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The migration grievance redress mechanism

Aminul Hoque Tushar | Friday, 18 January 2019



The Bangladeshi migrant workers, both male and female, experienced two types of grievances, financial and social. Moreover, majority of the Bangladeshi survivors did not file cases or grievances and also were not aware of the process earlier. As per the sources of BMET and Bangladesh government database, the common complaints of the migrants are: They paid more money for migration to agents, non-payment of agreed wages, lack of communication with family members, death of migrant workers, physical and sexual harassment by the employers,

stranded without employment, premature termination and return, labour trafficking and excess work. For redressing the migration-related grievances, both the government and private sector have their own grievance redress mechanism. The government also enacted laws for the legal protection of the migrant workers, through which the survivors could claim their rights and resolve the conflicts.

TYPES OF STUDY DONE SO FAR: The government's migration regulatory body called Bureau of Manpower Employment and Training (BMET) has a formal process to redress the migration-related complaints, for which it has a general cell and a female complaint cell. Both the cells are receiving the complaints online (<http://ovijogbmet.org>) and the call centre called Probash Bondhu. The complaint receiving cells of the BMET mostly provide two types of services: safely return from abroad if there is any evidence of being abused using two ways of communications with recruiting agencies and labour welfare wings at the Bangladesh missions and earning compensation for cheated migrant workers through arbitration with recruiting agencies. The BMET also kept the services at its district level offices called District Employment and Manpower Office and at the Migrant Welfare Desk. Though the government has decentralised the services at the district level to handle these migration grievances in a cost effective way, in most cases the survivors have to come to the central office at Dhaka for resolving the cases.

Consistent with the government initiatives for grievance management, the civil society organisations (CSOs) in Bangladesh also have taken different measures to make the process easier for the survivors. They actually work for strengthening the structure of grievance mitigation through coordinating the other facilities of government departments and ministries. Apart from this, some organisations also provide legal aid for dealing with the complex migration-related cases in district or judicial magistrate courts for ensuring justice under the Overseas Employment and Migration Act 2013 and other relevant laws.

As per a report of the International Labour Organisation (ILO) released in July in 2017, migrant workers from Southeast Asian countries, including Bangladesh, faced as much as 13 major barriers to justice. According to that report, the hurdles include lack of written evidences, high cost of legal assistance, slow legal process, fear of retaliation, discriminatory attitudes, unclear statutory

responsibility, language barriers, irregular legal status, work permits, restriction of movement, lack of coverage by labour law, non-functional complaint mechanism and lack of information about rights. The report also highlighted the limitations of the government institutions to deal with the barriers for making migration safer for the migrant workers and ensure justice.

In their study report, Manzoor E Khoda and Shahzada M Akram of Transparency International Bangladesh (TIB), have identified a number of legal, institutional and procedural governance challenges in the labour migration process. They also mentioned that the existing legal framework of migration had not clearly spelt out some important issues like complaint mechanism, worker selection, compensation, etc. Moreover, they pointed out that it had been difficult to enforce the existing laws in a proper manner due to the obscurity and limitations in the legal frameworks. There are also deficiencies in capacity of relevant stakeholders to ensure oversight and control in the process of labour migration.

The local power structures including the political influences have been identified as the major constraint in the grievance redress mechanism in Bangladesh, as per the publication of David Lewis and Abul Hossain in September 2017. They outlined five power structure: Administrative institutions, Political institutions, Formal civil society, Informal civil society, and Judiciary, where the influence of politics has been identified in each tier which ultimately affects the local grievance mechanism.

THE GRIEVANCE REDRESS STAGES: In the case of the majority of the grievances reported relating to the sub-agents or brokers (so called Dalal), the complaints are: the agents took the fees and failed to send workers abroad, pre-mature return of migrant workers because of having no wages, jobs and abused by employers, death of migrant workers, and even visa trading. Some grievances often arise from the factors associated with the social cost of migration including: conflict over land, remittance management, extra-marital affairs or second marriage, family separation or divorce, physical abuse, money lending and sometimes visa trading. Besides these common complaints, the migrant workers also stated labour trafficking complaints against the brokers or recruiting agents and sued them under the Human Trafficking Act 2012.

It was reported that in last three years (2014-17) from Saudi Arabia, which is the major destination country for our female domestic workers, a total of 3,339 returned after being physically and sexually abused by the employers. In another newspaper article it was reported that at least 3,480 Bangladeshi workers died abroad in 2017, mostly due to stroke or heart attack. Among them, 3,429 workers' bodies were brought home through official channels, while 51 workers were buried in the host countries, mainly in Libya, Iraq, the Kingdom of Saudi Arabia and the United Arab Emirates. Beside the grievances regarding the physical or sexual abuse and death of migrant workers abroad, some other grievances associated with fraudulences of recruiting agencies were also reported to different grievance redress committees or bodies.

The government institutions like the BMET resolve the grievances through a formal process called arbitration and receive the complaints through its online complaint submission mechanism. Similarly, the recruiting agencies' association BAIRA has its own arbitration cell. Moreover, Wage Earners Welfare Board (WEWB) has an online call centre service named Probash Bondhu Call Center through which it is also providing counseling and complaint receiving services round the clock. Intently the arbitration mechanism of BMET and BAIRA could not ensure gratified justice for the survivors. In some cases the migrant workers and their families used the local mediation system called Shalish or filing cases at Village Court to resolve conflicts. For complex cases, migrant workers with the help of legal aid or NGOs sued the recruiting agents or local brokers under the Overseas Employment and Migration Act 2013 or Human Trafficking Act 2012.

The following four stages have been followed in the structure of migration grievance mechanism practised informally by the government institutions and the civil society organisations (CSOs):

STAGE-1: COMMUNICATION AND CASE FILING: The survivors (here the migrant workers, returnees, left-behind family members of migrant workers) follow two channels of communications to redress migration-related grievances, one is directly communicating with local grievance management committees or Shalish committees and another is to communicating with agents or brokers.

STAGE-2: RECEIVING AND COMPILING CASES: The BMET online complaint service is software-generated services, which not only keep the record of the complaints, but also update the complainant on the status of his/her case. The BMET authority, after assessing the case story and documents, updates the complainant of the date of arbitration through issuing email and letters or sometimes refers cases to relevant labour wings of Bangladesh missions abroad. The case receiving process of BAIRA is conventional, where they receive the cases by submission of documents physically and sometimes via brokers.

STAGE-3: GRIEVANCE REDRESS PROCESS: Process followed by BMET-For the cases of returning women from abroad who are complaining of suffering from physical or sexual abuse by the employers, after receiving the complaint the BMET starts communicating with the labour wings of Bangladesh Missions abroad and the recruiting agencies for safe return of migrant workers within seven working days. For the compensation cases of returnee migrants, the BMET forms an investigation committee and arranges arbitration in presence of both parties at a neutral venue of BMET. Redressing the grievances or complaints through the arbitration process requires 1-2 months.

Process followed by BAIRA: The private association of recruiting agencies named BAIRA also deals with the migration grievance through its own setup, where it follows a conventional system to resolve the cases. It requires the physical presence of the complainant and the accused agents at the BAIRA arbitration cell. The process of BAIRA arbitration is mostly similar to BMET, where it requires 1-2 months or even uncertain time to mediate the grievances which are biased to favour the recruiting agents in most cases. Therefore, the survivors usually not feel confident to lodge a case with BAIRA.

Process followed by GMCs: The local general Grievance Management Committees (GMCs) usually resolve the migration grievances in presence of both parties analyzing their opinions and evidences. In case of established and specialised GMCs, the committees receive the case using a case-taking form and analyze the acceptability of the grievance or complaints. In the second step the GMCs talk with both parties and call all at a hearing session at a neutral place. The hearing sessions may be conducted for several times, but the GMCs keep all records and documents as support. If the defendant accepts the blame and commits to make compensation, the GMC closes the file. On the other hand, if the defendant does not accept the plea or does not express interest to resolve it, the GMCs with the evidence or support documents refer the cases to village court, BMET, mobile court or even the district magistrate or judge's court.

STAGE-4: LEGAL STEPS: For protecting the rights of migrant workers and their families as per the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990, the Bangladesh government enacted Overseas Employment and Migration Act 2013. Besides, the Prevention and Suppression of Human Trafficking Act 2012 has been enacted to protect migrants from trafficking and forced labour. Apart from these principal laws, in Bangladesh, the survivors also have the provision to take legal steps against deceit recruiters under Village Court Act 2006, Mobile Court Act 2009 (with the help of BMET), Penal Code 420 (fraud cases), Money Laundering Prevention Act 2012 (against illicit recruiting agencies or labour traffickers involved in illegal money transfer), Women and Children Violence Protection Law 2000 (for protecting migrant workers and families from physical and sexual harassment or abuse), and even under the Right To Information Act 2009 (to claim documents relating to labour migration, business agreement or job contract).

Case filing at Village Court: Union Parishad (UP) is the lowest tier of local government, where one UP chairman along with 13 members (one Chairman, 3 women members and 9 UP members) implements UP activities. The Ups are the main actor to operate the Village Courts (as per village court act 2006), which is a formal litigation process of government to ensure access to justice at the grassroots level. Usually, the Chairman of the UP acts as Chairman of the Village Court and forms the village court nominating four members from complainants and defendants after receiving the complaint. The village court could resolve grievances that are subject to resolution within the compensation of Tk 75,000 or less. It could also refer cases to first class magistrate court or Assistant Judge Court. For taking cases, the Village Court has its own application form. Since this takes time to resolve the grievances, the UP Chairman prefers to resolve the grievances through mediation.

Case filing at Mobile Court: The Overseas Employment and Migration Act 2013 has kept the provision under the Clause 40 to access the Mobile Court Act 2009, through which a survivor could file a case.

Case filing at police station or magistrate court: If the survivors are not satisfied with the BMET's GMC mediation or compensation, they have the provision to sue the brokers or recruiting agents through filing cases at local police station or magistrate court. There they could charge the dishonest broker under the Overseas Employment and Migration Act 2013 or Prevention and Suppression of Human Trafficking Act 2012. The poor migrant workers or survivors could also have the right to take free assistance from district legal aid services and lawyers. Based on the judicial system, the survivors have the access to district judge's court or High Court to get fair justice.

Case filing at specialized courts: The survivors could also file cases at specialised courts for claiming fair justice like: Labour Court or Social Court or tribunal (Druta Bichar Tribunal). In this case they can also take help of District Legal Aid services free of cost.

Case filing at the court of destination country: For getting justice in the destination country or host country, the survivor could file a case there under labour law or relevant international laws. With the help of the Bangladeshi mission, lawyers, international volunteer lawyers or organisations like Lawyers Beyond Border (LBB), the survivors could run the case.

Public Interest Litigation (PIL): To bring change in the national laws, policies or even international laws, the migrants or survivors could file PIL (Public Interest Litigation) at Appellate Court for the welfare of all migrant workers and survivors of labour trafficking. For this kind of PIL, the survivors could get assistance from the volunteer lawyers' organisation called Justice Watch Foundation.

CONCLUSION: In spite of having different legal remedies for the abused migrant workers or survivors of labour trafficking, getting proper justice is still challenging for Bangladeshi migrant workers. These challenging factors may include: lack of knowledge of the survivors or migrant workers' families, lack of wide publicity campaign on the part of the government, lack of manpower in the government institutions, absence of capacity building initiatives, delayed bureaucracy procedure, and insufficient funds for the welfare projects of migrants. Though the CSOs in Bangladesh are practising some distinctive processes to redress the migration grievances, these are informal, and have limited capacity to handle such services as well as not recognised by the government. For example, the Union Information and Service Centres (UISC) are also not well capable of filling BMET online complaint forms, local Police Stations also are not well familiar with the Overseas Employment and Migration Act 2013. However, existing policies and legislations are in place to protect and uphold migrant workers' rights as global citizens instead of treating them as commodities of the migration process. It is crucial to create awareness about this particular aspect of migration. There is a lack of clear procedural guidelines in the case of overseas migration. However, to ensure the protection of migrants' rights and their awareness, effective and timely measures should be taken. Therefore, for ensuring fair justice for the survivors, the structure could create a pathway both for the government and CSOs. For this purpose, the government should launch an integrated online complaint mechanism system to serve the migrant community in an efficient way.

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