





Justice at the Doorsteps  
**Mediation on Migration Fraudulence**

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## Preface

In 2017 more than 10,00,000 Bangladeshi workers migrated abroad to take up employment. During the 1970s and the 1980s migrants could change their economic status substantially through short term international contract migration. However over the years, labour migration has become extremely complex. While the cost of migration has gone up, the real wage of the migrants has reduced. Moreover, migrants also face fraudulence in realizing their migration dream.

RMMRU has recently conducted a door to door survey of 5400 households at one municipality and one union of Kalihati Upazilla of Tangail. It found that 40% of these are migrant HHs. Among these migrant HHs 40% experienced fraudulence at different stages of migration. 19% have failed to go abroad after paying a section or full amount and 32% have experienced inhumane and degrading treatment at the destination.

While conducting the survey the affected households expressed their desire that they do not want to pursue formal legal prosecution. Based on local demand RMMRU decided to experiment with local level mediation. Accordingly RMMRU undertook an action research that conducted mediation and recorded the results. Over a period of one year several mediations were conducted. Given the richness of learning from the field, RMMRU thought it is extremely important to capture the experience in a book.

Because of my background in mediation, the Executive Committee of RMMRU requested me to write the book. It was quite a challenging task. Thanks to Dr. Tasneem Siddiqui for insisting that I do this work. I am also thankful to Marina Sultana, Director, Programme, RMMRU and her Fairer Labour Migration (FLM) team for leading all the field interventions with utmost efficiency.

My thanks also go to Madaripur Legal Aid Association for helping RMMRU team by providing training to those who conducted mediation. We are also grateful to Nagorik Uddog officials for participating in the civil society consultations.

This book would not have been possible without the cooperation of the then DC of Tangail Md. Mahbub Hossain, who helped us organize our consultation and invite all relevant stake holders including DEMO and TTC officials as well as Police administration.

Members of RMMRU Migration Mediation Committee (RMMC) have played a pivotal role in materializing the mediation module in practice; my sincere gratitude towards them. I am deeply indebted to the families of the cheated migrants' and the migrants themselves for sharing their stories and agreeing to put their cases for mediation. I also like to recognize the good will of dalals who agreed to go through the mediation process and paid portion of the money they took from the migrants and their families.

I am thankful to Justice Syed Refaat Ahmed for reviewing this book and providing valuable guidance. I deeply appreciate the able assistance that Shara Arzooman provided me. I also thank Rabeya Nasrin for her contribution in the work. I hope this book will be of help to those who are conducting mediation on migration related fraudulences.

# CHAPTER 1

## 1.1 Introduction

Bangladesh is one of the major migrant sending countries in South Asia. People from this region have been migrating abroad for work for generations and contributing to labour force needs in foreign countries since the end of the Second World War (Etzold and Mallick 2015). By one estimate, approximately 500,000 workers leave the country to work abroad every year (Etzold and Mallick 2015). A large portion of Bangladesh's foreign income comes from remittances of migrant workers who live and work overseas.

Although their roles are crucial, migrant workers are particularly susceptible to various kinds of abuse and exploitation at different stages of their migration experience. A survey conducted by the Refugee and Migratory Movements Research Unit (RMMRU)<sup>1</sup> in 2017 covering 5400 households in Tangail reveals that approximately 51% of migrant workers experience fraudulence or abuse during the migration process (Arzooman 2017). Aspiring migrant workers, many of whom come from rural areas, are largely devoid of necessary information on migration policies, processes, and practices. In the absence of certified recruiting agencies at the local level, they have to rely on intermediaries or brokers, or someone in the community who is a returnee migrant with experience of working abroad for the requisite information. Most aspiring migrants, particularly those who live in abject poverty, believe that overseas work will change their lives and help them prosper. Consequently, they are willing to sacrifice whatever assets and savings they may have in exchange for overseas employment. Their sheer desperation drives them into the hands of unscrupulous middlemen/brokers who often cheat them, taking advantage of their ignorance and blind trust. By the time the victims realise that they have been duped, it is often too late to salvage the situation.

Although the Constitution and other laws vest on us legal rights, the

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<sup>1</sup> Based at the University of Dhaka, the Refugee and Migratory Movements Research Unit (RMMRU) has been working to establish fairness and good governance in the field of labour migration since its inception in 1995. In all these years, RMMRU has produced numerous evidence-based research, engaged in policy advocacy and grassroots programmes.

existence of rights alone is not often sufficient. Knowledge is power--it gives people, particularly the poor and the disadvantaged, the opportunity of articulating their needs as perceived by them and making informed choices. Indeed, general or minimal awareness of legal rights is not sufficient unless people develop an insight into how these rights are stated or enforced in law. For instance, whereas a migrant worker might have a vague notion about his/her rights in the migration process, s/he may have no clue about the process of making an effective claim against a wrong done to him/her. Since in most cases, the committers of irregularities including deception, cheating and fraud, are relatives, friends or members of the community with powerful connections, victims are reluctant to seek justice in formal courts for wrongs done to them in the migration process. Besides, historically the common man avoided accessing formal courts for any remedy as the process is deemed to be convoluted, time-consuming and expensive, not to mention, corruption-prone. In this context, alternative dispute resolution, more commonly referred to as ADR, is often the most preferred means of settling disputes locally without resorting to the more formal trappings of courts. ADR involves arbitration, mediation and conciliation in informal or quasi-formal settings as opposed to traditional litigation in formal courts of law.

Local communities have historically submitted their grievances to shalish, a traditional forum for dispute resolution. Shalish is a non-formal process through which a section of the village elite and concerned parties in most cases exclusively male, convene to assist disputants in reaching a solution by way of arbitration. The advent of legal aid organisations saw the transformation of traditional shalish from an adjudicatory body where decisions are meted out to the more facilitative and reconciliatory method of mediation where selected community members assist disputants to arrive at a mutually acceptable solution. Mediation has been hailed for being people-friendly, neutral and fair –a distinct improvement on shalish as it shuns adversarialism and seeks consensus.

Recognising the difficulties of migrant workers in accessing justice and the need to settle disputes effectively and satisfactorily, RMMRU has taken an initiative to develop a mechanism for settling migration specific disputes at the local level without having to go to formal court. While mediation is usually used in Bangladesh to settle inter alia disputes relating to family matters and assets, the utility of this mechanism to address migration fraud has not been explored before. Drawing on good practice and experiences

of NGOs that help resolve disputes through mediation, RMMRU has developed a manual to facilitate the resolution of migration related disputes at the local level through mediation. RMMRU believes that mediation would help not only to settle disputes but also to equip parties with valuable life-altering learning.

## **1.2 The Context**

Migration for better opportunities is not a new phenomenon in Bangladesh, which has seen both internal and international migration at different stages of its history. Indeed labour migration from the deltaic region dates back to the colonial period when people from erstwhile Bengal moved to India (particularly Assam) and the then Burma (now Myanmar) for employment. Subsequently, a great number of people permanently moved to the United Kingdom from Sylhet when the British departed from the Indian Sub-continent following the partition of India and Pakistan in 1947 (Islam 2014:10). Scholars record that most of the migrants from Sylhet married locals and established their families (Anwar 1979, Tinker 1977 and Mahmood 1994). When the British government adopted a policy to recruit foreign workers in the late 1950s, Bangladeshi women started migrating to join the men as part of family reunification (Siddiqui 2000:87).

The trend of international migration for employment in Bangladesh began in earnest soon after the country gained independence in 1971. According to Siddiqui (2005:74), the rising oil prices in the Middle East opened opportunities for large-scale infrastructure development. A huge number of Bangladeshi workers joined the labour market in the Middle East, a trend soon replicated in industrialised countries of South East Asia. The nature of this migration was qualitatively different from the migration to the West--these migrant workers went on short- term contracts with specific jobs and had to return home after completion of the contract period (Siddiqui 2005:74).

## **1.3 Migration Trends in Bangladesh**

Bangladesh is a huge labour surplus country. Since the mid-1970s, the country contributed in a major way to the international labour market in the Gulf and Arab states. Presently Bangladeshi migrants are engaged in overseas employment in more than 100 countries, mostly in the Middle East, namely, Saudi Arabia, Qatar, Kuwait, the United Arab Emirates (UAE) and in South East Asia, Malaysia.

From 1980 to 2010, the number of migrants who annually left for work in the Gulf States increased tenfold from 25,000 to more than 250,000 per year.<sup>2</sup> In 2015, a total of 5,38,667 workers have migrated overseas from Bangladesh to take up employment. In 2014, the total number who travelled overseas was 425,684. In 2013, it was 409,253. Compared to 2014, this year migration flow has increased more than 30%, while when compared to last four years combined, it increased by 35%. Almost 80% of the workers, who migrated in 2015, went to the Gulf and other Arab countries. The average flow of migration over the last 39 years also depicts the same scenario (82%). The remaining 20% went mostly to different South East Asian countries (1,25,492). About 23% of the workers migrated to Oman. Compared to 2015, the total number of migrant workers who went to Oman increased by 9%. Qatar received the second highest number of migrants from Bangladesh (22.4%). In 2016, Bangladesh experienced breakthrough in re-entering into three of its traditional labour markets. These are Kuwait, Saudi Arab and Malaysia. Malaysia has drawn a significantly large number of migrant workers recently.<sup>3</sup> In June 2015, the governments of Malaysia and Bangladesh signed a new labour recruitment agreement known as G2G+. Soon after, the Malaysian Home minister announced that his government would recruit 1.5 million Bangladeshi workers in the next three years through the private sector under the new agreement. After about eight years, the Kuwaiti government resumed hiring workers from Bangladesh from February 2015. As of 23 December 2015, a total of 16,833 workers have gone to Kuwait. This is almost 3.5% of the total flow from the country. In 2016, there has been a substantial increase in migration to Saudi Arabia, which accounts for almost 10.22% of the total migrants. This is the highest migration flow to Saudi Arabia in the last 7 years, followed by Singapore (Etzold and Mallick 2015:1,3). Women workers have been migrating Saudi Arabia in the last few years. In 2016, 75.5 % of those who migrated were men (Siddiqui 2016).

Women's presence in the migrant labour force is an important indicator of the feminisation of migration. Female migrants are primarily employed as domestic help, nurses and garment workers. In the past, female migrant workers from Bangladesh accounted for a small and negligible proportion of the total, but the annual trend rose consistently from 2000 to 2012. Up

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2 See <http://www.bpb.de/gesellschaft/migration/laenderprofile/216104/international-migration-from-bangladesh>

3 *Ibid.*

until 2004, women constituted only 1% of the migrant labour. The scenario changed soon after and by June 2007, women accounted for nearly 5% of the migrant labour. In 2014, the number of female migrant workers doubled to 76,000 from 37,000 in 2012. From 2000 to 2015, Jordan and Lebanon were the major destinations for female workers of whom more than 50% were engaged in domestic work and about 10% in garment factories or related work.<sup>4</sup>

## 1.4 Economic and Social Transformation

International labour migration has been an integral part of Bangladesh's economic and social development since the 1980s. It has helped generate employment opportunities and ensure stability in the country's foreign exchange reserve. Remittances of migrant workers sent from the country of employment to the country of origin play a central role in boosting the economy of the many labour sending countries, including Bangladesh (Azad 2003).

While economic, demographic, and social factors are among some of the key factors influencing the flow of overseas migration of workers, the foremost benefit arising from the emigration of workers has been their remittances. Migration flow is positively correlated with GDP growth in Bangladesh (World Bank 2012) and the long-term trend has remained positive for more than 2 decades, as economic growth has accelerated. This steady flow of overseas employment, despite economic progress, suggests that other factors are at play, including employment opportunities at home and expected higher earnings in countries with demand for migrant workers (ADB 2016).

The impact of overseas employment at the macro level cannot be overstated. Migrant workers' remittances to Bangladesh are a significant source of foreign exchange, second only to ready-made garments. On the other hand, the annual flow of migrant workers represents about 22% of this additional labour force annually. Taking into account the multiplier effect generated by the inflow of remittances and investment in economic activities by the receiving households of remittances, the contribution of overseas employment becomes quite considerable (ADB 2016).

At the micro level, the contribution of migration to poverty reduction is

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4 See <https://www.adb.org/sites/default/files/publication/190600/overseas-employment-ban-workers.pdf>

notable, with remittances boosting household consumption and savings significantly. The World Bank (2012), using the Household Income and Expenditure Survey 2010, showed that the monthly income, consumption, and savings were on average 82%, 38% and 107% higher, respectively, for remittance receiving households than households not receiving. In the same year, only 13% of remittance households were below the poverty line, compared with 34% in non-remittance receiving households (ADB 2016).

The inflow of remittances has substantially contributed to the economic development of Bangladesh and to the improvement of the external sector viability of the Bangladesh economy. The increased flow of remittances also greatly helped the country's Balance of Payment (BOP) to gradually reduce extreme deficits (ADB 2016). In 2014, Bangladesh received USD 15 billion in remittances, securing the seventh position on the list of highest remittance receiving developing countries in the world in 2014 (Siddiqui and Mahmood 2015:28).

In course of time, international migration became an important livelihood strategy for the people of Bangladesh. In addition to financial flows, it has helped generate assets, transfer ideas, skills and knowledge, increase connectivity and inter-personal links (Siddiqui and Mahmood 2015: 1). There has been significant impact on social development and empowerment by fostering many community development initiatives (Azad 2003). The impact of international migration on women has been immense. Women who have migrated themselves or whose husbands have migrated demonstrate tangible personal development. Having experienced economic and social transformation, many women actively participate in independent decision-making in the family and efficiently manage activities in both the private and public spheres (Siddiqui 2005: 10).

## **1.5 Challenges in Migration Governance**

The problems experienced by migrant workers are often the result of deficiencies in the governance of the sector. Despite continuous awareness campaigns by NGOs, civil society and government agencies, irregular migration continues to be a major concern. The unfortunate incidents of human trafficking to Thailand and Malaysia involving boat people in 2014 and 2015, the mixed flows of economic migrants and refugees to Europe in the wake of the conflict in Syria, and illegal entry into Libya through Sudan with the help of human traffickers are glaring examples of irregular migration.

Capacity and resource (both human and financial) constraints make efficient regulation of the migration process difficult. The government bodies involved in international labour migration are not amply equipped to address migration related complexities. While budgetary allocation to this sector is insufficient, the amount allocated is not fully utilised (Khoda and Akram 2017:40). The enforcement of law to tackle corruption and irregularities in the process of labour migration is slack and inadequate.

The lack of decentralised services adds to the problem in many ways. Since the principal actors in labour migration governance, i.e., the Ministry of Expatriate Labour, BMET, embassies, designated diagnostic centres and travel agents are all located in the capital, migrant workers are required to travel to the city repeatedly which is inconvenient and expensive for many. Procedural limitations are a key factor that complicates the migration process further. The entire process involves 24-27 steps from the collection of visa to the collection of emigration clearance and smart card. Of these, 11 steps need to be covered at the BMET alone (Khoda and Akram 2017:41-42). The entire process takes 30-45 days to complete. The procedural hassles and the unfamiliar city environment compel applicants to depend on dalals.

As of November 2015, only MRP passports are acceptable for foreign travel. Delay in delivering MRP passports to migrant workers abroad poses problems for them in obtaining valid visa stamps. The insufficient number of labour attaches abroad, who are the principal focal points between the migrants in the country of destination and their country of origin, is a major challenge in migration governance. Hundreds of migrant workers languish in foreign jails awaiting deportation due to sluggish response from concerned labour attaches.

## **1.6 Legal Redress for Migration Related Irregularities**

The government of Bangladesh has undertaken different measures to govern labour migration from Bangladesh and enacting the Overseas Employment & Migration Act 2013 is one of them. This Act has enunciated rules and regulations about the process of migration i.e. sending workers overseas, procedures to be followed by recruiting agents, obtaining licence, registration of the migrant workers, migration clearance and employment contract etc. Vital provisions regarding rights of the migrant workers, offences committed in the migration field as well as the penalties of those offences and trial procedures etc. are mentioned specifically in the Act.

Chapter VIII of the said Act is about offences, penalties and trial; and section 31 to 34 specifically laid down provisions for punishments in case of migration related irregularities. These include penalties for sending migrant workers overseas in unlawful manner, and for charging unlawful amounts of fees (section 31); penalty for publishing unauthorised advertisements by a person or recruiting agency (section 32); penalty for using unlawful means for collecting demand note, visa or work-permit for overseas employment, or for trading in such documents (section 33) and penalty for arranging for departure through places other than the specified place of departure (section 34). Furthermore section 35 and 36 has also provisions of punishments if any offence being committed by a company and even in case of abetting or instigating any offence accordingly.

Moreover in 2002, three sets of Rules were framed under the Emigration Ordinance 1982 (repealed by Overseas Employment & Migration Act 2013), which are Emigration Rules 2002, Rules for Conduct and Licensing Recruiting Agencies 2002 and Rules for Wage Earners' Welfare Fund 2002. The Emigration Rules elaborated the role of Registrar and Labour Attaché. It also gave directions to control sub-agents, provision of group visas and disposal of complaints. The Rules for Licensing Recruiting Agencies discuss the procedure of registration for recruiting agencies, including application, validation and license renewal. Finally the Rules for Wage Earners Welfare Fund plays down procedures to form a governing body to manage the fund. It also gives a mandate to the body to allocate or utilize the fund for the welfare of migrant workers. These rules are now part of the advanced Overseas Employment & Migration Act 2013.

### **1.6.1 Arbitration by BMET**

The Emigration Rules 2002 empower the Registrar of BMET to arbitrate complaints and claims of economic and other losses by aggrieved migrant workers due to negligence, fraud or violation of Rules by recruiting agencies, employers or the Bangladesh mission abroad (Rule 4). To this end, the Registrar conducts an investigation to check the veracity of the claims in the presence of the emigrant and the representative of the recruiting agency. On completion of the investigation, the Registrar has the liberty to send a copy of the investigation report to the police or the court, if necessary.

BMET receives complaints from migrants in two ways, online ([www.ovijogbmet.org](http://www.ovijogbmet.org)) and in person from the aggrieved migrant. Unsubstantiated complaints and claims unsupported by necessary documentation are rejected.

While arbitration conducted by BMET is indeed a good initiative, there exist some drawbacks in the system.

- **Inadequate Compensation:** The compensation awarded by the arbitral decision is sometimes neither adequate nor justified. When declaring compensation, the BMET takes into consideration the migration cost officially set by the government for specific employment categories irrespective of the amount actually paid by the migrant workers, which is invariably much higher than the government ceiling. In determining the compensation, the social, physical and psychological damage the migrant worker experiences is not taken into account. Besides, the inordinate length of time BMET takes to settle a matter only adds to the complainant's trouble.
- **Discriminatory treatment of complainants:** The arbitration authority has the tendency to declare decisions *ex parte* if the complainant fails to attend the arbitration hearing on time. This practice is not applied equally to the representative of the recruiting agent arrives late for the hearing. There are no sitting arrangements for the migrant workers during the arbitration hearing whereas the recruiting agency representatives have the privilege of getting seats. This unequal and hierarchical treatment, which demonstrates a clear bias against the complainants essentially relegates them to an inferior position and weakens their morale. It also generates doubts regarding the objectivity of the decision.
- **Absence of measures for non-compliance with arbitral decisions:** Specific measures to address non-compliance with the decision of the arbitration by BMET are not spelt out. In addition to a waste of time and resource, this omission the process meaningless and reduces its utility.

Although democratisation and the rule of law have been widely acknowledged as a major driving force for pro-poor development, poor people in relatively new democracies continue to experience powerlessness in diverse ways. This also holds true for migrant workers. While economists and development experts believe that this powerlessness stems from the lack of economic opportunities, it is equally valid that poor people's powerlessness also derives from the state's failure to provide adequate protection to its citizens, particularly when they are poor and/or marginalised and are unable to reach the relevant institutions for vindication of their rights.



## CHAPTER 2

# DIFFICULTIES EXPERIENCED BY MIGRANT WORKERS

### 2.1 Introduction

The process of migration is inherently complex and poses problems for migrant workers at various stages of their migration experience. Aspirant migrant workers, many of whom come from the rural villages, regard overseas migration as an excellent opportunity to earn money, but they are very rarely conscious of the associated risks. The migration experience essentially starts with the contact between intermediaries and returnee and/or potential migrant workers. The intermediaries are usually a part of the migrants' community--- friends, family, community members, and other returnee migrants who build trust with the potential migrants and invest in social relations to further their self-interests.

The procurement of a work visa, the recruitment of the worker and the receipt of emigration clearance are some of the key steps in the migration process (Siddiqui 2006:12) which give rise to many irregularities and corrupt practices thereby increasing the vulnerabilities of migrant workers. Research on migrant workers reveals that a great number of migrant workers are victimised by recruiting agents and their partners. Many travel without following the due process. This essentially makes their move irregular, which in turn places them in them low-wage exploitative working conditions in the destination countries with little or no scope for redress. Many are trafficked in the name and migration and sold into slavery.

Studies reveal the complex problems that migrant workers face in their quest for better employment opportunities abroad. Drawing on existing data<sup>5</sup>, the following sections encapsulates the most significant challenges that migrant workers usually face.

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5 See Siddiqui, Tasneem, *National Responsibility towards the Migrant Workers, Occasional Paper 1*, RMMRU, Dhaka, 1998. Siddiqui, Tasneem (ed.), *Beyond the Maze. Streamlining Labour Recruitment Process in Bangladesh*, RMMRU. Dhaka, 2002. Siddiqui, Tasneem (ed.), *Migration and Development. Pro-Poor Policy Choices*, UPL, Dhaka, 2005.

## **2.2 Pre-Departure Problems**

### **2.2.1 Ignorance and Lack of Access to Information**

Lack of awareness of the relevant migration processes and their legal rights and entitlements is a fundamental obstacle to hassle-free migration by many. There is very little opportunity for people at the local level firstly because, many of them being devoid of basic education have no clue what information to seek and secondly because there is no system in place for providing the requisite information. This compels them to depend on others to guide them through the various stages prior to departure, namely, dalals, neighbours with migration experience, and so on and more often than not, they are misled and cheated of their money and assets before departure. If they manage to travel abroad, they find themselves in employment situations that are very different from what was promised. The majority of migrant workers lack education, which compels them to rely on the brokers. While there is dearth of publication and publicity of migration related information generally, in most cases potential migrant workers pay no heed to existing cautionary advice imparted by the government and others. The urgency to go abroad for employment makes all other concerns secondary.

### **2.2.2 Procurement of Work Visas**

The buying and selling of work visas have become a profitable business for individuals with vested interests who collude to make a quick profit by taking advantage of the ignorance and gullibility of the poor people eager to go abroad for employment. An unholy nexus between high-ranking state officials in the destination countries, their recruiting agents, a group of Bangladeshi expatriates and a section of the Bangladeshi recruiting agents having strong political and social connections cause great sufferings to the migrant workers by engaging in irregular practices in visa transactions (Siddiqui 2006:13). These groups enjoy monopolises the work visa procurement from potential employers before auctioning them off to Bangladeshi recruiting agencies. This practice hikes the cost of visa and places a heavy financial burden on hopeful migrant workers.

### **2.2.3 Deception by Dalals (Brokers/Informal Agents)**

Fraud, misrepresentation and deception by recruiting agents in Bangladesh are commonplace. Since most of the registered recruiting agencies are located in the capital, Dhaka, and cannot afford offices at the local level, they are largely reliant on a plethora of informal sub-agents, popularly known as dalals, who essentially broker for them in recruiting migrant workers and undertaking financial transactions at the local levels. Recruitment at the local level is done verbally, with no documentation of agreed on terms and conditions or receipt of payments made. Recruiting agents and or dalals do not always recruit workers according to the job specification. The absence of proper documentation or the falsification of documents raises the risk of the migrant workers being labelled as “undocumented” if caught, punished and deported. The dalals are devoid of institutional identity, which creates scope for them and the recruiting agency hiring them to engage in fraudulent practices and cheat people of their dues. Just as potential migrants are unable to hold the dalals to account if they are cheated, recruiting agencies with a good reputation also have problems in taking actions against dalals for using their company name and extracting money without proper authorisation.

### **2.2.4 Getting Passports**

The process of obtaining passports is yet another challenge for aspirant migrant workers, many of whom cannot even sign their names. This compels them to follow instructions of the recruiting agents via their dalals blindly. Employees of recruiting agents often fill out the passport application forms for the passport seekers and forge their signatures. Unscrupulous immigration officials at the Bangladeshi airports, who allow the migrant workers to pass in return for bribes, often make travel on improper passports possible. There is also evidence that some of the recruiting agents and/or their dalals commit fraud when procuring passports. Migrant workers run into trouble when their signatures/names do not match the signatures/names in the passports on arrival in the destination country.

## **2.3 Problems in the Country of Destination**

The complexities at the pre-departure stage result in undesirable and unfortunate incidents in the countries of destination. The lack of transparency and proper documentation and irregular and corrupt practices in the migration process have adverse effects on the working and living conditions of migrant workers. In the absence of clearly spelt -out terms

and conditions in their contracts and knowledge of labour laws in the countries of destination, migrant workers are exploited and discriminated against in terms of wages, overtime, food, accommodation, and holidays. Dishonest employers sometimes rescind the original contract under which the migrant workers were recruited and compel them to sign a second agreement undercutting the original terms and conditions. Migrant workers are harassed and threatened with criminal prosecution if they resist. Physical and mental abuse of migrant workers is also common. Freedom of movement is curtailed and the right to association and social protection is absent. Migrant workers have little or no scope for negotiation, changing jobs, or seeking legal redress as employers confiscate passports and other relevant papers on arrival. If they choose to flee, they run the risk of arrest as undocumented, irregular workers.

## **2.4 Gendered Problems in Migration**

The restructuring of the global economy has led to the creation of new employment opportunities abroad that cater primarily to women migrant workers. With exceptions, domestic work is the highest employment-generating sector for women. While women migrant workers experience the very same problems as their male counterparts, in addition, the employers frequently subject them to sexual offences and physical violence. Since women migrant workers work within the closed confines of private homes, their opportunities to access help from outside are limited. Isolated and lacking in sufficient communication skills, women migrant workers often have no alternative but to suffer in silence.

It is said that three factors are instrumental in sustaining women's subordination and powerlessness: discriminatory laws, gender-biased court judgements and the ignorance of the law and the law-making processes (Hasan 1994:69). Although the poor as a whole are vulnerable to exploitation, the vulnerability of a poor woman migrant in Bangladesh assumes different dimensions having far-reaching implications. Backward, illiterate and economically dependent, women migrants are incapable of tackling complex legal problems let alone resolve them equitably. The entire scenario is compounded by the normative ideology that perceives women as inferior and unequal in the economic, social and cultural context. A poor woman in Bangladesh is subjected to dual hierarchies, one, because of her gender and, two, her impoverishment. Having very little access to

material resources, women lack autonomy and decision-making power, which precipitate their disempowerment within the family, community, the workplace and the wider society.

## **2.5 Victims of Migration Fraud : Selected Case Stories**

As mentioned earlier, migrant workers experience a multitude of problems in the migration process. Drawing from RMMRU's publication *Untold Stories of Migrants, Dreams and Realities*<sup>6</sup>, this section highlights selected stories of migrant workers in an attempt to illustrate the diversity of problems to give a better sense of the complex situations migrant workers often find themselves in. These stories reveal how migration can become a risky business if gone wrong.

### **Haider Mia's Story**

My name is Haider Mia and I am from Sharsha in Jessore district. I am from a farming family, but I was never really interested in following the footsteps of my father. There were no opportunities in my home community, so I decided that it would be best to look for employment overseas. In 2008, with the help of a local Dalal, I paid BDT 250,000 for a flight and visa to Iraq. The Dalal also arranged a two-year contract for a job at a hotel. My father had to lease 66 decimals (0.27 hectares) of his land in order to finance my migration. Although I was supposed to be received at the airport, nobody came for me. After spending two days at the airport, I informed the local police who then contacted the recruiting agency which processed my migration. Subsequently, a representative from the agency picked me up from the airport and took me to Mazhab town. I started working immediately, but I had no fixed tasks. I had to work at whatever they assigned me. The Dalal from Bangladesh promised me a salary of USD 350 per month, but I was only paid USD 200. After a lot of persuasion, my employer increased my salary by twenty-five dollars, still lower than what was promised. Although I had to work long hours, I was not paid any overtime. Sometimes, I worked twelve to sixteen hours a day! I also had trouble getting proper food. I managed for two years in such conditions. After two years, I was finally allowed to return to Bangladesh. Currently, I am trying to migrate to Lebanon because I hear that the conditions there are better.

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6 Siddiqui, Tasneem (ed.), 2017, RMMRU, Dhaka.

## **Farida's Story**

My name is Farida. I am from Boruha village of Tangail district. I am a twenty-seven year old returnee migrant. I have one son and one daughter. My husband divorced me within a few years of our marriage following which I returned to my father's family, bringing the children with me. I stayed with my parents while they were alive. However, after the death of my parents, it was difficult to stay with my brother's family. I then moved to a different home, but could not afford it.

In view of my troubles, I decided to migrate abroad. I went to Saudi Arabia in 2007 at a cost of BDT 110,000. In order to acquire the money, I had to sell the jewellery that I purchased for my daughter. The dalal promised me a job as a cleaner at an airport or hotel, but upon arrival, I was given the work of a domestic worker in a house of ten members. It was difficult to adjust to their schedule as they all slept during the day and kept awake at night, forcing me to work almost twenty-four hours. I had almost no time to rest. However, food and clothing were available. My salary was BDT 10,000 per month and I received it regularly for a year. At the end of one year when I asked for leave to go home, the employer stopped paying me. Thereafter, I worked for three more years without salary. Whenever I asked for money, I was told that I would get it later. I thought I would receive all my money together at the end, but I never received it. I gave up hope and returned home. Currently I have no job. I want to try to migrate elsewhere to earn a living; but I do not want to work as a domestic worker again. I would prefer to work as a cleaner, otherwise I will not go.

## **Mohammad Niaz Uddin's Story**

My name is Md. Niaz Uddin and I am from Dharmapur village, Sitakunda of Chittagong. I am a returnee migrant. We are family of five members: my mother and father, a sister, my younger brother, and myself. We owned a small piece of land, but it was not enough for our sustenance. I worked with my father in agriculture, and I also owned a small grocery store in my village. However, for various reasons I had to close my store. Therefore, our only income source was our land, which was simply not enough. Due to these factors, I decided to migrate to Kuwait in 2012, at the age of twenty-eight, spending BDT 200,000. I gave this money to a dalal. I spent an additional BDT 50,000 for medical tests, transportation, clothes, shoes, bags, etc. I borrowed part of the money from my father, and the rest from the Islami Bank. The dalal promised me a job at a chicken farm with a

salary of BDT 20,000. However, after arriving in Kuwait I found myself unemployed for six months during which I had to spend the money I earned in Bangladesh to survive. Eventually, I found work as a house-cleaner in different places and got part-time work in a shopping mall as a janitor. I found a job in a vegetable garden, making BDT 7,000 per month where I worked from 2012-2015. The pay was so poor that I could not save or remit anything home. One day I tried to contact the dalal who had sent me abroad, but I could not reach him. I was unable to clear my bank debt, which my father cleared after selling his livestock. Now we have no other sources of income. I have no job in Bangladesh—I spend my days in utter misery. Although I help my father cultivate his lands, this is not enough to provide for our family. I would like migrate again to change my fortunes.

### **Mohammad Sarif's Story**

I am fifteen years old and I am from Bilgram of Teknaf district. In December 2014 when I was a grade seven student of Teknaf Pilot High School, Guru Mia, a dalal from Bunia Ground, offered me a job in Malaysia. I readily agreed to his offer. They first took me to Shahpariar Island of Sabrang Union from where I was transferred, along with many others, to a trawler boat. There were nearly three hundred people aboard the boat, among whom fifteen or so were women. The women were confined in a small compartment, and the men in the hold of the ship. The women were sexually abused. We could hear them screaming from below. No one dared to protest or resist these heinous acts committed by our captors. We were eventually rescued from a dense forest in Thailand's Sankhala province, a former base for human-smugglers, and repatriated to Bangladesh. My experience was horrendous. Despite my anger, we had no redress done to me by the dalal, primarily because he had connections with powerful people.

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### **Mohammad Shikder Hossain's Story**

My name is Md. Shikder Hossain. I am from Bilgardina village, Tangail, and I am a 32-year-old returnee migrant. Although my father was a poor man, he was not interested in sending me abroad to work. I, however, wanted to work abroad. My interest to move abroad sharpened when I met a local dalal. He convinced my father to permit me to go abroad. My father agreed to give the dalal BDT 277,000 in return for securing me a job at a hotel in the Maldives. The salary was to be BDT 30,000 per month, on top of free accommodation, medical support, and visa. We paid the dalal in the presence of a group of villagers on 15th of June, 2014. He took my money, my passport, and photocopies of my passport. He assured me that I would get a genuine visa and that I would face no problems. A few days later, I was sent to the Maldives. However, upon my arrival I did not get the job I was promised. Instead, another dalal in the Maldives asked for an additional sum of BDT 200,000 to facilitate my return to Bangladesh. I informed my father about this and he contacted the dalal in Bangladesh, who agreed to deal with this issue. The dalal also signed a bond on a stamped document of BDT 200, promising to resolve the issue, but he did nothing. Having no alternative I returned home on early July.

On confronting the dalal in our village, he promised to mitigate the situation either by sending me back to the Maldives on another job, or by returning the money we gave him. Several days passed, but he did not do anything. On contacting him, the dalal informed that he was unable to return our money. We were speechless. Now we are pursuing a court case to recover our money.

### **Dhirendra Shutrodhar's Story**

I am Dhirendra Shutrodhar. I am a Hindu. Our family consisted of my son Dulal, his wife and children (two daughters, one son), my wife and myself. About eight years ago, Dulal went to Saudi Arabia. The intermediary informed us that it would be easier to get a work visa in the Middle East

if the applicant is a Muslim. Accordingly, my son's passport was issued under a Muslim name. Dulal started to work as a driver, and things went very well at first. However, after five years Dulal was tragically killed in a road accident.

On receiving this news, the Gala MRPC offered our family a helping hand. The MRPC committee helped us apply for the repatriation of Dulal's body and for financial compensation for our family. After waiting for a long time pending response, I revealed to MRPC that my son had been working in Saudi Arabia under a Muslim identity.

We soon discovered that this was a major obstacle to realising our claim. Conflicting information in different documents regarding my son's identity were stalling our application for repatriation of his body and for releasing compensation. At this point, RPDO, a local NGO, stepped in and began communicating with the DEMO office. RPDO and RMMRU managed to convince the concerned government functionaries at BMET that Dulal was genuinely our son, a Hindu and that he had adopted a Muslim name for convenience. Ultimately, BMET paid BDT 196,000 to our family in compensation. Sadly, we were not able to repatriate my son's body. If the MRPC, the RPDO, and RMMRU had not advocated for us, we would have not been able to collect the compensation. Nonetheless, I will die with this pain in my heart that I was unable to give my son a proper funeral.

### **Samina Begum's Story**

I am Samina Begum. I am twenty-one years old, and my home district is Faridpur. In 2009, I went to Lebanon as a domestic worker with the help of my sister who was already working there as a domestic worker. My sister helped me secure a Kafala visa from a Lebanese family. My sister came back to Bangladesh on vacation, and I returned with her to the Lebanese city of Sin el Fil. My sister informed me of the nature of my upcoming work, including salary details and other benefits. I was not aware of contract papers or any other documents. I started working and found that there was no limit to my daily working hours. I often worked seven days a week, usually for 16-18 hours a day. The work mainly consisted of daily household chores, like cleaning and cooking. I worked hard, but did not receive a regular salary at first. After two months, I received my salary for the first month. When I asked for my pay on time, my employer got upset, and started to scold and beat me on the slightest of pretexts.

Soon, my employer's younger son began sexually harassing me. I did what I could to protect myself, but I did not tell his parents. One night, the son sexually assaulted me. Luckily, I managed to fend him off. After this, I shared what had happened with his mother. However, she did not believe me, and instead responded by blaming me and beating me. After this incident, I ran away from the house and took refuge at the residence of one of my sister's friends in the downtown area, ten miles away from Sin el-Fil.

While I was hiding out, my employer filed a case against me, alleging that I had stolen valuables from his house. The police then arrested me and sent me to jail. After six months, an NGO rescued me from jail and brought me to their shelter, which is where I presently reside. The nuns from Caritas told me that I made several mistakes. For example, I did not use a recruiting agent; I did not take any prior training about domestic service; I had no knowledge of Lebanese law, which prohibits employees like myself from leaving the workplace without prior notice or informing the Ministry of the Interior. Throughout my time in Lebanon, I had no contact at all with the Bangladesh Consulate in Lebanon. I have learnt the significance of pre-departure information on support mechanisms and the legal frameworks in receiving countries.

### **Mohammad Akteruddin's Story**

My name is Md. Akhteruddin. I am from the Muradpur village in Comilla district. Before migrating, I had a small business, but I did not make enough to provide for my wife and son. Soon, the business failed. I wanted to find a job that would pay well so that I would be able to live comfortably in my old age. A person from my neighbourhood offered to introduce me to a dalal. The dalal promised me a job as a plumber in Libya, which would pay USD 600 a month. He asked for BDT 400,000 to make the arrangements. I believed him and borrowed the money from my relatives to pay him. He sent me to Libya but once I arrived, I found that the dalal had lied, and that I did not have a job. To survive I worked in a hotel for a few days, and as a mechanic in a car garage. Although I was paid 400 Dinars per month, the dalal claimed 100 and I got the rest - only 300 Dinars (BDT 16-17,000). It was very difficult to pay off my debts with this small salary, and at the end of each month, I had no money to send home. What was worse is that the place where I worked in Libya was a conflict zone. Every now and then, I would hear gunfire and bombs. On top of this, I had no official permission to work in the country so I had to work in secret and

hide from the authorities. For this reason, I could not stay long and had to return home. When I returned, I explained everything to the neighbour who introduced me to the dalal in the first place. I told him I wanted to lodge a legal case against him because he had cheated me. When I was preparing to do that, the dalal and the neighbour fled the village. I tried to contact them by phone, but found their phones switched off.

Libya was not my first migration experience. I went to Dubai earlier and worked there. With those savings, I was able to engage in business in my country, earning about BDT 8,000-10,000 per month. Somehow, I have to provide for my family, but it is very difficult. Regardless, I have decided not to go abroad again. Some people in my village had successful experience in migration, but I failed. I have been cheated in several ways and now I pass my days in deprivation.

### **Ratna Begum's Story**

My name is Ratna Begum. I am from Narayanganj, and I am a 30-year-old returnee migrant. Prior to migration, I worked in a bachelor's quarter, cooking for them. I have one son. My husband said he would pay all my expenses during my marriage, and promised to give me a certain amount of money each month. He also told me he would build a house. However, after my marriage, he gave me only BDT 2000 per month while my house rent was BDT 5000. I lived with my two sisters and my son while my husband lived elsewhere. Due to this situation, we frequently quarrelled. I dreamt that, no matter what, I would help my son finish his studies. I myself never got a chance to study, to become educated. My childhood was hard because my mother died when I was young.

For these reasons, I decided to migrate, going to Saudi Arabia with the help of a dalal, whom I paid BDT 70,000. I had to borrow this amount from my relatives, but also promised to pay BDT 20,000 in interest on this amount. My intermediary told me that my salary would be BDT 20,000 per month as a domestic worker in Saudi Arabia. However, in Saudi Arabia, I was assigned to one family one day, and another the next. I worked in many different houses in my first month there. I faced difficulties with food in all the houses, and I did not receive my salary at the end of the month. Some of the families also tortured me. One person threw a water bottle at me when I asked for my salary. In another household, the male members tried to coerce me into a sexual relationship. When I refused, they hit me. I informed my husband about these incidents. He lodged a case against

the dalal who sent me there, and brought me home. He had to spend BDT 45,000 to do all this.

In total, I worked for eight months in Saudi Arabia, for many different families, but only received salary for three months. Furthermore, my salary was not in line with the promised amount of BDT 20,000. I only got BDT 16,000 per month. I have started working as a cook in the bachelor's flat again. My husband works as a labourer in the construction industry. My only son is ten years old and studying in class 4. I have not been able to clear all my debts that I accrued before and during migration.

### **Mohammad Amirullah's Story**

I am Md. Amirullah and I am from Nedhar in Tangail. In 2013, when I was 18 years old, I wanted to go to Libya for work. In our family, we have four brothers and three sisters. My father and mother died two years ago. All of my elder sisters are married. Amongst the brothers, I am the eldest. My younger brothers are studying and so I felt that I had a responsibility to bring in some money. Thus, I sought out a dalal who promised to help me migrate abroad. I paid him BDT 400,000. I borrowed this money from some people in my village. However, the dalal was dishonest and he forged a number of my papers. When I was at the airport preparing to leave, an airport official discovered that my documents were fake. Instead of working abroad, I went to jail for one month. After one month, they released me. I still had some debts that I have to deal with. I am repaying these slowly. I am married but I have no children. Right now, I want to learn how to drive. Luckily, I found an opportunity to learn how to drive with RMMRU. I took the training course and it went very well. In future, I hope to put these skills to use. Maybe one day, I can drive a car for an individual or a company.

### **Jhuma Khatun's story**

My name is Jhuma Khatun. My father's name is Sohrab Molla. I am from Sultanpur in Faridpur district. On 12 July 2013, I travelled to Jordan to work as a housekeeper. I did this with the help of a few individuals: a local dalal named Ishak Sarder, and his brother Sabu Sharder, and the son of the Chairman of Bhadrason Upazila, Shawon. The trip cost me BDT 60,000. Before I left for Jordan, I did a housekeeping 21 days training course with the Sheikh Fazilatunnesa Karigori Training Centre that lasted twenty-one days. Five days after the training ended, I boarded a plane bound for Jordan. Just before entering the airport, the son of the Upazila Chairman gave me a packet to hand over to the people who were coming to receive me at my

destination. However, the other girls flying with me told me that the packet might be yabba (drugs), and as suggested by them I threw the packet into an airport toilet. On 13 July 2013, I reached Jordan. A representative of my dalal met me at the airport and brought me to their office. My employer met us at the office and gave me JOD 3,000 (USD 4,200). Later I was told that the owner bought me with this money. On 14 July, I started working. Sometimes my working hours were from 7am to 3am. They gave me a bit of bread, a cup of tea and some fruit each day, and once a week I received a serving of rice. After I started working, two of my employer's sons approached me for sex, but when I refused, they physically abused and tortured me. One day, one of the sons raped me. I was unable to protect myself from such aggression. After the first time, they came repeatedly and raped me repeatedly. One month later, I spoke with my father on the phone and told him what had happened. My father informed the local dalal asked him to take action immediately. The dalal did nothing, so my father complained to the local Chairman. The Chairman arranged an arbitration between my father, the dalal, and Shawon. The arbitration concluded that I would be brought back to Bangladesh within ten days. The ten-day period elapsed and nothing happened. However, during these ten days, the dalal and Shawon went into hiding. My father then filed a complaint under the Anti-Trafficking Law 2012. The complaint was lodged at the police station, but the officers did not take the case seriously. Later, my father brought the case to the Member of Parliament from Faridpur who referred it to the Home and Foreign Ministries. My father had to pay BDT 40,900 for my flight home. On my return to Bangladesh, I was immediately admitted to the hospital. To this day, I need to consult a counsellor to deal with my trauma.

The above stories illustrate the underlying risks that make migration a risky and unpredictable undertaking. While various factors shape people's decision to move, the realities that they and the consequences they suffer face in the process are also multi-dimensional. These stories also bring home the realisation that migrants, who have had unpleasant migration experiences, need help in recovering their losses-- whether financial, physical or psychological—in order to live a life with dignity.



## CHAPTER 3

# ALTERNATIVE DISPUTE RESOLUTION: PRACTICE AND PROSPECTS

### 3.1 Introduction

Bangladesh has ranked 139th out of 188 countries in the Global Human Development Index 2015 owing to its remarkable progress in many socio-economic areas, including life expectancy and per capita income (UNDP: 2017). Achieving an HDI Value of 0.579 in 2015, Bangladesh has been categorised as a “medium human development” country according to the Human Development Report (HDR) 2016. Despite this progress, people’s access to justice and protection of their fundamental rights continue to be challenge. People, who are poor, weak and disadvantaged and more particularly women, face innumerable obstacles in accessing justice from the more formal state organs, which are plagued by corruption, delays, complicated procedures, exorbitant cost and class biases. In the circumstances, the common people prefer to resolve their problems and disputes at the community or local level in an informal way. In legal circles, this is popularly known as “alternative dispute resolution” or simply ADR. The forms of these alternative methods may vary depending on the culture, practice and tradition of the people in particular contexts. While in some societies the practice has become redundant, in others, ADR continues to provide the local people with a viable alternative to the more formal justice system, that is, the Court.

### 3.2 Constraints on Disadvantaged Groups’ Access to Justice

Access to justice has many dimensions of which the ability to reach the process of law is but one. The capacity to access the judicial process depends on myriad factors involving the parties, objectives, available resources, nature of discords and existing socio-economic and cultural contexts. Broadly speaking, access to justice connotes more than simply entry into formal courts of law but includes the ability to reach lawyers and law enforcing agencies and to pay for their services.

The existing legal process in Bangladesh is cumbersome, time consuming and costly. The procedure for pressing charges is complex and generally

beyond the comprehension of simple-minded poor people who have little knowledge, much less understanding, of their legal rights and privileges. The administration of justice is circumscribed in two ways: one, the substance of the laws is incomprehensible to the poor and illiterate and is largely dependent on the production of documents which is problematic for the poor; two, weak law enforcement as the work of law enforcement agencies is seemingly guided more by their servitude to people with money and political power, rather than service to the community.

The exorbitant costs of professional legal service place the formal legal system beyond the reach of the average citizen. Justice is meted out based on power relations within the social structure, which means that service delivery is assured for those who command greater resources or patronage in the society. Therefore, poverty is a fundamental obstacle that effectively impedes economically disadvantaged groups' access to justice.

For those who do reach the courts, the corruption in justice delivery is enough to deter attempts in seeking legal redress. Apart from the enormous congestion in courts which results from inordinate delays in the disposal of cases, procedural wrangles, multiplicity of appeals, reviews and remands are but some factors that leave litigants embittered and frustrated, not to mention worn out, physically, mentally and financially. Payment of bribes often becomes a deciding factor when parties persuade court to change the dates for case hearings in exchange for money.

One of the major drawbacks of the justice system in Bangladesh is that women, especially when they are poor and disadvantaged groups remain largely outside the ambit of the legal system. Law often plays a critical role in reinforcing the vulnerability of disadvantaged groups within a given society. In Bangladesh, law in many ways plays a key role in designating power relations along lines of age, gender, class and ethnicity. The inherent difficulty within the legal system of Bangladesh is not so much the lack of laws, but the absence of proper implementation of the laws. Ignorance and impoverishment, not to mention expensive and cumbersome legal procedures, effectively impede poor citizens' right to equity and justice. Even if they knew the parameters of the law, vulnerable groups would not have the capacity to deal with the complexities of the formal legal system. The fact that these groups are economically disempowered greatly reduces their potential to take legal action and enforce their rights in Courts. Moreover, culture and tradition demand that they mute their needs and be content to live with their problems instead of challenging them. In the

circumstances, they are only willing to resort to procedures with which they can identify easily instead of approaching the more formidable court system for conflict resolution.

Clearly, the philosophy of access to justice is rooted in roles, roles, procedures, arrangements; in other words, institutions, frameworks, objectives, values and ends (Baxi 1976:176). The hapless poor are often at a disadvantage if they choose to redress their grievances in the courts of law, as the legal system, being resource-based, is not designed to cater to the needs of the impoverished populace. Therefore, when legal problems arise poor clients are constantly looking for viable alternatives to resolve their problems.

### 3.3 Understanding ADR

The development of ADR mechanisms is seemingly rooted in the recognition that ‘there are many legal orders operative in society, of which state law is just one and often not the most powerful one...[as] state legal norms were alien to and often inconsistent with the norms people actually followed’ (Tamanaha 2001:116). This notion emphasises on the development and expansion of dispute resolution forums by way of commercial arbitration, community based dispute resolution centres and the promotion of a host of mediators and counsellors.

Arguably, alternatives to courts are not a new phenomenon but there has been a revival of interest in the mechanism that appears to be premised on a much broader theoretical and practical base (Sander 1985:3). Historically, the alternatives movement revolved around four key goals:

- to relieve courts of congestion, undue costs and delays;
- to enhance community involvement in the dispute resolution process;
- to facilitate access to justice; and,
- to provide more effective dispute resolution (Sander 1985:3).

Therefore, the defining qualities of ADR would be speed, low cost, and informality, which would collectively ensure greater access to justice.

The term “resolution” is perceived as encompassing several dimensions. Drawing upon Macdonald’s (1996) work, Marshall (1998:778) describes that ‘resolution’ may be grouped as ‘resolution as outcome’, ‘resolution as process’ or ‘resolution as symbolism’. Indeed, the three categories clearly overlap, as one cannot effectually think of resolution as an outcome

without first having experienced resolution as a process or to a lesser degree, resolution as symbolic of the constancy of the pursuit of a purpose. Resolution through systems alternative to formal court traverses through the entire range of these experiences when a disputant recognises an injury, voices a grievance and seeks relief.

Alternative dispute resolution, more commonly referred to as ADR, encompasses arbitration, mediation and conciliation in informal or quasi-formal settings as opposed to traditional litigation in formal courts of law. ADR mechanisms are characterised by an element of bargaining or negotiation that essentially affords disputants with a certain degree of control over the process and the outcome. The techniques applied in ADR aims to 'both restore harmony and empower disputants while responding to personal needs and to detailed understandings of their situations' (Silbey and Sarat 1989:452).

ADR methods thus, mark a departure from the conventional adversarial mode of dispute resolution and accordingly facilitate parties to arrive at a solution, preferably in mutually acceptable ways. Other notable advantages of this system are that it tends to be faster, less expensive and if properly practiced, has the potential to reduce workload of the regular courts. It is contended that a transparent, efficient and accessible adjudication system is possible with a relatively low budget.

### **3.3.1 Major Issues on the ADR Agenda**

The sorting of disputes by their suitability to specific resolution processes is indeed a 'political choice' (Galanter 1989:xiv) that leads to certain types of disputes being assessed as appropriate for ADR while others are not (Marshall 1998:782). This has clearly steered the so-called 'soft cases' like family and neighbourhood disputes, into ADR, leaving formal courts to deal with the 'real law' cases involving corporate, contractual and constitutional issues (Marshall 1998:782).

A disproportionate number of cases in local contexts are rooted in disputes over land. Conflicts over property boundaries, inheritance and division of assets, loan-repayment, resource-sharing as in water, felling a neighbour's tree or killing a farm animal constitute some of the common features of disputes at local levels. Land disputes often involve violent encounters between competing parties. Another major site for conflict is the domestic sphere, which accounts for some of the critical cases involving child marriage, polygamy, arbitrary divorce, dowry demands, child custody, and

inheritance issues. While criminal offences are outside the ambit of ADR, matters such as petty theft for example, are often disposed of informally subject to mutual consent of the parties.

Migration disputes have not featured on the ADR agenda in Bangladesh before. Migrants who are cheated and abused in the process of overseas employment face the very same problems in accessing justice through formal mechanisms. The only option they have is to find ways to apply social pressure on the perpetrators, which often fails in the absence of some concrete political or financial support or simply suffer without redress. RMMRU's initiative to organise mediation services for victims of fraudulent practices in the migration process is first of its kind in Bangladesh and holds great potential to offer alternative justice at the local levels.

### 3.4 ADR Practices in Bangladesh

There are three streams of ADR currently in practice in Bangladesh—namely, community-based initiatives, e.g. the traditional shalish and NGO assisted mediation, ADR in the quasi-formal system (local level arbitration bodies) and ADR in the formal legal system (family courts, other civil processes and in the money loan courts).

#### 3.4.1 Community-Based ADR

Despite the existence of state-sponsored informal justice systems, there is growing evidence that ordinary people at the local levels, particularly in rural areas, invoke community-based informal or indigenous justice mechanisms more frequently as opposed to the formal judicial system. Travelling great distances, foregoing a few days' work and resultant earnings, spending money to marshal facts, engaging a lawyer and paying court fees and incidental expenses are some of the obvious factors that deter the poor from accessing the formal justice system. The principal attributes of the indigenous justice system are wider participation, paternalism, flexibility and innovativeness, emphasis on adjustment and compromise.

Abel (1982:2) conceptualises informal justice as:

*[U]nofficial (dissociated from state power), non-coercive (dependent on rhetoric rather than force), non-bureaucratic, decentralized, relatively undifferentiated and non-professional; its substantive and procedural rules are imprecise, unwritten, democratic, flexible, ad hoc, and particularistic.*

Certainly, no informal justice mechanism will embody all of these attributes at the same time but each will demonstrate some of the qualities in defining, modifying, and applying norms in the course of conducting a conflict (Abel 1982:2). Moreover, the term ‘informal’ or ‘non-formal’ is not used here to connote a system devoid of rules and organised political authority, but simply to describe a parallel, often competing, authority alternative to the formal state mechanism, which builds on traditional models of justice that rely on village elders, religious functionaries, elites and other community members for settlement of local disputes.

### 3.4.2 Shalish

In Bangladesh, shalish has traditionally been used to resolve disputes locally. It is a practice of gathering village elders and concerned parties, nearly always exclusively male, for the resolution of local disputes. Sometimes Chairmen and elite members of the Union Parishad are invited to be present at the proceedings.<sup>7</sup> Shalish has no fixed dimension and its size and structure depend entirely on the nature and gravity of the problem at hand. The fact that the process saves time and money and prevents potential counter claims through false cases gives an added incentive to people to involve the community in settling their problems. Local people have tremendous faith in shalish as a first step towards seeking justice and settlement of disputes.<sup>8</sup> Khair (2004:63) points out that although traditional shalish as a method of dispute resolution has potential advantages, it is increasingly losing credibility because of the arbitrary imposition of solutions by powerful people in the locality. “Solutions” are often fixed by the elite, more to ensure the continuity of their leadership roles rather than in response to specific needs of the concerned parties. Arbitration remains

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7 This non-formal method is complemented by activities of the local government authorities vested with judicial powers. For example, the Union Parishad conducts arbitrations in family disputes under the Muslim Family Laws Ordinance 1961 and settles petty civil and criminal disputes under the Village Court Ordinance 1976. In the urban areas, such disputes are settled under the Conciliation of Dispute Ordinance 1979.

8 Findings from a participatory rural appraisal conducted under a UNDP study in a village in Tangail district revealed that a mean of 4.0 respondents preferred shalish compared to a mean of 2.8 who preferred to access the village court. Responses in favour of approaching the formal court and the police were negligible. See, UNDP, “Informal Systems and Village Courts: Poor People’s Preference” in Human Security in Bangladesh: In Search of Justice and Dignity, UNDP, Dhaka, 2002, pp.91-100.

the most commonly used method within the traditional shalish system. As such, shalish processes often do not take into account the grievances of the parties, nor their desired solutions, and instead levy decisions as deemed as correct and appropriate by the officiating elites. The practice is also susceptible to manipulation by corrupt touts and local musclemen who, for a bit of money, often influence the pace of the process and the direction of the outcome. Siddiqi (2003:11) observes in this regard:

*...the language of consensus—when the consensus is not reached democratically—becomes a powerful tool for suppressing dissent. The ideal of consensus and the restoration of social harmony frequently translate into the imposition of judgements that may be far from neutral.*

Shalish in its traditional form, therefore reflects and perpetuates the existing power relations within the community instead of making any meaningful contribution towards conflict resolution. Singh's (2005:341) portrayal of the Indian indigenous legal tradition resembles shalish that has been functioning in Bangladesh for generations:

*[The] judicial process was as informal as it was inexpensive. It went in harmony with the cultural ethos of hierarchy and continuity and community ties. No doubt in this system too, the role of dominant castes, families and kin groups did occasionally vitiate the process of justice, but this more frequent in matters of property, land and hereditary obligations...*

The shalish process is far from tranquil; instead, it is wrought with tension and heated exchanges. Traditional shalish is characterised by gender bias and legal ignorance and given to authoritarian interpretation of customary laws, ignoring the liberal and equitable aspects as incorporated in national legal framework. The prevalence of male membership puts women disputants at a disadvantage manifest from discriminatory and harsh judgments. By convention, women are discouraged from speaking out; their presence even on the periphery of a public hearing is strongly discouraged (Siddiqi 2003:11). This forum often reinforces existing power hierarchies within communities to the detriment of the poor and the marginalised. Consequently, men from impoverished backgrounds are similarly constrained in having their voices heard, let alone play an officiating role in the process. Ties of patronage with village elites and political forces run deep. Evidently,

*... in conflicts involving parties of unequal social or economic status, judgement invariably goes in favour of the dominant group...Rulings on*

*matters of custom or religion tend to be made on the basis of personal (and highly patriarchal) interpretation of texts and community norms rather than [the] legal framework...Nor are shalish rulings impervious to corruption, nepotism, and the pressures of political patronage...the traditional shalish provides an effective tool for disciplining individuals and groups who dare to transgress established social rules (Siddiqui 2003:11).*

That said when a shalish is arranged and undertaken in good faith to resolve a conflict peacefully and amicably the process does not project social power structures and patterns of domination. Shalish of such a nature can essentially become the most efficient, cost-effective, and socially acceptable mode of dispute resolution. Given the limited options of utilising the formal judicial services, traditional shalish is viewed as an effective and politically legitimate tool by local communities. Although the decisions may not always fair, and equitable, they nevertheless carry a great deal of weight within the community as respectable members of the village pronounce them.

### **3.4.3 NGO Assisted Mediation**

Mediation services constitute the first step to legal aid and function as a primary tool for resolving disputes without resorting to formal courts. When ADR is discussed these days in different platforms in Bangladesh, it more often signifies NGO initiated mediation rather than tribunals or arbitration.

NGO innovations have made significant inroads in transforming the traditional shalish in significant ways. NGOs have built upon the existing accessible, comprehensible and free system of dispute settlement—effectively the only viable option open to impoverished communities—to develop a mechanism free of the inherent biases (Golub 2000:139) for helping poor communities change their lives. These initiatives have helped induce a shift in the way shalish is conducted at the local levels. The form and modus operandi of the traditional shalish have been reformed under the active guidance of NGOs, which have introduced community mediation to help disputants arrive at mutually acceptable solutions with the assistance of respected community members. In some instances, the NGO initiated mediation or shalish, as interchangeably referred to, is conducted by a formally constituted mediation committee comprising of lawyers or paralegals and in others, it is steered by people who are selected by the disputants from amongst NGO workers, community members or relatives/neighbours.

Training of shalishkars (officiating individuals) and other community members on salient human rights and legal issues constitute an important part of NGO efforts at reforming the traditional shalish. The training component often combines thematic lectures, simulations and role-playing, participatory workshops and so on.

The procedure followed by NGO assisted mediation or shalish essentially facilitates the resolution of disputes in a participatory manner where the negotiations are carried out either under a formally established mediation committee comprising of lawyers or trained individuals who hear cases or by individuals selected by the disputants to represent them. Given existing poverty and virtual inaccessibility of the poor to the legal system, mediation services provide disputants more easily acceptable choices for settlement of their problems. In view of the inaccessibility of the poor to the formal legal system, mediation provides easily acceptable choices for settlement of disputes. In mediation, conflicts are resolved and consensus forged through participatory negotiating exercises under the keen supervision of the mediator. Devoid of adversarial elements that breed acrimony and resentment, the NGO assisted mediation or shalish helps engender an environment that is conducive to peaceful co-existence of disputing parties in the family or community after a case has been resolved. While NGOs play a monitoring role in their respective areas, they also ensure neutrality, at the same time representing the interests of a particular client (Khair 2001:7-8).

### **3.4.4 Distinguishing Between Traditional Shalish and NGO Assisted Mediation/Shalish**

The distinction between traditional shalish in its better forms and NGO mediation is that while shalish essentially carries the characteristics of arbitration, in the sense that it aims towards a win-lose situation, mediation concentrates more on a win-win situation. In other words, whereas the parties in a shalish are bound by the decisions of the shalishkars, mediation actively engages both parties in arriving at a mutually agreeable solution. The NGO supervised mediation or shalish is more temperate and relaxed in its approach than the traditional shalish which tends to be acrimonious. People prefer to have NGOs assisting in traditional shalish as it assumes a more democratic dimension (Khair 2000:23-24).

One of the principal thrusts of ADR by NGOs has been the sustained pressure for ensuring gender equity in the processes. Fundamental to

NGO strategies in transforming the traditional shalish have been co-option and mandatory stipulations regarding gender and class composition of the shalish committees (Nazneen 2004:29). These initiatives ensured the inclusion of a minimum number of women members, one of whom is preferably an elected female local government representative and an individual representing the poorer class in the community. These members are usually selected based on their social acceptability, personal integrity, standing within their own community and involvement in local level community movements. Most committees have membership from amongst schoolteachers who normally command a high degree of respect and trust within local communities.

### **3.4.5 Diversity in NGO Mediation**

Based on years of experience in offering community based informal justice, NGOs have developed their own models of mediation while keeping within the general principles of mediation. This section highlights the mediation approaches practiced by selected NGOs in Bangladesh.

#### **Madaripur Legal Aid Association (MLAA)**

The Madaripur Legal Aid Association (MLAA), a grassroots legal services NGO in Bangladesh, has developed their own version of mediation, which, while essentially structured around on pre-existing patterns of shalish, has imported certain new and innovative techniques to make the process more people-friendly, neutral, systematic and fair. Today the Madaripur model is being replicated and used by many NGOs in Bangladesh in their ADR programmes. Under this scheme,<sup>9</sup> mediation committees are set up at local levels comprising a cross section of the village population including a trained mediator from MLAA. The Madaripur model of ADR proceeds through a number of stages starting from the lodging of a complaint to arriving at a solution starting from recording a complaint with personal details of both parties in a prescribed format, informing the opposite party to inviting them to submit to mediation at mutual convenience and in the company of mediators of their choice and individuals representing each side. On the designated day, the mediation worker lays down the ground rules in simple language without resorting legal jargon. Once settled, the parties are invited to tell their stories. The mediator ensures that neither

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<sup>9</sup> Drawn from Khair, Sumaiya, 2001, *Alternative Approaches to Justice: A Review of ADR Initiatives*, The Asia Foundation, Dhaka, pp.15-19.

of the parties are interrupted or stopped during their deliberations. The mediator has the difficult task of maintaining discipline and order without offending either party. All that a mediator can do at this point is to ensure that each party has a fair chance of making out his/her own case.

After both parties have stated their positions, the mediator proceeds to steer the discussion towards a possible solution. In so doing, the mediator adopts a few techniques:

- The mediator emphasises and reiterates points on which parties have agreed.
- Negative aspects are to be avoided. The mediator concentrates on issues that seem amenable to smooth settlement. This often facilitates negotiations on more contentious or complex issues at later stages.
- The mediator allows parties to interject without reserve but discourages emotional outbursts that are likely to overtake substantive issues of the dispute.
- The mediator clarifies the position and demands of both parties by repeating salient points, at the same time ensuring that reiterations of demands do not undermine or alter the agreements already reached.
- The mediator provides multiple options that would give parties mutual advantage.
- The mediator tries not to defer negotiations; however, in some cases, particularly when the issue is emotionally charged, the negotiations may not end at one sitting. In the circumstances, the mediator suggests a future date, re-emphasising the points on which agreement has already been reached.

The final stage requires the parties to sign the proceedings that had been documented during the process. Follow up measures are undertaken periodically to monitor the status of the parties. If the parties are unable to conform to the agreement the issue may be reopened if deemed fit by the mediator or processed for formal court proceedings.

Key to successful mediation under this scheme is patience, neutrality, active listening and a positive attitude of mediators. Besides, it is imperative that mediators are from local areas who are known by the inhabitants and who are acquainted with the custom, culture and practices of that locality. They must live and work amongst the people whose problems they are called upon to resolve. In this way, the parties feel that their conflicts will not only be taken seriously but also understood in context.

## **Bangladesh Legal Aid and Services Trust (BLAST)**

The Bangladesh Legal Aid and Services Trust (BLAST) is a legal aid organisation that helps women, children, the poor and the disadvantaged gain access to justice. BLAST facilitates alternative dispute resolution (ADR) through mediation for family, land, financial, petty crimes, and labour matters. BLAST believes that dispute resolution through mediation allows individuals and families to recover land, assets, maintenance, dower and/or arrears of wages quickly and assets and funds so recovered may be used to improve their lives in different ways, for example, in terms of earning a livelihood, savings, or investing in children's education.

BLAST provides ADR services in two ways based on the economic condition of the parties. It uses arbitration to settle disputes for parties from reasonably solvent backgrounds and mediation for economically weaker segments of the population. Although arbitration is not one of BLAST's priorities, given their experience in the field people often approach them to settle their problems. In such situations, the demand of the parties tends to be specific and the outcome in terms of decisions and compensation is defined. In matters involving poorer people, the process is often not so straightforward owing to their limited knowledge of the laws and systems, the claims made, and the desired outcome. Accordingly, one of the primary purposes of mediation is to acquaint the parties about the potential consequences resulting from their dispute and guide them in taking the right course of action.

The BLAST model of mediation is a replication of the MLAA model. As such, this model emphasises on an integrated solution through which both parties stand to gain something. However, there is a slight difference in institutional arrangements; while MLAA conducts mediation through a committee BLAST employs salaried meditation workers based in its head office and unit offices.

BLAST receives complaints in different ways. A complainant may approach BLAST head office or its unit offices directly seeking redress. Alternatively, the matter may be referred to BLAST by its previous clients, lawyers, NGOs/CSOs, government agencies, locally elected representatives, trade unions, courts, etc. The complainant is required to provide some fundamental information, for example, name, address, marital status, range of income, in a prescribed form. The data provided is verified later. BLAST scrutinises the filled out form carefully to determine whether the matter qualifies for

mediation or not. If the matter is considered appropriate for mediation, the form is registered in what is termed as the 'Mother Registration Book' and the complainant is issued a 'Yellow Card' with the date of mediation. This date is set afresh after each session.

After hearing the matter and documenting all relevant information, the mediation worker informs the opposite party about the compliant and sends forth an invitation to sit for an amicable settlement on the said date, along with a representative, if any. In the absence of a response from the defendant, notice is served a second or third time as necessary. If the defendant fails to respond altogether, BLAST resorts to three options: close the matter but maintain records of the same, stay the proceedings if the complainant is keen to pursue further and prepare for litigation if the complainant so desires.

The mediation takes place in an informal environment where both parties are encouraged to speak freely and air their grievances. The informality of the process enables the parties to identify the problem that is central to the dispute and articulate their demands accordingly. During this process, the mediator maintains complete neutrality and interjects only on legal points. The role of the mediator is complex in the sense that s/he has to play a multidimensional role of facilitator, tutor, friend and confidante. After an open discussion, a consensus is forged between the parties and a solution is reached. The proceedings of each session are recorded and signed by all concerned.

After every mediation, BLAST undertakes follow up activities through its Monitoring & Evaluation Cell. If the terms and conditions of the mediation outcome are breached, the complaint is required to inform BLAST within 15 days of such breach. BLAST then dispatches a letter termed as Shalisher Shorto Bhonger Potro to the defendant reminding him/her of the mutually agreed on terms and conditions. If the defendant continues to violate the mediation outcome, there is always scope for litigation.

### **BRAC, Human Rights and Legal Aid Services (HRLS)**

BRAC is facilitating the formation of migration forum since 2007. These forums are formed and operated voluntarily by the community people. In October 2013, BRAC HRLS programme and the BRAC Migration programme began a partnership and started working on migration field. Currently BRAC has 466 active migration forums in 252 upazilas under

42 districts.<sup>10</sup> However migration forums under BRAC facilitate mainly social arbitration in the community for deceived migrant workers to recover money from the middlemen. Rather than mediation BRAC adopted arbitration as an alternative dispute resolution process.

### **Nagorik Uddyog (Citizens Initiative)**

Nagorik Uddyog(NU) works to promote people's participation and access to democracy, rights, justice & development. Recognising the inherent difficulties of the traditional shalish, NU has developed its own version of shalish that is modelled on key principles of democratic governance. NU has a pool of trained shalishkars from amongst respected individuals from local communities having requisite knowledge of the laws of the land in the light of which they settle disputes. In order to maintain objectivity and neutrality, NU's shalishkars are restricted from giving commitments of any kind, receiving any favour from any of the parties or being entertained by them.

The shalish process is undertaken in ten stages starting from receipt of complaint, fact finding, fixing the date for shalish, notifying the parties, conducting the shalish to following up on the progress and impact of shalish decision on the parties. The entire process consists of the following steps:

- **Preliminary discussion aiming at settlement of dispute:** Before the formal commencement of the shalish process, one or more parties to the dispute request a third party to help settle their dispute. The third party motivates the concerned parties to settle their differences.
- **Determination of date, time and venue of shalish:** Shalishkars inform parties of the date, time and venue of the shalish and advise them to collect documents and papers relevant to the shalish.
- **Ice breaking:** Before the shalish begins in earnest, the shalishkars engage in light conversation with the parties in an attempt to create a congenial environment. They highlight the beneficial aspects of the shalish process and explain to the parties their expected roles. Following this ice breaking exercise, the shalishkars ask each party to present their side of the story and take notes on significant aspects of their deliveries. The shalishkars guard against interruptions by one part when the other is speaking.

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10 BRAC, Programme Components (29 February, 2016), retrieved from: <http://www.brac.net/migration-programme/item/913-programme-components>

- **Open discussion:** The shalishkars encourage open and uninhibited discussion by the parties. They allow the parties to vent their frustrations and concerns, which essentially helps to lighten their burdens and worries, at times leading to admissions of their faults.
- **Identification of problems:** Drawing on the discussions at different levels as described above, the shalishkars identify the key problems that are the root of the dispute. The shalishkars get a sense of the problems when, for example, the parties emphasise on one particular issue to the exclusion of all others or demonstrate bursts of emotion in respect some issues, or avoid talking about some issues altogether.
- **Constitution of Board:** Once the problems are identified, a Board is formed with one member representing the complainant, one member representing the defendant and three neutral members in order to arrive at an acceptable solution. The composition of this Board may vary depending on the local context.
- **Public hearing:** The recommendation of the Board is announced in public.
- **Consensus and decision:** If all concerned parties agree with the recommendation of the Board, the decision is accordingly taken at the shalish.
- **Documentation of decision and conclusion:** The decision along with associated terms and conditions are documented in simple language and the signatures of the parties put thereon.

### 3.5 ADR in the Quasi-formal System

There are mechanisms at the local level for settlement of disputes through arbitration/conciliation. Legally mandated, these apparatuses are headed by local government personnel who dispense justice with the aid of nominees of the parties to the dispute.

#### 3.5.1 The Village Court

The Village Courts (Amendment) Act 2013<sup>11</sup> seeks to establish a Village Court in every Union Parishad of the country for easy and speedy disposal of certain categories of disputes. Under the Act, Village Courts have the jurisdiction to try both civil and criminal matters as prescribed in the schedules thereto.

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11 This Act has repealed the previous Village Courts Ordinance, 1976 which was promulgated to try cases in rural areas.

The civil suits are admissible only when the amount claimed or the price of movable property or the value of immovable property involved does not exceed Tk. seventy five thousand. As for criminal matters, the Village Courts have the jurisdiction to try offences relating to specific sections of the Penal Code 1908.

A Village Court shall consist of a Chairman and two members to be nominated, in the prescribed manner, by each of the parties to the dispute. The Chairman of the Union Parishad shall be the Chairman of the Village Court, but where he is, for any reason, unable to act as Chairman or his impartiality is challenged by any party to the dispute, any member of the Union Parishad appointed in the prescribed manner shall be the Chairman of the Village Court. One of the two members nominated by the parties shall be a member of the concerned Union Parishad. If any party to the dispute does not find any member of the Union Parishad to be impartial, he may seek the permission of the Chairman to nominate any other person to be a member of the Court in place of the member of the Union Parishad.

A Village Court shall be constituted and shall have jurisdiction to try a case only when the parties to the dispute ordinarily reside within the limits of the union in which the offence has been committed or the cause of action has arisen. Each party shall have the right to nominate, if it so chooses, its representatives from its own union.

If the decision of a Village Court is unanimous or by a majority of four to one or in presence of four members by a majority of three to one, the decision shall be binding on the parties. If the decision of a Village Court is by a majority of three to two, any party aggrieved may, within thirty days of the decision, prefer an appeal to the Courts of Magistrate of First Class and Assistant Judge having jurisdiction, as the case may be. If satisfied that there has been a failure of justice the concerned authorities may set aside or modify the decision or redirect it to the Village Court for reconsideration.

Where a Village Court decides to award compensation to a person or to order the delivery of property or possession it shall pass a decree to that effect. It may, if it thinks fit, direct that the amount of compensation be paid in such instalments as it may fix. Where the decretal amount is not paid within the prescribed time, the Chairman of the Village Court shall forward the matter to the concerned Union Parishad for recovering it in the same manner as a tax levied by a Union Parishad is recovered under the Public Demands Recovery Act, 1913 and paying to the decree-holder.

For evidentiary purposes, a Village Court may, within restrictions, issue summons to any person to appear and give evidence, or to produce or cause the production of any document. If any person so summoned wilfully disobeys the summons of the Court, the latter may take cognizance of such disobedience, and, after giving such person an opportunity to explain, sentence him to a fine not exceeding Tk. one thousand.

The Act provides contempt provisions involving a fine against persons who are guilty of using, without lawful excuse, indecent words, threats, offensive conduct while the Court is functioning or interrupting the work of the Court or failing to produce or deliver a document when ordered by the Court, or refusing to answer any question of the Court which he is bound to answer, refusing to take oath to state the truth or to sign any statement made by him when required by the Court to do so. If the fine imposed pursuant to contempt charges is not immediately paid, the Magistrate having jurisdiction shall be requested to recover it according to the provisions of the Criminal Procedure Code in the same manner as if such fine is levied by him and in default, may order for the imprisonment of the person concerned. All fines recovered shall be deposited to the funds of the Union Parishad.

Section 20 envisages that government may by gazette notification articulate Rules to fulfil the objectives of this Act. Accordingly on February 02, 2016 the Village Courts Rules 2016 was enunciated in this regard.

### **3.5.2 The Conciliation (Municipal Areas) Board**

Similar structure, functions and powers to that of the Village Court are vested in the conciliation boards set up under the Conciliation (Municipal Areas) Board Act, 2004<sup>12</sup> that empowers board to settle minor disputes within respective municipal areas through conciliation. The Board is made up of five members headed by municipal Chairman; the other members of the Board shall be nominated by the respective parties each of which will name two individuals of their own choice.<sup>13</sup> In choosing nominees, each party shall ensure that at least one of them is a municipal Commissioner. The Board is empowered, within restrictions, to issue summons for the

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12 This law has replaced the earlier Conciliation of Disputes (Municipal Areas) Ordinance 1979 of which provided for settlement of certain cases in municipal areas through conciliation by a Conciliation Board.

13 Section 7, The Conciliation (Municipal Areas) Board Act 2004.

production of witnesses of documents as the case may be.<sup>14</sup> Decisions are reached either by consensus or by a majority vote of the members following which the decision shall be announced.<sup>15</sup> However, if there is a dissenting opinion, that shall be recorded.<sup>16</sup>

The Board may award compensation or order delivery of possession of property.<sup>17</sup> In default, the said amount shall be recoverable by the municipal corporation in the same manner as levying a tax.<sup>18</sup> Moreover, contempt proceedings may be initiated in the event the proceedings of the Board are disrupted or orders for production of witnesses or documents are not complied with.<sup>19</sup> Where a decision is reached unanimously or by a majority of the members attending, it shall be deemed final; in case the decision is by a majority of three to two, appeal shall lie within 30 days of the decision.<sup>20</sup>

### **3.6 ADR in the Formal Legal System**

The roots of alternative dispute resolution can be found in the Muslim Family Laws Ordinance, 1961 which provided for resolving family disputes involving dower, divorce, polygamy, succession and maintenance under the stewardship of an arbitration council constituted at the local Government level (Union Parishad). Backed by legal authority, local government personnel officiated over family dispute issues and attempted to provide parties with the opportunity of reconciling their differences and settling their problems in a less acrimonious way.

Much later in 1985, options for settlement of disputes found their way into the Family Courts Act. Provisions for informal settlement are found in Sections 10 and 13 of the law, which provide for settlement of disputes in informal ways at both the pre-trial and the post-trial stages.

According to Section 10 of the Family Courts Act, 1985 when a written statement is filed, the Family Court shall fix a date ordinarily of not more than thirty days for a pre-trial hearing of the suit. On the date fixed for pre-trial hearing, the Court shall examine the plaint, the written statement (if any) and the summary evidence and documents filed by the parties and shall

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14 Section 13 (2), *ibid.*

15 Section 10 (1), *ibid.*

16 Section 10 (3), *ibid.*

17 Section 9, *ibid.*

18 Section 15(1), *ibid.*

19 Section 14, *ibid.*

20 Section 11 (2), *ibid.*

also, if it so deems fit, hear the parties. At the pre-trial hearing, the Court shall ascertain the points at issue between the parties and attempt to affect a compromise or reconciliation between the parties. If no compromise or reconciliation is possible, the Court shall frame the issues in the suit and fix a date for recording evidence.

Section 13 of the Act, on the other hand, provides that after the close of evidence of all parties, the Family Court shall make another effort to effect a compromise or reconciliation between the parties. If such compromise or reconciliation is not possible, the Court shall pronounce judgement either at once or on some future day not beyond seven days of which due notice shall be given to the parties or their agents or advocates and, on such judgement, a decree shall follow.

Where a dispute is settled by compromise or conciliation, the Court shall pass a decree or give decision in the suit in terms of the compromise or conciliation agreed to between parties.<sup>21</sup>

### 3.6.1 ADR in Family Courts

The roots of alternative dispute resolution can be found in the *Muslim Family Laws Ordinance, 1961* which provided for resolving family disputes involving dower, divorce, polygamy, succession and maintenance under the stewardship of an arbitration council constituted at the local Government level (*Union Parishad*). Backed by legal authority, local government personnel officiated over family dispute issues and attempted to provide parties with the opportunity of reconciling their differences and settling their problems in a less acrimonious way.

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21 Section 14, The Family Courts Ordinance 1985.

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Where a dispute is settled by compromise or conciliation, the Court shall pass a decree or give decision in the suit in terms of the compromise or conciliation agreed to between parties.<sup>22</sup>

#### **4.6.2 ADR in the Civil Process**

Provisions for alternative dispute resolution have been incorporated in the Code of Civil Procedure, 1908 by an amending Act titled the Code of Civil Procedure (Amendment) Act of 2003. Sections 89A and 89B provide for mediation and arbitration as alternate means of settling disputes.

#### **Mediation:**

Section 89A of the said Act provides that after filing of the written statement, if all the contesting parties or their pleaders are in attendance in the Court and are willing to try and settle their dispute/s through mediation, the Court may

--adjourn the hearing and mediate in order to settle the dispute/s, or

--may refer the dispute/s to the parties or their pleaders, or

--may refer the dispute/s to a mediator from the panel prepared by the District Judge in accordance with sub-section 10<sup>23</sup> for undertaking efforts for settlement through mediation.

Mediation under this Act has been defined as flexible, informal, non-binding, confidential, non-adversarial and consensual dispute resolution in which the mediator shall facilitate compromise of disputes in the suit between the

<sup>22</sup> Section 14, The Family Courts Ordinance 1985.

<sup>23</sup> Sub-section 10 of Section 89A of The Code of Civil Procedure (Amendment) Act 2003 provides that for the purposes of this section, the District Judge shall, in consultation with the President of the District Bar Association, prepare a

parties without directing or dictating the term of such compromise.<sup>24</sup>

Within ten days from the date of reference by the Court to mediate, the parties shall inform the Court in writing as to whether they have agreed to try to settle the dispute through mediation and the name of the mediator. If they conform to these requirements then the mediation shall be concluded within sixty days from the day on which the Court is so informed, unless the Court extends the period on its own motion or upon the joint prayer of the parties. In any event, the extension shall not exceed thirty days. However, if the parties should fail to inform the Court of their decision to mediate following the reference by the Court, the suit shall proceed for hearing by the Court.<sup>25</sup>

Once the mediation proceeding is complete, the mediator shall submit to the Court through the pleaders a written report containing the result of the mediation. Should a compromise be reached, the terms of such compromise shall be reduced to writing in the form of an agreement, bearing signatures or left thumb impressions of the parties as executants as well as signatures of the pleaders and the mediator as witnesses. The Court shall thereupon pass an order or decree in accordance with relevant provisions of Order XXIII of the Code of Civil Procedure 1908.<sup>26</sup> When the Court itself mediates, it shall make a report and pass an order in a similar manner.<sup>27</sup> No appeal or revision shall lie against any order or decree passed by the Court in pursuance of settlement of disputes between the parties in accordance with the aforementioned provisions.<sup>28</sup>

When a mediation initiative undertaken by the Court itself fails to resolve the dispute, the same Court shall not hear the suit, if the Court continues to be presided over by the same judge who led the mediation initiative. In that case, the suit shall be heard by another Court of competent jurisdiction.<sup>29</sup>

Until recently, mediation was applicable only at the pre-trial stage of a suit. The introduction of Section 89D into the Civil Procedure Code by the amending Act of 2012 now enables the parties to a suit or where an appeal is pending in any court before the commencement of the CPC (Amendment)

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24 Explanation 1, Section 89A, The Code of Civil Procedure (Amendment) Act 2003.

25 Section 89 A (4), *ibid.*

26 Section 89A (5), *ibid.*

27 Section 89A (6), *ibid.*

28 Section 89A (12), *ibid.*

29 Section 89A (9), *ibid.*

Act 2012, to file an application stating their willingness to settle the dispute through mediation, and such appeal shall be disposed of in accordance with the provisions of Section 89A.

The proceedings of mediation shall be strictly confidential. In the circumstances, all communications made, evidence adduced, admissions, statements or comments made and conversation held between the parties, their pleaders, representatives and the mediator shall be deemed privileged and shall not be referred to and admissible in evidence in any subsequent hearing of the same suit or any other proceeding.<sup>30</sup>

### **Arbitration:**

Section 89B of the Code of Civil Procedure (Amendment) Act 2003 provides that at any stage of the proceeding, if the parties to a suit apply to the Court for withdrawal of the suit on the ground that they will refer the dispute/s in the suit to arbitration for settlement, the Court shall allow the application and permit the suit to be withdrawn. Thereafter, the dispute/s shall be settled in accordance with the Shalish Ain (Arbitration Act), 2001.<sup>31</sup> However, if for any reason, the arbitration proceeding does not take place or an arbitral award is not given, the parties shall be entitled to re-institute the suit so withdrawn.<sup>32</sup> The Arbitration Act, 2001 provides new ways of dispensing with the interference of the court in arbitral proceedings. While under the old system an arbitral award in order to be effective had to be made into a rule of the court, under the new scheme, the arbitral award, once final, is enforced as if it was a court decree. The new process also recognises the autonomy of the parties during the arbitral proceedings. The parties are also empowered to decide upon the composition and procedure of appointment of arbitrators.<sup>33</sup> The Act dispenses with the practice of citing grounds, which form the basis of the arbitral award only if the parties should so choose; otherwise, the reasons for the award must be recorded.<sup>34</sup>

### **3.6.3 ADR in Money Loan Courts**

The Artha Rin Adalat Act, 2003 also talks of settlement of disputes in alternative ways. It provides for both Settlement Conference and Arbitration. However, only one of the prescribed methods may be adopted to resolve

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30 Section 89A (8), *ibid.*

31 The Arbitration Act of 2001 repealed the earlier Arbitration Act 1940.

32 Section 89B (1), *ibid.*

33 Section 11, The Arbitration Act, 2001.

34 Section 38 (4), *ibid.*

disputes through alternative ways; in the event one method is followed and it fails, the other means cannot be used.<sup>35</sup> Under either method, strict confidentiality is maintained and all efforts are made for disposing of the suit in an informal, non-binding, confidential, non-adversarial manner on the basis of mutual cooperation and understanding of all concerned. In neither situation, the Court exerts any influence and merely plays the role of a facilitator.

The core reason of incorporating this Act is in many instances it has been observed that as migration related fraud cases involved monetary issue, many victims being unaware of the proper forum seek remedy under money loan courts as well.

### **3.7 Potential of Mediating Disputes Arising from Migration Fraudulence**

In the absence of legal support services for migrants and the prevailing loopholes in the law, perpetrators of malpractice always have an upper hand. Generally, the brokers and the intermediaries are powerful and maintain close liaison with local influential quarters whereas migrant workers, especially women, have little or no education, no money or power. In such a situation, if migration disputes are presented before the village shalish, evidence shows that the views and opinions of individuals with power and money, not to mention political influence, tend to prevail often to the detriment of the victim/s. On the other hand, if the matter is referred to the Village Court, its pecuniary jurisdiction of Tk. 25,000 limits the scope to hear matters the settlement of which involves a higher amount of money.

Modelled on equitable and non-violent settlement of conflicts, mediation has been found to bring changes not only in the attitude of the parties, but also in the nature of their demands. For instance, when a migrant woman seeks justice before the traditional shalish after being has been cheated by neighbours or dalal, the matter is likely to be settled in a reconciliatory manner. The shalishkars would either placate the woman or intimidate her to accept their decision and she would have very little option but to comply. Alternatively, if the matter were presented to RMMRU's GMS, the migrant woman would be informed of her choices in which case she would most likely want the mediators to ensure that she receives her due compensation. The example demonstrates a shift in ideologies and practice due to ADR

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35 Section 23, The Artha Rin Adalat Act, 2003.

interventions that enhances migrant women's bargaining capacities. Thus, it is not so much the decision itself but the nature of the transaction that makes ADR initiatives unique in providing parties some measure of choice.

Informal dispute resolution is said to 'seek inclusiveness, involvement, and empowerment of participants because those attributes are held to create consensus, harmony, and, ultimately, community' (Edelman and Cahill 1998:19). Viewed in this context, informal dispute resolution draws on the ideology of the community as opposed to liberal legal ideology (Edelman and Cahill 1998:17). Central to informal dispute resolution processes are therefore the involvement of the community, their participation in decision-making and their capacity to move away from state-centric justice administration mechanisms. Experiences in mediation demonstrate that enforcement of ADR initiatives

*...work best when all parties understand how the decisions are reached. The legitimacy of mediation depends in large part on incentives for agents to abide by the decisions of the forum. In most countries this, this incentive is provided by societal norms, the prospect of repeat dealings, or the threat of court actions (The World Bank 2002: 127).*

Experience with community mediation reveals that personal and social relationships play a pivotal role in informal justice systems. Indeed, whether in a family mediation or employment mediation, mediators are constantly trying to capitalise on existing relationships between disputants with each other and with the wider community in devising solutions. In so doing, mediators often end up transforming relationships in ways that help build rapport between individuals based upon a common understanding of core values. For example, in migration dispute mediations, the process explores the potential for reconciliation between the parties and future cooperation. That mediation can effectively foster cooperative engagements between disputants is aptly illustrated by Egle (1983:697):

*In contrast to the tension and trauma created by the adversarial approach, mediation through, through its capacity to reorient the parties towards each other, creates an atmosphere in which parties may solve their immediate disputes and at the same time lay a solid foundation for their future relationship... [In] cases where issues are hotly contested or, [sic] more importantly, where children are involved, providing for future communication is of critical importance.*

This approach is seemingly therapeutic in that it seeks to heal inter-

personal relationships. Professional lawyers are regarded as insensitive androids who, in their over-zealousness to win a case, care little for the emotional well-being of their clients; mediators, on the other hand, try to relate to disputants' inner feelings and promote communication. Mediation seeks to restructure future relationships. The rather open-ended and non-coercive process is likely to help parties to recognise and resolve future controversies thereby lending maximum durability to the settlement the parties have agreed upon (Sander 1985:14).

The goal of mediation therefore, is not to 'defeat' the opponent but to assist the parties in arriving at a mutually acceptable solution. As Cormick (1982:307) postulates:

*Mediation does not lead to a resolution of the basic differences that separate the parties in conflict. Rather, in situations where none of the parties perceives that it is able to gain its goals unilaterally, mediation can help the parties agree on how to make the accommodations that will enable them to co-exist despite their continued differences.*

Mediation discourages the expression of unreasonableness and extreme positions; in effect, the mediator, by encouraging agreement and the sharing of values, steers disputants towards elements that are more conducive to compromise (Edelman and Cahill 1998: 27). Put another way,

*the mediator, like the trickster, takes the communication of a party and, without abrogating his or her meaning entirely, alters and redirects that meaning to allow for its most constructive use in the settlement process...In reframing, the mediator operates to reposition each of the antagonists so that the dispute is amenable to a resolution (Benjamin 1995:9).*

Seen from the perspective of 'empowerment', while disputing parties are invariably unequal in power, mediation offers them the scope of devising a solution that will work for them both. Put another way, mediation helps parties to recognise their own needs, capacities and limits and accordingly develop their own standard of equity and justice. Debatably,

*[T]he mediation process contains within it a unique potential for transforming people—by helping them wrestle with difficult circumstances and bridge human differences, in the very midst of conflict. This transformative potential stems from mediation's capacity to generate two important effects, empowerment and recognition. In*

*simplest terms empowerment means the restoration of individuals of a sense of their own value and strength and their own capacity to handle life's problems (Bush and Folger 1994:2).*

Thus, mediation, as an alternate dispute settlement tool, is prescribed for a host of reasons. Authors (Menkel-Meadow 1995; Bush and Folger 1994) have hailed the process for being facilitative (where third party helps disputants arrive at a mutually acceptable solution without imposing their own decision), evaluative (where a combination of arbitration and mediation is used so that the solution technically remains in the hands of the parties but the mediator furnishes them with information on legal outcomes and suggests possible future directions), transformative (where changes occur in the mind-set of the disputants and the wider community and their understanding of the dispute), and pragmatic (where the mediator goes to great lengths to restore harmony and avoid violence, often to the exclusion of procedural niceties). Thus, mediation is perceived as a tool that promotes the satisfaction of both parties through a cooperative and integrative fashion, transforms the character of individuals and communities by instilling in parties self-confidence, self-respect and self-reliance and encourages the development of community organisation against exploitation and abuse of the poor and less powerful in society.

## CHAPTER 4

# RMMRU's GRIEVANCE MANAGEMENT SYSTEM (GMS)

### 4.1 Introduction

Recognising the difficulties of migrant workers in accessing justice and the need to settle disputes effectively and satisfactorily, RMMRU has taken an initiative to develop a mechanism for settling migration related disputes at the local level without having to go to formal court.

As discussed in the previous chapters it can be stated from the general practice of the NGOs that in mediation cases most of them emphasized on resolving family and property related disputes. Contrarily, since its inception RMMRU has devoted itself to ensure and provide proper migration services. This primary objective draws a line of distinction between RMMRU and other organizations. RMMRU has initiated mediation process only to resolve migration related fraud cases and to provide remedy to the victims.

Drawing on good practice and experiences of NGOs that help settle disputes through mediation, RMMRU has developed a Grievance Management System (GMS) to settle migration related disputes informally at the local level through mediation.

#### **The GMS has the following objectives:**

- Help settle migration related grievances through mediation at the local level.
- Ensure the rights of migrant workers who have experienced migration fraud.
- Ensure the protection of the migrants and their family members.
- Offer a platform to local communities to address migration related grievances in a transparent, credible and inclusive manner.

### 4.2 Governance Structure of the GMS

The GMS comprises three different committees with specific responsibilities for smooth operation of mediation services. They are the Migration Mediation Committee (MMC), the Youth Volunteers Committee (YVC) and the Advisory Committee (AC).

Composed of a cross-section of individuals from diverse backgrounds, the MMC is tasked with the core responsibility of steering mediations of migration related disputes at the local level. Comprising of youth volunteers, the YVC serves as a conduit between the disputing parties and the MMC and prepares the ground-work leading up to formal mediation. The AC provides overall advice and guidance to the MMC in implementing their task.

### **4.3 Formation of GMS Committees**

The process of forming the committees within the GMS is distinctive in nature. Transparency and inclusiveness are maintained throughout the process. The GMS Committees are formed at a meeting organised in the concerned local community involving local government representatives, such as the UP Chairman and members, local elites and socially accepted persons such as teachers, Imams of mosque, NGO workers, etc. who are interested in engaging in social service. The Committee members are selected through consensus based on an informed discussion and opinions shared at the meeting by the participants. RMMRU does not influence the process in any way.

**Certain prerequisites guide the formation of the Committees. The Committees shall be formed having due regard to the following:**

- Representation of the youth and women by 40%.
- Representation of marginalised and disadvantaged groups e.g., the ultra-poor, persons with disabilities, minorities.
- In case of the Advisory Committee, in addition to above, representation of lawyers and individuals having expertise and knowledge of labour migration is mandatory.

### **4.4 Composition of Committees, Eligibility, Role & Functions**

Members of the various Committees shall be selected from among people known for their credibility, honesty and dedication to social/community work. Experience in the field of ADR, particularly mediation, knowledge of local power dynamics, and migration shall be an advantage. Respectable persons of the society or of that particular community shall also be considered for membership. Each Committee has specific roles and functions in line with their mandate.

#### **4.4.1 Migration Mediation Committee (MMC)**

The MMC has the fundamental role of mediating disputes referred to it in accordance with RMMRU's Mediation Manual. The number of members of this Committee shall range from 9-11 persons of whom at least three are women. Members of this Committee must have an educational qualification of at least H.S.C. or S.S.C. They must be of minimum 30 years of age and a maximum 60 years. This Committee shall representatives from the local government, District Employment and Manpower Office (DEMO), Technical Training Center (TTC), different professional groups such as, social workers, businesspersons, journalists, local elites, students, teachers, lawyers, etc.

##### **The key functions of the MMC are:**

- Convene monthly meetings;
- Assign tasks to members of the Youth Volunteers Committee and guide them in receiving and processing complaints;
- Assess the merit of the complaint;
- Serve notice on parties to appear for mediation. Fix and announce date, time and venue of mediation;
- Appoint a Chair from among the MMC members to preside over the mediation session;
- Appoint a mediator from among the MMC members to conduct the mediation;
- Present the complaint clearly and acquaint the parties with the mediation processes;
- Explain the laws of the land relevant to the matter in dispute;
- Provide opportunity to both parties to present their views;
- Peruse evidence;
- Facilitate parties to arrive at a mutually acceptable solution;
- If the parties fail to arrive at a consensus, allow more time.

#### **4.4.2 Youth Volunteers Committee (YVC)**

The YVC shall comprise of local youth within 15-25 years of age. The number of members shall range from 7-9 persons. They must have studied up to at least class VIII. Members of YVC must have a demonstrated passion for social/community work. This Committee shall test the veracity of a complaint, bring the matter to the MMC's notice, organise the mediation session and undertake post-mediation follow-up activities.

##### **The functions of the YVC are as follows:**

- Notify local communities through mobile public address systems about the availability of mediation services for migration related problems;
- Collect and compile material information on the complaints;
- Provide disputing parties with designated formats to fill and submit to the MCC and register the complaint;
- Serve notice on concerned parties stating date, time and venue of the mediation;
- Obtain signatures on the mediation processes and provide other logistical assistance;
- On completion of the mediation, collect information from the complainant using the Fairer Labour Migration (FLM)satisfaction tool;
- Undertake door-to-door follow-up measures to monitor whether the parties are complying with the terms of the settlement;

#### **4.4.3 Advisory Committee (AC)**

The Advisory Committee shall consist of individuals with a high degree of experience and expertise in the field who adds strategic value to the work of MMC and supports victims if mediation fails. The number of members of this Committee shall range from 5-7 persons. They must have at least a graduate degree and their age shall range from a minimum of 40 years to a maximum of 80 years. This Committee shall comprise of law practitioners including women lawyers, principals of Technical Training Center (TTC), District Employment and Manpower Office (DEMO) officers, and respected members of the community.

##### **The functions of the AC are:**

- Convene monthly/ tri-monthly meetings;
- Scrutinise the documents of the complainant and the defendant;

- Take unsolved matters to court on request of the parties;
- Advise and guide the MMC and YVC for successful and smooth implementation of their work;
- Assess the performance of the mediators and advise them on how to improve their mediation skills;

## **4.5 The Mediator**

For every dispute, the MMC shall appoint a mediator from among its members. The mediator plays the most crucial role during mediation. Accordingly, s/he needs to be well-versed in and equipped with relevant skills and expertise in the field of mediation.

### **The standard attributes expected of the mediator are:**

- Competence and appropriate knowledge in conducting mediation.
- Proper training on this subject matter.
- Basic knowledge of legal issues, local context, prevailing religious and cultural norms and beliefs;
- Active listening skills and rapport building techniques.
- Independent, objective, impartial and fair without bias or prejudice;
- Amiable and positive personality with a credible reputation, generally liked and respected in the community;
- Trusted by both parties;
- Patient, attentive and accommodating;
- Open, tactful, and approachable;

### **4.5.1 Proactive Disclosure of Conflict of Interest**

Where circumstances have the potential to impede the independence of the mediator in conducting the mediation or to give rise to conflict of interest, the mediator must disclose those circumstances to the MMC at the time of his/her selection. If the situation arises after his/her selection and/or during the mediation process, the mediator must still draw the attention of the MMC to the matter. All things considered, if there is reasonable apprehension of bias on the part of the mediator, s/he shall be replaced by another member of the MMC.

**Situations, which demand proactive disclosure by the mediator, include:**<sup>36</sup>

- Any personal or business relationship with one or more of the parties;
- Any financial or other interest, direct or indirect, in the outcome of the mediation;
- The mediator, having acted in any capacity other than mediator for one or more of the parties;
- If the mediator has been facing pressure or threat from political parties or powerful groups/elite;

## **4.6 Mediation Process: Step by Step**

### **Pre-Mediation Stage**

#### **Step 1**

The aggrieved person fills out a prescribed form with relevant information and submits it to members of the YVC for submission to the MCC. The prescribed form contains fields on general information on the complainant, e.g., personal details (name, address, contact number etc.), specific information on the country of migration, costs, type of complaint, personal details of the accused, preferred choice of dispute resolution method, and so on.

#### **Step 2**

On receipt of the complaint forms, the YVC refers them to the Advisory Committee for scrutiny. If everything is found to be in order, the Advisory Committee sends a letter to all MMC members informing them about the complaint and furnishing them with detailed information about the matter.

#### **Step 3**

MCC serves notice on the accused stating the date, time and venue of the mediation. A copy is sent to the complainant, the MMC Chair, the DEMO office and other concerned individuals, e.g., teachers, social/NGO workers, female members, Imams.

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36 Drawn from European Code of Conduct for Mediators available at [http://ec.europa.eu/civiljustice/adr/adr\\_ec\\_code\\_conduct\\_en.pdf](http://ec.europa.eu/civiljustice/adr/adr_ec_code_conduct_en.pdf)

### **4.6.1 The Different Stages of Mediation**

Although listed as an informal method of dispute resolution, certain decorum and rules need to be maintained during mediation. The process of organising the mediation needs to be meticulous.

#### **The process involves the following stages**

##### **Stage 1**

- The MMC convenes on the designated date and time in the presence of the disputing parties, their representatives and their chosen witnesses. The parties and witnesses must be present voluntarily.
- A member of the MMC is appointed as Chair of the mediation session.
- A mediator is selected from among the members of the MMC based on consensus of the members who are present and participating.

##### **Stage 2**

- The mediator explains how the mediation would be conducted.
- The mediator makes sure that the disputing parties know the characteristics of the mediation process and their own role and the role of the mediator respectively.
- The mediator makes sure that the parties have understood and expressly agreed on the terms and conditions of the mediation process including any applicable provisions relating to obligations of confidentiality on the mediator and on the parties.
- The mediator conducts the proceedings in due process taking into account the circumstances of the case, including possible imbalances of power and any wishes the parties may express, the rule of law and the need for a prompt settlement of the dispute.

##### **Stage 3**

- The mediator ensures that both parties have adequate opportunities to be involved in the process and have been given equal opportunity to present their cases.
- The complainant presents his/her complaint and produces relevant papers, documents, witnesses. The defendant next presents his/her views, papers, documents and witnesses.

- The MMC hears both parties without interruption; if anyone needs to interject at any point in the process, s/he must take permission of the Chair.
- The disputing parties are allowed to communicate with each other and express their opinions freely.
- Once the parties have finished stating their claims and counter claims, they are encouraged to arrive at viable and mutually acceptable solutions/agreement.
- Proceedings and decisions are documented and signed by the Chair, both parties, their witnesses and the mediator.
- If the parties are unsure of or dissatisfied with the solution, the mediator and/or the MMC advises and guides them to access other platforms, without forcing them into any one direction.
- If the parties are unable to arrive at a satisfactory solution, the MMC sets a date for another session.
- If mediation fails, the parties have the liberty to pursue the matter in Court. If the parties so desire, the Advisory Committee provides them with necessary guidance including legal advice, in this regard.
- The mediator takes all appropriate measures to ensure that an agreement is reached by the parties in an informed manner and that parties understand the terms of the agreement.

#### **Stage 4**

- The parties may withdraw from the mediation at any time without giving any justification.
- If the parties agree with the mediation outcome, the mediator must, upon request of the parties and within the limits of his competence, inform the parties as to how they may formalise the agreement and the possibilities for making the agreement enforceable.
- Once the parties have agreed on a solution, the details including the outcome of the mediation must be documented and signed by the mediator along with the parties, the witnesses and the Chair.
- The mediator must maintain full confidentiality of all information arising out of or in connection with the mediation, including the fact that the mediation is to take place or has taken place, unless compelled by law or grounds of public policy to disclose it.

- Any information disclosed in confidence to mediators by one of the parties must not be disclosed to the other party without permission, unless compelled by law.
- The mediator may terminate the mediation after informing the parties, if:
  - a. A settlement is being reached which appears to the mediator to be unenforceable or illegal, having regard to the circumstances of the case and the competence of the mediator for making such an assessment;
  - b. The mediator considers that continuing the mediation is unlikely to result in a settlement.

## Stage 5

- Once the mediation concludes and parties arrive at a settlement, follow up activities are undertaken by the Youth Volunteers Committee to monitor if the mediation outcome is being complied with by the parties, in particular the defendant/accused. The Youth Volunteer notifies the MMC about the current situation.
- If the parties are found to be non-compliant with the mediation agreement, the MMC calls them to a meeting and seeks an explanation for non-compliance. If the MMC finds that the situation is beyond salvation, the parties are advised/assisted to access the court to settle their differences.

### 4.6.2 Popularising the GMC: Preparatory Measures

One of the fundamental problems besetting poor migrant workers in their attempts to access justice is the lack of information and legal awareness, i.e., legal literacy. Legal literacy is described as a 'process of acquiring critical awareness about rights and the law, the ability to assert rights and the capacity to mobilize for change' (Schuler and Kadirgamar-Rajasingham 1992:2). The lack of legal literacy gives rise to other subsidiary dilemmas: not knowing what rights s/he has, not knowing where to go and what to do in the event of crisis, not comprehending the legal procedures or the language of the law (Gaugamela 2002:3). As such, raising legal awareness among migrant workers is one of the most fundamental of tools for empowering poor migrant workers.

RMMRU undertakes the following basic initiatives to strengthen the capacity of migrant workers to claim their just dues through the GMC.

### **4.6.2.1 Orientation and Training**

Orientation and training programmes are arranged for all actors within the GMS in order to educate them of their purpose, role and functions and process in conducting mediation of migration related disputes. Presentations on different aspects of mediation and group works on selected issues are key features of the orientation sessions. The process is interactive allowing the resource persons and participants to engage intensely on salient issues pertaining to rights and entitlements under the laws and the Constitution generally, and access to justice by migrant workers through mediation, in particular. The group work by participants facilitates the identification of contextual problems and potential solutions.

### **4.6.2.2 Awareness Raising Through Cultural Events**

Popular theatre, stage drama, and folk songs and dances are some methods through which knowledge on migration processes, problems and migrant's legal rights are transmitted to local communities. Since folk culture essentially imbues traditional values and customs handed down through the generations in combination with entertainment, the spreading of migration specific information through this medium is found to be quite effective. Besides, IEC materials are used and mike announcements made to promote migration related information to help migrant workers guard against fraud and assert their rights.

### **4.6.2.3 Courtyard Meetings**

This is an informal meeting at the grassroots level meeting with local community members, particularly potential migrant workers. The participants gather on invitation of RMMRU in a suitable courtyard in the local community. Courtyard meetings offer opportunities to acquaint members of local communities with diverse issues ranging from fraudulent practices in the migration process, risks of misappropriation of money, falsification of documents to potential problems in destination countries and so on. Additionally, the participants at these meetings are informed about RMMRU's Grievance Management System (GMS), its role and functions, and how to access it. Courtyard meetings are organised by the youth volunteers working within the GMS and conducted by the Grievance Management Committee (GMC).

#### **4.6.2.4 Youth Group Meeting**

Youth Volunteer Groups formed with the assistance of RMMRU to facilitate GMC's work convene meetings to raise awareness on migration related problems and the role of the GMC. The discussions at the meetings help educate local people about the risks of fraud in the migration process, how migration related disputes may be settled informally through mediation, and how the activities of the youth group facilitate the whole process. Stories of migration fraud also flow in at this forum.

#### **4.6.2.5 Haat Shobha**

Haat shobhas are yet another platform that are used to flag migration related information. Conducted in local markets (bazaars), these haat shobhas are effective in informally communicating necessary information on migration, its process, and associated problems to people from diverse localities. Information dissemination at the local markets has a wide outreach as they attract a large crowd at any given time.

### **4.7 National Legal Aid Services and RMMRU**

In 2000, to establish a firm legal and institutional framework 'the Legal Aid Services Act' (LASA) was promulgated and the aim of this Act was to provide legal aid to such litigants who are poor and incapable of seeking legal redress due to financial insolvency, helplessness, destitution and various socio-economic constraints. Moreover considering the effectiveness of ADR system LASA has been amended in the year 2006 and provisions of ADR has been included as a legal aid service. However in order to monitor and implement the legal aid scheme Bangladesh Legal Aid Services Organisation (NLASO) has been established under the Act. This NLASO collaborates with other government and non-government organisations at all level to ensure the poor justice seekers get the most effective services possible.

Aiming at this, RMMRU has also started working with NLASO so that the unresolved cases under RMMC can be resolved in an efficient manner. Till now five cases have been referred to NLASO among which two are under process (at initial stage of hearing) and the other three cases were not accepted as the victims have no proper documentation to prove their claim.

This initiative has been adopted by RMMRU to accelerate the process of resolving disputes.



## CHAPTER 5

# **MEDIATION OF MIGRATION RELATED DISPUTES: EXPLORING POTENTIAL IMPACT**

### **5.1 Introduction**

RMMRU's initiative to mediate migration related disputes seemingly have great potential to facilitate viable alternatives for conflict resolution amongst migrant workers, by providing them with the means of recourse, alternative to courts, for vindication of wrongs done to them. This section summarises some good practices that have evolved or are likely to evolve in course of time if the interventions continue.

### **5.2 Reform of The Traditional Shalish**

Shalish in its customary form has usually operated for and by the powerful people in the society. Having socio-economic advantage and political influence, they tended to manipulate the shalish outcome that catered to their interest. Represented frequently by a body of men, shalish traditionally worked to the detriment of the poor and the hapless, not to mention women, as the decisions pronounced were largely arbitrary, opinionated, harsh and one-sided. The introduction of mediation services has contributed to the establishment of an altogether new system of administering justice and conflict resolution. Working parallel to traditional systems, mediation of migration related disputes have helped remodel the traditional shalish. Under this system, mediators take special care to ensure that disputing parties have an equal opportunity to ventilate their concerns and are equally satisfied with the outcome of the mediation. Disputing migrant workers are free express their views without hindrance or interruption and have the opportunity to identify mutually acceptable solutions. RMMRU's combined approach of knowledge dissemination, outreach and communication and capacity building in adapting mediation to address migration related has been successful in earning the trust and confidence of the local people in the intervention area.

### **5.3 Cost Effectiveness and Improvement in Material Circumstances**

Mediation conducted by RMMRU's GMC has many advantages, chief among which are informality, speed, economy, privacy, harmony and easy accessibility. The most tangible gain from mediation services is the low cost of dispute settlement, which in turn leads to a general enhancement of material circumstances of the complainant. There are examples that indicate an improvement in the financial circumstances of the complainant, even if on a modest scale, because of the compensation awarded or money returned in the mediation processes.

### **5.4 Enhanced Knowledge**

One of the significant impacts of mediation has been the increased awareness and sensitivity of migration stakeholders about migrant workers' rights, entitlements, problems and processes in the migration process. Orientation and training sessions on ADR for GMC members and mediators equip them with knowledge on particular issues relevant to migration. The mediation sessions are in themselves instructive as the parties, their representatives, witnesses and others present and participating have the opportunity of learning about the migration process, associated risks and available redress of wrongs suffered by migrant workers generally and women migrant workers in particular. Knowledge is power without which the ill-fated migrant workers cannot extricate themselves from the complex situations in which they often find themselves.

### **5.5 Attitudinal Change**

Mediation helps bring changes in the attitudes of migrant workers in ways that enable them to take control of their own lives and make informed choices. Conditioned by traditional ideas and practices, rural people are generally reluctant to disturb the existing social equilibrium by asking questions or challenging inequities dished out in traditional shalish. The advent of mediation services has induced a shift in the mindset and attitude of community members who now resist, albeit in modest degrees, oppressive practices and arbitrary decisions in ways hitherto unknown to them, much less practiced. Mediation processes also bring changes in the attitude of the mediators. They do not regard themselves as judges; rather, they consider their services as essential for settling disputes and maintaining a social balance. This has facilitated the neutral implementation of shalish at the local level the impact of which is visible from the behavioral change of the actors in local government.

## 5.6 Development of Negotiating Strength

All mediations usually involve intense negotiation between the disputing parties. Mediators encourage balanced debate between disputing parties on given issues pertaining to the grievance, which strengthens their negotiation skills. The process being participatory and democratic, enable both parties to express their views and articulate their demands without fear or intimidation. While the most significant advantage of mediation is the continued involvement of the parties in the negotiation process, it is essential to see if the disputants are indeed satisfied with the results. In addition to the outcome, perception of the rigours of the process is also important in ascertaining the benefits of the initiative. In this regard, participation by parties is vital for a successful negotiation. The sharing of experiences in mediation sessions lessens their feelings of helplessness and despair and reassures them that they are not alone in the struggle for existence.

The success of negotiation, however, depends upon a host of factors. While flexibility of the mind of the parties is fundamental to any negotiation, prevalent socio-cultural and economic contexts are equally important in arriving at just and realistic solutions. For example, a female migrant worker, after being cheated by a local dalal, may choose to accept a substantially low compensation for the wrong done to her, in view of the hierarchical/patriarchal structure of her community and/or because she has very limited options due to illiteracy, poverty, and lack of family support.

## 5.7 Community Participation and Ownership

The community benefits from mediation services provided by the GMC. Carried out at the local level with active involvement of community members, mediation helps instil a deep sense of responsibility to resolve their own problems and control their own destinies. A migrant worker, who believes that s/he can obtain meaningful and enduring relief through a relatively neutral, cheap, expeditious and above all, accessible forum is more likely to rely on community support rather than resort to self-help. This effectively reduces the need for state interventions. The community overall also benefits from the lessons gleaned and knowledge gathered from participating in and witnessing mediation processes. Moreover, the involvement of the entire community increases the accountability of both mediators and disputing parties whereby their commitment to abide by the decision is ensured.

## 5.8 Empowerment of Women

The introduction of mediation has enabled women to choose their preferred platform of justice delivery. Whereas previously women migrant workers suffered in silence due to socio-cultural inequities and inaccessibility to the formal legal system, RMMRU's GMS has provided them with an opportunity to challenge the injustices experienced in the migration process. Problems are resolved in presence of all and upon consensus of both parties. Consequently, there is a reduction in hostilities and aggression between parties as both realise the obligation they incur. The issue of migrant women's physical security has also gained prominence in RMMRU's mediation process and are no longer trivialised.

One of the distinct features of mediation is the inclusion of women as mediators and active contributors to the process of dispute resolution. The selection of a cross section of individuals, including women, by RMMRU for the mediation panel has altered the customary composition of local shalish, which originally consisted of senior male members only. The present scenario sees a departure from this stereotypical arrangement as women people are increasingly officiating as mediators. Women justice seekers tend speak more freely when there are women mediators and this ensures a transparent process of communication between the mediator and the parties. During mediation, women who are present and participating are also found to interject, protest and rebut motions in favour of the woman disputant. This results in generating collective strength in voicing their demands and ensuring for themselves the benefits of law and justice.

Efforts in developing alternative mechanisms often require years of sensitising, organising and mobilising local communities to properly understand and appreciate the system and to instil in them a sense of trust in its capacity to deliver justice. While a great advantage of the process is the continued participation of the parties in negotiation, the community as a whole also benefits from the exercise. The mediation process assures individuals support of the community. Since mediation is conducted publicly where community members are actively involved in the process, this instils in them a sense of responsibility and accountability and enable them to give their own inputs and learn from the contribution of others.

Clearly, mediation has immense potential to educate local people about the value of alternative means of accessing justice. Once citizens are enlightened about the benefits of alternative systems of justice, they would be better

equipped to navigate inequities and determine their own futures. Indeed, in order for ADR to be sustainable, it must be rooted in the community and its people. This would ensure ownership by the local people, which would in turn facilitate its continuity through generations. While attitudinal change is imperative for bringing about lasting behavioral change, there is also a need for consistent organisational support in providing mediation services to people at the local level until the time the practice becomes entrenched in their communities. The rationale is that it takes a great deal of time and patient handling to transform normative ideologies that are embedded in the social fabric over the years. If any change is to be brought about in the psyche of a given population, sustained efforts must be invested for mediating disputes for a reasonable period of time in order for people to effectively to internalise the practice.

Since shalish is conducted in every village with or without NGO assistance, the practice is not likely to disappear. What may transpire from RMMRU's mediation is that the impacts in terms of knowledge and value of the practice in RMMRU's intervention areas may gradually spread to non-intervention areas.

Despite the growing and apparently effective use of mediation, enthusiasm for it must be tempered by the acknowledgement of social realities. For one thing, the system is still very much male oriented, and despite NGO efforts to ensure female representation on mediation or shalish panels, they are unable to push too hard for fear of incurring a backlash. The existing situation is problematic: pushing for gender equity too fast could damage the credibility of NGOs in organising and facilitating shalish sessions and jeopardise their long term goals of transforming community attitudes and not pushing hard enough would undermine the very purpose of equitable dispute resolution (Golub 2000:138).



## CHAPTER 6

### CONCLUSION AND RECOMMENDATIONS

#### 6.1 Introduction

Community disputes are particularly amenable to the mediation process, which serves as a forum at which both parties are given an opportunity to discuss the cause of their discord and attempt to arrive at a viable solution. The process, being participatory, facilitates the reaching of a satisfactory consensus by both parties. The alternative method of dispute resolution applied by RMMRU departs, in essence, from the judicial processes and the stereotypical shalish. Under this system, parties are encouraged to communicate with mediators and between themselves, identify the areas of conflict, articulate their demands and arrive at a mutually acceptable solution. As such, this process is not coercive by nature, as it does not impose decisions. Rather, the process is voluntary whereby parties are induced to reach a compromise in an amicable manner. Mediation avoids the intractability and the one-sidedness that are inherent in other legal actions. By actively involving the disputants in shaping the agreement and binding them personally to make the agreement work, the parties become psychologically bound to respect the terms of their resolution (Cooke 1991:123).

However, mediation also has its perils. Scholars (Menkel-Meadow 1995, Folger 1994) have delineated the potential risks associated with the process. In their view, mediation can become bureaucratic when it takes place in courts or other institutional settings where the outcome of the dispute is often controlled by procedural protocols. Whether the exercise will be open or closed depends on the extent of control parties actually have over the process; there are occasions where conduct of parties is constrained by rules of practice. The mediator often orchestrates who will participate in the mediation and becomes the principal actor in determining the outcome of the dispute. The lack of professionalism engenders power imbalances between parties and contributes to the privatisation of public interest problems.

However, others like Grillo (1991:1548) describes the relative advantages of mediation in a different manner: firstly, by rejecting an objectivist approach

to dispute resolution mediation considers conflicts in terms of relationships and responsibility; secondly, it involves, at least in theory, a cooperative and voluntary process whereby disputants speak for themselves, which in essence, helps to eliminate the hierarchy of dominance that is typical of judge/litigant or lawyer/client relationships; thirdly, in the absence of rules of evidence and legalistic notions of relevancy, decisions are informed by the context rather than by abstract principle; and finally, emotions are supposedly recognised and incorporated in the mediation process, a fact that has led some commentators to characterise it as a ‘feminist alternative to the patriarchally inspired adversary system’.

It would appear from the above expositions that ‘it is mediation’s core or essential meaning that determines best practices, achievable goals and other mediation attributes; [b]ecause, no singularly correct ideology exists, there is ample scope for many interactions in how mediation is presented and understood’ (Landerkin and Pirie).<sup>37</sup>

The willingness to submit to informal community based dispute resolution systems as an alternative to court must also be understood in the context of the poverty experienced by a vast majority of the rural population. Given the disillusionment with actors in governance, the poor are keen to avoid any kind of contact with the law and law enforcement agencies for the simple fact that, in their view, such interactions only add to their overall impoverishment. This is not to say that the power of the law is undermined completely; on the contrary, in NGO assisted shalish, ‘the threat of taking cases to court frequently works to persuade otherwise unwilling disputants to accept shalish rulings’ (Siddiqi in Hasle 2003:21). Clearly, while without the support of legal services NGOs both parties would be equally disadvantaged to use the legal process, the presence of NGOs provide applicants with considerable muscle and compel respondents to abide by the agreement or face the consequences which would only exacerbate their impoverishment (Hasle 2003:22).

While there is evidence that indicates that legal services NGOs can play indispensable roles in using these forums for informal justice to the advantage of the poor and the marginalised, the fundamental issue of limited NGO outreach remains a major concern. Even if the informal justice

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37 Landerkin, Hugh F. and Pirie, Andrew J., “*Judges as Mediators: What’s the Problem with Judicial Dispute Resolution in Canada?*” available at <http://www.royalroads.ca/NR/rdonlyres/331CA235-74B7-4DBB-A67A-8DFC5FFF3698/0/LanderkinJDRCBaPaper.pdf> (undated).

system proves sustainable to the extent local ownership of the process is developed, admittedly legal services NGOs are able to reach only a small part of the rural population. It is however, argued that there is no guarantee that effective government services will reach a greater number of people, however expansive their coverage may be. As Golub (2003:28) suggests:

*We... should bear in mind the development experience of Bangladesh, which features large national NGOs substituting for [the] government regarding a wide array of services. Though adapting this approach to other societies is not necessarily workable, it should not [essentially] be precluded as a long term strategy.....It is also possible that government and NGO forms of [non-state justice system] need not be mutually exclusive. They can be complementary, leaving villagers the option of which vehicle to employ.*

Indeed, customary systems may vary considerably in any given society. The recognition and establishment of parallel systems for dispute resolution by the state indicates a process whereby 'customary systems have been seeded into communities by national governments for a variety of reasons: increasing judicial capacity, broadening access to justice, unifying ethnically diverse communities by appealing to common customary standards and procedures...' (Chirayath et al. 2006:9).

Informal justice can be effectively used only when parties recognise that they have been injured. Felstiner et al. (1980-81:633) observe that some people demonstrate an astonishing degree of tolerance towards injustice presumably because they are unable to perceive that they have been hurt. The authors identify a three-step exercise involving 'naming, blaming and claiming' whereby the injured party acknowledges that an injury has been done to him/her (naming), points a finger to another for causing the injury (blaming) and seeks vindication of rights (claiming) infringed in the process. Indeed, whether people perceive an experience as an injury that is good enough to merit subsequent 'blaming' and 'claiming' largely depends upon their social, cultural and personal characteristics. Debatably, short circuiting the blaming [and claiming] process may fall most heavily on those who are already at a disadvantage in society' (Grillo 1991:1565).

It is thus important to note that the act of recognising an injury and claiming redress and finally achieving resolution differs from person to person and from group to group. The particular social position that people occupy in a given scenario is likely to affect not only their personal perception

whether a dispute actually exists but also other people's acceptance of that perception (Marshall 1998:779). Arguably, the poor and the marginalised are less likely to have their problems recognised as readily as those of the majority group with resources and consequently less likely to have their grievances redressed (Marshall 1998:780). Thus, experiences of problems and injuries are duly recognised depending on who the parties are and the institutions and processes available for addressing them.

## **6.2 Possible Future Directions in The Field of Migration Dispute Mediation**

There is not denying the inherent value and effectiveness of mediation in resolving migration related disputes. An attempt is made in this section to provide possible future directions to improve ADR/mediation services in the face of evolving changes and challenges in a transitional society.

### **6.2.1 Imparting Legal Literacy and Training on Specific Legal Issues**

The training of organisational staff, resource persons and target stakeholders is by far the most useful means of imparting legal literacy. Knowledge of the law and the means of applying it are fundamental to appropriate redress. It would be useful to incorporate adjustments to existing training strategies and modules to make the sessions relevant and interesting for the users. A key feature of successful training is to avoid monologues and lectures and instead engage the trainees in active participation. Learning by doing is a cardinal feature of clinical training. This method ensures that the trainees actually act the part they are expected to play in practice. Since it is common for people to relate more readily with issues that are of particular significance in their lives, it would be useful to develop the contents of the training in line with matters that frequently feature on the migration agenda instead of engaging in general legal education. It must be borne in mind that that the trainees are often simple rural people who can only see and judge problems in context. Training methods should therefore avoid complicated discourses on law and instead engage trainees in role-playing and simulations capturing real life situations. The language of the training should be simple and inclusive so that even people with limited education can also benefit from it. Pictorial training materials and video documentaries can be an effective means of communication.

One of the primary drawbacks of legal literacy initiatives is that there is no guarantee that the knowledge imparted would be retained. Unless the knowledge is put to actual practice there is every likelihood that it will be lost. Indeed, refresher-training sessions held periodically can largely mitigate this risk.

### **6.2.2 Greater Involvement of People Particularly Women**

The potential of mediation in delivering speedy and cost effective justice at the local level has been tested and proved. However, greater involvement of the people is required for the system to take root in local communities. The development of strong local leadership, particularly amongst the younger generation, will ensure ownership of the system.

The participation of women in mediation is critical not only from the perspective of inclusiveness but also for recognising the particular concerns that affect migrant women's lives in the family and community. It is practical to increase the involvement of women in mediation of migration disputes as women find it easier to discuss their matters more openly in the presence of other women. Since women are generally sensitive to women's needs and problems, they are especially capable of addressing their needs. Since men dominate in shalish/mediation in rural areas, the inclusion of women in the mediation process, whether as mediator or GMC member, would help bring a certain degree of gender balance in local level justice dispensation.

Training of women and their integration in ADR initiatives would also help develop their intellectual and leadership capacities. Involvement of women in such processes would potentially encourage them to participate in the political and economic spheres, contribute to the development process and bring qualitative changes to their families and communities.

### **6.2.3 Expansion of Mediation Services**

Building on the success of mediation in one area, the service may be expanded to communities adjacent to the intervention areas in order to ensure wider outreach. While this would naturally require increased financial and human resources, joint initiatives with like-minded organisations would considerably reduce this burden, foster cross learning and ensure synergies in mediation work. The integration of legal services including ADR with development activities have proved to bring about meaningful and lasting changes to people's lives. Access to material resources alone is not enough

to empower people unless there is a means of protecting them. In the same way unless legal services run parallel to other development activities in and outside the service area people will not benefit substantially from these initiatives. To this end, networking and interaction among mediation providers is imperative to enable the sharing of skills and expertise in areas of training, counselling and dispute resolution.

#### **6.2.4 Monitoring and Follow-Up**

Mediation activities need to be evaluated and brought up to date on a regular basis. This would enable the implementing organisation to address emerging issues and redesign mediation approaches accordingly. Assessment of programme interventions provides organisations with an opportunity to adjust or modify strategies in accordance with the dominant needs of the moment. To this end, practical indicators must be adopted for measuring achievements and best practices in concrete ways. Follow-up activities are vital for monitoring progress. Feedback and critical appraisal from stakeholders is a unique way of assessing impact. Soliciting their views about interventions and initiating changes thereupon would strengthen the programme in various ways. Committed volunteers and staff are key to achieving this objective.

#### **6.2.5 Staff Development**

A strong staff having adequate expertise and experience is a prerequisite for the smooth and unhindered operation of any ADR intervention. It is essential to train and develop sound mediation personnel in order to achieve maximum impact in intervention areas. Training is a key component for educating programme staff about the various dimensions of their responsibilities. It is essential that mediation staff is well acquainted with legal issues and a grounding in relevant laws. It is necessary to have the staff undergo extensive training on law and legal issues in order for them to intervene effectively and correctly during mediations. It would defeat the whole purpose of delivering local justice if mediators are not confident about their knowledge.

It is necessary to hone the skills of mediation workers for equitable justice delivery. As such, the learning process is not necessarily complete after one training session. Follow-up training of programme staff is crucial for the effective discharge of their functions as mediators. Regular evaluation of staff performance is vital for efficacious project implementation. Assessment of the performance of mediation would broaden the scope for

improvement in terms of both professional development and institutional capacity. Appraisal of staff performance also enhances their accountability thereby encouraging them to work harder and achieve sustainable results.

Law is not static and its parameters are ever evolving. In the circumstances, it is important that ADR staff keep pace with changing patterns and applications of law. Unless programme staff is well versed in law, there is a great possibility of misapplication and circumvention of the law. This would definitely subvert the purpose of mediation resulting in an improper and illegal outcome. The process, instead of being democratic, may in fact become oppressive. Ensuring the presence of lawyers at mediation sessions may be one way of dealing with the problem. They could facilitate the process by making certain that no laws are misinterpreted or erroneously applied. If lawyers are not available or their inclusion in mediation sessions is not regarded as a good idea (as their presence might put parties off), a viable alternative would be to involve law students or individuals having a degree in law, who could interject on legal points.

### **6.2.6 Greater Collaboration with Local Government**

Slack and corrupt governance at local levels sometimes impedes programme interventions in any given situation. Local elected bodies are often characterised by weak administrative capacities, inadequate financial and human resources, rent seeking, political patronage and corrupt practices. In the circumstances, the vast majority of the poor are constrained in their interactions with local government agencies. Failing to overcome discrepancies in local governance, poor villagers turn to NGOS for assistance.

That said, if NGOs and the government overcome the mutual mistrust and apathy towards each other, local communities would make tangible gains. A shared responsibility ensures sustainability of interventions and helps bring about lasting benefits for the people. Greater collaboration between organisations providing ADR services and local government bodies would contribute to the institutionalisation of mediation at the local level.



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## ANNEXURES

### **Overseas Employment and Migrants Act 2013**

#### **(Act No. VLVIII of 2013)**

The following Act of the Parliament of the Peoples' Republic of Bangladesh received the assent of the President on the 27th of October 2013/the 12th of Kartik 1420, and is hereby published as the official translation into English and for information to general public:—

#### **Overseas Employment and Migrants Act 2013**

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

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; it is, THEREFORE, enacted as follows:

## CHAPTER I

### Preliminary

#### 1. Short title and commencement,

1. This Act will be called the Overseas Employment and Migrants' Act, 2013.
2. It shall come into force at once.

#### 2. Definitions. In this Act, unless the context otherwise requires,

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**” or “**worker**” means any citizen of Bangladesh who, for wages,
  - a. is in the planning process to migrate for work or is departing to any foreign country for work;
  - b. is employed in 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;
4. “**demand**” means any job-offer or request for Bangladeshi workers for employment in a project or organization/entity by an overseas or a Bangladeshi employer, or a person overseas, which is approved or conforms with the instructions for visa or is approved vide any other lawful means by the appropriate authorities of the country of employment;
5. “**citizen**” means any citizen of Bangladesh according to the provisions of the Citizenship Act, 1951 (Act No. II of 1951) and the Bangladesh Citizenship (Temporary Provisions) Order, 1972 (P.O. No. 149 of 1972);
6. “**prescribed**” means set down as a course of action to be followed by Rules;
7. “**dependent**” means a spouse/husband or wife, mother, father, children, brother or sister, or any other household member who is financially dependent on the migrant worker;
8. “**employer**”, for the purpose of overseas employment, means an overseas or Bangladeshi person or organization/entity who has hired the worker;

9. **“fraud”** means to cheat, deceive, induce or mislead others wilfully or negligently by any word or conduct or by contract or document about any facts or law, which shall include the meaning for which the word “fraud” is used in section 17 of the Contract Act, 1872 (Act No. 9 of 1872);
10. **“departure”** means the emigration of a Bangladeshi citizen to a foreign country;
11. **“Rules”** means Rules made under this Act;
12. **“Bureau”** means the Bureau of Manpower, Employment and Training established under Memorandum No. VIII/E-4/76/296, dated 3-4-1976 of the then Ministry of Health, Population Control and Labour;
13. **“overseas employment”** means the employment of a Bangladeshi citizen in a foreign country outside the legal authority of Bangladesh;
14. **“person”** means any natural person, company, association of persons, partnership firm, or statutory or any other kind of bodies including their agents;
15. **“recruitment”** means the hiring of workers for overseas employment by any overseas or Bangladeshi employer directly or through concerned authorities or a recruitment agent by means of a contract entered into orally or in writing, or enlistment of workers subsequent to publishing or circulating an advertisement for recruitment of workers, or exchanging letters or in any other way;
16. **“recruitment agent”** means any person/entity licensed under the Section 9; and
17. **“licence”** means a licence issued to a recruitment agent under the Section 9.

## CHAPTER II

### **Sending Workers Overseas, Migration, and such others**

#### **3. Authority to send workers for overseas employment,**

1. 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.
2. Under this Act, the Bureau, any other organisation or entity established by the Government, and a recruitment agent may conduct recruitment related activities.

#### **4. Migration,**

1. No citizen shall migrate or cause others to migrate for overseas employment except in accordance with the provisions of this Act.
2. For migration of a citizen, in addition to the clearance issued under the Section 20, following documents shall be required:—
  - a. evidence of recruitment for overseas employment by a person, organization or an entity authorised by the Government under an Agreement concluded with any country, or by a recruitment agent with appropriate visa; or
  - b. letter of appointment in for an overseas job or a work permit, or a noobjection certificate issued by any authorities of the country of employment and an appropriate visa.

#### **5. Non-application of this Act in case of departure of certain persons. This Act shall not be applicable for the departure of following category of persons,**

- a. person employed in the service of the People’s Republic of Bangladesh or of a local authority, who, with permission from the competent authorities, is going overseas for performing an official duty or for the purposes of education or training, or for employment with an international or multilateral organisation;
- b. student, a trainee, or a tourist;
- c. person emigrating at self-initiative for employment in a foreign government or international or multilateral organisation;
- d. person emigrating to a foreign country for the purpose of medical treatment and care, or for religious, business or investment purposes;
- e. dependent of any Bangladeshi citizen employed overseas or lawfully staying overseas; or
- f. person who initially emigrated for education and later accepted employment in a foreign country; and
- g. person emigrating for a purpose which is not in conflict with the purposes of this Act.

#### **6. Application of the principle of equality,**

1. The principle of equality is to be applied at all times for overseas employment and return of migrant workers and while providing services or performing any other action under this Act, and no one shall be discriminated on on one or more grounds, including, gender,

language, birth, colour, age, ethnicity or national origin, political views, religion, ideology, familial, marital or social identity, or regional affiliation, or any other reasons.

### **7. Place of departure,**

1. 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.

### **8. Restrictions relating to migration,**

1. If the Government is satisfied that the migration of Bangladeshi citizens to a particular country shall be against the public or state interest or that their health and safety may be jeopardized in that country, the state may, by order, restrict the migration to that country.
2. The Government may, in the public interest or for preservation of human resources, temporarily restrict migration of a citizen or a category of citizens.

## **CHAPTER III**

### **Recruitment Agents, Licence, and such others**

#### **9. Licence,**

1. No person shall operate any activity relating to recruitment unless issued a licence under this Act.
2. 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:—
  - certified copy of the trade licence;
  - certified copy of the certificate of payment of taxes, along with a copy of the Tax Identification Number (TIN);
  - bank statement indicating financial solvency;
  - police certificate;
  - In case of a company, its memorandum of association, articles of association and the certificate of incorporation;
  - 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

- 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.
3. Upon receipt of an application under subsection (2), the Government may, if satisfied upon examination of the information aforementioned and necessary investigation, grant the said person a licence to act as a recruitment agent after the receipt of security money and subject to conditions, or may reject the application.
  4. If any application is rejected under sub-section (3), the applicant may apply to the Government for review of the decision within the specified time and in the manner prescribed.
  5. The licence fee, the amount of security money, and the renewal fee payable under the Section 11 shall be determined by the Rules.

### **10. Eligibility for licence,**

1. No person shall be considered competent to obtain a licence, if the person:—
  - is not a citizen of Bangladesh;
  - has not attained adulthood as per the law;
  - is not a person of sound mind;
  - is declared by a competent court to be an insolvent and discharge from insolvency has not been established;
  - has been convicted of human trafficking, money laundering, international terrorism or any other serious crime; and
  - has been convicted of a criminal offence involving moral turpitude and a period of two years has not elapsed since the completion of the punishment.
2. A licence may be granted in favour of a company, organisation, partnership firm, or any other legal entity, if:—
  - a. in case of a company or organisation, not less than sixty percent shares of that company or organisation; and
  - b. in case of partnership firm or any other legal entity, sixty percent capital or ownership in that partnership firm or legal entity is owned or controlled by Bangladeshi citizens.

### **11. Duration and renewal of licence,**

1. The licence of a recruitment agent issued under the Section 9 shall remain valid for three years from the date of its issue, and it shall be renewable at a three years' interval in the manner prescribed and upon payment of the fees as may be prescribed.

## **12. Suspension and cancellation of licence,**

1. The Government may, after adequate investigation and upon affording the licensee an opportunity to be heard, suspend or cancel the licence of any recruitment agent for any of the following reasons:-
  - If the licence was obtained through false information or through fraudulent means;
  - if the conditions of licence were violated or if the licence was not renewed within due time;
  - if any provisions of this Act or the Rules or of the Code of Conduct prescribed for the recruitment agents stand violated;
  - if the person to whom the license has been issued has been convicted a criminal offence;
  - if the recruitment agent recruits or employs a migrant worker for a purpose not in the interest of Bangladesh; or
  - in case of a company, organisation, a partnership firm or any other legal entity, if the licensee is duly wound up or dissolved.
2. If the licence of any recruitment agent is suspended under above-mentioned Subsection (1), the said recruitment agent shall no longer have the legal capacity to carry out any action related to recruitment.
3. If a licence is suspended or cancelled, the recruitment agent may, within 30 days of such suspension or cancellation, appeal to the Government for a review and the Government shall review the case within 60 days of the appeal, and the decision of the Government in this regard shall be final.
4. If any licence of a recruitment agent is suspended or cancelled under this Section, the Government shall take appropriate measures to protect the rights and interests of those persons who may have enlisted for recruitment related services with that recruitment agent.

## **13. Revocation of licence,**

1. Notwithstanding anything to the contrary contained in other provisions of this Act, the Government may, by notification through the official Gazette, may withdraw a licence in view of a public interest.

## **14. Branch offices,**

1. A recruitment agent, with prior approval of the Government, may run one or more branch offices.

**15. Duties of the recruitment agent,**

1. The duties of a recruitment agent shall be as follows:-
  - a. to protect the interest of migrant workers;
  - b. to produce, when applicable, the migrant worker for registration under section 19 and to collect migration clearance;
  - c. to employ the migrant worker in the job offered and provide wages and other benefits and to ensure a good workplace conditions in accordance with the terms and conditions of the employment contract, and to maintain communication with the employer for these purposes; and
  - d. to discharge other duties as may be specified, from time to time, by the Government.

**16. Classification of recruitment agents,**

1. The Government may classify the recruitment agents in a prescriptive graded manner.
2. The classification into various grades shall be done based on an evaluation of the conditions that must be met by the recruitment agents.
3. The factors to be considered while classifying the recruitment agents into various grades under this Section shall be prescribed by the Rules.

**17. Transfer of licence, the change of address, and such others,**

1. A recruitment agent is not allowed to transfer the licence.
2. Upon the death of a recruitment agent, the concerned licence shall not devolve upon the heirs, but if an heir were to apply for a new licence, the Government shall, subject to the provisions of this Act, consider the application with preference, and in such a case, the licence shall be issued with the number of the previous licence.
3. If the recruitment agent is a company, organization, partnership firm, or any other legal entity, any partner or any member thereof, as the case may be, are not permitted to transfer individual part or share without the approval of the Government.
4. A recruitment agent shall not change the address of the office or the branch office without obtaining prior approval of the Government to do so.
5. If a recruitment agent changes the address of the office premises or the address of the approved branch office under the Subsection (4), new address must be published in newspapers by that recruitment agent and a copy thereof submitted to the Bureau and the Government.

## **18. Forfeiture of surety, and such others,**

1. If a licence is cancelled under the Section 12, the Government may confiscate the whole or part of the surety money paid by the concerned recruitment agent.
2. Compensation to any affected migrant worker or the cost of return/repatriation of a worker who was sent overseas by the concerned recruitment agent may be paid from the surety money confiscated under the Subsection (1).
3. If the confiscated surety money is inadequate to pay compensation to the affected migrant worker or to ensure return/repatriation from overseas, the Government may direct the concerned recruitment agent to pay an appropriate amount of compensation.
4. If any recruitment agent fails to pay the money directed to be paid under the Subsection (3), the Government may recover it from that recruitment agent in accordance with the provisions of the Public Demands Recovery Act, 1913 (Bengal Act No. III of 1913).
5. If a recruitment agent surrenders the licence following the expiry of its validity period, or if the recruitment agent dies, the Government shall return the surety money to the recruitment agent or the legal heir of the recruitment agent.

## **CHAPTER IV**

### **Registration of Migrant Workers, Migration Clearance, and such others**

#### **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 those 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 computerized database on a random basis from amongst workers registered according to their trade or profession under subsection (1):

- (1) Provided that qualified workers are not available in the database, workers may be recruited through open advertisements in the newspapers with prior approval of the Government or of the authorities with delegated authority, and in such a case, the advertisement shall include a declaration to the effect that a fee or money in any form shall not be charged before and unless the worker has been recruited.
4. The Bureau shall discharge the responsibility of protecting the interests of workers employed overseas, and the duties and functions relating thereto, and the means of monitoring thereof shall be prescribed by the Rules.

## **20. Migration Clearance,**

1. 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.

## **21. Cost of Migration,**

1. The Government may, by an Order, prescribe the ceiling of the cost of migration to be charged for the purpose of recruitment and overseas employment.

# **CHAPTER V**

## **Employment Contract**

### **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**

### **Labour Welfare Wing and Agreements on Migration**

#### **23. Labour Welfare Wing,**

1. 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.

#### **24. Duties of Labour Welfare Wing,**

1. The authorized officer of the Labour Welfare Wing shall inspect the place of work where Bangladeshi migrant workers are to be employed in the concerned country and shall meet with the employers, when necessary.
2. Following the regular inspection under the Sub-section (1), the authorized officer of the Labour Welfare Wing shall, in December of every year, send to the Government an annual report along with necessary recommendations relating to the condition of Bangladeshi migrant workers working in the concerned country.
3. The report prepared under subsection (3) shall contain the following information:-

- a. list of Bangladeshi migrant workers with names of trades and professions they are employed in, their working conditions, benefits and problems;
- b. list of cases brought against Bangladeshi migrant workers, if any, along with details thereof, and information about workers detained or convicted for offence;
- c. list of names of the migrant workers who have died, causes of their deaths, and whether they were compensated by the employer or not, or indication of possibility of getting compensation;
- d. services, counseling, and legal assistance offered by the Bangladesh Mission or the steps taken to resolve the problems of migrant workers;
- e. an estimation of the job opportunities of for the Bangladeshi workers in the concerned country and the current status of the implementation of any existing bilateral agreement regarding the rights of Bangladeshi migrant workers in such country;
- f. facilities related to passports, visas, and consular services; and
- g. any other matter as may be specified by the Government from time to time.

## **25. Bilateral agreement on migration,**

1. 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.
2. Any memorandum of understanding or agreement under the Subsection
  1. shall be concluded on the basis of, among others, the following principles:-
    - a. protection of the rights, safety and human dignity of all migrant workers within the country or while overseas;
    - b. protection of labour and other human rights of Bangladeshi migrant workers in the concerned country, and assuring conditions at work are compatible with the international standards; and

- c. assurance of the migrant workers' right to information and the right to redress if their rights are violated in the concerned country.

## CHAPTER VII

### Rights of Migrant Workers

#### **26. Right to information,**

1. 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.

#### **27. Legal aid**

1. Migrant workers and the persons who have become victims of fraud in the name of migration shall have the right to reasonable legal aid.

#### **28. Right to file civil suit,**

1. 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.

#### **29. Right to return home,**

1. 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.
2. If any sum of money is spent for repatriating a migrant worker, the money so spent may be recovered from that person.
3. If a migrant worker in a situation of distress due to the negligence or illegal activity of a recruitment agent, the Government may direct the concerned recruitment agent to bear the costs of repatriation of that migrant worker.
4. If a recruitment agent fails to pay the money ordered to be paid under the Subsection (3), the Government may recover the sum of money from the concerned recruitment agent in accordance with the provisions of the Public Demands Recovery Act, 1913 (Bengal Act No. III of 1913).

### **30. Financial and other welfare programmes,**

1. 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**

### **Offences, Penalties, and Trial**

#### **31. Penalties for sending migrant workers overseas in unlawful manner, and for charging unlawful amounts of fees, and such others,**

1. It shall be considered an offence if a person or a recruitment agent:-
  - a. sends or assists to send a person overseas for the purpose of employment or enters into contract on behalf of another person, in violation of provisions of this Act or of the Rules;
  - b. receives or attempts to receive any sum of money or a payment in any other form by giving a person a false undertaking to provide overseas employment;
  - c. detains, without any valid reason, the passport, visa, and migration-related documents of a migrant worker; and
  - d. makes a person fraudulently emigrates or induces a person to enter into a contract for migration by giving a false promise of high wages, benefits and facilities, or engages in fraudulent activities in any way with regard to a migrant worker;

and, for that offence, the concerned person or the recruitment agent shall be punishable with imprisonment of a term which may be up to five years, and with a penalty, which shall not be less than Bangladeshi Taka One Lakh.

#### **32. Penalty for publishing unauthorised advertisements,**

1. If a person or a recruitment agent publishes, without prior approval of the Government or the Bureau, an advertisement for the purpose of recruitment for overseas employment or migration, the act shall be deemed to be an offence, and, for that offence, the person or the recruitment agent shall be punishable with imprisonment for a term which may be up to one year, and with penalty, which shall not be less than Bangladeshi Taka Fifty Thousand.

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**33. Penalty for using unlawful means for collecting demand note, visa or work-permit for overseas employment, or for trading in such documents,**

1. If a person or a recruitment agent adopts any unlawful means for collecting demand notes or visa or work permit for overseas employment from the employer or a foreign country, or trades in the said visa or work-permit within Bangladesh, the act shall be deemed to be a criminal offence for which the offender be punishable with rigorous imprisonment for a term which may be up to seven years, and with a penalty, which shall not be less than Bangladeshi Taka Three Lakh.

**34. Penalty for arranging for departure through places other than the specified place of departure,**

1. If a person or a recruitment agent arranges for, or assists in departure of a worker from Bangladesh through a place other than the specified place of departure, such an action shall be deemed as an offence, and the offender shall be punished with rigorous imprisonment for a term which may be up to ten years, and with a penalty, which shall not be less than Bangladeshi Taka Five Lakh taka.

**35. Penalty for other offences,**

1. If a person acts in breach of any provision of this Act for which no specific penalty is provided for in this Act, than that person shall be punished with an imprisonment for a term which may be up to six months, or with a penalty, which may be up to Bangladeshi Taka Fifty Thousand or both together.

**36. Penalty for abetting or instigating an offence, and such others,**

1. If a person or a recruitment agent directly or indirectly abets or instigates an offence under this Act, and if the act of offence is committed as consequence of that abetment or instigation, the concerned abettor or instigator shall be liable to receive the same punishment as the perpetrator of the crime or the offender.

**37. Offences committed by a company,**

1. When an offence under this Act is committed by a company, and if its director, executive, manager, secretary or any personnel or employee has a direct involvement with the offence, that person shall be

deemed to have committed the offence, unless the person establishes that the offence was committed without their knowledge and that he exercised due diligence to prevent it.

### **38. Trial,**

1. Notwithstanding anything contained in the 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.

### **39. Cognizability, compoundability, and so on of offences,**

1. Offences under sections 33 and 34 shall be cognizable, non-bailable and non-compoundable, and offences under sections 31, 32, and 35 shall be non-cognizable, bailable and compoundable.

### **40. Act deemed to be included in the schedule of the Mobile Courts Act, 2009,**

1. This Act shall be deemed to be included in the Schedule of the Mobile Courts Act 2009 (Act No. 59 of 2009).

### **41. Complaints to the Government,**

1. Any person aggrieved may, without forsaking the right to file a criminal case, may file a complaint, including, a complaint for fraud, demand for money related to costs at unapproved rates, or a breach of contract against any person including a recruitment agent, with a relevant government authority.
2. The Government, or the authorities or a person authorized by the Government shall complete the investigation within not more than thirty (30) working days after the receipt of a complaint under subsection (1).
3. If the investigation conducted under sub-section (2) finds the complaint true, the Government or the authorities or the person authorized by it may, by an order, dispose of the complaint directly or through arbitration (salish) within three months from the date of completion of the investigation.

4. The procedures for resolving complaints through arbitration under subsection (3) shall be prescribed by Rules.

## CHAPTER IX

### Miscellaneous

#### **42. Inspection,**

1. For the purpose of preventing irregular migration, or to protect the interests of a prospective migrant worker, an officer authorised by the Government may inspect a place, or a means of transport departing from or heading towards Bangladesh.

#### **43. Recovery of money appropriated through illegal charges,**

1. If a sum of money has been appropriated in violation of provisions of this Act, the Government, following an investigation, as may be necessary, and by order in writing, may recover the said money from the concerned person, or may file a suit for compensation for the purpose of recovery.
2. The money recovered or collected under subsection (1) may be given to the aggrieved person.

#### **44. Delegation of power and appointment of agents,**

1. For the purpose of the protection of the rights of the migrant workers, the Government may, by notification or by executing a contract, delegate some powers or functions conferred by this Act, to an officer or authorities, and if necessary, may appoint an authorised agent or delegated authority in another country.

#### **45. Power of the Government to remove any difficulty,**

1. If a difficulty arises in the implementation of any provision of this Act, the Government may, by an order in the official Gazette, adopt necessary measures to remove that difficulty.

**46. Complementary Act,**

1. The provisions of this Act are intended to complement existing laws relating to passports, immigration, foreign relationship, exchange of foreign currency, control of foreign nationals, money-laundering, human trafficking, and the right to information, and shall not be used in derogation of them.

**47. Power to make Rules,**

1. For the purposes of this Act, the Government may, by notification in the official Gazette, make Rules:

Provided that until such Rules are made, and if it is necessary so to do, the Government may, by a general or special order, issue directives related to the adoption or execution of activities, which are compatible with this Act.

**48. Authentic English Text,**

1. Upon this Act coming into force, the Government shall publish an authentic English translation of the original Bangla text of this Act by notification in the official Gazette.
2. In the event of any conflict between the Bangla and the English text, the Bangla text shall prevail.

**49. Repeal and Savings,**

1. The Emigration Ordinance, 1982 (Act No. XXIX of 1982), hereafter the 'said Ordinance', is hereby repealed.
2. Notwithstanding such repeal, any function undertaken or action implemented, any Rule enacted, any order issued, or any notification or circular issued under the said Ordinance shall, subject to not being inconsistent with this Act and until they are repealed or amended, continue to be in force, and shall be deemed to have been undertaken, implemented, enacted or issued under this Act.
3. A case or a proceeding that remained pending in a court of law under the said Ordinance immediately before the commencement of this Act shall be heard and disposed of by the said court in the manner as if the said Ordinance has not been repealed.

রেজিস্টার্ড নং ডি এ-১

বাংলাদেশ



গেজেট

অতিরিক্ত সংখ্যা  
কর্তৃপক্ষ কর্তৃক প্রকাশিত

রবিবার, জুন ১১, ২০১৭

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার

প্রবাসী কল্যাণ ও বৈদেশিক কর্মসংস্থান মন্ত্রণালয়

প্রজ্ঞাপন

তারিখ : ২২ জ্যৈষ্ঠ ১৪২৪ বঙ্গাব্দ/০৫ জুন ২০১৭ খ্রিস্টাব্দ

এস, আর, ও নং ১৭৪-আইন/২০১৭।—বৈদেশিক কর্মসংস্থান ও অভিবাসী আইন, ২০১৩ (২০১৩ সনের ৪৮নং আইন) এর ধারা ৪৭ এ প্রদত্ত ক্ষমতাবলে সরকার নিম্নরূপ বিধিমালা প্রণয়ন করিল, যথা:—

\*১। শিরোনাম।—এই বিধিমালা বৈদেশিক কর্মসংস্থান ও অভিবাসী ব্যবস্থাপনা বিধিমালা, ২০১৭ নামে অভিহিত হইবে।

২। সংজ্ঞা।—(১) বিষয় বা প্রসংগের পরিপন্থি কিছু না থাকিলে, এই বিধিমালায়—

- (ক) 'অভিবাসন' অর্থ আইনের ধারা ২ এর দফা (১) এ সংজ্ঞায়িত অভিবাসন ;
- (খ) 'অভিবাসী কর্মী' বা 'কর্মী' অর্থ আইনের ধারা ২ এর দফা (৩) এ সংজ্ঞায়িত অভিবাসী কর্মী বা কর্মী;
- (গ) 'আইন' অর্থ বৈদেশিক কর্মসংস্থান ও অভিবাসী আইন, ২০১৩ (২০১৩ সনের ৪৮নং আইন) ;
- (ঘ) 'দায়িত্বপ্রাপ্ত কর্মকর্তা' অর্থ বিধি ৭ এর অধীন নিযুক্ত শ্রম কল্যাণ উইং এর দায়িত্বপ্রাপ্ত কর্মকর্তা ;
- (ঙ) 'নিবন্ধন' অর্থ বিধি ৫ এর অধীন নিবন্ধন ;
- (চ) 'নিয়োগকারী' অর্থ আইনের ধারা ২ এর দফা (৮) এ সংজ্ঞায়িত নিয়োগকারী ;
- (ছ) 'ফরম' অর্থ এই বিধিমালার ফরম ;
- (জ) 'ব্যুরো' অর্থ জনশক্তি, কর্মসংস্থান ও প্রশিক্ষণ ব্যুরো ;
- (ঝ) 'মহাপরিচালক' অর্থ ব্যুরোর মহাপরিচালক ;

( ৬৩৯৩ )

মূল্য : টাকা ১৬.০০

৬৩৯৪

বাংলাদেশ গেজেট, অতিরিক্ত, জুন ১১, ২০১৭

(এ) 'রিক্রুটিং এজেন্ট' অর্থ আইনের ধারা ২ এর দফা (১৬) এ সংজ্ঞায়িত রিক্রুটিং এজেন্ট; এবং

(ট) 'শ্রম কল্যাণ উইং' অর্থ আইনের ধারা ২৩ এর অধীন প্রতিষ্ঠিত শ্রম কল্যাণ উইং।

(২) এই বিধিমালায় যে সকল শব্দ বা অভিব্যক্তির সংজ্ঞা দেওয়া হয় নাই, সেই সকল শব্দ বা অভিব্যক্তি আইনে যে অর্থে ব্যবহৃত হইয়াছে সেই অর্থে ব্যবহৃত হইবে।

৩। ইলেকট্রনিক পদ্ধতি প্রচলন।—সরকার, আইনের উদ্দেশ্য পূরণকল্পে, অভিবাসন ব্যবস্থাপনা বিষয়ে সমন্বিত ইলেকট্রনিক পদ্ধতি প্রচলনের (ডিজিটাইজেশন) ব্যবস্থা গ্রহণ করিতে পারিবে।

৪। ডাটাবেজ তৈরী ও সংরক্ষণ।—ব্যুরো, নিম্নবর্ণিত বিষয়ে পৃথক পৃথকভাবে ইলেকট্রনিক ডাটাবেজ তৈরী এবং সংরক্ষণ করিতে পারিবে, যথা:—

- (ক) অভিবাসনে আগ্রহী কর্মীর তথ্য;
- (খ) অভিবাসী কর্মীর তথ্য;
- (গ) বৈদেশিক চাকরি সংক্রান্ত তথ্য;
- (ঘ) দেশভিত্তিক কর্মীর তথ্য;
- (ঙ) জেভার ও বয়সভিত্তিক কর্মীর তথ্য;
- (চ) বিদেশ হইতে ফেরত কর্মীর তথ্য;
- (ছ) রিক্রুটিং এজেন্টদের তথ্য;
- (জ) নিয়োগকারীর তথ্য; এবং
- (ঝ) আইনের উদ্দেশ্য পূরণকল্পে, সরকার কর্তৃক সময় সময়, নির্দেশিত অন্যান্য বিষয়।

৫। নিবন্ধন।—(১) অভিবাসন করিতে আগ্রহী ব্যক্তি বা সকল অভিবাসী কর্মীকে আইনের ধারা ১৯ এর উপ-ধারা (১) ও (২) এর বিধান মোতাবেক নিবন্ধন করিতে হইবে।

(২) আইনের ধারা ১৯ এর উপ-ধারা (২) এর অধীন নিবন্ধনের ক্ষেত্রে সংশ্লিষ্ট বাংলাদেশ মিশন বা দূতাবাস নিবন্ধনের বিষয় ব্যুরোকে অবহিত করিবেন।

(৩) উপ-ধারা (১) ও (২) এর অধীন নিবন্ধন কার্যক্রম পরিচালনার জন্য মহাপরিচালক বা, ক্ষেত্রমত, বাংলাদেশ মিশন বা দূতাবাস প্রধান, নিবন্ধনের দায়িত্ব পালন করিবেন।

(৪) উপ-বিধি (৩) এ যাহা কিছুই থাকুক না কেন, মহাপরিচালক ব্যুরোর অন্য কোন কর্মকর্তা বা, ক্ষেত্রমত, বাংলাদেশ মিশন বা দূতাবাস প্রধান কোন দায়িত্বপ্রাপ্ত কর্মকর্তাকে নিবন্ধনের দায়িত্ব পালনের জন্য ক্ষমতা অর্পণ করিতে পারিবেন।

৬। ব্যুরোর দায়িত্ব ও কার্যাবলি।—আইন ও এই বিধিমালার উদ্দেশ্য পূরণকল্পে, ব্যুরোর দায়িত্ব ও কার্যাবলি হইবে নিম্নরূপ, যথা:—

- (১) অভিবাসীর সংখ্যা অনধিক ২৫ (পঁচিশ) জন হইলে সংশ্লিষ্ট বাংলাদেশ মিশন কর্তৃক সত্যায়িত চাহিদাপত্র পরীক্ষা এবং প্রক্রিয়াকরণ;
- (২) অভিবাসীর সংখ্যা ২৫(পঁচিশ) জনের অধিক হইলে অথবা চাহিদাপত্র মিশন বা দূতাবাস কর্তৃক সত্যায়িত না হইলে সরকার কর্তৃক অনুমোদিত চাহিদাপত্র প্রক্রিয়াকরণ;
- (৩) বহির্গমন ছাড়পত্র প্রদান;

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- (৪) অভিবাসী কর্মীগণকে নিয়োগের শর্তাবলী সম্পর্কে পরিপূর্ণ জ্ঞাত বা অবহিতকরণ;
- (৫) অভিবাসী কমান্দে: বহির্গমন বা বহির্গমন ছাড়পত্র প্রদানের পূর্বে নিয়োগকৃত সংশ্লিষ্ট দেশের দায়িত্বপ্রাপ্ত কর্মকর্তার টেলিফোন নম্বর ও ই-মেইল, ঠিকানা, হেল্প লাইন নম্বর (যদি থাকে), আবাসনের ঠিকানা (যদি থাকে) এবং শ্রম কল্যাণ উইং কর্তৃক প্রদত্ত অন্যান্য সুবিধা সম্পর্কিত তথ্য প্রদান ;
- (৬) বহির্গমন ছাড়পত্রের তালিকা সংশ্লিষ্ট দেশের বাংলাদেশ মিশন বা দূতাবাসে অনলাইনে প্রেরণ;
- (৭) বহির্গমন ছাড়পত্র প্রদানের পূর্বে কর্মীদের প্রশিক্ষণ বা ওরিয়েন্টেশন এর ব্যবস্থা গ্রহণ;
- (৮) বিদেশে গমন ও বাংলাদেশে প্রত্যাবর্তনের সময় বিমান বন্দর বা, ক্ষেত্রমত, স্থল ও নৌ বন্দরে অভিবাসী কর্মীদের প্রয়োজনীয় সহায়তা ও সেবা প্রদান ;
- (৯) কার্যকর এবং দক্ষ অভিবাসন ও কর্মসংস্থান সেবা গড়িয়া তুলিবার জন্য বিভিন্ন প্রকার ডাটাবেজ তৈরী ও সংরক্ষণ ;
- (১০) অভিবাসী কর্মীদের কর্ম ও জীবনমানের অবস্থা এবং আন্তর্জাতিক শ্রম বাজার সম্পর্কে তথ্য-উপাত্ত সংগ্রহ, বিশ্লেষণ ও গবেষণা ;
- (১১) বৈদেশিক কর্মসংস্থান বিষয়ে একটি তথ্য ব্যবস্থাপনা পদ্ধতি প্রতিষ্ঠা করা এবং ব্যুরোর ওয়েবসাইটে মাসিক প্রতিবেদন প্রকাশ নিশ্চিতকরণ ;
- (১২) রিক্রুটিং এজেন্টদের বৃত্তান্ত সংরক্ষণ ;
- (১৩) রিক্রুটিং এজেন্টদের অফিস, প্রশিক্ষণ কেন্দ্র, যদি থাকে, এবং নিয়োগের উদ্দেশ্যে প্রার্থী নির্বাচনের স্থান পরিদর্শন ;
- (১৪) রিক্রুটিং এজেন্টদের কার্যক্রম মনিটরিং এবং এতদসংক্রান্ত অভিযোগ তদন্ত করা ;
- (১৫) বৈদেশিক কর্মসংস্থানের সুযোগ বৃদ্ধি ও পরিধি সম্প্রসারণের জন্য উদ্যোগ গ্রহণ;
- (১৬) অভিবাসী কর্মীর সামাজিক নিরাপত্তামূলক কার্যক্রম বাস্তবায়ন ;
- (১৭) রিক্রুটমেন্ট সংক্রান্ত কার্যক্রম পরিচালনা; এবং
- (১৮) সরকার কর্তৃক, সময় সময়, প্রদত্ত নির্দেশনা অনুযায়ী কার্য সম্পাদন।

৭। দায়িত্বপ্রাপ্ত কর্মকর্তা, ইত্যাদি নিয়োগ।—(১) আইনের ধারা ২৩ ও ২৪ এর উদ্দেশ্য পূরণকল্পে, সরকার, সংশ্লিষ্ট বিষয়ে যোগ্যতা ও অভিজ্ঞতাসম্পন্ন সরকারি কর্মচারীদের মধ্য হইতে শ্রম কল্যাণ উইং এর দায়িত্ব পালনের জন্য এক বা একাধিক কর্মকর্তাকে নিয়োগ প্রদান করিতে পারিবে।

(২) সরকার, প্রয়োজনে, শ্রম কল্যাণ উইং এর কাজে সহায়তার জন্য প্রয়োজনীয় সংখ্যক অন্যান্য কর্মচারী নিয়োগ করিতে পারিবে।

৮। শ্রম কল্যাণ উইং এর দায়িত্ব ও কার্যাবলি।—(১) শ্রম কল্যাণ উইং নিম্নবর্ণিত কার্যাবলি সম্পাদন করিবে, যথা:—

- (ক) কর্মীদের নিবন্ধন;
- (খ) অভিবাসী কর্মীদের কর্মস্থল পরিদর্শন এবং কাজের অবস্থা তদারকি;

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- (গ) অভিবাসী কর্মীদের সার্বিক কল্যাণের স্বার্থে নিম্নবর্ণিত বিষয়াদিসহ সামগ্রিক বিষয়ে সংশ্লিষ্ট দেশের সরকার এবং কর্তৃপক্ষের সহিত যোগাযোগ রক্ষা করা:—
- (অ) কাজের পরিবেশ;
  - (আ) জীবনমানের অবস্থা;
  - (ই) আইনগত সুরক্ষা;
  - (ঈ) শারীরিক, মানসিক, যৌন ও অন্য যে কোন প্রকার নিপীড়ন ও উহা হইতে সুরক্ষার ব্যবস্থা;
  - (উ) অভিবাসী কর্মীদের সংশ্লিষ্ট দেশে প্রবেশাধিকার;
  - (ঊ) প্রযোজ্য ক্ষেত্রে, অনিয়মিতভাবে অবস্থানরত কর্মীদের নিয়মিতকরণের লক্ষ্যে প্রয়োজনীয় পদক্ষেপ গ্রহণ ;
  - (ঋ) নিরাপদ ও নিয়মানুসারে দেশে প্রত্যাবর্তনের ব্যবস্থা গ্রহণ ; এবং
  - (এ) সরকার কর্তৃক, সময় সময়, নির্দেশিত বিষয়াদি;
- (ঘ) অভিবাসী কর্মীদের চাকরি রক্ষা, তাহাদের ব্যক্তিগত নিরাপত্তা এবং সংশ্লিষ্ট দেশের সরকার, আইন, নীতি এবং অন্যান্য বিষয়ে পরামর্শ প্রদান করা;
- (২) শ্রম কল্যাণ উইং এর দায়িত্ব হইবে নিম্নরূপ, যথা:—
- (ক) নিম্নবর্ণিত বিষয়ে অভিবাসী কর্মীদের সহায়তা প্রদান, যথা:—
  - (অ) চিকিৎসা সেবা প্রাপ্তি;
  - (আ) নিয়োগকারীর নিকট হইতে তাহাদের পাওনা আদায়;
  - (ই) সংশ্লিষ্ট দেশের বিদ্যমান সামাজিক নিরাপত্তা এবং সুবিধাদি প্রাপ্তি;
  - (ঈ) অভিযোগের প্রতিকার লাভে সংশ্লিষ্ট দেশে আইনগত সহায়তা প্রাপ্তি;
  - (উ) বাংলাদেশ সরকারের নিকট অভিযোগসমূহ প্রেরণ;
  - (ঊ) রেমিটেন্স ব্যবস্থাপনা, সঞ্চয় ও বিনিয়োগ এবং দেশে ফেরত আসিবার পর পেশা চিহ্নিতকরণ, ইত্যাদি বিষয়ে পরামর্শ প্রদান ও কর্মশালা বা সেমিনার আয়োজন করা;
- (খ) অভিবাসী কর্মীর অভিযোগের ভিত্তিতে নিয়োগকারী বা সংশ্লিষ্ট দেশের যথাযথ কর্তৃপক্ষের সহিত আলোচনাক্রমে মধ্যস্থতাকরণ ও সমন্বয় সাধন;
  - (গ) জরুরী অবস্থায় বা বাংলাদেশ সরকার কর্তৃক অভিবাসীদের জন্য বিপদজনক বিবেচিত এইরূপ পরিস্থিতিতে অভিবাসীদের প্রত্যাবর্তনের সহযোগিতা প্রদান;
  - (ঘ) অভিবাসী কর্মীদের মধ্যে সামাজিক ও সাংস্কৃতিক বন্ধন উন্নয়ন;
  - (ঙ) নিয়োগকারী কর্তৃক কোন অভিবাসী কর্মীকে নির্যাতন প্রমাণিত হইলে নিয়োগকারীকে কালো তালিকাভুক্ত করিবার সুপারিশ সংবলিত প্রতিবেদন সরকারের নিকট প্রেরণ ;
  - (চ) অভিবাসী কর্মীর সহিত রিক্রুটিং এজেন্ট কর্তৃক কৃত অসদাচরণ, প্রতারণা বা নির্যাতনের বিষয়ে সরকারের নিকট প্রতিবেদন প্রেরণ;

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- (ছ) নিয়োগকারী বা নিয়োগকারীর প্রতিনিধি কর্তৃক উপস্থাপিত চাহিদাপত্র যাচাই ও সত্যায়ন;
- (জ) শ্রম বাজারের অবস্থা সম্পর্কে সরকারকে, সময় সময়, অবহিতকরণ;
- (ঝ) সংশ্লিষ্ট দেশ বাংলাদেশী কর্মীদের কর্মসংস্থানের সুযোগ বৃদ্ধি ও পরিধি সম্প্রসারণের প্রতি বিশেষ গুরুত্ব দেয়া ও উদ্যোগ গ্রহণ;
- (ঞ) প্রতियোগিতাপূর্ণ চাকরি বাজারে সহজলভ্য হয় নাই এইরূপ ক্ষেত্রে কর্মসংস্থানের সুযোগ বিস্তৃত করিবার জন্য নিয়োগকারীদের সক্রিয় করা ;
- (ট) শ্রম কল্যাণ উইং এর কার্যসম্পাদন সম্পর্কিত দলিল নির্ভর বা ইলেক্ট্রনিক ডাটা ব্যবস্থাপনা, ডাটা এবং তথ্য সুব্যবস্থিত উপায়ে সংগ্রহ, বিশ্লেষণ, ব্যাখ্যা এবং অন্তর্ভুক্তকরণ;
- (ঠ) অভিবাসী, অভিবাসী কর্মীর পরিবারের সদস্য বা প্রতিনিধির নিকট হইতে প্রাপ্ত অভিযোগসমূহ রেকর্ড করিবার জন্য প্রতিদিন অনলাইন অভিযোগ সিস্টেম প্রবর্তন ও চেক করা ;
- (ড) অভিবাসী কর্মীদের প্রয়োজনে, নিরাপদ আবাসনের ব্যবস্থা করা;
- (ঢ) নিয়োগকারী বা অন্য কোন ব্যক্তির দ্বারা কোন অভিবাসী কর্মী যৌন বা শারীরিক নির্যাতন, শ্রম শোষণ বা কদাচারের স্বীকার হইয়াছেন বা ঝুঁকিতে রহিয়াছেন মর্মে তথ্য প্রদান হইলে, নিম্নরূপ ব্যবস্থা গ্রহণ করা, যথা:—
- (অ) সংশ্লিষ্ট দেশের আইনানুযায়ী উক্ত কর্মীকে উদ্ধার করা;
- (আ) নিরাপদ আবাসনে থাকিবার ব্যবস্থা করা;
- (ই) প্রয়োজনে, পুলিশের নিকট আনুষ্ঠানিকভাবে অভিযোগ বা আদালতে মামলা দায়েরের ব্যবস্থা করা;
- (ঈ) বাংলাদেশ বা সংশ্লিষ্ট দেশের অন্যান্য প্রতিষ্ঠানে প্রেরণের ব্যবস্থা করা;
- (উ) প্রয়োজনে, চিকিৎসা সেবাসহ কাউন্সেলিং এর ব্যবস্থা গ্রহণ এবং কর্মীর ইচ্ছা অনুযায়ী, অন্য কোন কর্মসংস্থানের ব্যবস্থা বা বাংলাদেশে ফেরত পাঠানোর বিষয়ে প্রয়োজনীয় ব্যবস্থা গ্রহণ;
- (ঊ) সংশ্লিষ্ট কর্মী, দেশে ফেরত আসিবার সিদ্ধান্ত গ্রহণ করিলে নিয়োগকারী অথবা রিক্রুটিং এজেন্ট কর্তৃক ফেরত আসিবার সম্পূর্ণ খরচ প্রদানের, যতদূর সম্ভব, ব্যবস্থা করা; এবং
- (ঋ) সরকারের নির্দেশনা অনুযায়ী, অভিবাসী কর্মীর স্বাস্থ্য সুরক্ষা, সামাজিক কল্যাণ সেবা এবং পেশাগত উন্নয়ন কর্মসূচী গ্রহণসহ সামাজিক সুরক্ষা সেবা প্রতিষ্ঠা;
- (ণ) বৈদেশিক শ্রম বাজার ও অভিবাসী কর্মী সংক্রান্ত বিষয়ে ব্যুরো কর্তৃক যাচিত তথ্যাদি প্রেরণ এবং ব্যুরোর সাথে সমন্বয় সাধন;
- (ত) সরকার কর্তৃক, সময় সময়, প্রদত্ত নির্দেশনা অনুযায়ী কার্য সম্পাদন।

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৯। শ্রম কল্যাণ উইং কর্তৃক অভিযোগ নিষ্পত্তিকরণ।—অভিবাসী, নিয়োগকারী বা রিক্রুটিং এজেন্টের বিরুদ্ধে কোন অভিযোগ প্রাপ্তির পর দায়িত্বপ্রাপ্ত কর্মকর্তা নিম্নবর্ণিত ব্যবস্থা গ্রহণ করিবেন, যথা:—

- (ক) অভিযোগটি যদি কোন নিয়োগকারীর বিরুদ্ধে হয়, তাহা হইলে তিনি নিয়োগকারীর সহিত অভিযোগকারীর নালিশের নিষ্পত্তির চেষ্টা করিবেন ;
- (খ) দফা (ক) অনুযায়ী বিষয়টি নিষ্পত্তি না হইলে, দায়িত্বপ্রাপ্ত কর্মকর্তা অভিযোগকারীকে সংশ্লিষ্ট আদালতে মামলা করিবার জন্য সহায়তা করিবেন ;
- (গ) নিয়োগকারী কর্তৃক অভিবাসী কর্মীর বিরুদ্ধে অভিযোগের ক্ষেত্রে অভিবাসী কর্মীকে চুক্তিপত্রের শর্তাবলী মানিয়া চলিবার জন্য পরামর্শ প্রদান এবং গুরুতর অসদাচরণের ক্ষেত্রে সংশ্লিষ্ট অভিবাসী কর্মীকে দেশে প্রত্যাবর্তনের ব্যবস্থা গ্রহণ করিবেন ;
- (ঘ) অভিযোগটি যদি কোন রিক্রুটিং এজেন্টের বিরুদ্ধে হয়, তাহা হইলে তিনি প্রয়োজনীয় তথ্যাদি এবং সুপারিশসহ বিষয়টি সরকার ও ব্যুরোর নিকট প্রেরণ করিবেন।

১০। দায়িত্বপ্রাপ্ত কর্মকর্তার বিরুদ্ধে ব্যবস্থা গ্রহণ।—কোন দায়িত্বপ্রাপ্ত কর্মকর্তা আইন ও এই বিধিমালার অধীন কোন দায়িত্বপালনে অনীহা বা অনিচ্ছা প্রদর্শন করিলে অথবা অভিবাসী কর্মীকে সহায়তা না করিলে, কোন ব্যক্তি নিজ নামে বা সংস্কৃত ব্যক্তি উক্ত দায়িত্বপ্রাপ্ত কর্মকর্তার বিরুদ্ধে সরকার, ব্যুরো বা বাংলাদেশ দূতাবাস বা মিশনের প্রধান বরাবর সরাসরি লিখিতভাবে বা ইলেক্ট্রনিক পদ্ধতিতে অভিযোগ দাখিল করিতে পারিবে।

১১। ব্যক্তিগত ভিসা সংগ্রহকারী কর্মীদের বহির্গমন ছাড়পত্র প্রদান।—(১) ব্যক্তিগতভাবে সংগৃহীত ভিসাদারী কোন কর্মী বিদেশ গমনের ক্ষেত্রে ফরম-ক অনুযায়ী ব্যুরোর নিকট আবেদন করিতে পারিবে।

(২) ব্যুরো কর্তৃক ক্ষমতাপ্রাপ্ত কর্মকর্তা উপ-বিধি (১) এর অধীন আবেদন প্রাপ্তির ৩ (তিন) কার্য দিবসের মধ্যে বহির্গমন ছাড়পত্র প্রদান করিবে।

(৩) উপ-বিধি (২) এ উল্লিখিত সময়ের মধ্যে ক্ষমতাপ্রাপ্ত কর্মকর্তা বহির্গমন ছাড়পত্র প্রদান না করিলে বা ছাড়পত্র প্রদান করিতে ব্যর্থ হইলে সংস্কৃত কর্মী মহাপরিচালকের নিকট আপিল করিতে পারিবে এবং আবেদন প্রাপ্তির ৩(তিন) কার্য দিবসের মধ্যে মহাপরিচালক আপিল নিষ্পত্তি করিবেন এবং সংস্কৃত কর্মীকে অবহিত করিবেন।

১২। ফি প্রদান।—প্রত্যেক অভিবাসী কর্মীকে, আইনের ধারা ২০ এর উদ্দেশ্য পূরণকল্পে, সরকার কর্তৃক, আদেশ দ্বারা, নির্ধারিত পরিমাণ ফি “৩৬-বিবিধ-১” খাতে প্রদান করিতে হইবে।

১৩। বিজ্ঞপ্তি, ইত্যাদি।—কোন রিক্রুটিং এজেন্ট কর্মী নির্বাচনের জন্য আইনের ধারা ১৯ এর উপ-ধারা (৩) এর শর্তাংশের অধীন অনুমতি পাইবার পর জাতীয় পত্রিকায় বিজ্ঞপ্তি প্রচার করিবে এবং উহার অতিরিক্ত হিসাবে স্থানীয় ও ইলেক্ট্রনিক পত্রিকা এবং নিজস্ব ওয়েব সাইটেও প্রচার করিতে পারিবে।

১৪। প্রশিক্ষণ, পরামর্শ, ইত্যাদি।—(১) ব্যুরো ও রিক্রুটিং এজেন্টগণ বিদেশে প্রচলিত বিধি, প্রবিধান, বৈদেশিক চাকরি ও এতদসংক্রান্ত চুক্তি, কর্মপরিবেশ ও আনুষঙ্গিক বিষয়ে অভিবাসী কর্মীর জ্ঞান আহরণের জন্য, সরকার বা ব্যুরো কর্তৃক অনুমোদিত প্রশিক্ষণ কেন্দ্র বা সেন্টারে, পরামর্শ, ব্রিফিং, ওরিয়েন্টেশন বা প্রশিক্ষণ প্রদানের ব্যবস্থা করিবে।

(২) উপ-বিধি (১) এ যাহা কিছুই থাকুক না কেন ব্যুরো—

- (ক) জেলা কর্মসংস্থান ও জনশক্তি অফিস এবং কারিগরি প্রশিক্ষণ কেন্দ্রের মাধ্যমে সম্প্রসারিত কর্মসূচি গ্রহণ করিবে;

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- (খ) কর্মীদের জন্য নতুন নতুন ও যুগোপযোগী প্রশিক্ষণ ও প্রশিক্ষকদের প্রশিক্ষণ কোর্সের আয়োজন এবং উহার সনদ বা স্বীকৃতি প্রদান করিবে;
- (গ) কর্মীদের প্রশিক্ষণের জন্য একটি প্রমিত কারিকুলাম, প্রশিক্ষণ ম্যানুয়াল ও শিক্ষার উপাদান প্রস্তুত ও প্রকাশ করিবে ;
- (ঘ) কারিগরি প্রশিক্ষণ কেন্দ্র, রিক্রুটিং এজেন্ট কর্তৃক পরিচালিত প্রশিক্ষণ বা পরামর্শ কেন্দ্রসহ অন্যান্য প্রশিক্ষণ কেন্দ্র নিয়মিত পরিদর্শন করিবে এবং সরকারের নিকট প্রতিবেদন দাখিল করিবে;
- (ঙ) অভিবাসীদের শিক্ষাদানের উদ্দেশ্যে প্রামাণ্য চিত্র, পুস্তিকা, ক্যাসেট, ইত্যাদি প্রকাশ করিবে ; এবং
- (চ) বিদেশী নিয়োগকারী বা প্রতিষ্ঠানের সাথে যৌথ উদ্যোগে দেশে ও বিদেশে চাহিদাভিত্তিক প্রশিক্ষণের ব্যবস্থা করিবে ।

১৫। সালিস বা মধ্যস্থতা।—(১) সরকার, আইনের ধারা ৪১ এর অধীন উত্থাপিত অভিযোগ সালিস বা মধ্যস্থতার মাধ্যমে নিষ্পত্তির নিমিত্ত, ব্যুরোর কোন কর্মকর্তাকে ক্ষমতা প্রদান করিতে পারিবে ।

(২) উপ-বিধি (১) এ উল্লিখিত ক্ষমতাপ্রাপ্ত কর্মকর্তা—

- (ক) বিরোধের প্রত্যেক পক্ষকে, তদকর্তৃক নির্ধারিত তারিখ, সময় ও স্থানে, সাক্ষ্য প্রমাণসহ নিজে উপস্থিত হইবার বা উহার পক্ষে প্রতিনিধি প্রেরণের জন্য লিখিত নোটিশ জারি করিবেন; এবং
- (খ) উভয় পক্ষের সুনানি গ্রহণ এবং প্রয়োজনে, তৃতীয় পক্ষের বক্তব্য ও সাক্ষ্য গ্রহণক্রমে সংশ্লিষ্ট রেকর্ডপত্রাদি ও দলিলাদি পর্যালোচনা করিয়া অভিযোগ নিষ্পত্তি করিবেন; এবং
- (গ) দফা (খ) এ বর্ণিত অভিযোগ নিষ্পত্তির প্রতিবেদন লিখিতভাবে সরকার ও ব্যুরোর নিকট দাখিল এবং উহার অনুলিপি পক্ষগণকে প্রেরণ করিবেন ।

১৬। সরকারের নিকট আপিল।—কোন ব্যক্তি, ব্যুরোর কোন কর্মকর্তা বা দায়িত্বপ্রাপ্ত কর্মকর্তার সিদ্ধান্তে সংক্ষুব্ধ হইলে, তিনি উক্তরূপ সিদ্ধান্ত প্রদানের ৩০ (ত্রিশ) কার্যদিবসের মধ্যে, উক্ত সিদ্ধান্তের বিরুদ্ধে সরকারের নিকট আপিল করিতে পারিবেন এবং সরকার আবেদন প্রাপ্তির ৩০ (ত্রিশ) কার্যদিবসের মধ্যে উহা নিষ্পত্তি করিবে এবং এইক্ষেত্রে সরকারের সিদ্ধান্ত চূড়ান্ত হইবে ।

১৭। রহিতকরণ ও হেফাজত।—(১) এই বিধিমালা কার্যকর হইবার সঙ্গে সঙ্গে বহির্গমন, বিধিমালা, ২০০২, অতঃপর উক্ত বিধিমালা বলিয়া উল্লিখিত, এতদ্বারা রহিত হইবে ।

(২) উপ-বিধি (১) এর অধীন রহিত হওয়া সত্ত্বেও, উক্ত বিধিমালার অধীন—

- (ক) কৃত কোন কার্য বা গৃহীত ব্যবস্থা এই বিধিমালার অধীন কৃত বা গৃহীত হইয়াছে বলিয়া গণ্য হইবে; এবং
- (খ) দাখিলকৃত কোন আবেদন, কার্যধারা, ইত্যাদি অনিষ্পন্ন থাকিলে উহা এমনভাবে নিষ্পত্তি করিতে হইবে যেন এই বিধিমালা প্রণীত হয় নাই ।

১৮। ইংরেজিতে অনূদিত পাঠ প্রকাশ।—এই বিধিমালা কার্যকর হইবার পর, সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, এই বিধিমালার ইংরেজিতে অনূদিত একটি নির্ভরযোগ্য পাঠ (Authentic English Text) প্রকাশ করিতে পারিবে:

তবে শর্ত থাকে যে, ইংরেজি পাঠ এবং বাংলা পাঠের মধ্যে বিরোধের ক্ষেত্রে বাংলা পাঠ প্রাধান্য পাইবে ।

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## ফরম-ক

## [বিধি-১১(১) দ্রষ্টব্য]

নিবন্ধন ও বহির্গমন ছাড়পত্রের জন্য ব্যক্তিগত ভিসা সংগ্রহকারী কর্মীর আবেদনপত্র

আবেদনকারীর ব্যক্তিগত তথ্যাদি		
আবেদনকারী কর্মীর নাম:		ছয় মাসের অধিক সময় পূর্বে তোলা নয় এরূপ পাসপোর্ট সাইজের একটি ফটো আঠা দিয়ে লাগান
পিতা/স্বামীর নাম:		
মাতার নাম:		
লিঙ্গ:	<input type="checkbox"/> মহিলা <input type="checkbox"/> পুরুষ <input type="checkbox"/> অন্যান্য	
জাতীয় পরিচয়পত্র নং:		
পাসপোর্ট নং:		
রেজিস্ট্রেশন নং: (যদি থাকে)		
ঠিকানা:	বাড়ি নং এবং/অথবা নাম:	সড়ক নং অথবা নাম:
	এলাকার নাম:	গ্রাম/শহর:
	ইউনিয়ন:	থানা:
	উপজেলা:	জেলা:
	পোস্ট কোড:	বাড়ির নিকটস্থ কোন ল্যান্ডমার্ক:
মোবাইল নং:		
গন্তব্য দেশের নাম:		

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নিয়োগকারীর বিস্তারিত বিবরণ	
১. নিয়োগকারীর নাম:	
২. মালিকের/প্রধান নির্বাহী কর্মকর্তার পুরো নাম, যদি নিয়োগকারী কোম্পানী বা দোকান হয়:	
৩. নিবন্ধিত ঠিকানা, কোম্পানী/ফ্যাক্টরী/দোকান/ অন্য কোন ব্যবসার ক্ষেত্রে (যদি না হয় তাহলে প্রযোজ্য নয় লিখুন):	
৪. আবাসিক ঠিকানা, যদি নিয়োগকারী একক ব্যক্তি হয় (যদি একক ব্যক্তি না হন তাহলে প্রযোজ্য নয় লিখুন):	
৫. রাষ্ট্র ও সিটি কোডসহ টেলিফোন নম্বর:	
৬. ই-মেইল ঠিকানা:	

৭. পেশা বা পদের নাম:		
৮(ক)	মাসিক বেতন/ওয়েজ	
৮(খ)	অভিবাসনের খরচ কে বহন করিবে (বিমান ভাড়া, বিমানবন্দর পরিবর্তন)? (চাহিদা পত্রের শর্তাবলী অনুযায়ী সঠিক বক্সে <input checked="" type="checkbox"/> চিহ্ন দিন)	<input type="checkbox"/> শতকরা ১০০ ভাগ নিয়োগকারী কর্তৃক <input type="checkbox"/> শতকরা ৫০ ভাগ বিমান ভাড়া নিয়োগকারী কর্তৃক এবং শতকরা ৫০ ভাগ বিমানভাড়া ও অন্য সকল খরচ আমি বহন করিব <input type="checkbox"/> শতকরা ১০০ ভাগ আমি বহন-করিব <input type="checkbox"/> অন্য কোন.....
৮(গ)	কর্মসংস্থান চুক্তিতে বর্ণিত মেয়াদ	.....বৎসর.....মাস
৮(ঘ)	বাসস্থান (চাহিদা পত্রের শর্তাবলী অনুযায়ী সঠিক বক্সে <input checked="" type="checkbox"/> চিহ্ন দিন)	<input type="checkbox"/> বাসস্থান নিয়োগকারী কর্তৃক বিনামূল্যের বরাদ্দ করা হইবে <input type="checkbox"/> নিয়োগকারী কর্তৃক সরবরাহকৃত বাসস্থানের খরচ আমি বহন করিব <input type="checkbox"/> আমি বাসস্থানের ব্যবস্থা ও খরচ বহন করিব <input type="checkbox"/> অন্য কোন.....
৮(ঙ)	খাদ্য (চাহিদা পত্রের শর্তাবলী অনুযায়ী সঠিক বক্সে <input checked="" type="checkbox"/> চিহ্ন দিন)	<input type="checkbox"/> নিয়োগকারী প্রতিদিন তিন বেলা খাবার ও পানি বিনামূল্যে সরবরাহ করিবে <input type="checkbox"/> নিয়োগকারী প্রতি কর্ম দিবসে একবেলা খাবার ও পানি সরবরাহ করিবে <input type="checkbox"/> আমি নিজে সকল খাবার ও পানির ব্যবস্থা করিব <input type="checkbox"/> অন্য কোন.....

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৮(চ)	প্রতি দিবসে কর্ম ঘন্টা	
৮(ছ)	জীবন বীমা	
৮(জ)	স্বাস্থ্য বীমা	
৮(ঞ)	প্রতি সপ্তাহে কর্ম দিনের সংখ্যা	
৮(ট)	বৎসরে অনুমোদিত সরকারি ছুটির সংখ্যা	
৮(ঠ)	বৎসরে অনুমোদিত পরিশোধিত অসুস্থকালীন ছুটির সংখ্যা	
৮(ড)	বৎসরে অনুমোদিত পরিশোধিত ছুটির সংখ্যা	
৮(ঢ)	অন্য কোন সুবিধা	

## আত্মীয়/বন্ধুর বিস্তারিত বিবরণ

আমি নিশ্চিত করিতেছি যে, নিম্নবর্ণিত আত্মীয়/বন্ধুর মাধ্যমে আমি চাকরি/ভিসা সংগ্রহ করিয়াছি:

নাম:		
জাতীয় পরিচয়পত্র নং:		
সম্পর্ক :		
গন্তব্য রাষ্ট্রে মোবাইল নং		
বাংলাদেশ এবং গন্তব্য দেশে ঠিকানা:	বাংলাদেশ: বাড়ি নং এবং/অথবা নাম: সড়ক নং অথবা নাম: এলাকা: গ্রাম/শহর: ইউনিয়ন: থানা: উপজেলা: জেলা: পোস্ট কোড:	গন্তব্য দেশ:

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রিক্রুটিং এজেন্ট (প্রযোজ্য বক্সে  চিহ্ন দিন):

- আমি নিশ্চিত করিতেছি যে, আমি কোন রিক্রুটিং এজেন্ট ব্যবহার করি নাই।
- আমি অভিবাসন ও অন্যান্য বিষয়ে প্রয়োজনীয় দলিলাদি পূরণের জন্য রিক্রুটিং এজেন্টের সহায়তা লইয়াছি। আমি যে রিক্রুটিং এজেন্ট ব্যবহার করিয়াছি উহার বিবরণ নিম্নরূপ:

রিক্রুটিং এজেন্টের নাম:	লাইসেন্স নম্বর:
ঠিকানা:	রিক্রুটিং এজেন্টের সদস্যের নাম যিনি আমার রিক্রুটমেন্ট পরিচালনা করিবেন:
অফিসের ফোন নং:	রিক্রুটিং এজেন্টের সদস্যের মোবাইল নং:
আমি চাকরির চুক্তিনামা স্বাক্ষর করিয়াছি:	<input type="checkbox"/> হ্যাঁ <input type="checkbox"/> না

সংযুক্ত দলিলাদি

আমি নিম্নবর্ণিত দলিলাদি সংযুক্ত করিতেছি এবং যাচাইয়ের জন্য মূল কপি আনিব:

- মেশিন রিডেবল পাসপোর্টের কপি, ন্যূনতম ছয় মাসের মেয়াদসহ;
- কর্মসংস্থানের ভিসার কপি;
- ওয়ার্ক পারমিটের কপি, যদি গন্তব্য রাষ্ট্রের আইন অনুযায়ী আবশ্যিকীয় হয়;
- আইন অনুযায়ী কর্মসংস্থান চুক্তির কপি;
- কর্মবিবরণী অথবা চাহিদা পত্রের কপি;
- কার্যকর রিটার্ন টিকেটের কপি অথবা একমুখী যাত্রার টিকেট, যদি চুক্তি এক বৎসরের অধিক হয়;
- পরিবারের তথ্যাদি, জরুরী যোগাযোগ এবং উত্তরাধিকারীর বিস্তারিত তথ্যাদি সম্বলিত ফরম-৬ এর মূল কপি;
- দুইটি ব্যাংক হিসাবের প্রমাণপত্র, একটি স্বামী বা স্ত্রীর যৌথ নামে, অপরটি নিজ নামে;
- জীবন বীমার প্রমাণপত্র;
- স্বাস্থ্য বীমার প্রমাণপত্র;

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বাংলাদেশ গেজেট, অতিরিক্ত, জুন ১১, ২০১৭

- স্বাস্থ্য পরীক্ষার জন্য সরকার কর্তৃক অনুমোদিত হাসপাতাল বা ক্লিনিক হইতে প্রদত্ত কর্মক্ষম সার্টিফিকেট;
- নির্বাচিত কর্মী গন্তব্য দেশের নিরাপত্তা, ফৌজদারী বা অভিবাসনের জন্য হুমকিস্বরূপ নন স্থানীয় পুলিশ কর্তৃপক্ষ কর্তৃক জারীকৃত একরূপ নিরপরাধ সার্টিফিকেট/অপরাধ যাচাই রিপোর্ট;
- জীবন বৃগুস্তের কপি;
- জন্ম নিবন্ধন সার্টিফিকেটের কপি; এবং
- রিক্রুটিং এজেন্সির সহিত সেবা চুক্তির কপি, যদি বৈদেশিক কর্মসংস্থানের সঠিকতা যাচাই ও অভিবাসন দলিলাদি প্রস্তুতির কাজে রিক্রুটিং এজেন্সির সেবা গ্রহণ করা হয়।

**ঘোষণা**

আমি এই মর্মে নিশ্চিত করিতেছি যে, যে সকল তথ্যাদি এই ফরমে দেওয়া হইয়াছে আমার জানামতে উহা সঠিক আছে এবং আমি বিশ্বাস করি যে, যদি প্রদত্ত তথ্যাদি সত্য না হয় বা দলিলাদি জাল হয় তাহলে আমাকে ইমিগ্রেশন ক্লিয়ারেন্স নাও প্রদান করা হইতে পারে অথবা পরবর্তীতেও যদি জালিয়াতি বা ভুল পাওয়া যায় তাহা হইলে আমাকে ফেরত পাঠানোও হইতে পারে।

কর্মীর স্বাক্ষর:

নাম:

তারিখ:

স্থান:

রাষ্ট্রপতির আদেশক্রমে

বেগম শামছুন নাহার  
সচিব।

মোঃ আব্দুল মালেক, উপপরিচালক, বাংলাদেশ সরকারী মুদ্রণালয়, তেজগাঁও, ঢাকা কর্তৃক মুদ্রিত।

মোঃ আলমগীর হোসেন, উপপরিচালক, বাংলাদেশ ফরম ও প্রকাশনা অফিস,  
তেজগাঁও, ঢাকা কর্তৃক প্রকাশিত। web site : www.bgpress.gov.bd



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