

# Exploitation of Migrant Workers in Malaysia and Protection under Domestic Laws

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Abstract: The contribution of foreign workers into the rapid development of Malaysia is enormous. Nevertheless, the workers have complained of exploitation and deprivation of their rights by their employers. This study aims to examine the extent to which the allegation and claim are true. It investigates the manner of the said exploitations based on the standards of International Labour Organization (ILO) and Malaysian law. The Qualitative investigation revealed that the rights of foreign workers as clearly set out those Malaysian domestic laws are breached. It therefore concludes that there is a need for Malaysia to take necessary measures in ensuring to stop exploitation and rights of the foreign workers are restored and preserve

## 1 INTRODUCTION

In this modern time Malaysia has become the highest labour importer in Asia. Unwillingness of local Malaysian workers is continuing the trend of import foreign workers over the past few decades. Despite the trend of migration, the issue of abuse and exploitation got attention in the society of Malaysia. Many migrant workers are reported that they have to work each and every single day in a week. Verbal and physical abuse is common especially women who are at most times subjected to incidents of sexual harassment and assault including rape. Article 6(1) and (2) of the Federal Constitution of Malaysia declared that all type of forced labour and slavery are prohibited in the territory of Malaysia. Art 6(1) states that 'no person shall be held in slavery'. In this article the term 'no person' reflects that neither local nor foreign workers shall be held in slavery or any form of servitude. The sardonic truth is, around the whole world migrant workers are exploited by their recruiting agents in Bangladesh, Pakistan, Nepal and Indonesia, or by their employers. Generally, the exploitation begins with the seizure of foreign workers passport either by their employer or by their recruiting agents. This practice is only to control the freedom of movement, to change the jobs, to make complain about the poor condition or slavery of foreign workers. This article will illustrate the

scenario of the exploitation of migrant workers based on their rights with supported local laws of Malaysia.

## 2 DEFINITION OF MIGRANT WORKERS

The term 'migrant workers' explains that a group of foreign people who have legal right to work in a country where they are officially recruited. The Employment Act 1955(Act 265) defined migrant worker as who is not a citizen of Malaysia. UN Convention on the Rights of Migrants and Their Families defines a migrant worker as a "person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national." The above definitions confirmed that migrant worker means a person who works in a country where he or she is not a citizen.

## 3 DEFINITION OF EXPLOITATION

Migrant workers travel in the foreign country with a great hope to have a better life, better working place and better salary. However, commonly they started their new life with dangerous working condition,

violation of their human rights and restriction of movement, and generally in beginning their document are seized by the recruitment agents or employers. Migrant worker is a human being are entitled to enjoy their basic human rights not the political rights, as declared in the Universal Declaration of Human Rights and other international human rights instruments.

The word 'exploitation' is meaning a lot in terms of treat on migrant workers in Malaysia. Exploitation is everywhere to migrant workers in the world while Malaysia has more complain regarding that within the area of Southeast Asia. Generally, migrant workers are vulnerable to employers in a foreign land and they tend to be constipated to comply with employer's decision or order. They are subject to weak recruitment regulations, limited legal protection and are vulnerable to exploitation by unscrupulous recruitment agents and employers. Many types of evil situation are conducted to migrant workers including the following forms of exploitations.

### **3.1 Seizing Workers Passport**

The most valuable and important document is passport for migrant workers. It seems a life of a migrant workers, though, it is withheld by employers to keep off workers from moving anywhere. Detaining Passport is prohibited under the Passport Act 1964 and other domestic laws related to migrant workers. Migrant workers have the right to free movement and even right to change the job, however, the situation of migrant workers in Malaysia is totally opposite. The employers always deny to leaving a foreign worker due to changing job from his/her institution to another factory or company. If a migrant worker wants to change the job or employer then he has to go to the foreign ministry office and industrial relations organisation to take permit which is very tough to a migrant worker. This is because, the processing will take a long time and worker has to be free to do so which they cannot due to withholding passport by employers. Sometimes, workers need to go outside for shopping, medication or other needs and often they are caught by police in the name of checking valid documents. Thus, workers cannot show their passport and police arrest them due to not having the legal documents. The foreign workers are sometimes taken off to some clandestine places by police to fear and misappropriate money from them. The employers and recruiting agents always neglect this type of situations and do not take the issue seriously. In addition, it happens sometimes that migrant workers need to travel to his/her home

country for any emergency matter but they cannot go because of locking up passport by employers. In terms of the above cases, migrant workers cannot move freely and cannot change the job rather they quail to do so. They constantly think that their life is in employer's hand and they cannot do anything beyond the employer's permission. Therefore, employers have no right to detain migrant workers passport that is an exploitation of migrant workers in free movement perspective.

### **3.2 Physical and Mental Torture on Migrant Workers**

It is obvious that migrant workers in Malaysia are being abused physically or mentally. Torturing physically, beating, pressuring for work, reviling, and leering are available for foreign workers daily life in the factory or workplace. There are a lot of case related to abusing migrant workers in the workplace by their employers even murder cases also noticeable in the court. Migrant workers come to Malaysia with a hope that they will lead their life happily and construct a better future, however, due to oppressions by employers their hopes become valueless. There is no right to torture whether mentally or physically to any workers under the international laws as well as local laws. If a worker does any wrong which make mischief to institution, employer can take action namely deduce salary or commission, dismiss the job, or anything provided by the law. However, any law did not provide any right to torture to anyone rather it is a criminal offence as in criminal law. Moreover, migrant workers are the most vulnerable human being in Malaysia as they cannot move anywhere leaving their passport because of the fear to become illegal status. Taking into account this reason, employers get inspiration to violence against migrant workers physically and mentally. Even, they do not take the law seriously because they know that foreign workers will not go to sue against them. Hence, employers are the supreme while workers are the vulnerable being to exploit in the workplace and the supremacy will be continued as exploitation until the proper law of enforcement.

### **3.3 Forced Labour**

Forcing to work after working hours without taking approval from workers is very common in Malaysian institutions or workplaces, especially to migrant workers. Every person has a capacity to work and out of that capacity if something is pressured to do, that will be an abusive manner other than exploitation. In

Malaysia, all forms of forced labour are prohibited by the federal constitution of Malaysia and any types of abusive practice is a criminal offence under the international and national laws. There are many cases that employers forced to workers to work for extra hours even for a day without any rest where workers are not paid for that extra works. This is totally wrong and an offence under the law. International Labour Organization (ILO), United Nations (UN) and other human rights organisations focused on forced labour especially force to migrant workers as it is a human rights violation and exploitation to migrant workers. Many worst situation and abusive practices are imposed to migrant workers in terms of excessive works and extra working hours without or half or less payment during busy schedule. Furthermore, if workers deny doing so, then physical torture are carried on them. Thus, migrant workers are compelled to work for extra hours whether for few hours or a whole day, even for day by day.

### 3.4 Sexual Harassment

Sexual harassment in the workplaces especially to migrant domestic workers is common and becomes general phenomena to employers in Malaysia. Migrant domestic workers are the most vulnerable among migrant workers due to some generous reasons such as they cannot move freely without the permission of the employer or owner, they cannot communicate to others for any evil circumstances, they cannot complain to others as their employer is only place to share anything happens and so on. Many cases in the court of Malaysia indicates that migrant domestic workers are not safe anymore in terms of sexual harassment, physical and mental torture, and rape. As migrant domestic workers work in the house, their passports are seized by the employer, their accommodation and food are also provided in that house, they are subjected to do what the employers says otherwise things will be very tough to them like physical and mental torture. Sometimes, domestic workers stay alone in the house and employers get opportunity to irritate the workers sexually, blackmail them emotionally and fear them that if they tell this to anyone then situation will be horrible to them. In these circumstances, migrant domestic workers do not have anything to do accept admire the torture silently and shut their mouth up with tears.

### 3.5 Discrimination against Migrant Workers

Migrant workers in Malaysia are constantly discriminated in terms of sex, race, religion, colour and many more ways in the workplace. They are distinguished from local workers in salary, working hours, accommodation, food, working sectors, fine, deduction and even exploitation perspectives where Article 8(1) provides that all persons are equal before the law and entitled to the equal protection of the law. In addition, migrant workers cannot join trade union and any types of association under the domestic laws in Malaysia. There is a prohibition from Ministry of Home Affairs that migrant workers in Malaysia cannot join any kinds of association which inspires the employers to discourage migrant workers to join unions. Furthermore, Under the Trade Union Act 1959 any union officer must be a citizen of Malaysia. Since joining the work to dismiss from the work, migrant workers are continuously discriminated with a neglect and leer. It is claimed by the foreign workers in Malaysia that local workers are paid more salary than foreign labour though both of them do the same work and for same hours. During the busy schedule in the workplaces, local workers deny working as overtime, however, migrant labours are compelled to do that. There are many complain against employers that they provide so many advantages regarding illness, leave of absence, allowance, and so on to local workers where foreign workers are deprived from those benefits. However, any discrimination is prohibited by the federal constitution of Malaysia and court decision while employers are careless to obey. As the Industrial Court in *Chong Wah Plastic Sdn Bhd and Others v Idris Ali and Others*, noted inter alia, that the principles of law, equity and good conscience demand that migrant workers must be given the same legal rights as local workers. All the above positions make migrant workers reluctant to work sincerely in the workplace, as a result abusive practices are returned to them.

### 3.6 Salary Deduction:

Migrant workers come to Malaysia with a hope as to earn more money for maintaining their family and expecting a better future after going back to their home country, however, the situation is the opposite to them. They are the being to whom employers can be capricious and cut down salary in the name of fine though it is nothing than exploitation. The claim from migrant workers is available regarding detruncate salary after working for a long month and migrant

workers cannot complain about that due to the vulnerability in a foreign country. Employers will provide the accommodation under the domestic laws but they do not do so, rather they cut salary as the accommodation fees if they provide. Moreover, as Malaysian laws, the levy will be paid by employers where employers reap salary of migrant workers as the levy charge as well as insurance fee. Furthermore, there is a basic and overtime salary payment limit by the government to migrant workers, however, employers follow only the basic scheme and outwit in terms of overtime payment. Therefore, migrant workers in Malaysia are dissatisfied with their salary after working a month with pressure and not mentionable rest while their inspiration to work carefully become less.

### **3.7 Poor Living Condition**

As human being, migrant workers may demand treating them well and decent, providing them healthy living condition, and equal facilities as local workers in accommodation perspective. A lot of research has been done on migrant workers health issue and found that poor living spaces is the main reason pulling to become sick. Often, foreign workers die also due to the unhealthy environment such as working in plastic factories with no protection, living in grimy and unclean room without ventilation and accommodating many people together in a small room and become cachectic. The previous research showed that in many cases 5 people live in a room like 200 square meters without any ventilation where they cook, sleep, dine and entertain themselves. Though, they pay for their living cost, the condition of the places is not absolute to live. However, under Malaysian laws, employers will provide the accommodation with nice, healthy and habitable living spaces. The law is there but employers are careless to follow and deny providing such conditions. In these circumstances, migrant workers are helpless to do something against employers rather they must survive and dwell silently.

### **3.8 Harassment by Police**

Another problem to foreign workers is harassment by police in the name of inspection or checking documents outside of the workplace. Migrant workers scare police though they have legal documents. This is because, some police stand on the way where migrant workers pass between living room and workplace and stop them, then fear and harass intentionally, so that they can get easy money from

workers. Workers claim that, police arrest them if their passport or legal documents are not with them due to withhold by the employer. In addition, few police take workers to a clandestine place in the name of arrest and then they force to give money. Workers are docile to give money to police because employers do not take the issue carefully and do not come to unhand from the police when they call to employers. That is why, migrant workers do not want to stay outside than workplace or living room. If a worker get arrest once, he needs to offer sometimes even half of their monthly salary otherwise police will not leave him/her and employer also will deny unhanding. This is such kinds of mental torture to migrant workers in a way while workers have nothing to do against this practice.

### **3.9 Levy System**

The levy is eliminated from the monthly salary of migrant workers though they paid a huge amount of money to broker or agent in their home country in terms of all kinds of cost related to them. However, they are forced to pay levy fee again behind a reason showed by employer that there is a condition with their agent in the deed to cut salary as levy fee. That is why, from the begging month of work employers detruncate salary and workers lose their hope to survive in Malaysia though they do not have any way to leave the job as they come to Malaysia by spending a lot of money borrowed from others. In a sense, migrant workers are paying levy charge two times and they are not satisfied with this levy fee at all. However, Malaysian government recently declared that employers have to pay levy not workers though the situation is still same as previous. Hence, if migrant workers need to pay levy again then they cannot clear the loan or borrowed money from others and cannot reach the hope with they came to Malaysia.

### **3.10 Others**

The problems faced by migrant workers in Malaysia are many and among them the above are the main claim in terms of exploitation and abusive practices. There are some other issues that also really exist and harm to migrant workers. For instance, employers refuse to renew the foreign workers visa sometimes due to remaining extra hassles. They just leave this issue to migrant workers and ignore any types of disturbance. For this cause, migrant workers fall into problem and face uncertain matters. In addition, claims are provided by workers that there is no proper safety and healthy tools in the workplace especially

in the construction sides. Moreover, religious practices are also prohibited during working hours in few factories or companies. If employers give time to pray, they fix the time as workers cannot finish praying within the time limit. Furthermore, Job dismissal is another bad thing happen to migrant workers without any notice and remedy. After dismissal, employers cancel the workers visa and foreign workers are bound to return back to their home country. If they want to stay after discharge then systematically they will be illegal. However, there are laws regarding unfair dismissal that migrant workers can complaint under the Industrial Relations Act but it takes a long time and long procedure to resolve. They are provided special pass for 1 month and it can be extended for one month increments under the Regulation 14 of the Immigration Regulations of 1963. During special pass, they do not have any job rather spend money for living cost, thus, they do not engage with the case procedure normally. Last but not least, if migrant workers complain to the actual authority, employers do counter claim against migrant workers and workers are vulnerable here as they do not understand the language they communicate in the court.

#### **4 PROTECTION OF THE RIGHTS OF MIGRANT WORKERS UNDER MALAYSIAN DOMESTIC LAW**

According to ILO constitution, ILO member countries are committed personally to protect the rights of foreign workers. As a member of ILO, Malaysia always tries to ensure the rights of migrant workers with their own policies according to the international labour standard to maintain a healthy labour migration system. Millions of migrant workers are getting justice under the Malaysian domestic laws of Malaysia. Basically, some fundamental rights are very general between ILO and UN conventions, such as Equality at work, Freedom of movement, Freedom from forced labour, Rights of Trade union, Medical treatment, Right for holding Passport, Proper wages, Access of justice, and Decent work and living condition. However, Malaysian Employment Laws given some basic rights for migrant workers where domestic workers are included, as follows:

- Overtime pay after eight hours per day or 48 hours per week.
- No more than 12 hours of work per day and 104 hours of overtime for per month.

- Every after five hours of work 30 minutes rest period.
- One day off each week except any emergency.
- Twelve paid holidays each year.
- Paid annual leave at least eight days if the employee has worked a full year.
- Paid sick leave of at least 14 days each calendar year.

The Employment Act 1955 (Act 265) is the main employment legislation in Malaysia to protect the minimum rights of workers. This Act prescribes the minimum protection of the rights of local as well as foreign workers except the domestic workers in Malaysia. The Act 265 included the proper wages of workers, over time wages and deduction of payment, maximum working hour in a day, maternity matter for female workers, all types of leave and holidays each year. According to the Act 265, if employer failure to provide all these benefits to the worker can be prosecuted through the Labour Court.

The Workmen's Compensation Act 1952 is now protecting only migrant workers for their injury. Injured person indicates only those workers who are working in government industries and those workers who are working in the place with less than five workers. According to the Workmen's Compensation Order (Foreign Worker Scheme) (Insurance) 2005 the workers who are earning RM500 per month or less they can participate. Under the Foreign Workers Scheme, an employer should contribute RM86 per year for each migrant worker.

All sections of the Trade Union Act 1959 are applicable for migrant workers in Malaysia. This Act confirms the rights of workers and employers to form a Union and migrant worker can participate in the activities of trade union.

The Industrial Relations Act 1967 also protects the rights of migrant workers in Malaysia. If an employer restrains any employee to join in a trade union, the employee can make a complaint with the Director General of Industrial Relation. However, generally migrant workers will not get justice under this Act because mostly after the complaint migrant workers are dismissed by the employer, cancel the work permits and forced them to go back to the country. In this issue Bar Council of Malaysia given one press statement against this practice and neglected the employer's attitude.

The Occupational Safety and Health Act 1994 ensured the rights of safety and health of migrant workers in work place. This Act applicable for some specific sector workers like Construction, Manufacturing, Agriculture, Mining, Transport and

storage, Hotel and restaurant. Under this Act an employer should provide necessary guidelines and training before using any dangerous equipment in work place. Further, when an employer has more than 40 workers he must established a committee to control health and safety matter. If the employer neglects this order and any accident happen in workplace he will jail for not more than 2yeras or will charge fine at RM50000.

The Factory and Machinery Act 1967 also secure health and safety for worker in the factory. The Act ensure that if any accident happen in workplace due to the negligence of employer and worker loss their life or body injury must report to the nearest inspector and employer may fine up not more than RM5000.

Basically, when worker terminated from job without any fault employer give compensation to the employee under the Employment (Termination and Lay-Off Benefits) Regulation 1980. Foreign workers are always cheaper than local workers and due to that there was a trend to retrench local worker and prefer foreign worker. After the amendment of the Employment Act in 1998 the trend is stopped. However, following workers will not be entitled to get the termination or layoff benefits:

- An employee who retires.
- An employee dismissed from job for misconduct.
- An employee who renew his contract by the same employer with same terms.
- An employee who denied renewing his contract with same terms.
- An employee who willingly terminate the employment contract.

As from the above discussion undoubtedly in Malaysia migrant workers have the same employment rights as the other local workers have.

## 5 METHODS

This paper is adopted a qualitative approach. Semi structured interview is one of the major instruments for data collection. The population is this study is the construction migrated workers based in Kuala Lumpur. Simple random sampling method has been utilised for 30 workers, living in the various construction sites based in Kuala Lumpur.

## 6 FINDINGS

It is beyond doubt that Migrant workers have contributed enormously to the development in Malaysia. But surprisingly some of these foreign workers are still abused by their employer. All states are under the obligation of human rights to preserve the minimum rights of migrant workers whether they are documented or undocumented. The ILO's member countries are committed by their own selves to protect the rights of foreign workers according to the ILO's Constitution. Malaysia always try to develop their own policies according to international standard to manage labour migration as well as protecting their rights. Millions of foreign workers now benefited by the national laws of Malaysia. Since, there are some good laws which are able to protect migrant workers' rights in Malaysia but the question is to access of justice. It is recommended that Malaysia should amend some domestic laws according to the regulation of the ILO.

## 7 CONCLUSION

As Malaysia is the largest foreign labour importer in the Southeast Asia region, Malaysia should pay attention more on migrant workers in terms of proper recruitment, admission, management, law making and law enforcement. Phillip S Robertson Jr rightly said that "The Malaysian Government does not have a comprehensive legal and policy framework to regulate the recruitment, admission, placement, treatment, and repatriation of migrant workers." Although many specific laws are there, a special law should be made which focus only migrant workers perspectives. Some contradictory laws are still visible that should be cleared. Regular fair investigation in the institution should be practiced more thus, healthy accommodation and workplace should confirm. The levy issue need to clear that whether it would be paid by employer or employee and whether it would be paid at home country or after arrival in Malaysia. Moreover, it is needless to say that there are inadequate laws to protect migrant workers in Malaysia rather poor law enforcement and enforcement policy, and poor human rights practices are here. Hence, Malaysian Government, Ministry Offices, NGOs and other authorities related to migrant workers should take the issue seriously and take necessary steps carefully.

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