

Ensuring Prosecution under the Overseas Employment and Migration Act 2013

Summary

In October 2013 the Government of Bangladesh (GoB) enacted the ‘Overseas Employment and Migration Act 2013’. It is a major development in the short term international labour migration governance of Bangladesh. However, prosecution under the law is very poor. To increase prosecution, law enforcement agencies, judges, lawyers, and migrant community need to be made aware of the contents of the law. Currently the Ministry of Expatriates’ Welfare and Overseas Employment (EWOE) is framing Rules under the law. Efforts must be made to address some of the unintended shortcomings of the law by detailing out clarifications in the Rules.



Panelists at the BCSCC national consultation on Ensuring Prosecution under ‘Overseas Employment and Migration Act 2013’ of RMMRU.

Introduction

In preparation of the Global Forum on Migration and Development 2016 (GFMD), as part of Bangladesh Civil Society Coordination Committee, Refugee and Migratory Movements Research Unit (RMMRU) hosted a national consultation on the 'Overseas Employment and Migration Act 2013' of Bangladesh. The event was organised with the support of PROKAS programme of the British Council and UKaid. Government functionaries, lawyers dealing with fraudulence cases, NGOs, and aggrieved migrants who filed cases under this law participated in the consultation. Representatives of civil society organizations such as BLAST, BNWLA, BRAC, BOMSA and OKUP also participated in the event.

The Act

The law commences with a rationale. It states that the Act is framed to create opportunity for foreign employment of workers, and ensure safe and just migration governance system. Framing of this new law was also necessary to fulfill the obligations of the government following Bangladesh's ratification of the 'UN Convention on The Protection of the Rights of all Migrant Workers and members of their Families, 1990'. Ratification of the Convention obligates the government to bring in necessary changes in its existing national laws. With these aims the GoB framed the new law. 'The Overseas Employment and Migration Act, 2013', supersedes the Emigration Ordinance of 1982. The mention of the UN Convention with such importance in the text of the law has been highlighted by Dr. Justice Syed Refaat Ahmed as 'philosophical adaptation of the 1990 UN Convention'¹.

Part 1 of the Act is preamble. It presents the title of the law and definitions of all the terms used. Part 2 deals with mechanism of sending workers abroad and Part 3 with recruiting agents, their licensing, etc. Part 4 determines the system of workers registration and method of clearance to leave the country. Parts 5 and 6 provide the regulatory frame work for the job contract and migration agreements and role and function of the office of labour Attaches. Part 7 documents the rights of migrants. Part 8 determines what constitutes offence, punishment for each offence and concerned authorities for dispensing justice. Part 9 presents all other relevant issues under the heading of miscellaneous.

The 2013 Act is a regulatory law. It has quite a few

Predicament of a regular migrant

Six months ago I went to Qatar through a dalal on a driving visa. I have taken due clearance from the BMET and I was also given a smart card. Once I reached there I was unemployed for a while. Then I was given a job to take care of camels. As I spent a large sum of money I continued with the work. However, one day I was arrested and put in jail for two months. Later I was sent back with an out-pass. Who will bear the responsibility of the losses that I incurred even after going through the formal channel?

- Mohammad Ismail

important features. At the outset it is clearly stated that the law is framed to make national laws compatible with the 1990 UN Convention and other labour and human rights conventions. This is quite significant as it opens up the scope of using the 1990 UN Convention in interpreting certain provisions of the Act. For the first time the legislation put a section on rights of migrants. More importantly, framing of the law sends a signal to the global community that Bangladesh is committed to honour its international obligations. Another important feature of the law is that for the first time it has endorsed migrants and their families the right to lodge criminal cases against any deception and civil cases for seeking compensation.

The conviction period for various offences has been enhanced. If any entity publishes advertisement for foreign recruitment without government knowledge it would be treated as an offence and that entails one year jail sentence and BDT 50,000 fine. Under another provision if a person purchases or sells or engages in procuring demand letter or visa without prior approval of the concerned government authority, he would be liable for 7 years of rigorous punishment and a fine of BDT 300,000. If any entity or person sends a migrant through channels other than those stipulated by the law then he may face 10 year rigorous sentence and fine of BDT 500,000.

However, this Act suffers from certain shortcomings. Many important provisions of the law are directory, not mandatory. This undermines the strength of the law. Besides that it does not have a provision stating "Notwithstanding anything in any other law, from this moment this law will be given importance".



This should have been included. In other words it does not have any non obstante clause.

Along with first class judicial magistrates and where concerned metropolitan magistrates, Section 14 allowed the Mobile Courts to dispense justice under the law. This provision weakened the strength of Sections 33 and 34 of the Act as the punishments stipulated are beyond the competence of the mobile courts.

Members of BAIRA opined that benefits of the law should be experienced by all parties. They feel that the law passed on all the responsibilities to the recruiting agencies. The government functionaries who attest the documents are not made liable for their actions. In some cases while the agencies maintain all formalities, the employer may not honour the agreement. BAIRA representatives argue that as Bangladeshi recruiting agencies do not have a presence in the destination countries, they cannot ensure justice at that end. The government functionaries should take more responsibility in ensuring that employers adhere to the contracts.

Implementation of the law

The law was passed in 2013, but adequate number of prosecutions for violations of the provisions of the law is not taking place. While there is a lot of incidents of fraudulence, victims are often worried about pursuing legal action because they fear it will deter them from going abroad.³ Poor financial

Absence of valid document hinders prosecution

I am currently involved in two cases of Migrant Rights Protection Committees of RPDO and RMMRU. In one of the cases, warrant has been issued against a local dalal, and in another case hearing is on. Earlier we used to file these types of cases under section 420 and 406 of CrPC. After attending a training workshop organised by RMMRU I have filed the two cases under the Overseas Employment and Migration Act, 2013. The MRPCs bring many cases of fraudulence, cheating as well as not being placed against jobs in the countries of destination. However, I cannot take them to court as sufficient documents that support the claims of the aggrieved migrants are not available. On occasions they only bring a paper signed by a local agent. That paper may not be accepted by the court as evidence. Moreover, although at the last stage recruiting agencies are involved in facilitating migration, my clients cannot produce any document that can identify the concerned recruiting agency. Therefore we cannot file cases against recruiting agencies; it is only the local level Dalals that we can touch”.

- Advocate Khalek Mia, Tangail Bar Association

background, intimidation and threats by vested



Migrants and migrant family members sharing their experiences of fraudulent practices and legal steps they had taken under the 2013 migration law.

quarters, and a lack of knowledge about laws and rights are working as barriers in ensuring prosecution under the law.⁴

Importance of keeping documents of transaction

I paid BDT 250,000 to a local dalal who promised me to send my son to Saudi Arabia. As I learnt from MRPC that I should keep record of any monetary transaction that I would make for overseas employment, I secured the dalal's signature on a BDT 300 non-judicial stamp. However, years passed by, the dalal failed to send my son. With the help of MRPC and RPDO I filed a case in Tangail district court. The document signed by the dalal will be used as evidence. The case is pending in the court.

-Innas Ali

Way forward

Dr. Shahdeen Malik⁵ observed that “When a law is enacted at that time the problems cannot be identified. That is why, it has taken 25 years to finalise the draft of the Code of Criminal Procedure. As we can't understand the mechanical problems of a vehicle until we drive it, in the same way we cannot foresee the difficulties of a law until we put into practice. Lawyers are reporting that they are facing problems in applying this law. So the

solution of the problems will also emerge gradually.” In this context K M Ali Reza⁶ added that currently four Rules are being framed under the Migration Act, 2013. If minor changes are required, that can be addressed in the Rules. Catharin Cecil⁷ noted that collective action of the local administration, police authorities, the bar and the civil society is required in promoting the application of the law.

Acknowledgement

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End Note

¹ National Training of Lawyers on ‘Overseas Employment and Migration Act, 2013’ organised by RMMRU under AMR project supported by MJF on 25 October 2014.

² Shameem Chowdhury Noman, Joint Secretary, BAIRA.

³ Javed Ahmed, Additional Secretary, Ministry of EWOE

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