

**RESEARCH PAPER****The Protection of Human Rights of Women Migrant Workers Under the International Legal Framework****¹Amna Anwar Siddiqui* and ² Prof. Dr. Farkhanda Zia Mansoor**

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***Corresponding Author:** amna.siddiqui045@gmail.com**ABSTRACT**

International labour migration brings a number of economic and development benefits to both the labour sending and receiving states. However, migrant workers who are women in particular face a multitude of challenges at different parts of the migration journey. They encounter exploitative practices during the recruitment process in the state of origin and are subjected to discriminatory treatment during their employment in the destination state. This research article explored the international legal framework, consisting of relevant human rights instruments and ILO labour standards, that effectively protect the rights of the female migrant labour force. The analysis revealed that international human rights treaties and labour standards bestowing legal, cultural, social, and economic rights are also applicable to women migrant workers and accord them protection from acts of discrimination and exploitation. Lastly, governments should formulate gender-sensitive migration procedures to ensure safe migration and legal protection for female migrant workers in overseas employment.

KEYWORDS: CEDAW, Discrimination, Human Rights, ILO, UN, Women Migrant Workers**Introduction**

International labour migration refers to the movement of workers across national borders to another country for employment purposes. Organized labour migration can bring growth and development to both the sending State in the form of remittances, transfer of knowledge and relieving unemployment pressures and in the destination States by meeting skilled labour shortages in essential occupations. While migration improves access to economic resources and opportunities for women from less developed countries, female migrant workers experience a number of abuses in their migration journey that affect their human rights such as violence, exploitation, and trafficking by recruiting agents and employers.

Global organizations defending human rights have published reports on the abuse of female migrant workers, in particular domestic workers, who are often subjected to discrimination, forced labour, debt bondage, physical abuse, and harassment. They encounter long working hours, delayed or unpaid wages, confiscation of identity documents, restrictions on freedom of movement, and inadequate living arrangements. Domestic service sector is often unregulated and excluded from labour protections on pay, minimum wage, working hours, safe working conditions, medical care or social protections. On registering a report of abuse or employment discrimination, women migrant workers may lose their work or residency permits. Such workers have little recourse to justice, consular assistance or grievance redressal mechanisms and are often left at the mercy of their employers.

Wickramasekara (2011) observes Sri Lanka has the highest share of female migration in South Asia that is employed overseas. Labour migrants from the South

Asian region are predominantly employed in the Gulf States. Resultantly, South Asian governments have benefited economically in the form of significant remittance inflows from the temporary labour migration to the Gulf region. However, restrictive migration policies and exclusion from labour laws in destination countries in low wage occupations such as domestic work make South Asian migrant women workers vulnerable to discrimination, violence, and maltreatment at the workplace. They have inadequate access to justice, healthcare, social, and maternity protection.

This study aims to focus on the extensive protection of the human rights of women migrant workers under the international legal framework consisting of treaties and conventions. In compliance with their commitments as Parties to the international conventions, States are obligated to develop laws and policies that promote safe migration procedures and eliminate discriminatory practices to ensure safe migration and uphold the rights and security of female migrant labour.

Literature Review

A previous research article discussed the effect of Migrant Workers Convention on the rights of women migrant labour and using the intersectionality approach, the study underscored that while the adoption of this Convention led to significant protections for migrant workers, the rights of women migrant workers would be better protected in light of key human rights instruments that have been ratified by a large number of States (Satterthwaite, 2005). Vittin-Balima (2002) further provides an overview of the role of ILO standards for the protection of migrant workers, especially those in an irregular situation who may be liable to exploitation or crimes of trafficking. Hainsfurther, (2008) discusses how CEDAW, as one of the most widely ratified legal instruments, may be an effective tool to empower women migrant workers.

The study conducted by Wickramasekara (2011) provides a comparative review of legislative and policy frameworks governing labour migration in South Asia, including Pakistan, India and Sri Lanka. The author highlights the importance of female migration and mentions the increasing outflows of labour migration, primarily of low and semi-skilled workers, from South Asia towards the Gulf region in the last two decades. The study identified the challenges relating to regulation of labour migration in South Asia regarding fair recruitment practices and high costs of migration, and acknowledges that only a few countries have ratified the major international instruments on migrant workers. A study by Auwal (2010) analyses how migrant workers from developing countries are exploited by recruiting agencies and employers in the Gulf States and are routinely deprived of their dignity and fair wages.

Material and Methods

This study is a descriptive research that analysed the protection of the rights of women migrant workers through examination of primary sources such as international treaties, conventions and labour standards. Secondary sources such as law journals, and reports on exploitation of migrant domestic workers published by international human rights organisations were also utilized for the conduct of this study.

The United Nations (UN) Conventions

The Migrant Workers Convention (MWC) is the principal instrument aimed at protecting fundamental rights of all migrant workers, including women workers, without any kind of distinction including nationality, age, marital status or sex. Under the Convention, all women migrant workers are entitled to pivotal human rights, including the right to life, liberty and security, equality and humane treatment; decent living conditions; freedom of opinion and expression; freedom to form associations and labour

unions; protection from torture, forced or compulsory labour; and freedom of movement. Other than an authorised public official, it is prohibited for anyone to confiscate or destruct identity and travel documents or work permits. The Convention recognizes that irregular or undocumented workers are particularly vulnerable to human trafficking as they are frequently employed in unfavourable work conditions. It calls upon States Parties to facilitate access to consular assistance for foreign migrants involved in employment disputes and to take measures for their safe departure to their native countries. The MWC also established the Committee on Migrant Workers tasked with overseeing the enforcement of the Convention in a particular Member State. However, in practice, only 58 countries have ratified this Convention to date. Sri Lanka and Bangladesh are the only South Asian countries to have acceded to the MWC. Notably, the countries hosting a sizeable population of foreign migrant workforce have not ratified the MWC, making it an ineffective mechanism in obligating States to provide basic rights to migrant labour residing in their territory.

CEDAW is a landmark instrument that aims to achieve worldwide gender equality and is considered as the international bill of rights for women. It defines discrimination as a gender based distinction that violates rights of women in the civil, economic, political, cultural and social fields. It obligates States Parties to adopt legislative actions eliminating discrimination as well as discriminatory cultural practices against women by any person or organization in order for women to enjoy equal rights to education, work, equal remuneration, free choice of employment, paid leaves, political and public life participation, ownership of property, health care and social security. The CEDAW Committee oversees the application of the Convention through enactment of national laws and other measures to promote the fundamental freedoms of women. The CEDAW Committee has also called for the protection of all classes of migrant women from discrimination in all forms. According to the Committee: (a) States Parties must put in place safe migration procedures to prevent recruitment agencies from exploiting female migrant labour; (b) States Parties are to safeguard women migrants at risk of abuse and gender-based violence; (c) States Parties should adopt laws that accord the same protections to women migrant workers within their jurisdiction that are extended to other workers in terms of workplace safety, wages, hours of work, and leaves; and (d) States Parties should initiate pre-departure training and awareness-raising programmes that are centered on terms and conditions in work contracts, labour rights in the host states, health services, complaint redressal mechanisms, and consular protection. CEDAW is one of the most widely ratified treaties with ratifications by 189 States Parties to date. The Convention may therefore be an effective tool to hold States accountable for violation of the rights of foreign female migrant labour in their jurisdiction. It offers protection to all women against all forms of discrimination and its applicability would strengthen domestic labour protections for both registered and unregistered migrant workers.

The ICESCR is a core rights treaty that directs States Parties to bestow economic, social and cultural rights in the enumerated in the Covenant on all persons without distinction of any kind including sex, race, religion, nationality or ethnic origin. Under the Covenant, States Parties acknowledge the right of all workers to safe and secure workplace environments, fair wages, equal remuneration and opportunities for both men and women, adequate living standards, hours of rest and paid leaves. The CESCR Committee monitoring the implementation of the Covenant's provisions, observed that foreign migrant workers, especially undocumented or irregular migrants, are highly susceptible to workplace exploitation in the form of long work hours, low wages, unsafe work conditions, unfair dismissal from work and expulsion. The Committee recommends States Parties to develop sound legal and judicial mechanisms to effectively address complaints of abuse against migrant workers and ensure access to remedies. The Committee further advised States Parties to execute bilateral agreements with host

countries and establish procedures for safe and regular migration to protect migrant workers from exploitation and trafficking.

The ICCPR is another key instrument that commits States to uphold civil and political rights for all individuals. The Covenant calls for the prevention of any cruel, inhuman or degrading treatment, arbitrary arrest or detention, and prohibits slavery in its all its forms, including forced or compulsory labour. The UN Convention against Torture further calls upon States to prohibit acts inflicting torture, brutal, cruel or humiliating treatment or punishment. According to this Convention, the State Party shall ensure redress, legal assistance and rehabilitation for victims of torture.

The ICERD is a widely ratified treaty that instructs all States Parties to abolish all types of discriminatory practices on the basis of race and advocate global cooperation among all nations. The Convention declares that everyone is entitled to civil, economic, political, cultural and social rights without distinction on grounds of race, nationality or ethnicity. Countries commit to eradicating race-based discrimination at the workplace and promote equality in remuneration, choice of occupation, equal treatment before tribunals, and to security of person against violence inflicted by any person or organization. The ICERD Committee has directed member States to: (a) enact legislative measures preventing race-based discrimination that will be applicable to all foreign nationals irrespective of their immigration status; (b) address discrimination faced by family members and dependents of non-national workers; (c) eliminate discrimination against non-citizens regarding conditions and requirements of work; and (d) establish complaint redressal mechanisms for non-national persons who face unjust work conditions or deportation orders by biased employers. States Parties are to take measures to prevent abusive practices encountered by foreign domestic workers faced including passport retention, physical and sexual assault, restriction on movement and illegal confinement.

The UN Trafficking Protocol provides for measures to block and combat human trafficking, especially of women and children, with the aim of exploitation in the form of sexual abuse, forced labour, slavery or practices akin to slavery. The Protocol for Migrant Smuggling for the prevention and detection of smuggling of migrants, particularly women and children. The Protocol defines migrant smuggling as facilitating the unlawful entry of a non-national person into a State Party for financial or other material benefit. The Protocol requires member States put in force legal measures to hinder conditions that expose vulnerable migrants to inhumane and cruel treatment.

The Global Compact for Migration was adopted on 10 December 2018 and is the first ever UN global agreement pertaining to international migration. It reaffirms the commitment of the States to defend the rights of all migrants and their families, irrespective of their migratory status. Governments undertake to pursue policies that incorporate gender dimensions of migration that will address a range of challenges faced by women migrant workers including exploitation by recruiting agents, and gender-based violence, and expediting access to legal redress, skills training, and secure remittance sending channels.

International Labour Organization [ILO] Conventions

All international labour standards, including the eight core ILO Conventions related to the abolition of forced labour, freedom of association, collective bargaining, equal remuneration, discrimination, minimum age, and the worst forms of child labour, are applicable to migrant workers. Besides the core labour standards, there are specific ILO Conventions that safeguard the rights of foreign migrant workers.

Under the ILO Convention No.97, member States are required to treat national workers and non-national migrant workers equally without any distinction on grounds of sex, nationality, race or religion in the following subjects: (a) remuneration; (b) trade unions activities and collective bargaining; (c) accommodation; (d) social security; and (e) legal proceedings related to the Convention. Migrant workers shall be facilitated during their employment journey and be provided with adequate medical assistance.

The ILO Convention No.143 calls for respecting the basic human rights of all migrant workers, and provides measures to combat abuses such as smuggling and trafficking of migrants, including the those who are undocumented. Each Member to this Convention is required to support equal opportunity and treatment in employment, social security, trade union and cultural rights of regular migrant workers. The Recommendation No. 151 supplements the ILO Convention No.143 and provides non-binding guidelines to Members on equality of opportunity and residence rights of migrant workers.

The ILO Convention No.189 is the first Convention that relates to protection of human rights of all domestic workers, that includes migrant domestic workers. It requires governments to regulate recruitment agencies, and prohibit retention of identity and travel documents of domestic workers. The Convention stipulates rights for domestic workers such as freedom of association, collective bargaining, fair terms of employment, occupational health and safety, minimum wage coverage, weekly days off, limits to hours of work, decent living conditions, social security, complaint mechanisms, and access to legal remedies. Member States are to work towards elimination of forced labour, child labour, all forms of abuse, violence, discrimination, and harassment.

The Convention No.189 further sets out standards concerning migrant domestic workers that includes: (a) a written contract with information about terms of employment prior to migration; (b) specification of circumstances that entitle migrant domestic workers to repatriation at the expiration of term of employment; and (c) protection from exploitation by unregistered recruiting agencies. Till date, this Convention has been ratified by 36 countries. The accompanying Recommendation No.201 is non-binding guide to member states to provide labour protections and decent work conditions for domestic workers.

The ILO Convention No.190 and the associated Recommendation No.206 direct member States to combat acts of violence and harassment at the workplace. The Convention covers all workers in all categories employed in every formal or informal sector such as migrant domestic workers. It obligates each member State to ensure that the element of violence and harassment at the work place is addressed in migration policies in order to protect the rights of women workers.

Female Labour Migration from Pakistan

The Bureau of Emigration and Overseas Employment (BEOE) is the central institution of the Federal Government regulating and monitoring the emigration process in Pakistan in accordance with the Emigration Ordinance, 1979 and the Emigration Rules, 1979. To protect female migrants from exploitation, the Government of Pakistan has set an age limit of 35 years for women proceeding as maid servants, that can be relaxed by five years in special cases under the Emigration Rules, 1979. The Prevention of Trafficking in Persons Act, 2018 provides for measures to prevent and combat human trafficking in Pakistan, especially of women and children. The Act states that the offence of trafficking in persons shall include recruiting, harbouring, transporting or obtaining another person for compelled labour.

According to an ILO study (2020), between 1971 and 2019, more than 10.48 million Pakistani nationals went overseas for employment purposes, with the vast majority being men. Saudi Arabia and the United Arab Emirates were the top destinations for Pakistani labour migrants. However, women labour migrants from Pakistan comprised of only 0.4 per cent or 40,807 of the total migrant workers in the same period. The largest category of female workers migrated as domestic workers/housemaids, followed by doctors and nurses, helpers, general workers, managers and clerical staff. The BEOE reports that in the year 2020, only 1727 women emigrants from a total of 224,705 emigrants were registered for employment overseas. The low participation of Pakistani female migrants for overseas employment could be attributed to a combination of sociocultural constraints and economic challenges that affects their access to jobs, quality education and required skills. Besides high costs of migration, a major obstacle is lack of information about safe migration and work opportunities overseas.

Pakistan has ratified several international conventions that provide protection to women migrant workers, including CEDAW, ICERD, and ICESCR. However, the country has not ratified the UN MWC or the ILO Conventions on labour migration. Pakistan is also a member of the Colombo Process and the Abu Dhabi Dialogue that deals with South Asian labour emigration.

Conclusion

Women migrant workers experience a wide range of economic injustice, violence, discrimination and abusive labour practices. However, there are a number of international instruments that regulate international labour migration, protect human rights of female migrant labour irrespective of their nationality and legal status, and promote equal opportunity and treatment. The MWC is the principal treaty that secures the rights of all migrant workers and their family members. While the MWC aims to eliminate the exploitation of labour in the migration process, there are other rights instruments that protect non-national migrants from discrimination and exploitation such as the ICERD. The ICERD is one the most widely ratified international treaties dedicated to tackling all forms of racial discrimination. It can play a key role on eliminating racial discrimination against non-national migrant workers. CEDAW is a comprehensive treaty on women's rights, requiring States to undertake measures to achieve gender equality and economic development of women. As one of the most ratified treaties, CEDAW can play a critical function in strengthening the rights of women migrant workers. All core human rights treaties such as the ICESCR and ICCPR contain rights that apply equally to non-national migrant workers as to any other person. The ILO Conventions on migration also provide adequate protection to women migrant workers in the labour sending and receiving states with the aim of preventing abusive practices. As Parties to the UN treaties and ILO conventions, States are bound to uphold human rights of women migrant workers by enactment of gender-responsive legislation, promotion of safe migration, adoption of counter-trafficking measures and provision of legal and medical aid.

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