is dismissed for reasons other than voluntary retirement or resignation, the employee is eligible to receive a termination allowance. This allowance, which depends on the length of service, ranges from 10 to 20 days' worth of salary. It is important to note that this entitlement is applicable specifically in cases where the employer has engaged in misconduct or deliberate violations.¹⁹³ Based on the "Sabri Bin Umar"¹⁹⁴ legal proceedings, it was seen that the foreign labourers were terminated from their employment without prior notification, prompting the

¹⁸⁸ Ibid., 209, Sec 14(3).

¹⁸⁹ Ibid, Sec 15(2).

¹⁹⁰ Ibid, Sec 15(1).

¹⁹¹ Ibid, Sec 14(1).

¹⁹² Ibid, Sec 14(2).

¹⁹³ Employment (Termination and Lay-Off Benefits) Regulations 1980, Regulations 4 and 6. Absenteeism is considered misbehaviour, thus an employee who is fired for this reason will not be eligible for termination compensation.

¹⁹⁴ *Sabri Bin Umar V Minister of Home Affairs Hamzah Zainuddin & Ors* [2022] MLJU 2820.

employer to initiate legal action against the aforementioned individual. In this particular scenario, it is imperative to acknowledge that migrant workers possess the entitlement to a just and equitable trial.

4.10 MIGRANT WORKERS RIGHTS TO FORM AND JOIN ASSOCIATION

According to Section 8 of the EA of 1955, “no provision within any employment agreement shall impose any limitations on the entitlement of an employee who is a signatory to said agreement, to exercise the following rights: the ability to join a trade union that is officially registered; the opportunity to engage in the activities of a registered trade union, whether in the capacity of an officer or in any other capacity; or the freedom to associate with other individuals for the purpose of establishing a trade union in accordance with the provisions outlined in the TUA of 1959 [Act 262].” According to the EA of 1955, it is impermissible for employers to incorporate any provision in an employment agreement that restrains the entitlement of an employee to engage in trade union activities, join a trade union, or engage in interactions with other employees with the intention of establishing a trade union.¹⁹⁵

Additionally, Section 4(1) of the IRA of 1967 establishes a prohibition on any actions that hinder, delay, or force workers or employers to exercise their rights to establish, support the formation of, and become members of trade unions, as well as engage in their lawful activities. No trade union of workers, employers, or individuals representing such trade unions has the authority to intervene in the establishment, administration, or operation of said trade union.¹⁹⁶ In the event that a person is affiliated with a labour union and perceives their termination as unjustified or lacking valid grounds, they possess the right to submit a formal complaint to the DG of the nearest

¹⁹⁵ EA, Sec 8.

¹⁹⁶ IRA, Sec 4(2 and 3).

location to their former place of employment within a period of sixty days from the date of dismissal.¹⁹⁷ It is impermissible for anyone to impose contractual conditions, refuse employment, engage in discriminatory practices, terminate or threaten termination of employment, or dissuade others from joining or holding a position within a trade union.¹⁹⁸

In addition, an employee has the option to submit a written complaint to the DG against the establishment and participation in a trade union, as outlined in Section 8(1) of the aforementioned Act. Employers and workers' unions, who are parties involved in resolving trade disputes, have the option to refer any unresolved or suspected trade disagreement to the DG.¹⁹⁹ According to Section 10(2), "an employer is prohibited from initiating a lock-out or terminating the employment of a worker if a trade union of workers has provided notice to the employer or a trade union of employers to which the firm is affiliated."²⁰⁰ Hence, in the event that an employee is terminated, harmed, threatened, or subjected to a change in their position solely due to their affiliation with a trade union, assuming a role as an officer within said trade union, or exercising their entitlement to the benefits outlined in a collective agreement or an award, the employer shall be deemed guilty and, upon conviction, may face imprisonment.²⁰¹

4.11 MIGRANT WORKERS RIGHTS FOR EQUAL PROTECTION OF LAWS

According to Section 28(1a) of the TUA of 1959, there exists a prohibition on migrant workers assuming the role of an executive member in a trade union or any other federation.²⁰² This provision explicitly prohibits individuals who are not citizens of the

¹⁹⁷ Ibid., 211, Sec 20(1).

¹⁹⁸ Ibid, Sec 5(1).

¹⁹⁹ Ibid, Sec 18(1).

²⁰⁰ Ibid, Sec 10(2).

²⁰¹ Ibid, Sec 59(1 and 2).

²⁰² Ibid, Sec 18(1a).

federation from serving or performing executive member duties in a trade union or any of its branches. Moreover, any federation of trade unions deems such individual's ineligible for election as executive members. Foreign workers are likewise ineligible to participate in voting processes. Additionally, trade unions are required to conduct secret ballots when making decisions pertaining to strikes, lock-outs, the imposition of a levy, or the dissolution of the trade union or federation of trade unions."²⁰³ However, a trade union allocates its financial resources to cover a range of expenses, including salaries, allowances, and administrative costs for its officers and employees. Additionally, these funds are utilised to address trade disputes and provide assistance to members or their dependents in the form of allowances related to accidents, unemployment, sickness, old age, and death.²⁰⁴

Moreover, the WCA of 1952 is a statutory measure that aims to establish a framework for the provision of compensation to those employed as workers who sustain injuries during the course of their employment. According to Section 4(a) of this Act, in the event of a work-related accident resulting in personal harm to a worker, the employer is responsible for covering all expenses associated with the worker's treatment and rehabilitation. According to the Act, the employer will not provide remuneration for the initial four days of disability unless the disability lasts for a minimum of fourteen days.²⁰⁵ Furthermore, if a worker contracts a disease or sustains an injury within a year of leaving their job, and if this work-related condition is the cause of the resulting disablement or death, the employer must provide compensation.²⁰⁶ In the event of fatalities arising from the inflicted damage, it is necessary to provide a sum of sixty months' worth of earnings, or eighteen thousand ringgit, to the dependents

²⁰³ TUA, Sec 40(1).

²⁰⁴ Ibid, Sec 50(1).

²⁰⁵ Workmen's Compensation Act (WCA), 1952, Sec 4(2a).

²⁰⁶ Ibid, Sec 5(1).

of the deceased worker. However, the employer will only disburse the monetary compensation if they can clearly identify the ailment as a specific incident that occurred during the performance of the relevant vocation.²⁰⁷ Furthermore, in the event of a worker experiencing permanent disablement as a result of said injury, the following compensation shall be provided: for an adult who has reached the age of eighteen or above, a lump sum payment equivalent to sixty times their monthly earnings or twenty-three thousand ringgit, whichever amount is lower; for any other adult, a lump sum payment equivalent to eighty-four times their monthly earnings or twenty-three thousand ringgit, whichever amount is lower; and for a minor, a lump sum payment equivalent to one hundred and eight times their monthly earnings or twenty-three thousand ringgit, whichever amount is lower.²⁰⁸ As per the provisions outlined in the WMSHA of 1990, the term “dependents” refers to persons who are part of the worker’s family unit, specifically the spouse, father, mother, and children under the age of eighteen. This definition also includes children who have been legally adopted in accordance with any relevant legislation, provided that they reside with the worker and are reliant on their support.”²⁰⁹

Moreover, if an employer or their agent violates any regulations established by the aforementioned legislation, they may face liability. The penalty imposed in such cases shall be equivalent to that specified in Section 54 of the OSHA of 1994.

4.12 PROTECTION OF MIGRANT WORKERS FROM HUMAN TRAFFICKING AND SMUGGLING

Malaysia employs a strategy to safeguard its foreign workforce through legal documentation, thereby mitigating the risk of human trafficking. These documents also

²⁰⁷ Ibid., 213, Sec 6.

²⁰⁸ Ibid, Sec 8.

²⁰⁹ WMSHA, Sec 14.

serve the purpose of monitoring any violation of the employment agreement of a foreign employee who is legally employed within the country. The Law on Combating Illegal Human Trafficking in Malaysia's Parliament has explicitly outlined numerous offences pertaining to the act of trafficking individuals. The legal framework prohibits persons who participate in the exploitation of individuals working in street-based occupations, encompassing the recruitment process, the subsequent locations of abuse, as well as the utilisation of temporary labourers. This includes meticulous planning to facilitate workers' transportation to Malaysia, ultimately aiming to transform them into Malaysian labourers.

Moreover, the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act (ATIPSOM, 2007) grants survivors of human trafficking-related offences comparable legal remedies to those available in criminal law. In other words, the victims of various unlawful activities are entitled to seek redress based on the perpetrators' actions in court and may pursue prosecution if their claims are dismissed. Offences that occur during the process of trafficking may potentially be immune from legal prosecution, encompassing offences related to immigration, certain therapeutic benefits, and accommodation provided throughout the duration of the case.

The provision of practical assistance effectively facilitated the prosecution of the remaining casualties in Malaysia, overcoming a significant impediment. However, in comparison to other survivors who have experienced other forms of trauma, the ATIPSOM framework provides distinct and specialised support to individuals affected by human trafficking. To effectively tackle the issue of trafficking, it must promptly place all individuals affected by this crime under protective custody and subject them to the supervision of relevant authorities until the investigation or legal proceedings conclude. If the victims are non-residents, they will be deported. Unlike the Royal

Malaysian Police (RMP) sanctioned Penal Code, the ATIPSOM Act recognises officials from five Malaysian agencies as legitimate enforcement officers. This category includes immigration officers, police officers, custom officers, Malaysian Maritime Law Enforcement Agency officers, and labour officers.²¹⁰ All enforcement personnel possess the ability to exercise the full extent of their mandated authority, which is characterised by its substantial magnitude. In terms of examinations, they encompass all materials required to complete the assessment in compliance with any violations stipulated by the relevant legislation.²¹¹

Moreover, the ATIPSOM Act grants authorised officials the discretionary authority to detain individuals without an arrest warrant, particularly when they detect, report, or instruct any offences, or when they suspect officials of participating in or attempting to participate in criminal activities linked to trafficking or smuggling.²¹² After arresting an individual, the arresting officers transport the suspect to the nearest police station, where they conduct further handling of the suspect in accordance with the Criminal Procedure Code (CPC).²¹³

Protections and safeguards are explicitly extended to individuals who are in close proximity to the person being trafficked, rather than to those who are accused of engaging in smuggling activities. Section 2 of the ATIPSOM deals with the cases of “Public Prosecutor v. Davis, Ak Mering, & Anor” and the goal of this law is to protect people who have fled from illegal trafficking activities.²¹⁴ Temporary migrants who are smuggled into a country have the potential to be subjected to legal prosecution for immigration offences. This particular approach primarily involves detaining,

²¹⁰ Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act (ATIPSOM), 2007, Sec 27(1).

²¹¹ Ibid, Sec 28.

²¹² Ibid, Sec 29(1).

²¹³ Ibid, Sec 29(2).

²¹⁴ *Public Prosecutor V Davis Ak Mering & Anor* [2021] MLJU 3078.

attempting, and deporting such individuals, regardless of whether they are otherwise required to confirm the existence of a speculative smuggler. In the “Kong Kok Kyt & Anor V Pendakwa Raya”²¹⁵ case, the court highlights significant progress in combating human trafficking. This includes the effective punishment of trafficking cases, the provision of suitable shelters and social services for victims, the protection of migrant workers from forced labour, and the lack of prosecution for traffickers apprehended and detained under preventive legislation.

After acquiring temporary custody, the enforcement officer will proceed to transport individuals who are potentially subject to execution to either a magistrate or a medical clinic for necessary medical attention.²¹⁶ Upon presenting distinct evidence, law enforcement personnel must bring individuals to justice within 24 hours or release them.²¹⁷ The magistrate is obligated to administer an interim protection order, which entails placing the individual within a legislative entity designated for asylum seekers, commonly referred to as a shelter and recognised by protection authorities.²¹⁸ The assurance officer faces accusations of neglecting their responsibilities and obligations towards the care and protection of the trafficked individual.²¹⁹

Moreover, the ATIPSOM system is anticipated to efficiently detect instances of human trafficking and facilitate the provision of evidence by trafficker casualties for the purpose of indicting dealers. The benefits of implementing a specified timeline, ensuring safe environments for victims of traffickers, expediting clinical considerations, upholding confidentiality, and enforcing accountability for violations by dealers are evident. According to the amended “ATIPSOM Act,” it is stipulated that the respondent

²¹⁵ *Kong Kok Kyt & Anor V Pendakwa Raya* [2014] 10 MLJ 99.

²¹⁶ ATIPSOM, Sec 44(1) and 45(1).

²¹⁷ *Ibid*, Sec 24(1) and 49(1).

²¹⁸ *Ibid*, Sec 44(2).

²¹⁹ *Ibid*, Sec 43(2).

is afforded the opportunity to initiate legal proceedings against the trafficker within the jurisdiction of a civil court. The failure to provide notification to the labour court, while not explicitly prohibiting the labour court from pursuing legal action for unpaid wages and monetary claims, did not serve as a deterrent.

4.13 CONCLUSION

The protection of employees employed in a country other than their home country has always been a priority for the ILO because they are more vulnerable to abuse than other workers, particularly if they are in a precarious situation and are victims of human trafficking. To eliminate ambiguity and vagueness, numerous provisions of Malaysian employment legislation need to be strengthened and reformed. Regardless of their nationality or occupation, migrant workers should receive the same level of protection. The WCA of 1952, the IRA of 1967, the TUA of 1959, the EA of 1955, and the EPFA of 1991 all appear to be vague or mute on the subject of equality. The compensation for migrant employees is lower than that of local workers. The Malaysian issue is an example of decentralisation failing in migrant labour recruiting and placement, aggravated by a lack of enforcement of existing restrictions by numerous stakeholders. In this regard, the government must improve monitoring and regulatory procedures for managing migrant employees beyond recruiting, particularly at migrant workers' workplaces, to guarantee that employers comply with their legal obligations.

In addition, a number of rules and labour laws must be strengthened to prevent abuses by rogue police and immigration officers, outsourcing businesses, and employers. Some have previously been declared but have yet to be put into action, while others are being considered. There are at least three main policy contexts for restricting

migrant inflows through the “price” impact (labour cost, which includes wages, non-wage benefits, and other intangible advantages).



CHAPTER FIVE

PROTECTION OF MIGRANT WORKERS IN BANGLADESH AND MALAYSIA: A PROPOSAL FOR LAWS AND POLICIES REFORM

5.1 INTRODUCTION

In the new trend of globalisation that is taking place after the inception of the laws, few substantial groups of workers are left out of the scope or with inadequate legal protection. In addition, labour migration is of the utmost importance to Bangladesh's economy, as it not only creates employment opportunities internationally but also contributes to a major remittance inflow. These remittances are a vital resource for underprivileged migrant households. The growing number of migrant workers originating from countries outside of Malaysia increasingly compromises the effectiveness of existing laws. Consequently, there is a need for legal reforms to align with the current state of employment in both Bangladesh and Malaysia, particularly with regard to migrant workers. By adapting the laws to reflect these realities, the legal framework can better address migrant workers' rights and protections, ensuring their protection and promoting a fair and sustainable labour market.

The Bangladeshi government places emphasis on policies, activities, and a legal policy program aimed at developing a robust, secure, and efficient pathway for Bangladeshi migrant workers. The Ministry of Expatriates' Welfare and Overseas Employment (MoEWOE) is responsible for protecting Bangladeshi migrant workers' well-being and rights. The MoEWOE plays a crucial role in the nation's socio-economic progress by facilitating the growth of job opportunities abroad, guaranteeing secure migration, safeguarding migrant workers' privileges, and improving the well-being of both migrant workers and their families. The ministry's objective is to cultivate a

proficient labour force that aligns with the requirements of international markets, hence increasing prospects for employment abroad. Additionally, the ministry aims to safeguard and advance the well-being of migrant workers and their families. Bangladesh has consistently incorporated migration into its national development planning process, policies, and industry strategies as a means of advancing national development. The Government of Bangladesh (GoB) has prioritised providing good employment opportunities and social security to migrant workers. Consequently, Bangladesh has complied with global standards and agreements regarding the management of migration.

The migration policy of Malaysia is overseen by the Ministry of Home Affairs, with a department under the purview of the Deputy Prime Minister. However, other entities are involved in various aspects of the immigration framework. Following the law's enactment, there has been a notable surge in globalisation, resulting in the exclusion or inadequate legal protection of migrant workers.¹ The rise in labour disputes in Malaysia has led to a corresponding increase in challenges to the relevant legislation pertaining to worker welfare. In order to align with the current state of employment for migrant workers, it is imperative to implement legal framework reforms. This overlooks the significant reliance of the state on these industries, such as manufacturing, construction, agriculture, and plantations.

According to data provided by the Malaysian Department of Statistics, the number of documented migrant workers in Malaysia was approximately 2.2 million in 2022.² Malaysia is often regarded as a significant recipient of undocumented or irregular migrants in Southeast Asia, with unofficial estimates ranging from 1.2 to 3.5 million

¹ Amin Noor Shuhadawati Mohamad, Norjihan Abdul Aziz, and Zuraini Ab Hamid, 172.

² Ministry of Economy, Department of Statistics Malaysia, <<https://www.dosm.gov.my/>> (accessed 10 May 2022).

individuals, and this places Malaysia among the countries in the region that experience a large number of migrant-receiving countries.³ Consequently, when the Malaysian government looked at the strategic plans they made, they tried to use methods that focused on standardisation and putting in place measures that would both punish and reward illegal migrant workers who chose to go back to their home countries. This demonstrates Malaysia's strong commitment to effectively managing migration by devising comprehensive tactics to achieve control.⁴

Furthermore, face-to-face interviews and FGD are conducted to evaluate the response of migrant workers to the current regulations related to them. The collection of responses holds significant value in the process of revising and enhancing the current legislation, with the objective of aligning it with worldwide norms and principles of equality. Extensive deliberation has taken place over the proposed reforms aimed at altering the existing regulations, encompassing a comprehensive examination of the available alternatives.

Two additional challenges emerged in the context of implementing government arrangements, namely the facilitation of social security payments and the acknowledgment of the core ILO accords.⁵ To prevent duplication, it is advisable to effectively distribute the workload among ministries by establishing dedicated offices. The subsequent section of the chapter will delve into an exhaustive examination of the legal structure.

³ Ibid., 221.

⁴ Anderson, Joseph Trawicki, "Managing labour migration in Malaysia: foreign workers and the challenges of control beyond liberal democracies," *Third World Quarterly*, vol. 42, no. 1 (2021): p. 86-104.

⁵ Berar, Azita, "The International Labour Organization: Social Justice in Global Governance," *In Handbook of Labor, Human Resources and Population Economics*: p. 1-33. (Cham: Springer International Publishing, 2022).

5.2 PROPOSALS FOR LAWS AND POLICIES REFORM IN BANGLADESH

The process of labour recruitment from Bangladesh involves multiple entities, including government departments and agencies, private recruiting agents, both local and international middlemen, as well as potential migrants and their families. Implementing more policies helps to protect the rights of migrant workers.

5.2.1 Amending Overseas Employment and Migrants Act 2013

The Ministry of Expatriates' Welfare and Overseas Employment, along with officials from the Refugee and Migratory Movements Research Unit (RMMRU) and the Manusher Jonno Foundation, established an inter-ministerial committee in Bangladesh in 2009. The committee proposed amendments to four provisions of the EO of 1982. At the behest of the National Law Commission, the Ministries established a different committee, including government officials and distinguished experts in the fields of law and migration. The committee drafted the language for a new law known as the Act on emigration and overseas employment. The document is presently under consideration by the Ministry. Many migrant workers from Bangladesh lack awareness of the legal protections offered by the OEMA of 2013, particularly regarding Sections 15, 21, and 22, which govern job details, migration costs, and employment contracts.⁶ He added, recruitment agents often exploit this gap in knowledge, providing false information about job offers, wages, and working conditions. Workers are frequently misled about the true costs of migration, with agents demanding significantly higher fees than the government-prescribed amounts.

Additionally, many workers do not receive clear information or official contracts before departure, leaving them vulnerable to exploitation and harsh working

⁶ Dr. A Sufian Emon, Interview by Author (expert opinion), Organization for Migrant Rights' & Welfare, Dhaka, 10 March, 2024.

conditions. The legislative proposal consists of a total of 32 provisions.⁷ Bangladesh recently accepted and signed the ICRMW. The proposed Act mandates the dissolution of the Special Courts established under the EO of 1982. The provision enables affected individuals to initiate legal actions, either civil or criminal, in a court of law in the event that the government neglects to initiate legal proceedings within a specified period. The recently enacted legislation requires recruitment agencies to issue identification cards to their subagents. Furthermore, their license renewal is contingent upon their demonstrated performance.⁸ The absence of explicit requirements for agents who engage in fraudulent activities during the migration process, whether in transit or at the point of departure, and the lack of an indemnity policy for those agents are notable shortcomings.⁹

In addition, the committee has indicated the possibility of making amendments to address human rights concerns about victims' post-fraud survival. The committee also recommends considering the Act's non-beneficial provisions and actions when evaluating government and agent involvement in such cases. The Act is comprehensively drafted in accordance with legal principles. In the event that any migrants encounter difficulties, they will afterwards rely on the legal process for resolution.¹⁰ This lack of transparency and the absence of formal agreements exacerbate the financial and legal challenges faced by migrant workers, often forcing them to take out high-interest loans to cover unexpected costs. To address these issues, it is essential to implement comprehensive educational initiatives and enforce stricter regulations on

⁷ Labour Migration from Bangladesh, Achievements and Challenges (2011), RMMRU: Dhaka, <<https://www.rmmru.org/newsite/wp-content/uploads/2020/01/Migration-Trends-Report-2012.pdf>> (accessed 10 April, 2022).

⁸ Farbenblum, Bassina, "Governance of migrant worker recruitment: a rights-based framework for countries of origin," *Asian Journal of International Law*, vol. 7, no. 1 (2017): p. 152-184.

⁹ Apurba Deb Roy, Interview by Author (expert opinion), former policy analysis, CARE Bangladesh and USAID, Dhaka, 10 September, 2022.

¹⁰ Sarder Al Mamun, Interview by Author (expert opinion), Advocate, Bangladesh Supreme Court, Dhaka, 15 September 2022.

recruitment practices. This would ensure that workers are better informed about their rights and obligations, reducing their reliance on agents and protecting them from exploitation.

5.2.2 Amending Bangladesh Overseas Employment Policy (BOEP)

In the early 1970s, the Bangladeshi government lacked an official strategy to either encourage or discourage female migration. In the early months of 1981, there was a persistent demand from civil society organisations for the implementation of a comprehensive national migration policy. The drafting of an Overseas Employment Policy (OEP) was initiated by the MoEWOE in 2002. The Ministry formulated the initial iterations of the policy. Subsequently, a technical assistance committee was established, and a refined version of the draft was collectively approved. The policy was officially ratified by the governing body on November 5, 2006. The primary objective of its founding was to effectively structure the international labour market and protect the well-being of migrant workers from Bangladesh. The policy includes individuals of both genders who migrate, including both short-term labour migrants and long-term diaspora residents.

Furthermore, the OEP places significant importance on the maintenance of transparency and accountability within recruiting agencies. The acknowledgement is made regarding the vital need to broaden the scope of labour markets in Bangladesh. The OEP also focusses on the augmentation of remittance inflows and their optimal utilisation as investment capital. The OEP places particular emphasis on the social and economic reintegration of migrants upon their repatriation. The annexure of the OEP provides a comprehensive account of the various roles played by several government institutions, including the MoEWOE, the BMET, and the BAIRA. Furthermore, the

BMET implements overseas employment policies that pertain to the training and development of migrant workers, a practice that has drawn criticism. Additionally, in certain cases, their training and development process is insufficient, and the provision of training is not directly linked to a foreign job. Since then, the BAIRA has not played any vital role in migrant workers' development and well-being.

5.2.3 Amending migration governance: institutional framework

Ministries

The Ministry of Expatriates' Welfare and Overseas Employment, the Ministry of Foreign Affairs, the Ministry of Home Affairs, the Ministry of Civil Aviation and Tourism, and the Ministry of Finance are prominent governmental bodies responsible for managing matters related to international labour migration. The MoEWOE, assumes responsibility for the comprehensive advancement, oversight, and governance of the migration industry. The organisation's efforts are primarily centred around two key areas: the facilitation of international employment opportunities and the provision of comprehensive support and protection for migrant workers.

Bureau of Manpower, Employment and Training (BMET)

The BMET, which stands for Bureau of Manpower, Employment, and Training, serves as the implementing agency under the Ministry of Expatriates' Welfare and Overseas Employment, specifically in managing labour migration. In 1976, the BMET with the objective of optimising the advantages derived from the exportation of manpower. The designated agency has effectively administered the EO since its implementation in 1982. Presently, the BMET is engaged in a diverse range of activities. These include overseeing and managing the activities of recruiting agents, gathering and evaluating

labour market information, enrolling job seekers for overseas employment, granting emigration clearance to individuals with secured job opportunities, and designing and executing training initiatives to address specific labour demands at both domestic and global levels. Before they depart for employment abroad, prospective migrant workers receive essential information through pre-departure briefing meetings. Moreover, it assumes a key function in the resolution of legal conflicts that may emerge within the international labour market, guaranteeing the protection of the rights and welfare of migrant workers and the pursuit of suitable redress.

Bangladesh Overseas Employment Services Limited (BOESL)

In 1984, the BOESL as a limited company to manage direct recruitment processes. Since its inception, the BOESL has facilitated the migration of a total of 19,191 individuals. This figure represents a mere 0.27 per cent of the overall migrant population. In 2010¹¹, the BOESL facilitated the overseas deployment of a total of 3,733 individuals. This marked the agency's largest deployment of personnel overseas since its establishment. This difficulty emerged due to a lack of effective strategic and marketing methodologies. Despite its significant potential, the BOESL is currently encountering difficulties in efficiently facilitating the deployment of an adequate number of personnel to foreign countries. According to a recent survey, it has been determined that the BOESL has a higher degree of organisational capacity when compared to commercial recruitment organisations. Nevertheless, the aforementioned component only accounts for a mere 2.0 per cent of the entire migration rate.¹² The

¹¹ Abrar, C. R., and M. Motasim Billah, "Challenges of labour recruitment for overseas employment: the Bangladesh experience," *In South Asia Migration Report, (2017)*: p. 165-181. (Routledge India, 2016).

¹² Shahiduzzaman Khan, "BOESL needs to perform its due role in migration," *The Financial Express*, Dhaka, 29 January, 2020, <https://thefinancialexpress.com.bd/views/opinions/boesl-needs-to-perform-its-due-role-in-migration-1580308503>.

implementation of a comprehensive strategy by the government agency, the BOSEL, to enhance the international workforce should be considered. The organisation facilitates the deployment of workers at a lower cost of migration while adhering to appropriate procedures to ensure the safety of the migration process. Given the aforesaid factors, it is vital for the BOSEL to embrace a positive stance in facilitating the deployment of supplementary staff. This will provide a precedent for commercial recruiters to effectively facilitate the safe and successful migration of workers. The organisation possesses the capacity to function as a benchmark for private sector recruiters due to its exceptional history of effectively enabling safe migration.

Private recruiting agencies

The recruitment and placement phases are integral components of the labour migration process, holding significant importance. During the 1970s, the government undertook the role of a recruitment agency. Since 1981, the private sector has assumed the responsibility of fulfilling this duty as a component of its growth, with private recruitment agencies taking the lead in this endeavour. These agencies function within the parameters of licenses granted by the government. The organisation engages in proactive efforts to collect data on global employment demand and actively solicits recruitment requests from foreign companies. The transition from government-led to private sector-led recruiting exemplifies the evolving dynamics of labour migration and the participation of various stakeholders in this process. Following the authorisation from the BMET, the agencies proceed to enlist individuals from a BMET database, including job seekers, who satisfy the criteria set by multinational enterprises. Subsequently, the agencies undertake the necessary procedures to facilitate the deployment of these individuals. The immigration section of the BMET is required to

issue a clearance certificate to every employed worker. Over the course of time, a federation called BAIRA was established by the recruiting agencies. Delegates from 23 recruitment agencies established the association in December 1984. In 2011, the association consisted of approximately 860 member agencies. In addition, government agencies should properly and regularly monitor all the activities of private recruiting agencies.

Associations of returnee migrants in Bangladesh

In recent years, there has been the establishment of three organisations by individuals who have returned to Bangladesh after migrating. These organisations include the Welfare Association of Bangladeshi Returnee Employees (WARBE), the Bangladesh Migrant Centre (BMC), and the Bangladesh Women Migrants' Association (BWMA).¹³ However, their function was very limited, and in some cases, they did not take any action to protect migrant workers in their home country. The formation of the WARBE took place in 1997.¹⁴ The organisation endeavours to assume the role of an advocate for migrant workers, specifically in terms of the actualisation of their rights. Since its establishment, the WARBE has had a limited role in creating public awareness of the challenges faced by migrant workers and their significant contributions. The organisation has constantly advocated for enhanced transparency regarding the utilisation of the Wage Earners' Welfare Fund, as well as the involvement of representatives from the returning workforce in the fund's management. The BMC is the sole active organisation representing Bangladeshi migrant workers in both their home country and the destination country. Furthermore, the authority of the Bangladesh

¹³ Siddiqui, Tasneem, 118.

¹⁴ Ibid.

government should help establish a rule-playing association of returnee migrants in Bangladesh.

5.3 CHALLENGES OF AMENDING RECRUITMENT FOR OVERSEAS EMPLOYMENT IN BANGLADESH

Recruitment agencies in origin countries and employers in destination countries should be adequately controlled, and ethical norms of behaviour should be promoted and monitored (Bangkok Statement on Migration and Development, Recommendation No. 17). Despite various legislative and administrative mechanisms to regulate the recruitment sector, the relationship between the industry and the government in Bangladesh remains contentious. The recruiting industry plays a critical role in facilitating labour migration, but there have been ongoing challenges and issues that have strained the relationship between industry stakeholders and government authorities. These challenges may include disagreements over regulatory compliance, enforcement of recruitment standards, transparency in the recruitment process, and addressing the grievances of migrant workers. The complexity of the relationship highlights the need for continuous dialogue and collaboration between industry and government to ensure effective regulation and protection of migrant workers' rights and welfare. The business community, as represented by the BAIRA, believes that the state has done so. The intermediaries are comfortable dealing with them because they live in their own communities.

Moreover, in cases where issues arise, migrant workers can seek support from other members of their community to exert pressure on intermediaries and seek redress. It is worth noting that many grassroots assisting migrants do not have direct access to registered recruiting agents and often rely on others based in metropolitan areas, with Dhaka being a prominent location for such intermediaries. This interconnected network

highlights the complex dynamics involved in the migration process and the various channels through which migrants seek assistance and support. In the current situation, where all parties rely on informal intermediaries, the latter has emerged as a key player in the migration sector. As a result, it is critical to develop a policy approach that recognises the function as well as the ties that exist between registered recruitment agencies on the one hand and aspirant migrants on the other.

The government establish a database for prospective migrants to register their names in order to stop recruiting agents and sending people illegally. The goal was to ensure that the database handled all hiring. However, it is important to note that, despite the existence of the database, only a limited number of workers have been able to benefit from the registration process in recent years. However, effective implementation of the registration process holds significant potential as a solution to the sector's challenges. This approach has the potential to streamline the recruitment process, enhance transparency, and guarantee the matching of migrant workers with suitable employment opportunities.

By leveraging the database effectively, the sector can overcome some of its longstanding issues and improve the overall migration experience for workers. However, according to the record, no investigation into the system's inactivity has taken place. There could be a variety of reasons for this. One explanation could be the system's wishful nature, particularly in the context of a corrupt visa-trading environment that forces recruiting organisations to charge exorbitant fees to migrants, preventing them from recruiting from the database. The pessimists claim that the system is intentionally broken to benefit a nexus of vested interests between private recruiting firms and government officials. Furthermore, contingency preparations must be made to address the issue of recruiters and their intermediaries, especially in cases where the

government is unable to ensure that workers are recruited through the official database. It is crucial to establish legal protections for intermediaries to prevent their exploitation and ensure their compliance with recruitment regulations. There are three ways to accomplish this. First, the BMET could take on the task of issuing permits or monitoring the performance. For the BMET's under-resourced and understaffed monitoring of thousands of subagents, this is not a practical idea. BMET's performance in dealing with the 800 plus registered recruiting companies could be far better; therefore, heaping more burden on its shoulders will almost certainly be futile.

The second alternative is to encourage and reward recruiting firms for establishing branch offices in the district towns so that migrants have direct access to such offices, can obtain information, and have their applications processed. In addition, this alternative appears to be less viable because the decision to open branches is exclusively in the hands of the entities involved. They are unlikely to do so if they do not find any additional value in doing so outside of the capital city. Only the third alternative, requiring recruitment agents to acknowledge their separate subagents, give them photo identification cards, and provide a list of the subagents to the BMET, remains.

In turn, the BMET will provide local government entities with a comprehensive list of all recruiting agencies' subagents. Laws must be enacted to hold registered recruiting agents accountable for the actions of their subagents. Implementing such a structure would serve two purposes. Firstly, it would offer legal protection to subagents involved in the recruitment process. Secondly, it would hold private recruiting companies accountable for the actions of the informal intermediaries they employ to find workers. This agreement also grants the government the authority to take action against agencies whose appointed intermediaries engage in fraudulent activities. If

effectively developed, such a system would be a crucial step in closing a significant gap in the recruitment system. It would promote transparency and accountability within the recruitment industry. By doing so, it would undermine the registered agencies' tendency to disclaim responsibility for the hardships faced by migrants due to their actions. Moreover, it would weaken the common excuse of government officials that they cannot provide redress due to dealings with unauthorised agents.

5.4 RATIFICATION AND IMPLEMENTATION OF INTERNATIONAL CONVENTIONS RELATING TO MIGRANT WORKERS

The justification for doing this study is the need to ratify the migration convention, as Malaysia remains a prominent recipient country for low-skilled and semi-skilled migrant workers from Bangladesh.¹⁵ Despite the fact that Bangladesh and Malaysia have ratified multiple treaties established by the UN and the ILO, there remains a need to extend the duration of these accords in order to safeguard the legal rights of migrants. In accordance with the additional recommendations, it is possible for the International Labour Migration Convention and the ICRMW to ratify and adopt the aforementioned proposal. Policymakers may be motivated to endorse conventions, such as the ICRMW, due to their consistent alignment with the existing national legislation of Bangladesh and Malaysia. It is imperative for the consents or agreements established within these conventions to align their criteria with the prevailing local legislation. As explained in Chapter Four, Malaysia possesses a dual legal system of a general kind. Prior to ratifying international treaties, it is imperative to ensure their domestication and effective implementation, as failure to do so would render their acceptance meaningless. The diverse conditions observed in current research and the esteemed standards upheld

¹⁵ Mobarak, Ahmed Mushfiq, Iffath Sharif, and Maheshwor Shrestha, "Returns to low-skilled international migration: Evidence from the Bangladesh-Malaysia migration lottery program," World Bank Policy Research Working Paper 9165, (2020).

in the worldwide legal system inform the Malaysian government's recommendations for enhancing its rules and policies. As expressed, the rare situation of migrant workers cannot be ensured through extensive promotion. The focus of this study is that the protection of labour rights and human rights is the obligation of the state as a duty transmitter. While the ratification process is voluntary, it has significant implications for endorsements. Moreover, the act of ratifying international accords yields similar effects on the nation.¹⁶

In addition to international conventions made by the ILO or the UN, such as the ICEFRD, Malaysia has ratified and obligated the country to implement these conventions to ensure equal treatment for non-residents and citizens. Despite being a signatory to the ICEFRD, Malaysia lacks comprehensive legislation or procedural mechanisms to effectively address and prevent discrimination against individuals. This explains the underlying factors contributing to Malaysia's human rights violations. Therefore, this study additionally establishes that the current employment law in Bangladesh shows limited efficacy in safeguarding migrant workers. Furthermore, the legal framework in Malaysia possesses the capability to address instances of victimisation and other violations of human rights.

Furthermore, Malaysia nearly embraced significant international instruments pertaining to this matter, establishing a legal obligation to uphold the conventions by incorporating their norms and harmonising them with existing national laws and practices. The provisions relating to the ILO social security convention impose financial implications on governments, compelling them to implement requisite measures and enact legislative reforms in order to facilitate the development of laws and institutions

¹⁶ Gurowitz, Amy, "Migrant rights and activism in Malaysia: Opportunities and constraints," *The Journal of Asian Studies*, vol. 59, no. 4 (2000): p. 863-888.

associated with existing social security systems.¹⁷ The integration and execution of these requirements into the existing social security resolution will necessitate the government taking on responsibilities. Malaysia is actively engaged in efforts to enhance the adaptability of existing guidelines to meet the requirements of migrant workers, irrespective of its endorsement of the related ILO social security convention.¹⁸ An alternative viewpoint suggests that governmental authorities should take into account the consent of domestic workers when granting migrants equal rights to those enjoyed by native citizens. The last reason is anticipated to exert a significant influence on the regulation of the nation's labour market.

Given the above-mentioned features, it is acceptable that both Bangladesh and Malaysia might proceed with the key ILO treaties relating to migrant workers, including the Migration to Employment Convention (Revised) of 1949 (No. 97), the Migrant Workers' (Supplementary Provisions) Convention of 1975 (No. 143), and the Migrant Workers' Recommendations of 1997 (No. 151).

Convention No. 97 was officially ratified and took effect in 1952, while Convention No. 143 was ratified and subsequently came into force in 1978. This particular convention includes fundamental and flexible principles relating to social security. The nation has the potential to gradually achieve and guarantee the social security outlined in the convention. Once a nation achieves complete development, individuals will begin to have confidence in its ability to fulfil all the benefits it promises. Moreover, the lack of adequate judicial safeguards has broken the eligibility criteria for migrant workers to access social security benefits.¹⁹ Malaysia is generally

¹⁷ Noor Shuhadawati Mohamad Amin, "Migrant Workers and Social Security Protections in Malaysia." (IIUM Press, 2017).

¹⁸ Holzmann, Robert, "Do bilateral social security agreements deliver on the portability of pensions and health care benefits? A summary policy paper on four migration corridors between EU and non-EU member states," *IZA Journal of European Labour Studies*, vol. 5, no. 1 (2016): p. 1-35.

¹⁹ Devadason, Evelyn Shyamala, and Chan Wai Meng, 8.

recognised as a nation of high standing, characterised by admirable domestic norms and adherence to the ILO commitments outlined in the Fundamental Convention on Labour Standards.²⁰ Hence, it is important that Malaysia's local laws refrain from marginalising migrant workers by imposing legal restrictions that negate their right to legal assurance and protection, thereby depriving them of the opportunity to exercise their right to demonstrate. Once the legislation receives official sanction, it will evaluate and assess the implemented law based on its outcomes.

An alternative approach to addressing migration practices involves acknowledging and appreciating the distinct dedication exhibited by migrant workers as labourers in the host country. This is particularly relevant when their commitment contributes to progress within the Malaysian context. In order to address this issue, it is vital that migrant workers be granted the privilege to exercise their agency in selecting many components of the social security system. The Malaysian government should consider ratifying of various international human rights treaties and conventions. By endorsing these treaties and conventions, the government can enact domestic legislation to ensure the cessation of all forms of oppression against migrant workers and secure their entitlement to relevant benefits.

It is imperative for government authorities to make concerted efforts to adhere to the fundamental principles outlined in the two prominent conventions established by the ILO, which serve as international benchmarks for labour practices. The two conventions of particular significance are the Social Security (Minimum Standards) Convention of 1952 (No. 102) and the Equality of Treatment (Social Security)

²⁰ Lim, Steven, and Lee Keat Teong, "Recent trends, opportunities and challenges of biodiesel in Malaysia: an overview," *Renewable and Sustainable Energy Reviews*, vol. 14, no. 3 (2010): p. 938-954.

Convention of 1962 (No. 118), both of which pertain specifically to the rights and welfare of migrant workers.²¹

Furthermore, it is noteworthy that both Bangladesh and Malaysia have officially ratified the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights, as well as the Abolition of Forced Labour Convention (No. 105) and the International Convention on the Elimination of All Forms of Racial Discrimination Against Women. Additionally, it is advisable to endorse the ILO Conventions pertaining to migrant workers. Ratification of international treaties relating to migrant workers is critical to developing a strong legal framework for protecting migrants' rights. Through the process of ratifying the above-mentioned international treaties, the government will undertake the necessary modifications to domestic legislation, aligning it with the international conventions' objectives of protecting the rights and welfare of migrant workers.

5.5 PROPOSALS FOR LAWS AND POLICIES REFORM IN MALAYSIA

The reformation of labour laws and policies can be viewed as a manifestation of the government's endeavour to address the inherent conflict in Malaysia's labour migration policy by ensuring harmonious stability between the well-being of migrants, protection of their labour rights, and effective immigration control. The legislative foundations of labour law protection in Malaysia, however, primarily cater to the needs of lawful migration. Given the established legal framework, it is imperative to proactively safeguard the rights of migrants in order to prevent their vulnerability. The migrant worker policy in Malaysia has undergone substantial transformations since 2015, leading to the implementation of distinct labour rights regulations. Starting in 2019, the

²¹ Akahsah, Namirah Mohd et al, "Migrant Workers with Social Security in Malaysia: Are they being discriminated against?" *Environment-Behaviour Proceedings Journal*, vol. 5, no. SI1 (2020): p. 61-66.

Malaysian government has taken substantial steps to ensure employer accountability for the welfare of their employees. In recent years, the Malaysian government has proposed and implemented a number of changes to several labour regulations, including the EA, the EPFA, the WMSHA, the TUA, and the IRA. The Ministry of Human Resources is committed to enhancing the level of protection afforded to migrant workers in Malaysia. The Ministry intends to abolish the WCA of 1952 as part of its efforts to ensure equitable protection for both local and foreign workers within the country. The majority of Bangladeshi migrant workers assert that they experience a lack of safeguards pertaining to pay, insurance coverage, social benefits, and damage compensation schemes. Nevertheless, the principal factors contributing to the precarious conditions faced by migrant workers encompass legal barriers, outdated labour legislation and policies, dependence on labour intermediaries, and inadequate protection of employees' rights.

5.5.1 Implementation of amended Employment Act 1955

The EA of 1955, as amended in 2022, will be implemented on January 1, 2023. The commencement of the implementation of the revisions to Malaysia's EA of 1995 has been rescheduled from the initially proposed date of September 1, 2022, to January 1, 2023. The EA's current requirement entails a reduction in workers' maximum weekly working hours from 48 to 45 hours. This implies that employees now have the right to receive compensation and benefits for any hours exceeding the prescribed 45-hour maximum. Employers who engage in the act of intimidating, misleading, or coercing an employee to perform tasks or preventing them from leaving the workplace after work hours may face legal consequences. These consequences include a maximum fine of RM100,000, a prison sentence of up to two years, or both. According to the new

amendment, the 14 to 21 days of paid sick leave for non-hospitalisation are now in addition to the 60 days of paid sick leave that are available for hospitalisation under the new provision. In addition, employers are required to obtain prior approval from the DGL before engaging foreign labour. In the event of termination of employment for a foreign worker, it is incumbent upon the employer to duly inform the DGL within a period of 30 days. In the event that a foreign worker decides to terminate their employment, it is imperative for the employer to promptly inform the DGL within a period of 14 days. In addition, the DGL possesses the jurisdiction to conduct enquiries and address any grievances or concerns pertaining to employment. The DG possesses the authority to make an order, and any employer who fails to adhere to the order is deemed to have committed an offence. Therefore, it is imperative for employers to assess their work conditions and procedures in order to ensure adherence to the EA of 1955 prevent the imposition of penalties.

The recently revised legislation's initial schedule now includes individuals who have entered into a contractual agreement for employment, indicating that the EA of 1955 now applies to all workers, regardless of their remuneration. Employees earning a monthly salary over RM4,000 would be exempt from specific regulations pertaining to overtime and termination remuneration. Given the expanded coverage of the EA of 1955, it is crucial for employers to ensure that their employment contracts align with the minimum standards specified by the EA of 1955. Additionally, the latest amendment to the EA of 1955 specifies that individuals who partake in any unlawful activity or breach any provision within this Act, as well as any regulations, orders, or other subsidiary legislation under it, for which no specific penalty is defined, could face a fine not exceeding fifty thousand ringgits upon conviction.²² Furthermore, the EA of 1955

²² EA, Sec 99A.

amendments in sections 57B and 60K appear to suggest the inclusion of provisions for voluntary termination agreements at the expiration of work permits, with the aim of mitigating the challenges faced by migrant workers. Hence, it is imperative to consider amending the EA to enable migrant workers to switch employers, retain possession of their passports, and remain in the host nation until the resolution of any contested cases that involve instances of exploitative working conditions. Companies must adopt a flexible approach when dealing with migrant employees to uphold labour rights and ensure consistency. This includes the provision of contracts in the worker's home language as well as the issuance of a single pay slip that is available in many native languages.

5.5.2 Implementation of the amended of Workers' Minimum Standards of Housing and Amenities Act 1990 (Act 446)

The provisions of Act 44(6) pertain to the housing and accommodation arrangements for personnel employed in the plantation and mining industries. The recent revision has expanded the scope of the statute to encompass all employment sectors that offer housing and accommodation options for their employees. The provisions of Act 446 establish the prescribed minimum criteria for housing and nurseries intended for workers and their dependents. Furthermore, the legislation mandates that businesses distribute land within the place of employment for agricultural and farming purposes. Additionally, employers are obligated to offer health, hospital, medical, and social amenities for their employees. The recent amendments have predominantly centred around the responsibility of employers to ensure the well-being and protection of migrant labour, along with the timely implementation of the revised legislation. The aforementioned revisions align with the guidelines set forth by the ILO, specifically the

1961 Workers Housing Recommendations (No. 115) and the 1925 Equality of Treatment (Accident Compensation) Convention (No. 19).

5.5.3 Reformation of Employment Provident Fund Act and SOCSO

The benefits provided to migrant workers under the EPFA are significantly inadequate. The current EPF Act falls short in adequately addressing the limited contribution towards the salary and working conditions of migrant workers. Furthermore, it has been recommended mandating foreign employees to make contributions to the EPFA, which are currently voluntary. The proposed revision to the EPFA should incorporate the challenges outlined in the EPFA by incorporating provisions for dividend disbursement and addressing the manner in which credit is distributed in the case of an employee's death. There exist two separate regulatory frameworks that govern the provision of benefits for work-related injuries, distinguishing between local employees and migrant workers. If a new policy grants old-age benefits to foreign employees, it could potentially create a recurring imbalance. When evaluating options, it is important to place precise limitations on their operational hours in accordance with the country's regulations. A further measure that governmental authorities may consider involves conducting a comprehensive evaluation of the existing provisions under the EPFA pertaining to migrant labourers. The governing body should regulate the wage level of migrant workers, or a justifiable rate, to determine the significance of a retirement plan and the company's proposal.

It is imperative to consider extending the provision for migrant employees to access cash withdrawals from the plan. Given the extended duration of migrant employment in Malaysia, facilitating pension arrangements in the home country of origin is a critical consideration. The maintenance of voluntary commitment among

migrant workers should be upheld by taking into account several factors. A significant proportion of migrants might not have any legal or financial obligation to make payments.

Moreover, migrant workers express concerns about potential challenges in withdrawing their funds from the EPFA scheme after opting to contribute and subsequently returning to their country of origin. Moreover, it is recommended that the EPFA relax the limitations imposed on foreign workers in terms of their ability to select the EPFA scheme nomination. The rationale behind this is that, as a consequence of the demise of a migrant labourer, the designated beneficiary has the option to accept and oversee the funds belonging to the deceased worker. Hence, it is imperative for all migrant workers to adhere to comparable regulations, albeit with certain restrictions in place. Based on the aforementioned recommendations, it may be argued that the existing policy grants the transferability of pensions as stipulated in the EPFA. In addition, the UN Sustainable Development Goals (SDG, No. 1.3) prioritise the establishment of universal social protection. Moreover, it is imperative to conduct a thorough examination of the social security provisions available to migrant workers in Malaysia.

The establishment of the SOCSO was in compliance with the provisions outlined in the ESSA of 1969. The Ministry of Labour and Manpower subsequently transformed SOCSO into a governmental entity in 1971 (SOCSO, 2017).²³ The SOCSO, the Social Security Organisation, assumes primary responsibility for administering two social security benefits, namely the EIS, and the Invalidity Scheme. The EIS offers comprehensive coverage and guarantees for employees who have

²³ Hamid, Tengku Aizan, Wan Alia Wan Sulaiman, Mohamad Fazdillah Bagat, and Sen Tyng Chai, "Policy development on ageing in Malaysia: issues and challenges," *Healthy Ageing in Asia* (2022): p. 25-61.

suffered from occupational injuries. The definition of the Employment Injury Scheme was further elucidated as referring to “a bodily injury sustained by an employee as a result of an accident or a work-related illness that arises during the course of their employment in an industry covered by this legislation.”²⁴

5.6 EMPLOYMENT POLICIES REFORM

Based on the discussions presented in Chapters Four, it is evident that the policies for migrant labour in this country are not without flaws. The Malaysian government has undertaken efforts to enhance the well-being of migrant workers by implementing revisions to its labour legislation. The wellbeing of migrant workers in Malaysia is impeded by the lack of social security systems, antiquated labour laws, reliance on labour brokers, and employers’ limited responsibility. Based on these findings, the relevant government authority should consider several suggestions to modify the current government policy. In the year 2019, two labour laws underwent amendments in accordance with the requirements set forth by the ILO. These laws are the WMSHA of 1990 and the ESSA of 1969. These suggestions are offered in a constructive manner, aiming to address the identified shortcomings and improve the overall framework for migrant labour. The revisions have successfully established parity in legislative protection for both national and migrant employees, enhanced employers’ responsibility towards the well-being of their migrant workforce, and effectively tackled the issue of forced labour.

The implementation of this legal framework in Malaysia has resulted in an association between migration management and enhanced social security protection for migrant workers, addressing a previous deficiency in foreign worker policy. The legal

²⁴ ESSA, Sec 2.

amendments demonstrate the government's effort to resolve the conflict in Malaysia's migration management by striving to achieve a harmonious balance between the well-being of migrants, labour market requirements, and immigration control.

5.6.1 The possibility of bilateral and multilateral agreements being negotiated between Bangladesh and Malaysia as a labour sending and receiving countries

Bilateral labour migration agreements between Bangladesh and Malaysia, founded upon the ICRMW, the ILO standards, and the UDHR, stand as pivotal mechanisms within labour migration governance. These agreements facilitate a secure, organised, and systematic process of labour migration. In the current global landscape marked by unprecedented challenges, this initiative can herald a mutually advantageous situation for both Bangladesh and Malaysia, promoting an augmented flow of migrant labour in each respective role. As Bangladesh serves as a significant contributor to Malaysia's foreign workforce, these nations can collectively elevate their export potential by expediting the engagement of migrant labour while simultaneously safeguarding their rights and well-being. In the timeframe spanning March to May 2021, the USAID Asia Counter Trafficking in Persons (Asia CTIP) Program conducted an investigative study aimed at comprehending the dynamics of the Bangladesh-Malaysia migration corridor.²⁵

This study strives to contribute to the evolution of fresh policies and systems tailored to curtail costs and amplify safeguards for Bangladeshi migrant workers within Malaysia.²⁶ Acknowledging the present dearth of robust migrant worker organisations in both Bangladesh and Malaysia, it becomes evident that labourers necessitate access

²⁵ Denney, Lisa, and Siliphaithoun Xayamoungkhoun, "Labour migrants' vulnerability to human trafficking and labour exploitation in Southeast Asia: An analysis of Laos," London: ODI and ASEAN-Australia Counter Trafficking, (2023).

²⁶ Ibid.

to support entities, including migrant associations, non-governmental organisations advocating for migrant welfare, human rights institutions, and diaspora organisations. These associations can furnish essential support, particularly given the multifaceted discrimination often experienced by migrant labour in host countries. It becomes crucial to proactively provide information concerning trade unions and civil society organisations that extend support within the destination country before a worker embarks on their journey. The contours of bilateral agreements can include provisions that promote the operation of such organisations while facilitating migrant worker access in accordance with both contracting parties' legal frameworks. To concretise an efficacious bilateral accord between these two nations and to safeguard the rights of all migrant workers, the following policy imperatives merit implementation:

1. The establishment of a centralised online employment portal, with terms meticulously outlined in employment contracts, caters to Bangladeshi jobseekers pursuing opportunities abroad and employers keen on directly selecting candidates.
2. Increased outreach by recruitment agencies, the BMET, and its subsidiary agencies fosters the dissemination of accurate migration-related information.
3. Improved pre-departure training programs are available for prospective migrant workers.
4. Transparency and widespread awareness campaigns to inform all stakeholders about the nuances of the bilateral agreement should be prioritised.
5. Strengthened collaboration between the governments of Bangladesh and Malaysia.

6. Intensified monitoring and enforcement of existing labour regulations involves governmental authorities working in tandem with organisations and employers to guarantee adherence to minimum workplace standards for migrant labourers.
7. The goal is to minimise the barriers that obstruct essential services for migrant workers, including the imperative of equitable treatment within their workplaces.

5.7 CONCLUSION

In brief, an astute recalibration of national laws and policies can unequivocally ameliorate the plight of migrant workers and reinforce their fundamental human rights. Notably, Bangladesh prominently occupies the role of one of South Asia's principal labour-exporting nations. The nation has commendably enhanced its migration governance, resulting in both national and bilateral dynamics. Non-governmental organisations, private actors, and outsourcing entities have played an instrumental role in this transformation within this overarching framework. Furthermore, the delicate equilibrium between domestic legislation and policies and their harmonisation with international instruments pertinent to labour law and fundamental human rights underscores Bangladesh's commitment to this multifaceted issue.

In parallel, Malaysia ranks among the nations accommodating a substantial population of migrant labourers within Southeast Asia. It can forge a symbiotic partnership with Bangladesh through collaboration, culminating in bilateral accords tailored to embrace international best practices. The blueprint for such agreements necessitates flexibility in migration management, imbibing insights gleaned from global paradigms. Additionally, the establishment of specialised offices can fortify the existing

framework governing migration management, which is based on a limited spectrum of services shared between Bangladesh and Malaysia. Ultimately, bilateral and multilateral agreements, along with the endorsement of the UN, and the ILO Conventions safeguarding the rights of migrant workers, can bolster the efficacy of domestic legal frameworks and policies in both nations.



CHAPTER SIX

WORKERS RIGHTS IN ISLAM

6.1 INTRODUCTION

Work and labour are regarded with the greatest respect in Islam, and it is one kind of worship. Islam thinks of work as an idealistic undertaking. It is compulsory for each individual who can do any work. “According to a *hadith*, the pursuit of *halal* (legitimate) revenue is obligatory following obligatory prayer and other duties,” and *Baihaqy*, the religion of Islam, has established laws to regulate labourers.¹ The Islamic laws were established for the purpose of protecting the labour force from exploitation and mistreatment. In addition, Islam has regarded, thought about, and dignified the labourers and went before all societies in arranging the privileges of labourers, while, in numerous different societies and human advancements, the insignificant significance of work was synonymous with bondage and reliance, and in other places, it inferred embarrassment and disgrace.² Clearly, Islam outlined the rights of workers and mapped out the means through which those rights may be realised and safeguarded. Islam had given workers complete protection from all sorts of exploitation and abusive behaviour in the workplace.³ Islam does not make a distinction between local and migrant workers, and Islamic teachings strongly condemn acts of cruelty.⁴

Islam granted explicit rights to labourers, both as residents and as individuals, and upheld numerous rules that guaranteed their privileges as labourers. These rules

¹ Azid, T, “The concept and nature of labour in Islam: A survey,” *Review of Islamic economics*, vol. 9, no. 2 (2005): p. 93.

² Ibid.

³ Mohamad, Ashgar Ali Ali, and Farheen Baig Sardar Baig, “Treatment of migrant workers: The Islamic perspective,” *Australian Journal of Basic and Applied Sciences*, vol. 6, no. 11 (2012): p. 97-105.

⁴ Ibid.

aimed to establish social equity and ensure a standard of living for labourers and their families, both during their lifetime and beyond.

In this chapter, the researcher seeks to analyse the rights of workers in Islam. The researcher also continues to discuss the general recognition of legal protection of workers in international Islamic instruments, highlighting the UIDHR, the Cairo Convention, Arab Conventions, and the OIC Conventions for workers' rights in Islam.

6.2 THE CONCEPT AND NATURE OF LABOUR IN ISLAM

The Islamic framework highly values work and the participation in work-related financial activities (if *halal*). However, Islam clearly distinguishes between *halal* and *haram* in regards to financial activities; therefore, in an Islamic express, a worker can only participate in *halal* activities.

There are two major sources of creation within the Islamic framework, such as “work” and “*mal*” (in broad words, he used “*ama'il*” for “work,” that is, made out of “*ama'il-I-silil*,” that is, noble acts, and “sayings,” that is, efforts).⁵ Where any organisation and society are remembered for work, capital and regular assets are remembered for the idea of “*mal*”. Regarding the phrase that was added, it did not make any reference to people who were self-employed; therefore, there is nothing in it that is anti-Islamic.⁶ *Ama'il* denotes both labour and labour lessens, and it has a wide connotation. The term “work” has expanded to encompass not only the modern labourer in a narrow sense, but also includes white-collar staff and administrative faculty in any generation unit. Therefore, for all practical purposes, the term “work” now encompasses

⁵ Tabakoglu, Ahmat, “Labour and capital concepts in Islamic economics,” *In Second International Conference on Islamic Economics, Islamabad, Pakistan. Organized by International Islamic University, Islamabad, (1983).*

⁶ Uzair, Muhammad, “Comments on Labour and Capital Concepts in Islamic Economics,” *In second international conferences on Islamic economics. Islamabad: IIU, (1983).*

all human resources.⁷ A labourer is communicated with the term called ‘*ajfr*’ in Islamic *fiqh*; for example, a labourer is the individual whose work is enlisted in kind for compensation (each body who works as an end-result of a pay is considered a specialist).⁸ ‘*Ik tisab*’ is the best possible word that ought to be utilised, which means endeavouring. A breadwinner is an ‘*ajlr*’, whereas a worker is a ‘*kasib*’, suggesting that action is the primary determinant of generation.⁹ ‘*Ajtr*’ can be broken down into two distinct categories: the first, known as ‘*ajlr al mushtarak*’ (meaning “subject to labour”), requires the individual to make restitution for any damage caused to a particular product as a result of his actions.¹⁰

6.3 PRINCIPLES OF EMPLOYMENT RELATIONS IN ISLAM

Earlier in Islamic history, people regarded workers as responsible for creating substantial worth and riches in the commercial centre. Additionally, the fourth Caliph, who passed away in 661, stated that merchants and craftsmen are the “suppliers of advantages and products.”¹¹ When they say that vendors and labourers are “the folks who will guarantee stable unity and regard allegiance,” Imam Ali is emphasising the importance of these groups as a counterpoint to the state’s authorities and representatives.” Then again, the mediaeval Arab humanists contended (p. 241) that “work has a place with the things that comprise capital” and that “benefit is the worth acknowledged from work.”¹² That is, Islamic reasoning arranges labourers at the focal point of financial exercises, and without them, there will be no worth or wealth creation.

⁷ Uzair, Muhammad, “Some conceptual and practical aspects of interest-free banking,” *Islamic Studies*, vol. 15, no. 4 (1976): p. 247-269.

⁸ Azid, T, 248.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ali, Abbas J., and Abdullah Al-Owaidan, “Islamic work ethic: a critical review,” *Cross cultural management: An international Journal*, vol. 15, no. 1 (2008): p. 5-19.

¹² Alrefai, Ahmed, and Michael Brun, “Ibn Khaldun: Dynastic Change and its economic consequences,” *Arab Studies Quarterly* (1994): p. 73-86.

From an Islamic perspective, work is a necessary action and a prudent measure, taking into account the needs of individuals and the importance of maintaining balance in both personal and public life.¹³ Indeed, the Islamic perspective compares difficult work to profound satisfaction, viewing it as an obligation for all individuals who possess the mental or physical capacity to perform it.¹⁴ Looking to make one's living in a legitimate way is considered strict recognition. Muslims are required to earn their living through work and to forgo asking. Islam prefers work because it is through it that an individual can communicate and contribute to the general public.

According to another Islamic custom, the Prophet (PBUH) was once sitting with his colleagues, who, when seeing a tough youngster, stated, "Oh dear for that man! Had it been for his capacity and toughness to be for jihad in the reason for Allah (SWT)". The Prophet (PBUH) answered, "Do not say as much! For in the event that he is endeavouring to go without himself from asking individuals, he is the reason for Allah (SWT). Also, on the off chance that he is taking a stab at the purpose of powerless guardians or descendants to do the trick on them, he is the reason for Allah (SWT)."¹⁵ However, Islam expects labourers to strive for expert performance, as one might expect, given that the ultimate goal of work is strict recognition.¹⁶ The Prophet (PBUH) stated: "The labourer, whenever utilised, takes what is correct and gives what is correct, resembles a *mujahid* struggler in the reason for Allah (SWT) till he gets back."¹⁷

¹³ Ali, A. J., & Wahabi, R, "Managerial value systems in Morocco," *International Studies of Management & Organization*, vol. 25, no. 3 (1995): p. 87-96.

¹⁴ Saks, Alan M, "Antecedents and consequences of employee engagement," *Journal of managerial psychology*, vol. 21, no. 7 (2006): p. 600-619.

¹⁵ El-Sayyad, I. A. H, "The Islamic view of medicine," *Reflections on Islamic medicine* (1993): p. 1-27.

¹⁶ Ibid.

¹⁷ Al Tabarâni, "*Al-mu'jam al-Kabîr*," Dâr ihyâ'at-turâth al-arabî, (1983).

6.4 RIGHTS OF WORKERS IN ISLAM

The religion of Islam plays a significant part in ensuring the protection and advancement of workers' rights. However, the Islamic regulations for workers are noteworthy since they define workers' responsibilities explicitly, leading to a more equitable workplace. The religion of Islam has something to say regarding virtually every type of worker's right. The following sections describe the most important rights of workers.

6.4.1 Comprehensible agreements for ensuring justice

The concept of justice has a key role in the Islamic legal system. It joins equity both now and, in the future, with an emphasis on human rights and financial equity. The Islamic concept of "Equity" is not solely based on shared concerns, but also integrates religious principles. This means that Islam opposes exploiting the weaker party and emphasises the importance of ensuring a fair economy. The Islamic law instructs employers and supervisors to treat their subordinates and workers with dignity and fairness at all times.

Nevertheless, Islam mandates that all parties to any exchange enter into an agreement, either written or oral, although the former is preferable for the sake of security. Somewhere else, "the *Quran* guides individuals to satisfy their commitments (Al-Ma'idah 5:1)," ¹⁸ "on the grounds" that the inquiry will be posted on the Day of Judgement whether one satisfied one's commitments or not. A contract makes common rights and commitments where the business gives a few advantages. In another hadith, "Individuals ought to keep their understandings except if there are conditions in the understandings that are unlawful and not as per the code of Islam,"¹⁹ and another hadith says, "Islam does not allow any understanding, which is the weakness of any

¹⁸ Sura Al-Ma'idah 5: 1.

¹⁹ Tirmidhī, M, "Al-Sunan," *Beirut, Dār al-Fikr*, (1983).

gathering.²⁰ The contract is basically and will be proceeded with if the specialist and proprietor do not commit any unlawful. On the off chance that there is any gross infringement or unfortunate behaviour, the manager has all the rights to end the specialist. An agreement allows the specialist, with specific conditions, to leave or change the activity if there is an accessible alternative. The Prophet (PBUH) says, “In the occasion that you vow a pledge for something and a superior elective comes your way, break the vow, make up for it, and improve.” A contract can be disavowed by any gathering if the guidelines permit. Renouncement can be reciprocal or one-sided.²¹ Additionally, the Islamic guidelines on contracts, along with the *Quranic* and *Hadith* arrangements on the subject, allow individuals to understand that the agreements pertaining to bosses and representatives must be secured by these arrangements, ensuring that no worker or business is denied their proportionate rights and obligations.

6.4.2 Kindness, humility and respect towards workers in Islam

According to the previously referenced *hadith*, Islam denies the slapping of a slave, with the exception of the off chance that it is for a real reason. If Allah (SWT) willed it, the master should be appreciative and grateful that he is now in a position to have servants or employees rather than becoming the worker himself. Allah (SWT) has appointed, “And Allah (SWT) regarded some of you over others with riches and properties.”²² Master, it must be understood that not all were made for a similar reason, but rather, in reality, they are the formation of Allah (SWT). Each and every one of us has been made by Allah (SWT).

²⁰ Riinawati, “The Concept of Islamic Education Management from the Perspective of the Qur’an and Al-Hadith,” *Tafkir: Interdisciplinary Journal of Islamic Education*, vol. 3, no. 2 (2022): p. 148-162.

²¹ Al-Bukhari, M. Sahih al-Bukhari, “Trans. by Muhammad Muhsin Khan, Riyadh, Saudi Arabia:” *Darussalam Publishers and Distributors*, vol. 9 (1997).

²² Surah A Nahl (16): refrain (71).

6.4.3 Equality and non-discrimination

Islam places a strong emphasis on the idea that everyone is equal in Allah's (SWT) eyes. A master cannot be superior to a slave unless that superiority is based on piety and morality. In Surah al-Hujurat (4) verse 13, Allah (SWT) says, translated as, "O Mankind! In order for you to get to know one another, it formed you from a man and a female, then divided you into countries and tribes. Islam never permits discrimination based on race, sex, race, shade, etc." It likewise says, "The proportion of honourability is just *taqwa*, that is, carrying out the correct things and dreading, and in every single other field, all are equivalent." Moreover, this phrase conveys an idea that is contrary to Islam, namely, that women are equal to men in the workplace and that companies should not discriminate against them based on their sexual orientation. "Shifa Bint Abdullah was so gifted in open organisation that Umar selected her as market overseer and manager of the Medina Market." "She was also the primary lady instructor in the early Islamic era." "She was going to the foundation of Al-Hisbah" (the job of the state). She was responsible for ensuring the simplicity and accuracy of scales, as well as the compliance of transactions with Islamic rules.

In addition, the blessed *Quran* provides a clear and concise framework for recruiting workers. When assigning tasks to an incompetent person, the Prophet (PBUH) warns, "Just wait for the pulverisation."²³ It is commonly assumed that workers prepare for the workplace by following the *hadith* that says, "search for information from support to grave gives sign of ever taking in." Islam encourages a kind of education based on apprenticeship.²⁴ A second *hadith* states, "Whoever is appointed to deal with the difficulties of a Muslim people group and then chooses somebody on the basis of nepotism, will be revealed by Allah (SWT)." In Islamic law, it is the

²³ Al-Bukhari, M. Sahih al-Bukhari, 253.

²⁴ Ibid.

responsibility of the company to look for the most advantageous option. “If a person of lesser competence is allocated while a superior one is available, his action would be comparable to misleading Allah (SWT), the Prophet (PBUH), and the individuals,” Umar, the second Khalifa of Islam, remarked.²⁵

6.4.4 Working hours and conditions

Islam maintains that there should be a daily cap on the number of hours worked to prevent overwork. If an expert lacks critical assistance, they are unable to put in more hours. This criterion can be found in the *hadith* as well as the *Quran*. These adages explain that Allah (SWT) has appointed that the workers should not be overburdened; the Almighty never overburdens his manifestations, which is why his supporters, who must follow him and show him respect and uprightness, must do the same. They must also treat their employees or subordinates with ease. A similar approach is outlined in the accompanying *hadith*, which states, “Your hirelings are your siblings whom Allah (SWT) has put under your charge.”

Additionally, anyone who has someone else under them should support them by providing them with food and clothing, and they should not burden them beyond their capacity. However, in the event that you do trouble them beyond their ability, at that point, help them. The above *hadith* plainly expresses that business cannot overburden its labourers. Where there is additional time, there is additional compensation.²⁶ “In any case, inordinate additional time and overburdening a specialist might be unsafe for a labourer’s wellbeing, and anything counterproductive cannot be upheld past typical lines.” According to another *hadith*, “the one who distributes easy tasks among

²⁵ Al-Hakim, M. B. A., & Muhammad, H, “al-Mustadrak ‘ala al-Sahihayn. *Bm, bg*, vol. 3 (1990): p. 745.

²⁶ Syed, J., & Ali, A. J, “Principles of Employment Relations in Islam: A Normative View,” *Employee Relations*, vol. 32 (2010): p. 454-469.

subordinates will be rewarded on the Day of Judgement.”²⁷ Islam coordinates to ensure that the workplace is safe, clean, and free of danger; both the *Quran* and the *Hadith* establish the standard.

6.4.5 Justification of workers' wages in Islam

Islamic law adopts a severe strategy for instalments for administrations.²⁸ As per the *Quran*, compensation is a right, not thoughtfulness from the proprietor. The *Quran* says, “The individuals who accept and perform decent deeds (great work), their income will never be retained from them (95:06).” Anticipating present-day ideas of express or suggested agreements of business, the Prophet (PBUH) additionally “prohibited the contracting of a labourer without the earlier obsession of wages for the work.” The above examples from the *Quran* and *Hadith* show that a specialist ought to be unequivocally told about the wages he will get after the completion of his work. Particular wages might be oral or in a composed structure. The workers have a right to wages that are sufficient to provide for the most basic requirements of existence.²⁹

According to Islamic teachings, a person should earn at least a “living” income or some sort of fair minimum wage. It can be deduced, through *Qiyas*, from the refrain that “remuneration should meet at any rate the expense of nourishment and garments (the fundamental necessities at the hour of disclosure of the *Quran*) as per the standards of the time.” Different customs from the Prophet (PBUH) manage the subjects.³⁰ On another occasion, the Prophet (PBUH) stated, “Those working under you resemble your

²⁷ Hoque, Kazi Arshadul, “Wage Principles in Islamic Law: An Analysis,” (2017).

²⁸ Hussain, Mumtaz, Asghar Shahmoradi, and Rima Turk, “An overview of Islamic finance,” *Journal of International Commerce, Economics and Policy*, vol. 7, no. 01 (2016): p. 1650003.

²⁹ Ahmad, I, “Religion and Labour: Perspective in Islam, Working USA,” *The Journal of Labour and Society*, vol. 14 (2011).

³⁰ Muslim, S. M, “Arabic and English,” *Translated by Nasiruddin al-Khattab*. (Darussalam Publishers, Riyadh, 2007).

siblings whom Allah (SWT) has made your subordinates.”³¹ In other words, if a person has a sibling working for him or her, that person should provide for his or her needs in the same way that the person provides for his or her own needs, including providing the same food and clothing. It is described in a *hadith* that the Prophet (PBUH) stated, “Give a representative his or her wages before the perspiration is dry on him.”³² In another *hadith*, it is connected, “The rich, regardless of his wealth, cannot defer an installment to the specialist, for it is a wrongdoing.”³³ The *hadith* contrasts the third individual with the one who turned a free individual into a slave and sold him for cash. This *hadith* demonstrates not only that a labourer should receive full compensation for his or her job but also that there should be a limit placed on limited employment. “Retaining someone’s compensation is viewed as perhaps the gravest sin. This *hadith* likewise reveals some insight into the issue of compensation robbery.”³⁴

6.4.6 Workers social security in Islam

The work environment rationale of *ehsan*, which emphasises goodness and liberality in representative relations, clearly demonstrates the social welfare component of employment relations in Islam. Hopefully, Islam places a unique emphasis on social equity and considers moral conduct to be a fundamental aspect of Islamic finance. “The Islamic impression of [the] financial procedure is dynamic, and its emphasis on social equity is firm, and this is due to the fact that unfairness disrupts social consensus and, for that same reason, is not trustworthy.”³⁵ This opinion holds that a fundamentally

³¹ Al-Bukhari, M. Sahih al-Bukhari, 253.

³² Majah, I., & Muhammad, A. A., “Sunan Ibn-i-Majah,” Translated by Tufail Ansari, Lahore. (Kazi Publication, 1993).

³³ Ibid.

³⁴ Bobo, Kim, “On the Just Treatment of Immigrant Workers,” *Religious and Ethical Perspectives on Global Migration*, (2014): p. 297.

³⁵ Naqvi, Syed Nawab Haider, ed., “Islam, economics, and society (RLE politics of Islam).” (Routledge, 2013).

good way of thinking should inspire man's economic endeavours to produce the finest social structure. Furthermore, Islam not only discusses the fair conveyance of riches to the general public but additionally gives the entire populace a privilege to a fundamental way of life through essential state annuities. *Zakat*, one of Islam's five mainstays and a natural requirement, ensures a basic way of life for individuals who pay *Zakat* on their possessions above the base (*nisab*).³⁶

Moreover, it is important to note that while national social security and the three Islamic standardised social protections may appear to be similar, they are inherently characterised by distinct standards and objectives. In this context, it is noteworthy that within the framework of Islam, migrant labourers are granted specific privileges to address the essential requirements of Muslims, thereby contributing to the overall benefits of the *Ummah*.³⁷ Employers can be considered to have a moral obligation to provide social welfare for employees. According to the *Quran*, Allah (SWT) said, "believers should engage in acts of kindness towards individuals who are under their authority or employ."³⁸

Islamic sharia, as previously noted, mandates that labourers receive a living wage to meet their basic daily needs. The observed Umayyad Caliph Omar Ibn Abdul Aziz (682-720) stated³⁹: whoever attempts an open activity and has no house, ought to have a house; in the event that he has no spouse, ought to get married; and on the off chance that he has no mammoth to ride, ought to have one.⁴⁰ Besides, with respect to

³⁶ Chapra, M. U, "Islamic Work Ethics," *Al-Nahdah: Muslim News and Views*, vol. 3 (1983): p. 1-7.

³⁷ Mohammed, Hossameldeen, and Ray Jureidini, "Umma and the nation-state: dilemmas in refuge ethics." *Journal of International Humanitarian Action*, vol. 7, no. 1 (2022): p. 17.

³⁸ An-Nisa: 37.

³⁹ Hussain, Ashaq, "Scientific And Literary Progress During Medieval Period With Special Reference To Medicine (750-945)," *Ar-Raniry: International Journal of Islamic StudiesI*, vol. 2, no. 2 (2020): p. 1-20.

⁴⁰ Ibid.

local officials, it is the duty of an Islamic state to accommodate all prerequisites of their job, as this will encourage their dedication to work.

6.4.7 Profit sharing in Islam

It is possible that profit sharing is the most beneficial arrangement for employees in Islam. Benefit-sharing or stock-ownership schemes in businesses are a central tenet of the arguments made by proponents of the Islamic economic and financial system. “Developing a benefit sharing plan for employees should be a mandatory requirement for every company in the workplace.”

In addition, Islam acknowledges joint endeavours, “The religion of Islam permits partnerships between two parties, with one party providing the capital and the other party providing the labour or services, with the profits being divided in accordance with the terms that were previously agreed upon (called *Mudarabah*; it is a particular type of association, or *usharakah*).”⁴¹ “It also encompasses work-only companies in which the primary asset is the expertise possessed by the employees.”⁴² Chapra has argued that “benefit might be divided into two sections: rewards and other advantages,” with the latter being used to better working conditions and provide training for workers, compensation for children’s education, and food endowments.⁴³ These advantages incorporate retirement and medical advantages as well as paid excursions, which definitely influence labourers’ inspiration and employment fulfilment. This is a basic and straight standard that a firm needs to impart benefits to its representatives. The possibility of reward is cherished in the above-cited hadith. Another rule perceives from

⁴¹ Siddiqi, M. N. S, “Issues in Islamic Banking,” Leicester, UK: p. 139. (The Islamic Foundation, 1983).

⁴² Udovitch, A. L, “Labour Partnerships in Early Islamic Law. In M. G. Morony (Ed.),” *Manufacturing and Labour*, (2003): p. 307-323. (Aldershot, Hant, England; Burlington, VT: Ashgate).

⁴³ Chapra, M. U, 258.

the principal hadith that if the business is not procuring a lot of benefit, he should in any case give labourers some of the benefits.⁴⁴

6.4.8 The moral duty of employers and employees

Considering that engaging in any other action would be regarded as an act of treachery, the employer is primarily responsible for ensuring that the employee's rights are fully granted and should also undertake all other necessary measures to avoid any potential decrease in these rights. Moreover, it is imperative for firms to acknowledge the pressing necessity of providing employment opportunities while refraining from restricting workers' rights. Alternatively, employers may choose to compensate their employees inadequately. Islam forbids the perpetration of injustice and affirms the principle that "there should be no harm nor reciprocating harm."⁴⁵ Allah (SWT) says in the *Quran*: "Ensure compliance with the established standards of measure and weight, refrain from unjustly withholding what is rightfully owed to individuals, and refrain from engaging in acts of corruption following the restoration of order on the Earth." The Prophet (PBUH) said: "it is incumbent upon individuals to assume care for their brothers."

According to Islamic belief, Allah (SWT) has placed people under your control or authority. Those who have a sibling under their care should provide them with sustenance commensurate with their own consumption and attire them in a manner consistent with their own clothing. In the event that such duties are assigned, it is essential to offer appropriate support and assistance to ensure their successful

⁴⁴ Zulfiqar, A. A. Z, "Religious Sanctification of Labour Law: Islamic Labour Principles and Model Provisions," *University of Pennsylvania Journal of Labour and Employment Law*, vol. 9 (2007): p. 426.

⁴⁵ Muzammil H. Siddiqi, "Rights of Workers in Islam," <<https://aboutislam.net/shariah/shariah-and-humanity/shariah-and-life/rights-workers-islam/>> (accessed 10 May 2022).

completion.⁴⁶ Despite the mutual agreements of employers and employees, instances of human error might still arise, leading to occasional instances where individuals recognise issues between themselves. In pursuit of this objective, Allah (SWT) established a mechanism for arbitration. A “legal enforcement framework” should be established to address any uncertain issues between “employer and employee” and to choose a fair judge from Allah (SWT) to judge and meet with. Several references are provided below: According to the teachings of Allah (SWT), “it is stated that in the event of conflict arising between two factions of believers, efforts should be made to reconcile and establish peace between them.”⁴⁷ Once again, Allah (SWT) states in the *Quran* that “individuals should not make judgements based on their own whims and wants, but rather should adhere to what has been revealed by Allah (SWT).”⁴⁸

6.4.9 Rights and duties of workers in Islam

According to the Prophet (PBUH), “for a rich man to pine for appearances to stay away from the satisfaction of his dedication towards the fundamental privileges of a labourer is persecution;” and “Any worker who watches Allah’s (SWT) privilege and his lord’s right will get a twofold prize” (Bukhari). Islam does not distinguish between Muslim and non-Muslim specialists. As conveyed in that work, it should, within reasonable limits, be a better way of life and a better opportunity to work.⁴⁹ Furthermore, the Prophet (PBUH) is: “Notice (day by day) supplications and of (the privileges of) the individuals who are subordinate to you.”⁵⁰ The privileges of labourers are evident in

⁴⁶ Sahih Al-Bukhari: 6050, Book 78, Hadith 80.

⁴⁷ Al-Hujurat: 9.

⁴⁸ Al-Mayidah: 49.

⁴⁹ Faruque A. A, “Current Status and Evolution of Industrial Relation Systems in Bangladesh,” *New Delhi: International Labour Organization, Sub Regional Office for South Asia*, (2009).

⁵⁰ Yousaf et al., “Impact of ethical leadership on employees helping behavior: role of moral attentiveness and moral courage,” *Int Rev Manag Bus Res*, vol. 9, no. 2 (2020): p. 193-206.

their daily petitions. It is presumed that despite the fact that the specialist does not work by any means, in light of the deficiency of the workplace, for example, nonattendance of crude materials, power, and so on, a specialist must acquire his compensation since he finished up an agreement beforehand.⁵¹ If a business needs to remove a labourer before the agreed-upon hour, they must compensate the specialist for their loss. This also infers the responsibilities of workers.

6.4.10 Islam abolished slavery

More than fourteen hundred years ago, Islam was the first religion in the history of the world to protect the rights of slaves. They received human rights from Prophet Muhammad (PBUH), who also elevated their social status and urged others to show them courtesy. For instance, in the *Quran*, in Surah An-Nisa (4) verse 36, Allah (SWT) commands that the slaves be treated in a way that is both humane and appropriate. “Serve Allah (SWT), and join not any partners with Him; and do good to parents, kinsfolk, orphans, those in need, neighbours who are of kin, neighbours who are strangers, the companion by your side, the *way-farer* (yet meet), and what your right hands possess: for Allah (SWT) loved not the arrogant, the vainglorious.”

6.5 RELATIONSHIP BETWEEN EMPLOYER AND EMPLOYEE IN ISLAM

The *Quran* (5:1 and 17:34 individually) states: “O dedicated! Satisfy your agreements” and “be consistent with your responsibilities, for you will need to represent them.” Furthermore, the colloquialisms of the Prophet (PBUH) state: “Muslims ought to tolerate their conditions” (*Bukhari*); and “the Prophet (PBUH) did not need any distinction to rise regarding utilisation example and living standard between employed

⁵¹ *Ibid.*, 261.

labour and contracting business person, which ever legitimate status they have a place (*Bukhari*).” At the point when somebody contracts with a specialist, particularly for his administration (regardless of whether al has or al *mushtarak*), it should take the necessary steps himself and must not supplant himself with another person without his manager’s assent.⁵² Any agreement forcibly and in danger is not legitimate and admissible.⁵³ Business and representative are not flat-out terms; however, they are relative terms in Islam. For example, an individual can be both a labourer and a businessman all the while.⁵⁴ The *Quran* (43:32) states: “Is it they who distribute their Lord’s kindness? We have distributed among them their work in the life of the world and raised some of them above others in positions where some of them may take work from others.”

6.6 ISLAMIC PRINCIPLES AND ITS APPLICATION ON MIGRANT WORKERS

According to the Malaysian Constitution, Islam is recognised as the official religion of the federation.⁵⁵ The legal framework in Malaysia can be characterised as having a binary nature. It consists of two distinct legal systems: civil law and Islamic law. The Federation primarily governs the civil law system in Malaysia, which primarily derives from English common law. In contrast, Islamic law, commonly referred to as Sharia, primarily governs many aspects of familial matters for Muslims, encompassing topics such as marriage, divorce, inheritance, *zakat* (charitable giving), *waqaf* (endowments), and *fariad* (distribution of assets according to Islamic principles). The legal framework falls under the purview of individual states’ jurisdictions.⁵⁶ Moreover, four fundamental

⁵² Tabakoglu, A, 249.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ The Federal Constitution of Malaysia (FCM), Art 3(1).

⁵⁶ Ibid, Art 74(2).

sources form the foundation of Islamic law, also known as Shariah law: (i) The *Quran* encompasses the divine expression of Allah (SWT). (ii) The *Sunnah*, or *Hadith*, refers to the teachings and actions of Prophet Mohammad (PBUH), serving as a demonstration or exemplification. (iii) In Islamic law, Muslim legal scholars reach a consensus or collective agreement known as *Ijma* to address complex situations not explicitly addressed in the *Quran* or *Hadith*. It serves as a means to resolve pressing matters based on the Muslim community's knowledge, (iv) *Qiyas* proposes that Muslim scholars are discovering that the identification of a certain concept is not consistently delineated across various practices.⁵⁷ The selection of a new case is dependent upon the cognitive faculties and the authoritative frame of reference. Muslim scholars have implemented a prohibition on smoking due to the probable health risks associated with consuming cigarettes and alcoholic beverages, which have been linked to life-threatening sicknesses.

According to Islamic jurisprudence, there is a lack of explicit categorisation of work requirements. The comprehensive explanation of the *Quran* and the *Sunnah* fundamentally resolves all issues. Thus, the necessity to categorise labour legislation is rendered obsolete. Employment depends on the norms of '*ubudiyyah* (Allah SWT is the entire obedience), *mas'ulyyah* (responsibility), and *itqan* (guarantee). Given these criteria, individuals are encouraged to recognise that the primary incentive for the separation between employment and access to business lies in the pursuit of spiritual fulfilment via devotion to Allah (SWT). The basic goal of an "employee" is to find the joy of Allah (SWT), which was instructed in the *Quran*: "I created the jinn and humankind only so that they might worship Me."⁵⁸ Given the aforementioned title,

⁵⁷ Al-Aqaileh, Zaid Muhmoud, "Legal Cultures Dialogue: Benefits and Obstacles of Comparative Law Studies," *Journal of Sharia and Law*, vol. 94, no. 1581 (2013): p. 1-107.

⁵⁸ Mohammad, Jihad, and Farzana Quoquab, "Furthering the thought on Islamic work ethic: how does it differ?," *Journal of Islamic Marketing*, vol. 7, no. 3 (2016): p. 355-375.

expect personnel to exert diligent effort, refrain from acquiring inappropriate personal benefits while executing their commitments, and demonstrate a complete commitment to their responsibilities. The main principle of Islamic law pertains to the legal valuation of all endeavours undertaken. In order to ensure equitable and reasonable expectations, it is imperative that any labour undertaken is duly acknowledged and remunerated in accordance with its inherent validity, while avoiding both undue depreciation and unwarranted amplification.⁵⁹ The concept of divine assurance is rooted in the Islamic belief system, wherein Allah (SWT) ensures recompense for acts of righteousness and perseverance, both within the earthly realm and perhaps even beyond it.⁶⁰

According to the *Quran*, Allah (SWT) states, “And Allah (SWT) does not desire injustice for [His] servants.”⁶¹ Upon further examination, it becomes evident that Islamic law unequivocally forbids and denounces the act of aggressive employees’ earnings, as well as the deliberate delay in payment by employers. Therefore, it is imperative for employers to ensure timely payment of salaries to employees in adherence to these standards, as the withholding of unpaid wages contravenes Islamic legal norms.

Moreover, the Islamic curriculum highlights the primary orientations for promoting the importance of ensuring safety and well-being. This statement suggests the secondary overarching objective of Islamic law (*Shari’a*), wherein it is incumbent upon every adherent of the faith to safeguard their own life under any circumstances and also to support the preservation of others’ lives.⁶² Additionally, the UIDHR draws

⁵⁹ Shaharuddin, Raja Raziff Raja, Lukman Abdul Mutalib, and Hasnizam Hashim, “The concept of rights and protection to employees: A comparative overview,” *International Journal of Islamic Thought*, vol. 4 (2013): p. 58.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ismail, Afifah Binti, and Mohd Shahril bin Ahmad Razimi, “Occupational Safety and Health (OSH) From Islamic Perspective: A Conceptual Study,” *Ikonomika*, vol. 3, no. 1 (2018): p. 73-88.

upon the teachings of the *Quran* and *Sunnah* in order to ascertain the rights of migrant labourers. By considering the aforementioned criteria, it is necessary to identify other factors that can effectively address the issues faced by individuals who are seeking alternative employment opportunities. The introduction underscores the importance of a cohesive and consistent legal perspective and serves as a pledge to uphold the principles of Islamic jurisprudence.⁶³ According to clause 6 of the UIDHR, “individuals are entitled to the right to safeguard themselves against any form of harassment perpetrated by governmental entities. The individual is not obligated to provide an explanation for their actions unless they are responding to accusations or if circumstances arise that reasonably arouse suspicions about their potential involvement in a criminal offence.”⁶⁴

The Prophet Muhammad (PBUH) also said: “Muslims must abide by their agreements, unless there is an agreement that makes *halal* what is *haram* or makes *haram* what is *halal*.”⁶⁵ Regardless, companies must consistently meet the basic human needs of their employees. Through the lens of justice, the aforementioned Islamic criteria and standards offer a revised approach that safeguards the well-being of both employers and employees. Ultimately, with the assistance of the employer, the employee’s manual dexterity is utilised for the benefit of both the individual and others. This is just remarkable. The fundamental requirements for an individual’s character and goals are often centred on possessing a genuine identity and sincere aspirations, both of which are dedicated to selflessly benefiting humanity. By adopting this approach, the likelihood of sustaining injuries will be eliminated, resulting in benefits for all individuals involved. These advantages are for both Muslims and non-Muslims. Muslim

⁶³ Zoli, Corri, M. Cherif Bassiouni, and Hamid Khan, “Justice in post-conflict settings: Islamic law and Muslim communities as stakeholders in transition,” *Utrecht J. Int’l & Eur. L.*, vol. 33 (2017): p. 38.

⁶⁴ Al-Maida: 49 and An-Nisa: 148.

⁶⁵ Touré, Abdoul Karim, “*The Concept of Halal and Haram from Qur’an and Sunnah Perception*,” 2012.

countries have an obligation to benefit all of humanity.⁶⁶ One issues directives to individuals, urging them to engage in morally upright behaviour and desist from engaging in wrongful actions.”⁶⁷ Allah (SWT) said in the *Quran*: “You represent a distinguished nation. Allah (SWT) designed you to promote the well-being of humanity.

6.7 INTERNATIONAL INSTRUMENTS AND CONVENTIONS ON WORKERS RIGHT IN ISLAM

6.7.1 Universal Islamic Declaration of Human Rights

The UIDHR is a document created by Islamic Councils in Paris⁶⁸ and London.⁶⁹ It does so by employing the terminology of Islamic jurisprudence and restating fundamental human rights.⁷⁰ An “extremely serious” gap has been identified between the Arabic original and the official English translation.”⁷¹ Mayer points out that the document’s use of the generic term “the law” to refer to Sharia’s law throughout raises red flags because it may confuse readers who are only familiar with the English translation.⁷² According to the lawyers of the Arab Union, they also adopted a similar declaration in 1987 called the “Draft Charter on Human and People’s Rights in the Arab World”,⁷³ and the “Cairo Declaration on Human Rights in Islam (CDHRI),” adopted by the OIC states in 1990. The later proclamation was created using more secular language and was less biased against Shi’ite Islam than the former, the Universal Islamic Declaration.⁷⁴

⁶⁶ Rehman, Scheherazade S., and Hossein Askari, “How Islamic are Islamic Countries?,” *Global Economy Journal*, vol. 10, no. 2 (2010): p. 1850198.

⁶⁷ Ibid.

⁶⁸ Almahfali, Mohammed, and Helen Avery, “Human rights from an Islamic perspective: A critical review of Arabic peer-reviewed articles,” *Social Sciences*, vol. 12, no. 2 (2023): p. 106.

⁶⁹ Fred Halliday, “Relativism and Universalism in Human Rights: the Case of the Islamic Middle East,” *Political Studies*, vol. 43 (1995): p. 152-167.

⁷⁰ Eva Brems, “Human rights: universality and diversity”: p. 244-246. (Martinus Nijhoff Publishers, 2001).

⁷¹ Mayer, Ann Elizabeth, “Islam and Human Rights: Tradition and Politics,” 3rd Edition, p. 76. (Westview Press, 2006).

⁷² Ibid.

⁷³ Robert Traer, “Religious Communities in the Struggle for Human Rights,” *Christian Century*, September 28 (1988): p. 835.

⁷⁴ Ali Mohammadi, “Islam encountering globalization,” p.114. (Routledge, 2002).

6.7.2 Arab charter on human rights

Affirming the principles outlined in the UNC, the UDHR, the ICHR, the CDHRI, and the ACHR was approved by the Council of the League of Arab States on May 22, 2004, and it came into force on June 1, 2004.⁷⁵ It guarantees a wide range of customary human rights, including the right to liberty and security, equality before the law, protection from torture, ownership of one's own property, religious freedom, and the right to peacefully assemble and associate with others.

In addition, the charter additionally accommodates the appointment of a seven-person committee of experts on human rights to think about states' reports. Furthermore, a first version of the charter was created on September 15, 1994, but no state ratified it. The updated (2004) version of the charter came into force in 2008 after seven of the members of the League of Arab States ratified it. Various elements in the Arab Charter, especially those pertaining to women's rights and the death penalty for minors, are incompatible with the UN's understanding of universal human rights, as stated by the then UN High Commissioner for Human Rights by Louise Arbour on January 24, 2008.⁷⁶

On the website of her office, the charter can be found listed with other texts adopted by international organisations with the goal of fostering and strengthening democracy.⁷⁷ Algeria, Bahrain, Iraq, Jordan, Kuwait, Lebanon, Libya, Palestine, Qatar, Saudi Arabia, Syria, the United Arab Emirates, and Yemen were the only countries that had not signed the charter as of November 2013.⁷⁸

⁷⁵ Magliveras, Konstantinos D, "Completing the institutional mechanism of the Arab human rights system: The Arab Court of Human Rights," *International Human Rights Law Review*, vol. 6, no. 1 (2017): p. 30-52.

⁷⁶ The Arab Charter on Human Rights is incompatible with international standards -Louise labour, <<https://www.ohchr.org/sites/default/files/Documents/Issues/IJudiciary/Arab-Charter-on-Human-Rights-2005.pdf>> (accessed 10 June 2022).

⁷⁷ OHCHRA, "fostering and strengthening democracy," <<https://www.ohchr.org/en/democracy>> (accessed 10 June 2022).

⁷⁸ Ibid.

6.7.3 Cairo declaration on human rights in Islam

The CDHRI is a declaration of the member states of the OIC adopted in Cairo, Egypt, on August 5, 1990,⁷⁹ (Conference of Foreign Ministers, 9-14 Muharram 1411H in the Islamic calendar),⁸⁰ which provides an overview of the Islamic perspective on human rights and affirms Islamic sharia as its sole source. The CDHRI declares its purpose to be “general guidance for member states [of the OIC] in the field of human rights.”

Furthermore, this declaration is widely acknowledged as an Islamic response to the UDHR, adopted in 1948. It guarantees huge numbers of identical rights from the UDHR and fills in a living archive of human rights rules endorsed for all individuals from the OIC to follow; however, it confines them clearly as far as possible, as set by the Sharia. As a result of this breaking point, the CDHRI has been scrutinised as an endeavour to shield the OIC part states from global analysis for human rights infringement, just as for neglecting to ensure opportunity of religion, legitimising flogging, and permitting victimisation of non-Muslims and women.

Members of the OIC states decided to adopt the CDHRI in 1990, and since then, 45 states have signed it.⁸¹ In 1992, the UNCHR first presented the CDHRI. It received a resounding censure from the International Commission of Jurists.⁸² The declaration begins with the statement that “All human beings form one family whose members are bonded by their submission to Allah (SWT) and descent from Adam.” In addition to this, it prohibits all kinds of discrimination on the grounds of race, colour, language,

⁷⁹ Brems, E, “Islamic Declarations of Human Rights,” *Human rights: universality and diversity*: vol. 66 of *international studies in human rights*, p. 241–84, ISBN 90-411-1618-4. (Martinus Nijhoff Publishers, 2001).

⁸⁰ University of Minnesota, “Cairo Declaration on Human Rights in Islam,” <<http://hrlibrary.umn.edu/instate/cairodeclaration.html>> (accessed 10 May 2022).

⁸¹ Anver M, Emon, Mark Ellis, Benjamin Glahn, “Islamic Law and International Human Rights Law,” p. 113. (Oxford University Press, 2012).

⁸² Ibid.

faith, sex, religion matters, political connection, social position, or other reasons.⁸³ The CDHRI gives women the “right to maintain their name and lineage” as well as “equal human dignity,” “own rights to enjoy,” “duties to perform,” “own civil entity,” “financial independence,” and “own rights to enjoy.” Article 18(b) says that “everybody will reserve the privilege to security in the direct of his exclusive issues, in his home, among his family, with respect to his property and his connections.” Moreover, the declaration acknowledges people’s rights to protection and property in accordance with its terms.⁸⁴ The law forbids spying on him, placing him under surveillance, or tarnishing his reputation.⁸⁵ It prohibits the destruction and seizure of any family’s living arrangement and the removal of the family.⁸⁶ The individual will be shielded from any interference that is arbitrary by the state.⁸⁷

6.8 CONCLUSION

There is a possibility that Islamic teachings were prominently featured in the process of formulating labour and employment legislation in Muslim countries. Despite this, Islamic-practicing countries’ labour and employment policies do not entirely mirror the Islamic framework for work relations. Islam, as an entire code of life for a Muslim, can have a prominent effect on changing and tolerating work laws in Muslim nations that may follow the global work standard, as well as making advantageous arrangements for the purpose of enhancing the standard of living of ordinary workers. Muslims acknowledge that the religious basis of the employment legislation may increase its

⁸³ University of Minnesota, Cairo Declaration on Human Rights in Islam, 268”

⁸⁴ Rule, James B.; Greenleaf, G. W, “ Global Privacy Protection: The First Generation,” p. 45, ISBN 978-1-84844-512-3. (Edward Elgar Publishing, 1 January, 2010).

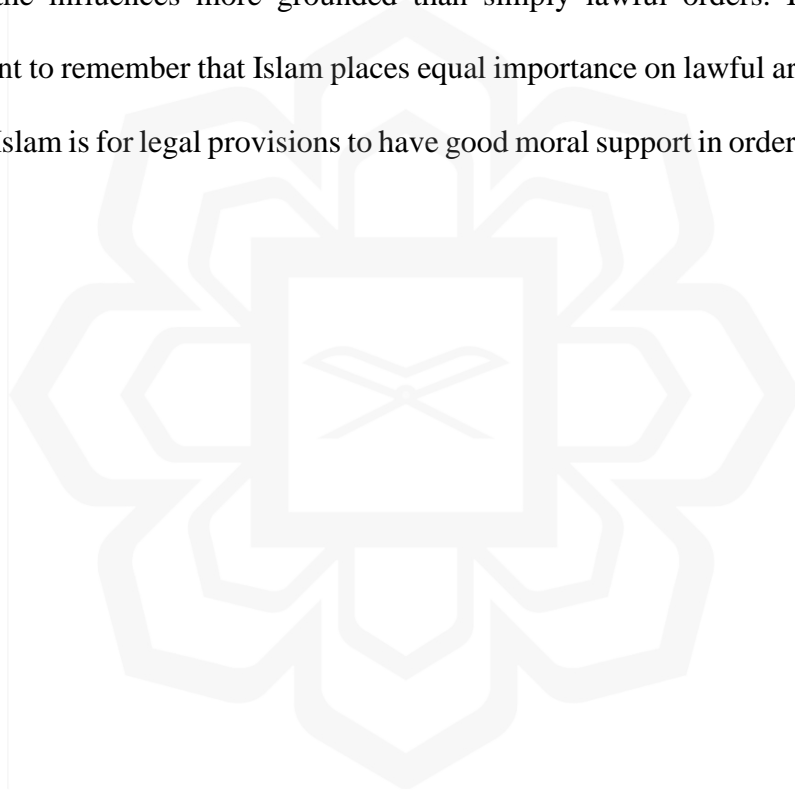
⁸⁵ Baderin, Mashood A, “ International Human Rights and Islamic Law,” p. 141, ISBN 978-0-19-102182-4. (OUP Oxford, 11 September 2003).

⁸⁶ Ibid.

⁸⁷ “University of Minnesota Human Rights Library,” <<http://hrlibrary.umn.edu/>> (accessed 4 May 2022).

validity, resonating better with the Muslim Umah, especially Islamic law professionals and academics, and providing workers, businesses, and citizens with a sense of ownership and association on the basis of labour law.

Moreover, Islam encourages states to take an active part in the process of regulating and developing new laws pertaining to the labour market, and these religious and good influences go about as strong lawful directives with respect to basic Muslim conviction of the great beyond (al-akhirah). From now on, this worry for the other world makes the influences more grounded than simply lawful orders. In any case, it's important to remember that Islam places equal importance on lawful arrangements. The goal of Islam is for legal provisions to have good moral support in order to be successful.



CHAPTER SEVEN

CONCLUSION

One of the main objectives of this study is to identify the problems and difficulties faced by some Bangladeshi migrant workers due to a lack of implementation of existing laws. This study has used migrants' standards, existing legal frameworks, and Islamic perspectives on the right to work to examine the proper implementation of Bangladeshi and Malaysian laws in terms of protecting migrant workers. This research comprehensively examines the ratification of international legal instruments, including the ICRMW and conventions established by the ILO. Additionally, it delves into regional legal frameworks and the intricate interplay with national labour laws, scrutinising the degree of acceptance and efficacy of these legal constructs in surmounting prevailing challenges. This research has also revealed claims, findings, and a compressive legal framework based on a literature review, a field study, and expert opinions on migrant workers, especially Bangladeshi and Malaysian labour laws.

The second chapter analyses in detail the international legal framework related to the protection of migrant workers. The international legal framework ensures that migrant workers get secure working conditions and basic human rights at their workplace. Following a meticulous analysis of international legal standards, this research believes that receiving countries should have confirmed sovereignty of planning and all necessary arrangements to protect the rights of migrant workers. The UN and the ILO's Migrant Workers' Conventions are of great significance to this research. The core international convention is the ICRMW, which entered into force on July 1, 2003. The main objectives of these conventions are to protect migrant workers

and members of their families; their existence sets a moral standard and serves as a guide and stimulus for the promotion of migrant rights in each country. Bangladesh is one of the signatories to this convention. The ICRMW explicitly delineates fundamental human rights for migrant workers, encompassing vital aspects such as healthcare provisions, workplace safety, unhindered mobility, trade union participation, provisions for overtime, sick leave entitlements, and more. Regrettably, a substantial number of these crucial rights are noticeably lacking in many workplace environments, leaving migrant workers significantly vulnerable and inadequately shielded. In addition, before joining the workforce, most migrant workers do not know about their work or other facilities provided by the host countries.

According to the ICRMW Conventions, all migrants have the right to join a trade union, but in reality, migrant workers do not usually engage in such activities. In addition, migrant workers frequently encounter a spectrum of challenges within their workplace milieu, spanning from insidious discrimination and virulent xenophobia to deeply ingrained racism. Moreover, the recruitment procedures, both in the origin and destination countries, are often marred by glaring unfairness, exacerbating the vulnerabilities of these workers. Concurrently, constraints stemming from their migration status further compound their predicament, perpetuating a conducive environment for the perpetration of exploitative labour practices and unjust wage disparities.

Furthermore, the ILO Migration for Employment Convention (Revised), 1949 (No. 97), and the ILO Migrant Workers' (Supplementary Provisions) Convention, 1975 (No. 143) contain provisions designed to protect migrant workers. The main aims of the ratification of ILO Convention No. 97 and 143 are to promote the creation of tripartite

forums (representatives of Ministries of labour, employer's organisations, and workers' organisations) where measures can be adopted to guarantee and safeguard the labour rights of migrant workers. The overarching objective of the convention is to safeguard the welfare of migrant workers and their families. Its presence establishes a robust moral benchmark, simultaneously functioning as a compass and catalyst for the advancement of migrant rights within each nation's purview. Furthermore, proper implementation of the ILO Migrant Workers' Convention helps migrant workers protect their rights in the workplace. The governments of the migrant workers sending and receiving countries should properly collect, analyse, and use credible data and information about jobs and, among other things, demographics, cross-border movements, internal displacement, diasporas, labour markets, seasonal trends, education, and health. This is essential to creating policies based on facts that weigh the benefits of migrant workers and minimise the risks of migration.

In addition, the ILO has set four principles to protect the rights of migrant workers, such as to promote and realise the standards principles at the workplace, to create greater opportunity for both men and women to secure their employment, and to provide social protection for all. Migrant workers are often neglected by their social protection rights in sending and receiving countries.

The COVID-19 pandemic proves that both Bangladesh and Malaysia somewhat avoid their social security rights. After review, Bangladesh is a signatory country of the ICRMW and still holds ratifying status. It can be recommended that both Bangladesh and Malaysia ratify some conventions related to migrant workers of the UN and the ILO, which may help promote and protect migrant workers at their workplaces. While prevailing discourse often emphasises the extension of fundamental human rights and

pertinent labour entitlements to marginalised or susceptible demographics within a nation, regrettably, scant consideration is directed towards the pivotal aspects of migration status and individual identity. In this way, Bangladesh and Malaysia, as members of these international organisations, are morally and legally committed to respecting and protecting all human rights for migrant workers to work.

The Third Chapter has examined Bangladeshi employment laws, with a particular focus on employment-related laws. Chapter Three's analysis clarifies that the Bangladesh Overseas Employment and Migrants Act 2013 fails to effectively integrate national laws with the international legal framework. The OEMA of 2013 is the main law to protect the rights of all migrant workers, but this law is very weak as a large migrant-sending country. Most of these laws' provisions are not relevant to the international legal framework. The chapter also stresses engaging in discussion in order to comprehend whether the OEMA of 2013 and the PSHTA of 2012 can be considered international laws in terms of sending migrant workers to ensure their rights and safe migration. The research findings underscore that the principal catalyst behind the infringement of migrant workers' rights emanates from the inadequate enforcement of the overseas employment act.

Furthermore, this deficiency inadvertently empowers recruitment agencies to transgress the rights of migrant workers. Moreover, many migrant workers faced this problem regularly: high fees for migration charged by recruitment agencies, especially for low-skilled jobs; low wages; a lack of information on migration opportunities and risks; discrimination, exploitation, and abuse while overseas; and insufficient services to protect the rights of workers. Human trafficking stands as a significant and pressing concern, casting a shadow over the pursuit of secure and protected migration. One of

the most common challenges faced by law enforcement agents is getting the victims to cooperate in the investigation. Victims are hesitant to cooperate because of fear, shame, and trauma. The fear of retaliation by their traffickers if they provided evidence or information against them. Legal aid for abused migrant workers is very costly, and court trials are lengthy procedures. The Fourth Chapter has scrutinised Malaysian employment laws under an international legal framework and human rights conventions. The central goal of this segment of research is to understand the institutional framework and policy apparatus governing the oversight and preservation of migrant workers' rights within the country. Concurrently, it endeavours to unravel the intricate web of laws and regulatory policies that intersect with this endeavour. The discussion in this chapter focused on whether the Malaysian governments and various companies' employment laws can align with international legal frameworks and human rights conventions to protect migrant workers in the segmented local job market.

The findings of this study elucidate that the inherent fragmentation within the local job market renders Malaysian laws and policies comparatively less efficacious in safeguarding the comprehensive rights of migrant workers. This inadequacy becomes particularly pronounced when considering critical facets such as workplace safety, housing provisions, and access to healthcare coverage. According to the study's findings, lack of protection in the construction sector was to blame for the huge number of workplace injuries since there were a large number of migrant workers employed in the private sector. Examining migrant workers in Malaysia reveals that their protection under domestic employment laws is not complete. Following these lines of thought, this section reveals that migrant workers in Malaysia face legal and regulatory difficulties

in obtaining equal rights to join a trade union, free movement, health housing facilities, and health coverage.

The Fifth Chapter provides a comprehensive understanding of the legal framework that safeguards the welfare of migrant workers, with a particular focus on the employment laws of Bangladesh and Malaysia. According to the study, the most recent amendment to the Bangladesh OEMA of 2013 does not genuinely have enough components to modify its rules and laws. In the most recent years, an influx of Bangladeshi migrant workers has sought employment in Malaysia through government-to-government (G2G) agreements, supplemented by additional provisions (G2G+). Paradoxically, despite these agreements, a substantial portion of Bangladeshi migrant workers grapple with a myriad of challenges, including exorbitant migration expenses, obstacles to securing suitable job placements, and inadequacies in securing housing accommodations offered by local entities. In these cases, Bangladesh and Malaysia should follow international legal frameworks and human rights-related laws to ensure migrant workers' rights.

Finally, this study confirms that migrant workers encounter legal and managerial challenges in both Bangladesh and Malaysia when it comes to accessing fair rights relating to job-related information, wages, treatment, housing amenities, and legal matters. Consequently, it becomes necessary to adapt to an intractable circumstance. In this way, it can be inferred that, as a labour-sending country, Bangladesh needs to follow and apply international legal instruments to their national labour laws and ensure that all of their basic human rights are protected. Due to Malaysia's socio-political and economic complex and as a labour-receiving country, they have the inherent tendencies

and tricky authorisations to reform national laws and legal agreements based on regional and international conventions, and human rights resolutions lack specificity.

7.1 FINDINGS OF THE RESEARCH

Evidently, Bangladeshi migrant workers find themselves bereft of any meaningful support from the ambit of domestic labour statutes, notably exemplified by the limitations evident within the OEMA of 2013. Most migrant workers find work abroad through private recruiting agencies. Before leaving Bangladesh, most of the migrant workers did not know about their job place, working hours, salaries, housing facilities, or health coverage. In addition, recruiting agencies hide all of the basic work-related information and charge more from the migrant workers. All relevant laws are available in the Bangladesh OEMA of 2013, but they are not reflected much in practice. The Bangladesh Bureau of Manpower, Employment, and Training faces many challenges in providing effective training to migrant workers due to geographic limitations, increased costs, language barriers, translation issues, and virtual training equipment. According to the study, human trafficking is a grave and pressing concern that profoundly impacts Bangladeshi migrant workers who strive for secure and protected migration pathways. Usually, human traffickers use a third country or sea port for trafficking. In most cases, human traffickers used Thailand or Indonesia as a safe route for trafficking migrant workers. In recent years, the Bangladesh government has amended the PSHTA of 2012 to protect migrant workers' rights and ensure safe migration, but the main problem is the implementation of these laws.

This study suggests that although migrant workers ostensibly receive assurances, they often experience distressing physical and psychological torment. This encompasses a range of challenges, such as wage reduction, labour limitations, coerced

labour, and substandard living conditions, among others. These instances persist despite the existence of domestic legal safeguards ostensibly designed to protect their rights. They face various conventional boundaries of all systems that cannot guarantee legal protection, including termination of jobs and legal identities, which can lead to arrest and deportation. In such a situation, they have no chance to go to court for justice. They have to show their identity card or passport to file claims or police complaints. After illegal termination from the job, migrant workers' visas are automatically cancelled, and they have no legal rights to stay or work in Malaysia. This study has unveiled a troubling reality: the autonomy of migrant workers to freely move is considerably restricted or subject to manipulation by their employers. An alarming and pervasive practice involves the confiscation of passports by both employers and agencies, effectively ensnaring and confining these workers against their will. Due to the extreme exclusion of domestic workers in Malaysia on a regular basis under the Malaysian labour laws and current government strategy, domestic workers face additional difficulties in ensuring their rights and equal guarantees. Despite the existence of this framework, migrant workers have actually adopted an appropriate equity framework to determine problems with labour courts or employers or report violations to authorities. Most of the abused and victimised migrant workers have thus far returned home without receiving any social or retirement benefits. Based on the information delineated above and the discussion in the chapters, the study's conclusion firmly establishes that migrant workers in Malaysia confront starkly constrained legal and safety statuses.

The results of this study are based on a legal survey and investigation, interviews and focus group discussions with migrant workers, expert opinions and analyses of cases, and existing legal reference points. It describes the Bangladeshi and Malaysian

legal framework, organisation, and laws set up to protect the rights of migrant workers in Malaysian domestic laws, and it gives an assessment of how well these laws and frameworks protect migrant workers in Bangladesh and Malaysian legal frameworks.

In addition, hardly most of the migrant workers from Bangladesh do not understand laws or use the systems available in Malaysia to capture changes resulting from utilisation, work, or injuries suffered during arrest by the police and imprisonment. Notably, migrant workers and their families did not receive any relevant information about their rights as employees or the ability to switch employers. Furthermore, these migrant workers did not receive critical information in a language they could easily understand. As a result, there is very little chance of finding a place where workers or lawyers can respond and advise migrant workers in trouble. The coordination between the authorities and labour-sending countries on the protection and repatriation of migrant workers is also not clear.

The first objective of this study was to examine the international legal framework and human rights conventions to identify the complications, issues, and challenges faced by migrant workers overseas. The UN treaties and conventions on migrant workers undeniably provide the best practices and standards to protect them. Furthermore, the ICRMW provides comprehensive protection for migrant workers working abroad, as well as their family members. Likewise, the ILO Convention No. 97 and 143, along with two Recommendations No. 86 and 151, have given necessary rights to migrant workers properly, though criticism exists in both organisations between the UN and the ILO. It has been mentioned that Bangladesh and Malaysia have not ratified any core ILO Conventions on migrant workers as well as UN treaties to follow international standards for protecting migrant workers in Bangladesh and

Malaysia. The researcher provides a brief assessment of the literature on the legal protections for migrant workers under international laws. It was revealed in a literature review that a significant number of migrant workers are really being abused and are not fully protected by international and national legal frameworks.

Furthermore, countries that send and receive labour must adhere to UN and ILO Conventions related to their national laws. The second objective of this study was to identify the complications, issues, and challenges to the implementation of Bangladesh labour laws, especially the Bangladesh OEMA of 2013 and the PSHTA of 2012. The entire research focused on low-skilled and semi-skilled migrant workers, excluding those with higher skills. In the first chapter, the researcher provides a brief assessment of the literature on legal protections for migrant workers in sending countries. It was revealed in a literature review that some migrant workers undergo different kinds of abuse by the recruiting agency before leaving their home country. In that sense, the researcher conducted a semi-structured interview to verify and obtain data from the field. Experts' opinions were also taken from the NGO's, lawyers, and many organisations that work with migrant labourers. The researcher's interviews revealed the abuse of migrant workers by both their home country's recruiting agency and their Malaysian employers. Workers file claims against the recruiting agency, the government, recognised organisations, and existing laws and regulations. Thus, the attainment of the second research objective materialised in Chapter Three, wherein a comprehensive exploration and discourse on the myriad challenges confronted by migrant workers within their countries of origin were successfully undertaken.

The third objective aimed to meticulously scrutinise and explore the existing Malaysian labour laws that presently serve as protective measures for migrant workers

within the nation's borders. Malaysia has a number of labour laws and policies that protect both local and foreign workers. One of the most significant laws is the EA of 1955, which provides all sorts of basic rights such as wages, working hours, overtime, holidays, sick leave, and so on, while the IRA of 1967 and the TUA of 1952 provide rights to resolution of disputes between employers and employees by joining a trade union.

Besides, the WMSHA of 1990 ensures the safety and health of housing for all migrant workers, but in most cases, migrant workers lived in unhealthy environments. The ESSA of 1969 provides social security while they are working and staying in Malaysia. The EPFA of 1991, the MMWO of 2022, and the WCA of 1952 provide specific rights for workers, and migrant workers are also protected under those laws. While a multitude of gaps persist, which embolden employers to exploit migrant workers and undermine their entitlements, it is evident that certain government strategies, including immigration and recruitment policies, exhibit limitations in effectively managing and safeguarding their well-being. Due to inadequate industry inspection and improper legislation implementation, migrant workers are still being abused in Malaysia, despite the country's laws and international norms to protect them. This is explained in Chapter Four.

The last objective of the research encompassed the formulation of a holistic legal framework, tailor-made for both Bangladesh and Malaysia, with the overarching objective of safeguarding and upholding the rights and well-being of migrant workers. To reach this objective, the researcher has analysed the current international standards and obligations as well as Bangladeshi and Malaysian labour laws, along with the empirical fieldwork conducted. In Chapters Five and Seven of its report, the research

provides legal guidelines for Bangladesh and Malaysia to ensure the free movement of migrant workers, as well as suggestions for their legal protection. Chapter Five offers a possible framework for ratifying the convention on migrant workers, reforming and liberalising departments or institutions' policies, amending a few laws, introducing a system of international portability, creating a one-stop centre, and establishing institutional coherence, accountability, and transparency.

The current chapter provides recommendations for various stakeholders, including the government, authorities, non-government authorities, policymakers, and future researchers. As a consequence, the researcher maintains a conviction that the study has adeptly fulfilled its intended research objectives. This study is definitely a significant assessment of the legal protection of migrant workers in Bangladesh and Malaysia. Basically, the migrants who came to Malaysia are engaged in low-paying work with a temporary work permit. The acceptance of all legal and social benefits is a basic right for migrant workers. The Malaysian court and the many organisations there have long upheld a crucial point, namely that a just and effective society must be created on the basis of legal principles. At the end of the research, it can be said that, as a large-scale labour-receiving country, Malaysia has a legal framework to review and guarantee migrant workers whose rights have been violated. Its laws can protect everyone in Malaysia, including migrant workers; however, due to improper implementation of all existing laws, abuse of migrant workers in this country is a reality. The basic human rights guaranteed by the constitution of Malaysia, labour law, contract law, criminal law, and precedent should be exercised more rigorously to ensure that the migrant workers' basic human rights are protected. To protect these legal rights, Malaysia has

additionally created judicial and non-judicial mechanisms as a labour-receiving country.

The findings and underlying essence of this study substantiate the potential for Bangladesh and Malaysia to undertake revisions within their respective labour legislations, aligning them with prevailing international labour benchmarks and human rights conventions. As a culmination of this research, a set of accompanying legal and regulatory strategies is put forth as a compelling avenue to furnish migrant workers in both countries with robust assurances and protections.

7.2 RECOMMENDATIONS

This study recommends the ratification of a select number of UN treaties and ILO Conventions with excellent implementation. The ICRMW is one of the UN treaties or conventions. This convention is the most recent and unique approach to safeguarding the human rights of migrant workers and their families abroad. The countries may ratify all or any part of the convention that suits the situation in Bangladesh and Malaysia. Though, as a labour-sending country, Bangladesh and a labour-receiving country, Malaysia has not ratified any core UN and ILO Conventions on migrant workers yet, the country should ratify and implement both the migrant workers' conventions and their recommendations. It is also recommended that Bangladesh immediately amend the overseas employment act and the human trafficking act to protect migrant workers' rights and ensure safe migration. Most of the laws of the OEMA are weak and do not have any strength to protect migrant workers. The NGO's and other policymaking institutions play a vital role in advising the government on how to properly protect migrant workers' rights. A further imperative recommendation is to advocate for Malaysia's expeditious ratification of the Social Security (Minimum Standards)

Convention (No.102) of 1952, underscoring its critical role in safeguarding the social benefits and perspectives of both local and migrant workers.

In Chapter Five, the researcher has suggested ratifying several conventions; however, among them, the above three conventions are the most significant, and the rest of the conventions, like the Equal Treatment Convention, the Abolition of Forced Labour Convention, the ICERD, and the ICESCR, can be ratified in terms of providing non-discrimination protection. If the country just ratifies and is not concerned about the proper implementation of those conventions, the result will be the same. Hence, the dual process of ratifying and diligently implementing agreements and accords stands poised as an effective mechanism to ensure comprehensive protection for migrant workers from the intersecting vantage points of labour and human rights within Malaysia.

A steadfast recommendation is to prioritise and institute measures that assure equitable and uniform protection under the law within Malaysia. There are few Acts that discriminate against migrant workers against local workers; however, amending such laws and ensuring equal treatment of migrant workers is a serious concern for Malaysia today. For that, Malaysia may ratify the Equal Treatment Convention (No. 118) of 1962 and include those rights in national laws. If equal rights and facilities are provided to migrant workers as local workers are enjoying in terms of international labour standards, social security benefits, working conditions, et cetera, the scenario will be completely different than today, and migrant workers will be regarded as having respected standards.

Furthermore, this study strongly advocates for a comprehensive reform and liberalisation of the regulatory framework governing migrant workers in Malaysia. The migrant workers are handled by several government authorities, such as the Ministry of

Human Resources, the Ministry of Home Affairs, the Department of Labour, the Department of Industrial Relations, the Immigration Department, and sometimes third-party authorities, while the framework should be in a single department or platform to manage them. The authority should also be on a single platform where migrant workers can claim and get access to justice.

The study also recommends amending the respected labour laws discussed in Chapter Five. The EA of 1955, which provides basic working conditions for migrant workers, holds the highest value among them. From this viewpoint, the Act should incorporate domestic workers without any limitations, ensuring their protection under national laws and access to general benefits. There are not many Acts on the amendment table, but the authority should be focused on the suggested alteration in Chapter Five. A more streamlined approach could involve the introduction of a dedicated law exclusively focused on migrant workers' protection. Such legislation could comprehensively outline all facets pertaining to migrant workers, ensuring optimal protection across various dimensions. However, if limitations exist, the government should at least ensure the equal rights of migrant workers that local workers enjoy under national laws. To achieve this, the government may amend the local laws to meet the international standards provided by the UN and the ILO.

Finally, the researcher came up with the recommendation for both Bangladesh and the Malaysian government to form a one-stop-centre and establish a portability system, along with introducing an online verification system for the protection of migrant workers. Given the dispersed oversight of migrant workers across various authorities, a more efficient solution would be the establishment of a centralised, one-stop centre. This hub would consolidate all essential activities encompassing

recruitment, training, management, and repatriation, streamlining processes and enhancing overall effectiveness. The problems and hassles migrant workers face due to having many departments can be handled in one-stop- centres. Furthermore, a portability system between two countries should be formed. A proactive recommendation entails the introduction of user-friendly online applications, providing migrant workers with comprehensive access to vital information encompassing national laws, international labour standards, social security provisions, healthcare protocols, safety guidelines, trade union matters, legal procedures, recruitment policies, and beyond. This digital approach aims to empower migrant workers with a readily accessible repository of knowledge and resources.

7.3 SUGGESTIONS FOR THE FUTURE RESEARCH

This research mostly looks at the legal protection of migrant workers based on an analysis of interviews with migrant workers and experts' opinions, as well as their legal rights under international standards and national laws in Bangladesh and Malaysia. To approve and verify the data coming from secondary sources, a FGD and semi-structured interview was conducted. However, due to fewer data from the field (only Bangladeshi migrant workers), the study leaves and lacks extensive research in the future on the other nationals who come to work in Malaysia. If this research were to adopt a quantitative methodology, employing an extensive survey encompassing diverse nationalities and various sectors, the outcomes could potentially present distinct variations in both abuse and protection dynamics. Recognising this study's limitations, future research endeavours could concentrate on addressing these aspects comprehensively, delving deeper into the abuse experienced by migrant workers, and further exploring avenues for bolstering their legal protections. A significant proportion

of participants involved in the interviews for this study predominantly hail from sectors such as services, construction, manufacturing, agriculture, and plantations. However, the situation for workers in the agriculture and plantation sectors would be entirely different because of the contrast between their living and working environments and those of the participants in the other sectors. Hence, future work can be done, especially on plantations and agriculture sectors, with migrant workers from several countries, which will affect and assist low-paid and low-skilled migrant workers in Malaysia.

Moreover, exclusive research on the recruitment process of migrant workers can help identify loopholes and limitations before they arrive in Malaysia. Conducting these types of research will help the government develop a policy on migrant workers' recruitment and enhance both labour sending and receiving countries for bilateral and multilateral agreements. Finally, many employer-provided facilities view skilled migrant workers as competitors and discriminate against them. The government agencies of labour sending and receiving countries, NGO's, experts in the relevant fields, and business organisations are not adequately aware of their rights and protection because they are paid more than low-skilled migrant labourers. Therefore, future research may be conducted on skilled migrant workers protection in terms of their legal rights. In conclusion, this study represents a significant assessment of the legal protections available to migrant workers in Bangladesh and Malaysia. While Malaysia boasts a comprehensive legal framework aimed at safeguarding the rights of all workers, including migrants, the persistent gap between legislation and its implementation has resulted in continued exploitation and abuse. The research underscores the critical need for rigorous enforcement of existing laws and the reform of certain policies to ensure equitable treatment of migrant workers. This includes incorporating international

standards into national legislation and establishing a centralised system to better manage migrant worker issues.

Furthermore, the study emphasises the importance of ratifying and implementing relevant international conventions to bolster the protection of migrant workers. Both Bangladesh and Malaysia can enhance the protection of migrant workers by adopting a dual approach of legal reform and practical implementation, ensuring the upholding of their rights in line with international benchmarks. This research provides a comprehensive framework and actionable recommendations for policymakers, legal practitioners, and other stakeholders, promoting a more just and equitable environment for migrant workers. The findings and recommendations of this study contribute to the broader discourse on migrant worker rights and offer a robust foundation for future research and policy development.

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APPENDIX I

INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

PREAMBLE

The States Parties to the present Convention,

Desiring to codify the basic instrument of international law relating to the United Nations concerning all human rights,

Recognizing that the United Nations Conference on the legal framework of the Migrant Workers and Members of their Families Convention, adopted the following legal provisions as generally declaratory of established principles of international convention. Have agreed as follows:

Article 1

Except as otherwise provided below, the present Convention shall apply to all migrant workers and their families without regard to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic, social origin, age, economic position, property, marital status, birth, or other status.

Article 2

A “migrant worker” is someone who plans to, is currently, or has previously worked for pay in a country other than their own.

Article 3

The present Convention shall not apply to- (a) a students or trainees, (b) Persons sent or employed by international organizations and agencies or persons sent or employed by a State outside its territory to perform official functions, (c) Persons sent or employed by a State or on its behalf outside its territory who participate in development programmes and other co-operation programmes, (d) Persons taking up residence in a State different from their State of origin as investors or (e) Refugees and stateless persons.

Article 4

The term “members of the family” as used in this Convention means spouses, domestic partners, persons in a relationship with a migrant worker that produces effects equivalent to marriage, children of either spouse, and other dependent persons who are recognised as family members under the laws of the States involved or under applicable bilateral or multilateral agreements.

Article 6

For the purposes of the present Convention,

- a) The term “State of origin” means the State of which the person concerned is a national;
- b) The term “State of employment” means a State where the migrant worker is to be engaged, is engaged or has been engaged in a remunerated activity, as the case may be;
- c) The term “State of transit,” means any State through which the person concerned passes on any journey to the State of employment or from the State of employment to the State of origin or the State of habitual residence.

Article 8

Freedom of movement between states, especially freedom to return to one's home country, is a fundamental human right for migrant workers and their families. Nothing in this section of the Convention shall be construed to deny or restrict this right, except to the extent that such deprivation or restriction is required by law, is necessary to protect national security, public order, public health or morals, or the rights and freedoms of others. They have also rights at any time to enter and leave in their state of origin.

Article 9

Migrant workers and their families have a right to life that must be protected under the law.

Article 10

No migrant worker, including family members, may be tortured or subjected to cruel, inhuman, or degrading treatment or punishment.

Article 12

Freedom of thought, conscience, and religion shall be guaranteed to all migrant workers and members of their families. This right includes the ability to choose and/or practise one's own religion or belief and to exercise such rights in a public or private site.

Article 16

All migrant's workers and their families should be guaranteed the right to personal freedom and

safety. Migrant workers and their families have a right to be safe from all forms of physical and psychological abuse at the hands of the state, including but not limited to those perpetrated by public authorities and non-state actors such as criminal gangs and terrorist organisations.

Article 18

Workers who migrate for work and their families should be treated fairly by the law enforcement and judicial systems. They have the right to a public and fair trial before a competent, independent, and impartial tribunal established by law, regardless of whether the case involves a criminal charge or a dispute over civil rights and responsibilities.

Article 22

No mass expulsion policies may be enacted against migrant workers or their families. Expulsions will be considered on a case-by-case basis.

Article 23

When the privileges granted by this Convention are violated, migrant workers and their families have the right to seek the help of the consular or diplomatic authorities of their home country or of a country that acts on its behalf. In the situation of expulsion in particular, the expelled individual must be informed without delay of this right, and the authorities of the expelling State must make it easy for them to use it.

Article 26

States Parties recognise the right of migrant workers and members of their families. To

participate, subject only to the norms of the organisation in question, in the meetings and activities of trade unions and of any other groups created in conformity with law, with the aim of preserving their economic, social, cultural, and other interests.

Article 28

Based on the same premise of equality with nationals of the State concerned, migrant workers and members of their families must have the right to obtain any medical care that is immediately necessary for the preservation of life or the avoidance of irreparable injury to health. In the event of an emergency, they must have access to appropriate medical treatment regardless of any discrepancies in their employment or length of stay.

Article 32

It is the right of migrant workers and their families to move their earnings and savings and, according to the laws of the receiving and sending states, their personal possessions and belongings upon the termination of their stay in the State of employment. According to Article 33, all migrant workers and members of their families shall have the right to be informed by the State of origin, the State of employment or the State of transit as the case may be concerning.

Article 72

A Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families should be constituted for the purpose of assessing the application of the present Convention (hereinafter referred to as “the Committee”). The Committee shall be comprised of ten experts of high moral standing, impartiality, and recognized competence in the field covered by the Convention at the time of entry into force of the present Convention, and fourteen experts

after entry into force of the Convention for the forty-first State Party.

IN WITNESS WHEREOF the Secretary-General of the United Nations is designated as the depositary of the present Convention.

Adopted by General Assembly resolution 45/158 of 18 December 1990.



APPENDIX II
INTERNATIONAL LABOUR ORGANIZATION

CONVENTION 143 - MIGRANT WORKERS (SUPPLEMENTARY PROVISIONS)
CONVENTION, 1975 (NO. 143)

PREAMBLE

The General Conference of the International Labour Organization,

Considering that the Preamble of the Constitution of the International Labour Organization assigns to it the task of protecting “the interests of workers when employed in countries other than their own”, and,

Considering the ILO World Employment Programme and the Employment Policy Convention and Recommendation, 1964, and emphasizing the need to avoid the excessive and uncontrolled or unassisted increase of migratory movements because of their negative social and human consequences.

Have agreed as follows:

Article 1

Each Member for which this Convention is in force undertakes to respect the basic human rights of all migrant workers.

Article 2

Each Party to the contract to this Convention shall make concerted efforts to ascertain whether it employs unauthorised foreign workers on its territory, and whether any movements of migrants for employment that are subject to conditions contravening relevant international multilateral or bilateral instruments originate from, transit through, or terminate on its territory.

Article 3

Each Member shall adopt all necessary and appropriate measures, both within its jurisdiction and in collaboration with other Members-

- (a) to suppress clandestine movements of migrants for employment and illegal employment of migrants, and
- (b) against the organisers of illicit or clandestine movements of migrants for employment departing from, passing through or arriving in its territory, and against those who employ workers who have immigrated in illegal conditions, in order to prevent and to eliminate the abuses referred to in Article 2 of this Convention.

Article 7

With respect to the laws, regulations, and other measures provided for in this Convention and intended to prevent and eliminate the abuses outlined above, the representative organisations of employers and workers shall be consulted, and the possibility of their taking initiatives for this purpose shall be recognised.

Article 11

For the purpose of this Part of this Convention, the term “*migrant worker*” means a person who migrates or who has migrated from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant worker.

Article 13

A Member may take all necessary measures which fall within its competence and collaborate with other Members to facilitate the reunification of the families of all migrant workers legally residing in its territory. The members of the family of the migrant worker to which this Article applies are the spouse and dependent children, father and mother.

**C097 - MIGRATION FOR EMPLOYMENT CONVENTION (REVISED),
1949 (NO. 97)**

PREAMBLE

Having decided upon the adoption of certain proposals with regard to the revision of the Migration for Employment Convention, 1939, adopted by the Conference at its Twenty-fifth Session, which is included in the eleventh item on the agenda of the session, and considering that these proposals must take the form of an international Convention,

Article 1

Each Member of the International Labour Organisation for which this Convention is in force

undertakes to make available on request to the International Labour Office and to other Members-

- (a) information on national policies, laws and regulations relating to emigration and immigration;
- (b) information on special provisions concerning migration for employment and the conditions of work and livelihood of migrants for employment;
- (c) information concerning general agreements and special arrangements on these questions concluded by the Member.

Article 6

Each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favorable than that which it applies to its own nationals in respect of the following matters, in so far as such matters are regulated by law or regulations, or are subject to the control of administrative authorities-

- (i) remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on homework, minimum age for employment, apprenticeship and training, women's work and the work of young persons;
- (ii) membership of trade unions and enjoyment of the benefits of collective bargaining;
- (iii) accommodation;

Adoption: Geneva, 32nd ILC session (01 Jul 1949)

C066 - Migration for Employment Convention, 1939 (No. 66)

PREAMBLE

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Twenty-fifth Session on 8 June 1939, and

Having decided upon the adoption of certain proposals with regard to the recruiting, placing and conditions of labour (equality of treatment) of migrant workers, which is the third item on the agenda of the Session.

Article 1

Each Member of the International Labour Organisation which ratifies this Convention undertakes that it will--

(a) enact and enforce penalties for the repression of--

(i) misleading propaganda relating to emigration or immigration; and

(ii) propaganda relating to emigration or immigration which propaganda is contrary to national laws or regulations; and

(b) exercise supervision over advertisements, posters, pamphlets and other forms of publicity relating to employment in one territory which is offered to persons in another territory.

Article 12

1. The Director-General of the International Labour Office shall notify all the Members of the International Labour Organisation of the registration of all ratifications and denunciations

communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which this Convention will come into force.



**C048 - Maintenance of Migrants' Pension Rights Convention, 1935
(No. 48)**

PREAMBLE

The General Conference of the International Labour Organisation,

Having decided upon the adoption of certain proposals with regard to the maintenance of rights in course of acquisition and acquired rights under invalidity, old-age and widows' and orphans' insurance on behalf of workers who transfer their residence from one country to another, which is the first item on the agenda of the Session, and

Having determined that these proposals shall take the form of an international Convention,

Article 1

1. There is hereby established between Members of the International Labour Organisation a scheme for the maintenance of rights in course of acquisition with and of rights acquired with compulsory invalidity, old-age and widows' and orphans' insurance institutions (hereinafter called insurance institutions).

2. References to Members in Parts II, III, IV and V of this Convention shall be construed as including only Members of the International Labour Organisation bound by this Convention.

Article 14

The authorities and insurance institutions of each Member shall afford assistance to those of other Members to the same extent as if they were applying their own laws and regulations relating to social insurance, and more particularly shall, at the request of an institution of any

Member, carry out the investigations and medical examinations necessary to determine whether the persons in receipt of benefits for which the latter institution is liable satisfy the conditions for entitlement to such benefits.

Article 17

Every Member which at the date of its ratification of this Convention has not established such a scheme undertakes to establish within twelve months from that date either-

- a. a compulsory insurance scheme under which pensions are payable at an age not later than sixty-five to the majority of persons employed in industrial and commercial undertakings; or
- b. a compulsory invalidity, old-age and widows' and orphans' insurance scheme covering a substantial proportion of the persons employed in industrial and commercial undertakings.

IN WITNESS WHEREOF the formal ratification of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

adopts this twenty-second day of June of the year one thousand nine hundred and thirty-five the following Convention, which may be cited as the Maintenance of Migrants' Pension Rights Convention, 1935.

APPENDIX III

BANGLADESH OVERSEAS EMPLOYMENT AND MIGRANTS ACT 2013

(Act No. VLVIII of 2013)

PREAMBLE

The States Parties to the present Act,

An Act to promote opportunities for overseas employment and to establish a safe and fair system of migration, to ensure rights and welfare of migrant workers and members of their families, to enact a new law by repealing the Emigration Ordinance, 1982 (Ordinance No. XXIX of 1982), and for making provisions in conformity with the International Convention on the Rights of Migrant Workers and the Members of Their Families 1990 and other international labour and human rights conventions and treaties ratified by the People's Republic of Bangladesh,

Have agreed as follows:

CHAPTER I

Section 1

This Act will be called the Bangladesh Overseas Employment and Migrants' Act, 2013.

Section 2

1. "migration" means the departure of a citizen from Bangladesh for the purpose of employment in a trade or profession in any foreign country;

2. “migrant” means any citizen of Bangladesh who has migrated to a foreign country for the purpose of overseas employment in any work or profession and is staying in that country;
3. “Migrant 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 a 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.

CHAPTER II

Section 3

Authority to send workers for overseas employment. —

4. The control of all activities relating to the recruitment and emigration of workers from Bangladesh for the purpose of overseas employment shall be vested in the Government or its delegated authorities.
5. Under this Act, the Bureau, any other organisation or entity established by the Government, and a recruitment agent may conduct recruitment related activities.

Section 7

Place of departure: The departure for overseas employment will be from the port or place as may be specified by the Government by notification in the official Gazette.

CHAPTER III

Section 9

Licence: No person shall operate any activity relating to recruitment unless issued a licence under this Act.

A person willing to recruitment services shall have to apply to the Government for a licence in the manner and form prescribed and upon payment of fees, and by submitting the following documents:

- a. certified copy of the trade licence;
- b. certified copy of the certificate of payment of taxes, along with a copy of the Tax Identification Number (TIN);
- c. bank statement indicating financial solvency;
- d. police certificate;
- e. In case of a company, its memorandum of association, articles of association and the certificate of incorporation;
- f. an affidavit declaring that while sending migrant workers overseas, fees and other amounts in excess of the ceiling fixed by the Government shall not be charged; and
- g. an undertaking to the effect that while sending workers overseas, false promises shall not be made to any person and that fraudulent actions shall not be practiced.

CHAPTER IV

Section 19

Registration of migrant workers and protection of their interests:

- (1) A person planning to migrate under the provisions of this Act or all migrant workers shall be registered with the Bureau and concerned trade and profession recorded, and the Bureau shall preserve full information of the workers registered in the manner prescribed and, if necessary, shall enter that information into a register.
- (2) If a migrant is not registered under sub-section (1), the worker shall be allowed to register and have concerned trade and profession recorded at any time in Bangladesh or with the Bangladesh Mission in the country where the worker is employed. (3) The Bureau, any other organisation or company established by the government, and the recruitment agents shall recruit workers openly and by means of computerised database on a random basis from amongst workers registered according to their trade or profession under subsection (1).

Section 20

Migration Clearance: Subject to the fulfilment of all official requirements related to migration, the Bureau shall stamp the passport of every person registered under the section 19 with a seal bearing the registration number, and shall issue a migration clearance electronic card bearing the thumb impression and necessary information concerning migration including biometric details of the concerned migrant worker.

CHAPTER V

Section 22

Employment contract:

- (1) The recruitment agent shall cause to be concluded an employment contract between the recruited worker and the employer, in which stipulations concerning the worker's wages, accommodation facilities, duration of employment, compensation amount in the event of death or injury, cost of emigration to and return from the foreign country, and so on shall be stated.
- (2) For the purpose of the contract mentioned in the subsection (1), the recruitment agent shall be deemed to be a representative of the overseas employer, and as regards liabilities arising from the contract, the said recruitment agent and the employer shall be liable jointly and severally.
- (3) The recruitment agent shall submit a copy of the contract concluded under the subsection (1) to the Bureau and to the Bangladesh Mission in the concerned foreign country.
- (4) In case workers being sent overseas by the Bureau or any organisation, entity or company established by the Government, the Bureau or the organisation, entity or the company established by the Government shall arrange for the conclusion of a employment contract between the employer and the worker and shall submit a copy thereof to the Bangladesh Mission the concerned foreign country.

CHAPTER VI

Section 23

Labour Welfare Wing: If it is deemed necessary to establish a Labour Welfare Wing in any country for the purpose of expanding reach into the labour market thereto or for protecting the rights of migrant workers, the Government may establish a Labour Welfare Wing in the Bangladesh Mission in the concerned foreign country, and the Wing shall perform duties as have been specified in this Act and the Rules thereof.

Section 25

Bilateral agreement on migration: The Government may conclude memorandum of understanding or an agreement with another country with a view to increase opportunities of migration by the Bangladeshi citizens for overseas employment, improving management of labour migration, repatriation and reintegration of the migrant workers in the home country, and to ensure welfare and the rights of migrant workers including the members of their families.

CHAPTER VII

Section 26

Right to information: Migrant workers shall have the right to be informed about the migration process, employment contract or the terms and conditions of the work overseas, and the right to know about their rights as per the law before his departure.

Section 27

Legal aid: Migrant workers and the persons who have become victims of fraud in the name of migration shall have the right to reasonable legal aid.

Section 28

Right to file civil suit: Without prejudice to the right to seek a criminal prosecution for any offence under this Act, a migrant worker, if affected by violation of any provision of this Act or of the employment contract, may file a civil suit for compensation.

Section 29

Right to return home: A migrant worker, especially a worker detained or stranded, or otherwise is in situation of distress overseas, shall have the right to return to Bangladesh and to receive necessary assistance from the Bangladesh Mission in the concerned foreign country.

Section 30

Financial and other welfare programmes: For the purpose of welfare and development of migrant workers and the members of their families, the Government may, if necessary, undertake measures to launch, and make more accessible, bank loans, tax-exemptions, saving schemes, investment opportunities and other facilities.

CHAPTER VIII

Section 31

Penalties for sending migrant workers overseas in unlawful manner, and for charging unlawful amounts of fees, and such others.

Section 32

Penalty for publishing unauthorized advertisements.

Section 33

Penalty for using unlawful means for collecting demand note, visa or work-permit for overseas employment, or for trading in such documents.

Section 34

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

Section 37

Offences committed by a company

Section 38

Trial:

1. Notwithstanding anything contained in the Code of Criminal Procedure 1898 (Act No. V of 1898), offences under this Act shall be triable by the Judicial Magistrate of First Class, or, as the case may be, the Metropolitan Magistrate.
2. The trial under this Act shall be concluded within four months from the date of framing of charge in the concerned case: Provided that where the trial does not conclude within the said time, the concerned Magistrate may, upon stating the reasons for such delay, extend the said time-frame by not more than another two months, and in that case he shall send a progress report to the Chief Judicial Magistrate's Court or to the Chief Metropolitan Magistrate's court, as the case may be.

WHEREAS it is expedient and necessary to promote opportunities for overseas employment and establish a safe and fair system of labour migration, to ensure rights and welfare of migrant workers and members of their families, to enact a new law by repealing the Emigration Ordinance, 1982 (Ordinance No. XXIX of 1982), and for making provisions in conformity with the International Convention on the Rights of Migrant Workers and the Members of Their Families 1990 and other international labour and human rights conventions and treaties ratified by the People's Republic of Bangladesh.

APPENDIX IV

INTERVIEW QUESTIONS WITH EMPLOYMENT LAW

EXPERTS INTERVIEW QUESTIONS

Part I: Employment Protection on Bangladesh Laws

1. Migrant workers are less protected against that state's arbitrary or unjust exercise of authority and against its employers' whims than are national workers. As a result, they are entitled to special protection under the Bangladesh Overseas Employment and Migrants Act 2013. Do you believe this law provides sufficient protection for migrant workers, or does it require any amendments?

**Thank you very much for taking the time to complete this questionnaire and
have a nice day!**

APPENDIX V

INTERVIEW QUESTIONS WITH MIGRANT WORKERS

SECTION A: DEMOGRAPHIC DATA

1. Gender
 - Male
2. Age
 - Below 25 Years
 - 26-30 Years
 - 31-35 Years
 - 36-40 Years
3. Types of job:
 - Agriculture
 - Plantation
 - Construction
 - Service Sector
 - Manufacturing
4. Country of Origin:
 - Bangladesh
5. How long you have been working in Malaysia:
 - Less than a year
 - Between one to two years
 - Between two to three years
 - Between three to four years

- Between four to five years
- Other, please specify...

SECTION B: BANGLADESH LEGAL FRAMEWORK

What are the Bangladesh labour laws and other legal frameworks to protect the rights of migrant workers as a labour sending countries?

Part I: Awareness of the Overseas Employment and Migrants Act 2013, Section 15.

Do you know what the Bangladesh Overseas Employment and Migrants Act 2013 and its legal implementation to the protection of migrant workers in Bangladesh are?

Please specify _____

Do you know what the Bangladesh Overseas Employment and Migrants Act 2013 and its legal implementation to the protection of migrant workers in Bangladesh are?

Please specify _____

Do you know what the Bangladesh Overseas Employment and Migrants Act 2013 and its legal implementation to the protection of migrant workers in Bangladesh are?

Please specify _____

SECTION C: MALAYSIAN LEGAL FRAMEWORK

What are the Malaysian labour laws and other legal frameworks to protect the rights of migrant workers as a labour receiving countries?

Part II: Awareness of Employment Act 1955-

Do you know what the Employment Act 1955 and its legal implementation to the protection of migrant workers in Malaysia are?

Please specify _____

EA 1955 denotes that any person who agrees with an employer to perform any occupations should be entitled to wages, work time, rest day regardless of whether the employees are local or migrant workers. Did you face any discrimination from your employers in the workplace?

Please specify _____

Part III: Awareness of Employment Provident Fund Act 1991-

Do you know what the Employment Provident Fund Act 1991 and its implementation to protect the social security's rights of migrant workers in Malaysia are?

Please specify _____

Do you know what are the Employment Provident Fund (EPF) Scheme is?

Please specify _____

Part IV: Awareness of Workmen Compensation Act 1952-

Do you know what the Workmen Compensation Act 1952 and its coverage to protect the employment injury of migrant workers in Malaysia are?

Please specify _____

Do you know what the Foreign Workers Compensation Act (FWCA) and the Foreign Workers Hospitalization and Surgical Insurance Scheme (FWHSS) are?

Please specify _____

Part V: Awareness of Industrial Relation Act 1967-

Do you know what the Industrial Relation Act 1967 and its implementation to create the relationship between employers and employees are?

Please specify _____

Section 20 (1A) of the Industrial Relations Act 1967 is the section in which it protects workers from unfair termination. Did you face such problems from your employers?

Please specify _____

Part VI: Awareness of Trade Union Act 1959-

Do you know what the Trade Union Act 1959 and its implementation to provide social protection and rights of union members are?

Please specify _____

According to EA 1955 and IRA 1967 mention that migrant workers can join to be part of a trade union at any part of Malaysia. Did you try to join any trade union?

Please specify _____

Part VII: Awareness of Minimum Wage Order Act 2016-

Do you know what the Minimum Wage Order 2016 and its implementation to provide minimum wage guarantee are?

Please specify _____

As of 6 September 2018, the new national minimum wage for workers in the private sector has been set at RM1,050 per month. Did you receive minimum monthly wages set by the Government?

Please specify _____

Part VIII: Awareness of Workers' Minimum Standard of Housing and Amenities Act 1990

Do you know what are the Workers' Minimum Standard of Housing and Amenities Act 1990 and its implementation to confirm the minimum standard of housing?

Please specify _____

Did your house in less crowded, hygienic and wee sanitary conditions which affect your health and right to privacy?

Please specify _____

4

Part IX: Awareness of Occupational Safety and Health Act (Act 514)

Do you know what the Occupational Safety and Health Act (Act 514) and its implementation

to protect you from the unwanted accident at your workplace are?

Please specify _____

The Occupational Safety and Health Act (OSHA) 1994 is the primary law governing workplace safety and health issues in Malaysia, and it provides “for securing the safety, health and welfare of persons at work”, to protect others from unsafe work practices. Did you think that this Act secures your safety, protect your health at the workplace?

Please specify _____

**Thank you very much for taking the time to complete this questionnaire and
have a nice day!**

