



## **Migrant Workers under the Domestic Law and International Labour Organization (ILO) Convention in Perspective of Malaysia**

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### **ABSTRACT**

Malaysia has profited extraordinarily from the employment of migrant workers in a few financially imperative areas. Amid the most recent two decades, these workers have given the labour that has fuelled the nation's development as an upper-centre wage nation. However, guaranteeing that migrant workers get reasonable treatment keeps on demonstrating troublesome, with reports of mishandling in a few major industries. In light of late improvements in international trade and more scrutiny examination of worldwide supply chains, there has been expanded weight from the global group to order approach and institutional changes that will better ensure the rights of migrants. The International Labour Organization (ILO) has been giving specialized help to the government and social accomplices to reinforce labour migration administration in Malaysia. Key territories of work have included contributing inputs to draft enactment and reciprocal agreements, enhancing the accumulation of labour migration statistics. The insurance of workers employed in a nation other than their nation of root has dependably had a critical place among the exercises of the ILO, since more than whatever other specialists they are at risk to misuse, especially on the off chance that they are in an unpredictable circumstance and are casualties of the trafficking of people. This paper concentrates on the migrant worker, assurance of whether Domestic Law or ILO Convention and the current insurance that is accessible in Malaysia's employment laws.

*Keywords: Domestic Law, ILO Convention, Malaysia, Migrant Workers.*

### **1. INTRODUCTION**

There were more than 30 million migrant workers in the Asia and the Pacific area in 2016. This district is likewise encountering feminization of migration as women's contained 42% of migrants in Asia and 50% in Oceania. The stream of undocumented migrants in Asia Pacific is the biggest contrasted with different locales on the planet and is for the most part between neighbouring nations. Myanmar's, Cambodians and Laotians represented 3.1 million of migrants in Thailand and half of them are undocumented. In Malaysia, half of the 1.8 million enrolled migrants were from Indonesia in 2015, and it was trusted that the

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proportion of legitimate and undocumented migrants in Malaysia was 1:1. Undocumented migrants are likewise alluded to as sporadic or illicit migrants; a person, who, inferable from the unapproved section, breaks of a state of passage, or the expiry of his or her visa, needs lawful status in a travel or host nation. This paper focuses on the Malaysian migrant worker, possible ways to implement domestic law and International Labour Organization (ILO) convention.

Malaysia is rumoured to have the biggest number of migrant workers in Asia. The administration arranges these migrant workers into recorded and undocumented migrants. Some say, consistent migrants and sporadic migrants. Some utilises the term 'illegal migrants', the point at which they allude to the undocumented migrants, yet the term is unfavourable as no individual no person ought to ever be called unlawful. At last, the last segment manages the position of the ILO towards differentiating not just negative effects that migration caused if not legitimately controlled but rather likewise towards the advancement of a nice work motivation

## **2. THE MIGRANT WORKERS PHENOMENON**

The phenomenon of migration is characterized by the International Organization for Migration (IOM) as "a procedure of moving, either over a worldwide fringe or inside a state. Incorporating any sort of development of individuals, whatever its length, structure, and causes; it incorporates exiles, dislodged people, evacuated individuals, and financial migrants". This phenomenon has been a piece of history since the absolute starting point. Individuals relocate for various reasons, yet more often than not they migrate to improve their circumstance, in social, physical and money-related terms. The world is traditionally partitioned into two sections: North and South. The North is portrayed by the nearness of created nations, while the South, and then again, is for the most part described by the nearness of creating nations.

The expression "migrant worker" has distinctive authority implications and intentions in various parts of the world. The United Nations' definition of migrant worker is people who were working outside of their nation of origin. Some of these are called expatriates. A few nations have a huge number of foreign workers. Some have a huge number of unlawful immigrants and the greater part of them being workers. As per the International Labour Organization (ILO) starting at 2014, there were an expected 232 million international migrants on the planet (characterized as people outside their nation of inception for 12 months or more) and around half of them were evaluated to be monetarily dynamic (i.e. being utilized or looking for business).

As indicated by the Panos Network, it is never fitting to allude to shelter searchers or displaced people as "illegal migrants". From one viewpoint, their

explanations behind moving are not quite the same as those of migrants, and on the other, international law perceives that those escaping strife or mistreatment may need to cross global outskirts without approval and ought not to be punished for doing so. The term can likewise be utilized to portray somebody who migrates inside a nation, potentially their own, to seek after work, for example, occasional work.

The Bangladeshi Malaysians comprise of individuals of full or fractional Bangladeshi plummet who were conceived in or immigrated to Malaysia. Bangladeshis in Malaysia shape an extensive extent of Malaysia's foreign labour drive. At the point when both lawful and unlawful occupants are incorporated, their populace was evaluated to add up to 500,000 people, around one-6th of all the foreign workers in Malaysia starting at 2009. In mid-2016, a dubious agreement by Bangladeshi Prime Minister Sheik Hasina was summoned to send a sum of 1.5 million Bangladeshi workers in stages for 3 years to Malaysia. This decision was met with criticism from people in both governments.

### **3. LEGAL FRAMEWORK IN MALAYSIA**

Article 8 of the Federal Constitution of Malaysia gives that "all persons are equal before the law and is entitled to equal protection of the law" and by the utilization of term "person" rather than 'citizen', it is most certain that this certification of rights stretches out to all people, including migrant specialists, be they archived or undocumented. It must be brought up that 6 of the 13 Articles under Part II of the Federal Constitution entitled 'Fundamental Liberties' uses "persons" instead of word "citizens", and accordingly utilization of "persons" in Article 8 unmistakably is not cognizant but rather likewise imperative.

This balance is additionally reflected in our Employment Act 1955 which applies to all workers, regardless of whether the person is a local worker or a foreign worker (migrant worker). In section 2 of the Employment Act, being the interpretation section, the term worker is characterized as:

"Employee" means any person or class of persons-

- a. included in any classification in the First Schedule to the degree determined in that; or
- b. in respect of whom the Minister makes an order under subsection (3) or section 2A;

In the First Schedule, item 1 which describes the first category of workers.

1. "Any person, regardless of his occupation, who has gone into an agreement with the administration with an employer under which such individual's wages does not surpass one thousand five hundred ringgit a month".

And, item 2, describes the other category of workers covered by the Act.

2. "Any person who, regardless of various wages he acquires in a month, has gone into an agreement with the administration with an employer incompatibility of which".

In *Nacap Asia Pacific Sdn. Bhd. v. Jeffrey Ronald Pearce & Anor* [2011] 5 CLJ 791, Mohd Zawawi Salleh J referred to art. 9 of the ILO Migrant Workers (Supplementary Provisions) Convention 143 of 1975, and stated: "This ILO Convention, to which Malaysia is a party, expressly provides that where laws and regulations which control the movement of migrants for employment - such as the Immigration Act - have not been respected, the migrant worker shall nevertheless enjoy equality of treatment in respect of rights arising out of past employment. This is the international labour standard prescribed by the ILO."

In a recent Industrial Court Award 743 of 2011 dated 24 May 2011 between *Kesatuan Kebangsaan Pekerja-Pekerja Perusahaan Alat-Alat Pengangkutan Dan Sekutu And Denso (Malaysia) Sdn. Bhd.*, the Learned President of the Industrial Court Y.A. Susila Sithamparam stated at the end of her Award that "Foreign workmen should receive the same wages and benefits as local workmen for the same type of work which they are doing in the same undertaking."

### **3.1 Domestic Laws that apply to Migrant Workers**

Besides the Federal Constitution, some of the domestic employment related laws that are applicable to workers, including the Migrant Worker, are:-

Employment Act 1955 (West Malaysia), Sabah Labour Ordinance (Sabah), Sarawak Labour Ordinance (Sarawak), Workmen's Compensation Act 1952, Worker's Minimum Standard of Housing and Amenities Act 1990, Children and Young Persons Act 1966, Industrial Relations Act 1967, Trade Unions Act 1959, Occupational Safety and Health Act 1994, Wages Council Act 1947, Employment (Termination and Lay-Off Benefits) Regulation 1980, Employees Provident Fund Act 1991, Employees' Social Security Act 1969, Factories and Machinery Act 1967, and Minimum Wages Order 2012.

Sadly, there is not enough energy and chance to manage each and every one of the laws, tops to bottom. Therefore, in this paper, authors only touched on matters that are believed important.

Briefly, the other law that identifies with Migrant Workers is the Immigration Act 1959/60. There are 3 sorts of passes and visas that are specified in the Immigration Regulations 1963 that grants foreign nationals entering Malaysia to work. They are the Employment Pass [Regulation 9], Visit Pass (Temporary

Employment) [Regulation 11 (1) (ii)] and the Work Pass for Sabah [Regulation16].

### ***3.1.1 Migrant Workers and Trade Unions***

Migrant workers can join and be pieces of an exchange union, however, are disallowed from holding an official position in an exchange union, i.e. Section 28(1) of the Trade Union Act 1959. The section is believed, is ultra vires the Federal Constitution, i.e. Article 8 whereby this is absolutely not one of the permissible discrimination's recorded in Article 8. Section 28 of the Trade Union Act, Officers-1), a man should not be or go about as an individual from the official of an exchange union or any branch thereof, or of any organization of exchange unions, and might be excluded for decision in that capacity part) he is not a citizen of the Federation.

Considering the Trade Unions Act 1959, specifically, section 2 (the Interpretation segment), unmistakably the demonstration does not recognize on the premise of the nationality of "employees" or 'workmen'. "Employee", when utilized with reference to an exchange union or political gathering implies any individual who is locked in for contract or reward on a full-time or part-time premise; "workmen" means any person, including an understudy, employed by a employer under an agreement of employment to work for contract or remunerate and for the reasons for any procedures in connection to an exchange debate incorporates any such person who has been expelled, released or saved regarding or as an outcome of that question or whose rejection, release or conservation has prompted that dispute.

Further, Section 8 of the Employment Act 1955 additionally obviously perceives the privilege of migrant workers to sort out trade unions. Contracts of administration not to limit privileges of employees to join take part in or compose trade unions. Nothing in any agreement of administration should in any way confine the right of any employee who is a gathering to such contract-

- a) to join a registered trade union;
- b) to participate in the activities of a registered trade union, whether as an officer of such union or otherwise; or
- c) to associate with any other persons for the purpose of organizing a trade union in accordance with the Trade Unions Act 1959.

Today, the legislature has allowed certain employers, similar to the outsourcing organizations and labour supply organizations, to have all workers who are migrant workers, and most likely these workers/employees must have the same right from concurred to every single other worker in Malaysia. Most likely, labourers in these organizations likewise ought to concur the right to frame unions.

### ***3.1.2 Migrant Worker and Social Security***

In Malaysia, while local workers are by and large secured by the Social Security Act, migrant workers are secured by the Workmen's Compensation Act. The Workmen's Compensation (Foreign Workers' Compensation Scheme) (Insurance) Order 1998, forced a further commitment to employers to get a protection strategy for their worker, which gives extra advantages in case of death of a workman from personal damage managed in an accident which emerges out of and over the span of his employment, and furthermore covers mischances which happens outside the working hours of a worker.

### ***3.1.3 Migrant Worker and Access to Justice***

While Migrant Worker rights are ensured under Malaysian laws, the issue is in getting to equity. They have the right to make grumbings to the Labour Department, which incorporates access to the Labour Court. They additionally have appropriate to refer their complaints to the Industrial Relations Department, and in the long run to the Industrial Courts in cases including wrongful dismissal.

The problem, however, lies in the way that their employment permits/visas/passes are generally constrained to one employer only, and when they do endeavour to benefit themselves of the systems and roads of justice, employers can and tend to wipe out their permits/visas/passes and their choices are to leave the nation, or wind up noticeably undocumented migrants who might be captured, kept and ousted. There is a truly a requirement for the Malaysian government to consider hones in different nations that do give the board and safe house to migrant workers as they seek after their rights in the Labour Departments, Labour Courts, Industrial Courts and even the Civil Courts.

### ***3.1.4 Inadequacies in Domestic Employment Act***

Foreign Workers First Out (FWFO) approach with regards to conservation discovers bolster in area 60N of the Employment Act, 1955. The section is believed, is likewise ultra vires the Federal Constitution, i.e. Article 8, whereby this is positively not one of the allowable discrimination's as given in Article 8.

It additionally is in opposition to the right not to be separated as expressed in segment 60L of the Employment Act. We bolster the position taken by 51 civil society groups requiring an end of this unreasonable, prejudicial and unlawful strategy and practice, known as Foreign Workers First Out (FWFO) rule. The Last in First Out (LIFO) guideline ought to be utilized for all workers, independent of whether they are local workers or migrant workers.

#### **4. The Position of the ILO Convention**

Since the ILO has been established, the point was to secure the interests of workers to ensure social equity, especially when utilized in various nations than their own. The ILO is the main UN agency with an established command for the protection of migrant workers, focused on battling the related discrimination's that they bear when urgently looking for work to guarantee a steady life to themselves and to the individuals from their family. The ILO has drafted an arrangement of activity with a specific end goal to battle the negative effects identifies with this phenomenon, contained in the better than average work motivation. Besides, the ILO is advancing the rights of migrant workers through its assemblage of standards, including the ILO fundamental rights conventions, the ILO Conventions No. 97 and 143 on the protection of migrant workers and the governance of labour migration, and accompanying Recommendations No. 86 and 151, as well as through its Multilateral Framework on Labour Migration.

First of all, the ILO is focused on settling on migration a decision rather than a need. This can be accomplished if all through various nations there are decent works open doors, enabling individuals to pick where to chip away at a wilful premise without being driven out of their nations by constraining. By "decent" job, it is expected that one that regards no less than four fundamental standards: profitability, equal remuneration among sexes and positions, sheltered and refreshing working conditions and, at last, a solid social protection arrange.

Secondly, it is resolved to diffuse data about this wonder, expanding mindfulness not just among employers on their obligations and of the positive effects that labour standards could have on their organization and on society all in all additionally among workers with the goal for them to comprehend what their rights and choices are. The contextual analysis we have dissected proposed that the migrant employees often do not know the foggiest idea about the presence of Trade Unions or are undermined not to join. The ILO means to go past simply diffusing data by receiving a subsequent method and in this way giving specialized help and proactively helping part states execute international standards and in addition viable supervisory frameworks.

Moreover, the ILO intends to guarantee reasonable enrolment and equivalent treatment of migrant workers to keep away from the misuse of the last that are frequently seen just as a shabby profitable variable. As we found in the Malaysian setting these angles were not regarded and discrimination was at that point started in the recruitment stage. Recruitment organizations are in truth similarly in charge of the negative effects of this marvel. Actually, workers are bound by contracts made with operators instead of with organizations. Contract substitution permits employers not to hold up under the duties of the association with their labourers, having the likelihood to later decrease the outcomes of statements contained in the agreement the workers have marked. This must be

surveyed and employers ought to answer straightforwardly to the working conditions inside the company's limits.

Another important stride that the ILO has settled in its motivation is to promote fair migration schemes not only at the national level as well as on the provincial one, by supporting a powerful joining process crosswise over individuals from a group. The EU, for instance, has normative power and should advance multilateral understandings keeping in mind the end goal to guarantee that fair migration and directions in the particular countries are lined up with the international standards.

Finally, supporting a profitable and practical social discourse all together for approaches concerning migration to speak to all gatherings included is another fundamental objective. The tripartite structure of the ILO best mirrors this mission. Subsequently, strategies are organized by counselling with governments as well as Trade Unions that speak to workers on the worldwide level and the employers' associations. Furthermore, this is considerably more compelling if the participation is stretched out to the tripartite accomplices in the few nations included.

The endeavours attempted in the private part to meet the minimum human rights norms are a result of the crevice between the general population segment's directions and the societal desires. The social effect of organizations can't be kept separate from their financial execution. All together for each nation and their separate members to receive the rewards of globalization and facilitated commerce we need to ensure reasonable fair competition across countries. The ILO assumes a fundamental role, speaking to an association point between the private and open segments and can, in this manner help fill the crevices deserted by national laws. The same applies on the off chance that we consider the distinctive players of the work showcase that it unites all together for every one of the parts to be spoken to and for useful exchanges to raise. The point is to give each individual from society, and who and what is to come, break even with chances to appreciate respectable working conditions and in this manner seek after a proper and good life.

#### **4.1 Migrant Workers Rights in ILO Convention**

In this section, we present a right-based view of the migrant workers' issues developed so far in the paper. In particular, there is a general introduction to all the centre ILO standards and traditions identified with human rights and the rights specifically the connection to the status of working as a "migrant" in a foreign nation. The human rights of every single migrant worker speak to an extremely basic issue and they ought to be advanced and secured everywhere throughout the world. Every single migrant worker ought to profit by the standards and rights contained in the 1998 ILO Declaration of Fundamental



Principles and Rights at Work and its development, which are reflected in the eight key ILO Conventions and in the crucial United Nations human rights Conventions.

All international labour standards, which are lawful instruments drawn up by the ILO's constituents (governments, employers, and workers) and received at the ILO's yearly International Labour Conference (ILC), set essential standards and rights at work and ought to apply to migrant workers. The global gauges are spoken to either by Conventions, which are lawfully binding international treaties that might be approved by part States, or by Recommendations, which fill in as non-restricting rules. In many cases, a Convention sets out the fundamental standards to be executed by endorsing nations, while a related Recommendation supplements the Convention by giving more point by point rules on how it could be connected, despite the fact that it can likewise be independent (i.e. not linked to any Convention).

The already specified eight ILO Core Conventions are considered especially imperative in light of the fact that regularly the infringement of workers' rights more probable jump out at that labourer that are less ensured, similar to migrant workers. For sure, migrant workers much of the time end up being in constrained work conditions, with international IDs withheld and a commitment to pay the "obligations" brought about in moving to the goal nation. In addition, regardless of the possibility that it is frequently just grown-up workers who migrate, now and again they bring their families along and this infers additionally their kids could be compelled to work.

From now on, it is better to characterize the standards which can be connected to all workers, including migrants, contained in the ILO Core Conventions:

- Freedom of Association and Protection of the Rights to Organize Convention, 1948 (No.87): It ensures the expulsion of demonstrations of oppression trade unions, the insurance of employers' and workers' association against shared impedance and calls for measures to advance aggregate haggling.
- The right to Organize and Collective Bargaining Convention, 1949 (No.98): It goes for ensuring labourers who are practicing the right to sort out; it maintains the standard of non-obstruction between workers and employers associations and advances deliberate aggregate bartering.
- Forced Labour Convention, 1930 (No.29): Aimed at the prompt concealment of all forms of forced or compulsory labour, with exceptions such as military service, convict labour and during emergencies such as war, fires, and earthquakes.
- Abolition of Forced Labour Convention, 1957 (No.105): Accommodates the abrogation of all types of constrained or necessary work as methods for political compulsion or training, as approvals against the free articulations

of political and ideological assessments, as workforce activation, as work teach, as a discipline for participating in strikes and as a measure of separation.

- Equal Remuneration Convention, 1951 (No.100): Highlights the standard of equal remuneration between men and ladies, for work of equivalent esteem.
- Discrimination (Employment and Occupation) Convention, 1958 (No.111): Intended to cut, regarding business and occupation, all immediate and roundabout discrimination's in light of race, shading, sex, religion, political assessment, national extraction or social starting point.
- Minimum Age Convention, 1973 (No.138): It contains the announcement that States must proclaim a national minimum age for admission to employment(not before the achievement of mandatory tutoring) and they should seek after a national arrangement to guarantee the powerful abolition of child labour.
- Prohibition and Immediate Elimination of the Worst Forms of Child Labour Convention, 1999 (No.182): It executes part States to draw up a period headed the program for the abrogation of the most exceedingly terrible types of child labour.

A rights-construct approach established in light of international law is required for the assurance of migrant workers. In reality, in defining national law and arrangements concerning this particular point, governments ought to be guided by hidden standards contained in two fundamental Conventions, with their added Recommendations Nos. 86 and 151, concerning equity of treatment amongst nationals and migrant workers in a customary circumstance and least benchmarks of assurance for every migrant worker. The mentioned Conventions are the following:

1) Migration for Employment Convention (Revised), 1949 (No.97):

It accommodates break even with treatment and non-segregation in regard to nationality, race, religion or sex between migrant workers, who have been routinely conceded. Emerging out from laws or from controls or from practices of the regulatory specialists, authors can recognize four fundamental points: living and working conditions, government-managed savings, employment taxes and access to equity.

The Convention and it's going with Recommendation (No.86), additionally manage contract conditions and the cooperation of migrants in employment preparing or advancement. Also, they manage arrangements for family reunification and bid against the unjustified end of employment or ejection and different measures to control the whole migration prepare.

In particular, Equal Treatment is the focal issue of this Convention and it is contained in Art.6, which forbids discrimination between frequently conceded

migrant workers and national workers with respect to remuneration, enrolment of trade unions and satisfaction in the advantages of aggregate haggling, settlement, government-managed savings, employment charges, and legitimate procedures. Aside from a couple of marginal workers classes, the rule of Equal Treatment is appropriate to every single migrant worker who has been consistently conceded in nations having approved the Convention.

2) The Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143):

The Convention comprises of three sections, whose first (Part I) and the second one (Part II) can be avoided by governments from their ratification.

Part I: (from Art.1 to Art.9): it speaks to the principal endeavour by the universal group to manage unpredictable movement and to do it from a rights-based perspective.

Article 1: states that the rights of all migrant workers, paying little heed to their status are to be regarded by States. It alludes likewise, as indicated by the ILO Committee of Experts, to the key human rights contained in the worldwide instruments received by the UN in this space and incorporates the focuses secured by the ILO Declaration of fundamental principle and rights at work (1998).

Article 2 and Article 3: welcome part States to act and potentially coordinate to smother the surreptitious migration. Despite the fact that it ought to be indicted and sentenced just the employers of unpredictable workers, this is extremely uncommon and "sanctions against migrants in a sporadic circumstance are exceptionally across the board, both in sending and in accepting nations";

Article 8: manages defensive measures for migrants who have lost their employment;

Article 9: A migrant worker, who has performed work, regardless of the possibility that in an unpredictable circumstance, has the privilege to be paid his compensation and is qualified for the work performed to standardized savings and different advantages, as would apply to a transient in a normal circumstance.

Part II: it accommodates "equality of opportunity", going for taking out discrimination rehearses contrasted with national workers, by proposing particular measures to guarantee correspondence in enrolment, work portability, instruction and professional preparing.

In the added Recommendation (No.151) a note expresses that migrant workers are once in a while permitted to be employed wrongfully for various years in a nation. This abandons them in a perpetual questionable circumstance, in which

they are significantly more helpless against bear the results of injurious conditions. With a specific end goal to maintain a strategic distance from such circumstances, the Committee proposes to quicken the procedure of location of migrant workers in a sporadic circumstance and it additionally highlights the significance of the choice of whether to formalize their working contracts.

Notwithstanding those two essential Conventions, there is likewise another, embraced by United Nations in 1990, however, which gone into drive just in 2003, which is:

- 3) International Convention on the Protection of Rights of All Migrant Workers and Their Families (ICRMW), adopted by UN in 1990:

The Convention, which the ILO effectively taken an interest in the drafting stage, perceives and expands upon the arrangement contained in the ILO Conventions, and somehow goes past them. While its long-term goal is to demoralize lastly dispense with sporadic migration, in the meantime it goes for ensuring the fundamental rights of migrants made up for lost time in such migratory streams, considering their defenceless position. Other significant parts of the Convention incorporate the way that ratifying States are not allowed to bar any classification of a migrant worker from its application and furthermore the way that it incorporates each kind of migrant worker, including the individuals who are avoided from existing ILO instruments. The Convention requires States gatherings to advance "sound, impartial, sympathetic and legal conditions" for the international migration of workers from their families. These prerequisites incorporate the foundation of strategies on movement, the trading of data with different States.

## **5. SIMILARITIES OF ILO CONVENTION AND MALAYSIAN DOMESTIC LAW**

Being a member of the ILO, Malaysia is required to watch the ILO international labour standards on migrant workers. In spite of the fact that Malaysia does not ratify all ILO conventions relating to migrant labours, nonetheless, being an ILO part, it is contended that a few commitments are put on her to guarantee that the worldwide standards are watched.

The two principle ILO Conventions concerning migrant workers are the Migration for Employment (Revised) Convention of 1949 (Convention 97) and the Migrants in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers of 1975 (Convention 143)<sup>11</sup>. These two Conventions have been ineffectively endorsed, Malaysian being the main nation to in the Asia Pacific area to have confirmed (Convention 97)<sup>12</sup>. However, this does not mean that migrant workers in this district are unprotected

by the ILO as most of the ILO Convention applies to migrant workers and nationals similarly. States that ratified Conventions concerning basic rights are under a commitment to ensure the rights of migrants' workers.

In the current ILO Declaration on the Fundamental Principles and Rights at Work which was received by the ILO at its eighty-sixth session in Geneva in June 1998, it was concurred that all nations are to regard the standards contained in the traditions identifying with migrant workers, independent of whether the state has ratified the conventions being referred to. The Declaration of the Fundamental Principles and Rights at Work expresses that "All individuals, regardless of the possibility that they have not ratified the Convention being referred to, have a commitment emerging from the very truth of participation in the association, to regard, to elevate and to acknowledge, in compliance with common decency and as per the constitution, the standards concerning the key rights which are the subject of those Conventions".

In this manner, it is in this expansive sense that the correlation between the international conventions governing workers' rights, specifically that of a migrant worker and Malaysian work enactment will be made to decide the degree of consistence of Malaysia work laws with international labour standards. A correlation of the international standards set down in different Conventions identifying with migrant workers is additionally important to decide the degree to which Malaysian work laws conform to international labour standards. This is analysed in the expansive sense and as per the ILO Declaration on the Fundamental Principles and Rights at work which was received by the ILO at its eighty-sixth session in Geneva in June 1998 where it concurred that all nations are to regard the standards contained in the traditions identifying with migrant workers, independent of whether the expressed has confirmed the tradition being referred to.

The Migrant Workers (Supplementary Provision) of 1975 (Convention 143) which likewise tries to advance uniformity of chance and treatment for transient specialists is to a larger part, committed to the concealment of secret migration where suitable measure ought to be taken by number States to battle surreptitious relocation by identifying illegal employment of migrant workers and the burden of common and punitive assents. Measures ought to likewise be taken against those aid stealthy developments of migrant workers. The Convention likewise gives cap loss of employment ought not to change the status of a legitimate migrant worker to that of an illegal worker.

A concise examination ought to likewise be made with the arrangements or benchmarks of treatment contained in the United Nations Conventions on the Protection of the Rights of All Migrant Workers and Members of Their Families which basically looks to give insurance to the labourer in all parts of the relocation procedure, from the season of readiness for migration to the arrival to

the condition of root. The arrangements of this Convention are additionally intended to ensure migrant workers who are sporadic (unlawful). Advance, the Convention additionally empowers a migrant worker to look for a legal solution for any infringement of rights.

However, under Malaysian laws, a qualification is made amongst legitimate and illegal migrant workers in that the previous concurs assurance while the last is most certainly not. Therefore, an illegal migrant worker is considered as an unlawful individual under the migration law and is not ready to have any legitimate response, except for criminal law. It is presented that the agreement of employment gone into by the employer and illegal migrant workers labourers are void, despite the fact that this issue is yet to be tried in the official courtroom.

A survey of the assigned 'centre work guidelines' now is likewise significant to decide or inspect the rights accessible to a labourer in the Malaysian work atmosphere. The International Confederation of Free Trade Union (ICFTU) in its report for the WTO General Council Review of the Trade Policies of Malaysia expresses that in spite of the fact that Malaysia has endorsed Convention 98 i.e. The Right to sort out and Collective Bargaining Convention 1949, it has been liable to feedback by the ILO for its non-regard of Convention 98. Convention 98 basically addresses the connection between labour and administration in fulfilling labourer rights.

In shields the rights of workers to sort out themselves into exchange unions, the international labour standard looks to secure the labourers against unjustifiable work practices and exploitation for exchange union action. Convention 98 likewise looks to guarantee the autonomy of exchange unions from employer impact, control, and strength. Under the Malaysian labour laws, both the Employment Act and the Industrial Relations Act explicitly denies the confinement of the rights of the workman to sort out and join trade unions and to partake in its legitimate exercises. Out of line work practices are recorded in sections 5 and 7 of the Industrial Relations Act, which incorporates dismissal, the danger of dismissal for joining an exchange union and considerably more.

'Victimization' as an unreasonable labour practice is seen truly in Malaysia. On the off chance that an employer declines to utilize, to advance or dismiss, exchanges, cutback or reject a man for legitimate exchange union movement, the segment would be translated as defrauding the worker<sup>24</sup>. A demonstrated demonstration of exploitation is a culpable offense and the Industrial Court is engaged to request restoration with back wages as well as to authorize its request by treating resistance with its request as a further offense which is culpable with a fine or a term of detainment or both.

Malaysia laws, for the most part, don't separate remote labourers. Migrant workers are secured under terrifically vital enactment such the Employment Act

and Industrial Relations Act. In principle, it gives the idea that to the extent the employment rights of a migrant worker is concerned, they are qualified for similar employment rights and advantages delighted in by other neighbourhood labourers. The Employment Act accommodates the instalment of wages, end of the agreement of administrations, hours of work, occasions and different states of administration. By and by be that as it may yet in a specific circumstance, the working states of some migrant workers is dealt with gravely contrasted with those of national specialists. What's more, illegal workers, for the most part, don't have a plan of action to the legitimate securities accessible to Malaysian labourers.

## **6. CONCLUSION**

The protection of workers employed in a nation other than their nation of the beginning has dependably had an imperative place among the exercises of the ILO, since more than some other labourers they are obligated to misuse, especially on the off chance that they are in an unpredictable circumstance and are casualties of the trafficking of people. While there are great laws that ensure Migrant Workers in Malaysia, the issue that needs our consideration is the topic of access to equity, a matter that the Bar Council is genuinely concerned. By what means can the migrant worker have the capacity to case his right on the off chance that he needs to leave the nation in light of the fact that the labourer's permits/visas/passes have lapsed (or been repudiated) and our immigration laws require that them to leave promptly. Returning to Malaysia, not once but rather perhaps a few times, to give prove in their trial or to go to the statutory gatherings at the Labour Department or Industrial Relations Department is past the methods for these migrant workers.

In the case, *Chong Wah Plastic Sdn. Bhd. and Others v. Idris Ali and Others*, aptly noted inter alia, that the principles of law, equity and good conscience demand that migrant workers must be given the same legal rights as local workers. If a country provides and ensures the fair application of laws and protection to all its workers takes care of foreign nationals and guarantees them their rights, it would be better for the growth of the country, in terms of peace and foreign investment. Hence, Malaysia may have a beautiful proclamation of rights which really does no justice to migrant workers.

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Article 5 (Liberty of the Person), Article 6 (Slavery and Forced Labour Prohibited), Art.7 (Prohibition against retrospective criminal laws and repeated trials), Art. 8(Equality), Art. 11(Freedom of Religion) and Article 13 (Right to Property) are amongst the 8 Articles under Part II (Fundamental

- Liberties) of the Federal Constitution that applies to all persons. Art. 9 (prohibition from Banishment and Freedom of Movement), Art.10 (Freedom of Speech, Assembly and Association), Art.12 (Rights in Respect of Education) uses the word “citizen” and not “persons”.
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