

MANAGEMENT OF MIGRATION AND HUMAN RIGHTS PERSPECTIVE

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Abstract

This paper provides an overview related to management of migration and human rights. The paper lays emphasis on theoretically road map for the better understanding of the human rights specifically the vulnerable migrant. To eliminate widespread discrimination against the migrant workers and members of their families a Convention was adopted by the General Assembly of United Nations on December 18, 1990. The Convention came in to force on 1 July 2003. Migrant means is a person who is to be engaged or has been engaged in a remunerated activity in a State of which he or she is not a national. The expression member of the family has also been defined as persons married to migrant workers or having with them relationship that according to applicable law. In 2013, United Nations General Assembly High-Level Dialogue on International Migration and Development represents a key opportunity to address in a comprehensive manner the human rights dimensions of migration at the international level and to foster more effective cooperation and coherence between States, international organisations, civil society actors and other stakeholders. In this paper attempt will made to explore why it is important to embed the human rights framework and a human rights-based approach within the global institutional architecture on migration. Proper governance of migration and human rights explore future directions in this regard. Migrant workers are the human asset of the receiving country if managed well otherwise it increase the burden on economy.

Keywords: Migration, human rights, discrimination, Council of States, United Nation and International Conventions.

2. Origin and Development of Human Rights

'Human Right' are those rights, which are inherent in human beings irrespective of caste, religion, sex and nationality. Individual is entitled to some basic rights, without which we cannot live as human beings. All rights, which are essential for the maintenance of human

equality, dignity, may be called as human rights. Human rights are the natural rights of the human. It is also called as basic rights or fundamental rights. Human rights are essentially for every individual. They are not created by any legislature through legislation and are not subject to amendment. Section 2(1) (d) of the Protection of Human Rights Act, 1993 defines 'human rights': "Human Rights mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international Covenants and enforceable by Courts in India." The history of human rights can be traced to ancient times. Human rights were admitted during the Vedic times. In the Rigveda, it was mentioned three rights i.e. the right to body, right to dwelling place and right to life. At the time of Buddhism human life was based upon human rights. During the time of Roman Empire, human rights were most important. During the ancient period and medieval period, human rights were recognized and maintained. In the modern times, these rights are important place in the society. Two great revolutions, namely the American Revolution and the French revolution which occurred respectively in 1776 and 1789 provided a great support to the human rights. Human rights were based on four theories such as natural law theory, the positive law theory, the historical theory and the idealistic theory. The General Assembly of the United Nations adopted this Declaration on 10th December, 1948. It is the first Universal declaration on Human rights, which is the basic international pronouncement of human rights. This declaration contains Preamble and 30 Articles. The provisions of 30 Articles may be classified as general provisions, civil and political rights, economic, social and cultural rights and conclusion. Number of conventions has been adopted under the guidance of the United Nations. These conventions assist for the prevent of certain acts which are being inhuman such as genocide, apartheid, slavery and slave trade, forced labour, torture, cruel, inhuman and degrading treatment and traffic in persons.

3. Migrant Workers

It is the issue to manage the migrant peoples efficiently and allocate these human resources for more efficient productive purposes. At international level more attempts are making for better administration of the migration issue. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was adopted by resolution 45/158 of 18 December 1990 at the forty-fifth session of the General Assembly of the United Nations. The Convention came into force on July 1, 2003 in accordance with Article 87 Para 1 of the Convention. As on June 16, 2006 the Convention had 34 States

Parties. It seeks to establish minimum standards that States parties should apply to migrant workers and members of their families, irrespective of immigration status. A migrant worker has been defined under Article 2 of the Convention as a person who is to be engaged or has been engaged in a remunerated activity in a State of which he or she is not a national. 18 December 2015, will be celebrated as the 25th anniversary of the International Convention on the protection of the rights of all migrant workers and members of their families. The global campaign started by Migrant Forum in Asia network and affiliated civil society organizations and trade unions, together with the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the ILO. The platform provides a space for all stakeholders to promote the human rights of migrant workers and the ratification of the Convention. The Committee started campaign on ending child immigration detention, migrant domestic workers, forced labour, contributions of migrant workers to countries of origin and host countries, and promotion of the ratification of the Convention. Many migrants move for economic reasons. They are in search of better socio-economic perspectives and seek to job in abroad. Some face poverty in their home country and see no choice but migrating to survive. The object behind the migration is to obtain job opportunities. Migrant of workers results to brain drain and brain gain.

International Bill of Human Rights

1. Universal Declaration of Human Rights (1948)
2. International Covenant on Civil and Political Rights (1966)
3. International Covenant on Economic, Social and Cultural Rights (1966)

Other Core Human Rights Instruments (Thematic or Protecting Specific Groups)

1. International Convention on the Elimination of All Forms of Racial Discrimination (1965)
2. Convention on the Elimination of All Forms of Discrimination Against Women (1979)
3. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
4. Convention on the Rights of the Child (1989)
5. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

4. Research Methodology

4.1 Objectives of the Study

- 1) To study the International Conventions on migrant workers and members of their families.
- 2) To find out the main problems faced by migrant workers and members of their families.
- 3) To suggest the remedial measures to the problems faced by migrant workers and members of their families.

4.2 Hypothesis

- 1) International migration leads to increased international collaboration and transmission of knowledge.
- 2) Amnesty International and other NGOs are also playing a vital role in the protection of human rights of migrant workers.
- 3) Migrant workers are the human asset of the receiving country if managed well.

4.3 Research Design

4.3.1 Scope of the Study

This paper covers only exploratory results of migrant workers and members of their families.

4.3.2 Limitations of the Study

This paper is useful for the study the migrant workers and members of their families. Only secondary data is used for preparation of this paper. This paper is in descriptive nature.

4.3.3 Source of Data

For the preparation of the present paper only secondary data is used i. e. books, magazine, journals, internet, Government publications etc.

5. Results and Discussion

International Convention protects the rights of migrants. Migrants are not only workers, they are also human beings. Migrant workers create the positive and negative effects of both the receiving and sending countries. The result of migrant of workers depends on the optimum utilisation of the available labour force. A country which utilise the migrant workers as a demographic divided will be develop its natural resources. The rules and regulations of the migrant workers are not common all over the world. The UN attempt regarding the protection the rights of migrant of workers are appreciable. Amnesty International and other

NGOs are doing their best in the protection of human rights. Migrants are often not informed of their rights to appeal and of the status of their situation. The lack of awareness of the right to appeal and access to free legal counsel is the main constraint in human rights. Amnesty International and NGOs are carrying the programmes to educate people for their human rights. For the protection of the rights of migrant of workers a procedure is developed. Migrant workers face the citizenship, cultural, social, economical and legal problems.

Implementation Procedure

The Committee was formed for the implementation of the rights of a migrant worker and members of his family. A Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families was set up to monitor States Parties compliance with their obligations under the Convention. The Committee met for the first time on 1st March, 2004 in Geneva to set up rules of procedure and to develop an agenda.

Reporting System

It is compulsory to every States parties to report to the Committee on legislative, judicial, administrative and other measures they have taken according to the provisions of the Convention within a year after its entry into force in that country, and every five years thereafter and whenever the Committee so requests. Committee examine the reports submitted by the State Party. The Committee shall present an annual report to the General Assembly of the United Nations.

Inter-State Communications System

Inter-State communications system has been recognised under Article 76 of the Convention. Inter-State communications take place when State party claims that another State party is not fulfilling its obligations under the Convention. Inter-State Communication system is optional and shall come into force when ten States parties have made a declaration.

Individual Communications System

The Committee has a power to receive and consider communications from or on behalf of individuals who claim that their individual rights have been violated by the State party. The

Committee consider communications when information received to it. The Committee shall forward its opinion to the State party and to the individuals.

Rights of the Migrant Workers

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) - ICRMW includes the following rights.

1. They shall be free to leave any State, including their State of origin, without restrictions (Article 8, Para 1) and the right to enter and remain in their State of origin (Article 8, Para 2)
2. Protection of the right to life under the law (Article 9)
3. Prevention from subjection to torture or to cruel, inhuman or degrading treatment or punishment (Article 10)
4. Forbidding of slavery or servitude (Article 11, Para 1)
5. Forbidding of forced or compulsory labour (Article 11, Para 2)
6. Right to freedom of thought, conscience and religion (Article 12)
7. Right to hold opinions without interference (Article 13, Para 1) and right to freedom of expression (Article 13, Para 2)
8. Protection from arbitrary or unlawful interference with his or her privacy, family, home, correspondence or other communications (Article 14).
9. Protection from arbitrary deprivation of property (Article 14)
10. Right to liberty and security of person (Article 16, Para 1)
11. Protection against violence, physical injury, threats or intimidation whether by public officials or by private individuals (Article 16, Para 2)
12. Protection from arbitrary arrest or detention (Article 16, Para 4)
13. Information regarding legal rights while under arrest or detention (Article 16 Para 5) or committed to prison or custody pending trial (Article 16, Para 7)
14. Right to equality with nationals of the State concerned before the courts and tribunals (Article 18)
15. No migrant worker or members of his or her family shall be imprisoned merely on the ground of failure to fulfil a contractual obligation (Article 20)
16. Each case of expulsion must be examined and decided individually. Collective expulsion of workers has been declared illegal (Article 22)

6. Conclusion

1. Migrant of workers results to brain drain and brain gain.
2. Migrant of workers helps for economic development of the receiving countries
3. The principles and standards of International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provide the framework for human rights.
4. International migration leads to increased international collaboration and transmission of knowledge.
5. The International Convention on human rights is an instrument for the protection of rights of migrant workers.
6. Amnesty International and other NGOs are also playing a vital role in the protection of human rights of migrant workers.
7. Migration provides employment opportunities to skilled, semi-skilled and unskilled workers.
8. Migrant workers are the human asset of the receiving country if managed well.

7. Suggestions

1. Migrant workers are required to give better human treatment by the receiving countries.
2. Development of legal environment for the migrant workers in the receiving countries.
3. Migrant workers are the human asset of the receiving country so it required proper administration.
4. Create assured trust among the migrant workers for the protection of their rights.
5. The efforts of Amnesty International and other organisations are required to reach the grassroots level for better administration of migrated workers.
6. Proper cooperation and coordination among the both the receiving and sending countries on migration issue.
7. Development of social and political relationship in receiving and sending countries.

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