

# MIGRANT WORKERS AT MALAYSIAN CONSTRUCTION MARKET: A CRITICAL ANALYSIS OF THEIR FACING DIFFICULTIES

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<https://doi.org/10.55327/jaash.v8i4.281>

*(Received: 25<sup>th</sup> October 2022; Accepted: 23<sup>th</sup> November 2022; Published: 30<sup>th</sup> December 2022)*

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## **Keywords**

*Migrant workers;  
Construction sector;  
Malaysia; challenges;*

## **ABSTRACT**

Migrant workers play a significant role to the economy and social development of Malaysia. Most of these employees are working at the construction industry which is known one of the highest hazardous working zones in the globe in terms of personal safety and health. The construction activities comprise various building performances, such as concreting, plastering, paving, bricklaying, painting and other related works. The local people are not much interested to work at this sector. Consequently, Malaysia requires hiring more foreign workers in order to continue the growing demands of building schemes. However, the working situations for those migrant workforces are often challenging but these do not hinder them from working. The aim of this study is to identify and

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examine some difficulties which are facing by migrant workers in Malaysia. The qualitative method has been used in gathering and analysing of data of this research. This research has found that migrant workers do not achieve some basic legal and humanitarian rights at construction sector in Malaysia. It is submitted that a proper step should be taken to minimise the identified challenges to protect the rights of migrant workers and to influence them to continue working at construction industries in Malaysia.

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## INTRODUCTION

Construction sector is one of the most important industries which attach a large number of migrant workers in Malaysia. The Malaysian construction industries offer employment opportunities for more than 800,000 workers demonstrating 8% of the total employees while 69% of labours are from foreign countries (Abdul-Rahman, Wang, Wood, et al., 2012). The figure of foreign workers is also increasing gradually due to the unquenchable number of new building works expecting to finish rapidly. Local people are also rebuffing backbreaking as well as blue-collar works. As a result, the construction companies hire more required manpower mostly from the developing countries to complete their immense projects they get per annum (Salleh, Mat, Mamter, et al., 2014). The migrant workers are coming to Malaysia from the early nineteenth century in the British colonial period and until present time. The employment of overseas workforces in Malaysia is being legally started in 1981 and it was continued by passing the Medan Agreement in 1984 with the major countries that supply labours in Malaysia (Azizah, 2005). It receives workers from many foreign citizens mostly from Indonesia, Pakistan, India, Bangladesh, China, and Nepal (Dannecker, 2005).

However, the migrant construction workers suffer various difficulties at their workplace namely non-conducive materials and dangerous working situations at building projects (Ali, Arshad, Bakar, et al., 2016). The Department of Occupational Safety and Health Malaysia (DOSH) reported that from the total accidents in Malaysia the third highest accidental events are occurred in construction sites comparing to factories as well as farming sectors in 2016 (Department of Occupational Safety and Health, 2017). It can be found that 239 workers were died in 2016 in different working sectors while the highest number of death were at construction sectors which comprises about 37.5% or 106 deaths (Thye, 2018). In addition, a survey form the Social Security Organisation (SOCISO) showed that 7,338 accidents were reported at construction factories in 2016 which a growth of 69.47% accidents comparing from

2011 (The Star, 2018). In this situation, the local people even relevant bodies seldom take proper initiatives to resolve the hazardous construction environment which causes dangerous injuries and demises of many innocent lives. Thus, this paper has discussed some identified challenges which are faced by migrant workers to take concern from competent authority.

### **WHO IS THE MIGRANT WORKER?**

A migrant worker is generally known a person who travels to a foreign state to achieve his livelihood on a contractual basis for a limited period of time. Foreign labours are normally employed by the employment agencies, government or hired by the construction companies while they are looking for supplementing the job vacancies or providing skills based on contract that the state seeks for a temporary time with specific terms and conditions. Article 2(1) of the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) has illustrated the “migrant worker” as “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.” The Malaysian Employment Law Act 1955 has used a different term as “foreign employee” where it has defined that “an employee who is not a citizen” which means an employee who is not a Malaysian citizen. Therefore, it can be said that a migrant worker is an individual who is working in overseas where he or she is not having citizenship of that respective country (Islam, 2017).

### **MIGRANT WORKERS IN MALAYSIAN CONSTRUCTION INDUSTRY**

A vast majority of migrant workers are attached with construction industry of Malaysia. The Department of Statistic Malaysia (DOSM) has divided the number of construction workers into two specific groups. The first group is the local citizens amounting to 93759 people and the second group is non-citizens amounting to 181,730 people (Department of Statistic Malaysia, 2012). The Khazanah Research Institute (2018) stated that Malaysia received around 2.2 million migrant workers in 2017 and the majority of them were employed in the construction and agriculture sectors (Free Malaysia Today, 2018). According to the Malaysian Investment Development Authority (MIDA), a specific number of countries’ citizens are permitted to work in Malaysian construction industries and the amount of Indonesian people is at the top. Besides that, the contribution of some other developing countries’ citizens cannot be denied in this sector which are known as India, Pakistan, Bangladesh, Sri Lanka, Nepal, Cambodia, Vietnam, Myanmar, Laos, Philippines (male only), Thailand, Kazakhstan, Turkmenistan as well as Uzbekistan (Malaysian Investment Development Authority, 2014).

## **CHALLENGES OF MIGRANT WORKERS AT MALAYSIAN CONSTRUCTION SECTOR**

Migrant labours are facing numerous difficulties at the construction industries in Malaysia. Most of these problems are linked up with constructions conditions and policies while some of the incidents are happened by the negligence of the workers. In these situations, many labour law specialists have suggested that most of construction related hitches would be minimised by taking appropriate inspections and proper care of the construction projects. This study will critically analyse some of the challenges which are threatening the migrant workers at construction sectors in Malaysia (Islam, 2013).

### **Unsafe and dangerous working environment**

Dangerous working conditions and inadequate safety performances are major reasons for the most of construction accidents in Malaysia. It has been found by the construction calamities related investigation that nearly 99 percent of these incidents are caused by the unsafe labour performance, risky working situation or both (Charehzehi & Ahankoob, 2012). Pipitsupaphol and Watanabe had stated that the safety performance can be directly influenced by using machineries and equipment, condition of the project, nature and method of work, attitude of the management and selection of workers. It is also so common phenomenon in the construction industry that labours are working at the height without suitable safety devices, disobedient and negligence of workers, and engagement of unskilled labours that contribute to accident and injuries.

The Occupational Safety and Health Association of Europe (OSHA) has identified that construction workers are in two times in the possibility of getting involved in accident and more probable to cause death in three times comparing to other working sectors (European Agency for Safety and Health at Work, 2014). The Department of Occupational Safety and Health Malaysia (DOSH) has characterised the consequences of construction accidents are immediate death, permanent disability, non-permanent disability and in some cases death in Hospital. DOSH has also stated that the most common feature of accidents in construction industry is instant death. The most fatal accidents are usually caused by falling down from the height of the construction building, slipping and stocking by construction objects (Abdullah & Wern, 2011). Therefore, these accidents psychologically impact on labours, and they face trauma as well as stress to work in this sector. As a result, construction industry will not be able to build up a quality production in the project (Zeng & Tam, 2001). Thus, the responsible authority should find out the root grounds of construction accidents and confirm safety, security, and healthy workplace in order to improve the industry in the country.

It is highlighted that Malaysian Occupational Safety and Health Act 1994 discusses about the security, safety, rights, and duties as well as welfare of all employees in general at the workplace in Malaysia. The Act does not distinguish or ignore migrant workers from their legal rights as it

confers the legal obligations in common for all workers in the state. Third parties' rights are also protected in the Act if they are being affected by the misconduct of the labours at the work. It also imposes certain legal rights and duties on the workers in order to protect the employers. The officers of the Director General of Occupational Safety and Health are the responsible persons to implement the Act by their inspection and investigation of the incidents. They may serve notice of 'improvement' or 'probation' and prosecution if necessary (Mohamed, 2005). Unfortunately, the enforcement of the is very poor in practice especially when the victims are migrant workers. Thus, it can be presumed that if the Act is accurately implemented in the legal system of the country without discriminating between local and foreign employees, all rights of construction workers would be well protected which would help to produce expected quality product in Malaysia.

### **Violation of international core labour standards and human rights**

In Southeast Asia, Malaysia is the most favourable place for migrant workers to come and gain their livelihood. It is undoubtedly true that most of the migrant workers live under the poverty level. They travel to this country to escape from poverty and to achieve a better livelihood for their families. However, their life is beset with full of misery from the very beginning of their journey. Many local and international agents bring them to this country often they are being cheated and betrayed by the agents in providing suitable job, adequate salaries and even delivering convincing accommodation. Sometimes, they are also being found in lock up for slight and unacceptable reasons. According to the report of the Amnesty International, the construction companies and employment agencies are encouraging migrant worker to travel to Malaysia by giving assurance to provide high wages. However, in most cases they are abused, deceived and ended up with torture (The Star online, 2010). This report also suggested that the Malaysian government should come out with better policies to protect these human resources for the betterment of the nation. Moreover, migrant workers are also facing difficulties to enforce their contractual rights because of linguistic barrier, high legal costs and living permit in Malaysia for a limited period of time. At these situations, they are psychologically stressed and feel helpless and isolated as their enshrined rights of contract are not protected in overseas.

Malaysia became a member of the International Labour Organisation (ILO) in 1957, since then this country has ratified 18 ILO conventions which include 5 core conventions out of ILO's eight core labour conventions (ILO in Malaysia). Based on the analysis of the situations of labour rights in Malaysia, it could be identified that the construction working conditions and workers' rights of the country do not protect the international core labour standards which is designed by the ILO. It is renowned that ILO has developed four core labour standards which are enshrined in eight ILO major conventions (Global Employment Institute, 2015) namely Prohibition of child labour (Convention No. 138 and No.

182), Elimination of forced labour (Convention No. 29 and No. 105), Prohibition of discrimination (Convention No. 100 and No. 111), and lastly Assurance of freedom of association and collective bargaining (Convention No. 87 and No. 98) (Berik & Rodgers, 2008). The principles of the core labour standards construct key policies to develop good relationship between governments and workers, and employers and employees and workers' organisations. These international doctrines help to distribute the benefit of globalisation properly in both inside and between the states. They also abolish the abusive attitudes from the country to establish equality as well as social justice.

Therefore, the responsible authority of Malaysia should take reasonable measures to make sure that the local laws and labour related policies protect the fundamental human rights of all people in the country including foreign labours. As an ILO member country, it should implement and monitor the international core labour standards at the time of drafting local labour policies. The Construction Industry Development Board (CIDB) is a statutory body which works under the Malaysian Minister of Works. This authority plays vital role to undertake legal functions related to construction industry in Malaysia which includes the protection of the rights of migrant workers. Thus, it is the hope of the migrant workers that their rights will be well protected in the country to work not only construction sites but also other sectors.

### **Difficulties in getting “work permit”**

Migrant workers are confronting the most exhaustive barrier in applying and getting permit for work from the immigration department of Malaysia. Pre arrival and post arrival are the two processes of the application for work permit. However, the application has needlessly a complex application formula and unnecessarily time-consuming. All migrant workers' applications for work permit fall under quota system. All of them are subjected to follow the system which jeopardizes the possibility of receiving the permit. In order to submit a complete application, a worker needs to prepare several documents including certificate for medical fitness, security bonds, letter of approval, passport photocopies and an insurance grand letter. In this process, a hopeful applicant has to wait for a long period to issue the letter of approval which also costs them a huge amount of money. Before work, they are additionally required to receive an identity card based on their nationality and sector of the job (Wei & Yazdanifard, 2015). They don't have any choice, but to work in the fixed sector which is stated in their identity card. This rigid policy also generates another trouble to migrant workers as they don't have proper job security compared to local citizens.

There is another major reason why the application procedure is quite difficult for migrant workers. They come from developing or poor countries to find a job to support livelihood of their families. Most of them are not well educated and even not educated at all. However, they need to prepare written documents for submitting application in English or Bahasa

Malaysia. It creates another difficulty to apply the work permit in Malaysia. Hence, the government should find an easy and convenient mechanism which will help migrant workers to get their working visa in a short or reasonable time.

### **Culture and language differences**

Migrant workers come from different countries with diverse cultures and languages to work in different job sectors in Malaysia. The culture normally forms the basic character of the person as people are dominated by their local norms. Similarly, language helps the person to understand the instructions given by employers. These two basic elements are very important in working sectors especially in construction industry to develop a good relationship between employers and employees. Without proper understanding of these two values, the supervisors or the project managers will not be able to deal with workers properly and the workers also will not be capable to work accurately based on given instruction. Thus, a proper understanding of these two principles between employers and workforces are considered as prerequisite to produce a quality product in the construction industry of Malaysia.

Moreover, the differences in culture and language hamper the unity among the workers during running building projects because they are not able to communicate all instructions to one another. They also find themselves in troubles to understand the safety rules, instructions as well as work orders. They need to be trained up with all commands and even someone needs to interpret to them all the safety signs and the working guidelines. These difficulties also can contribute to construction accidents which may delay the delivery of the product, create psychological problems, bodily injury, permanent and non-disability or even in some cases cause death of labours (Salleh, Nordin & Rashid, 2012). Thus, the government should take an appropriate policy to overcome the culture and language barriers among construction workers which will be helpful for the development of the construction industry.

### **Challenges in getting compensation and insurance scheme**

The insurance is very important in construction sites as the activities of this industry are considered as the most dangerous comparing to other job sectors. An insurance policy could be considered as a compensation or a security of a worker in case of accidental injury or death. However, these rightful benefits are not properly implemented to migrant workers because of their lack of awareness and knowledge. In some incidents, they are being cheated out by the local authority which is certainly a discrimination to them. Section 26(2) of the Malaysian Amended Workmen's Compensation Act 1952 has regulated that every employer must guarantee that all migrant workers engaged by him are covered by an insurance scheme which will cover their liabilities. This Act has also sanctioned that if any employer fails to fulfil the prescribed requirement shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding RM20,

000 or to imprisonment for a term not exceeding 2 years or both (Islam, 2015).

Furthermore, Malaysian Amended Workmen's Compensation Act 1952 covers all claims which are issued in any place of Malaysia. The Act is commonly used for local and migrant workers as it is not customised for any specific citizens. However, the law covers for compensation for body injury or death only for a specific group of workmen who are working in the course of employment and monthly salary is not exceeding RM500. According to section 8 of the Act, no worker is allowed to claim for any compensation from employer under this Act unless he fulfils those two specific conditions. In addition, section 24 of the Act has stated that no contract will enforceable if it is formed out of this Act. If a workman has managed to get damages for any injury under Civil Court, he is omitted to claim for compensation for similar injury under this Act. If any claim is initiated under section 41 of the Employment Act 1955, the employee will be barred from seeking relief from a Civil Court (Mohamed, 2005). A good example can be found in Australia where all the companies had cover for nearly all physical injuries in the workplace (Hutchings, 1996, p. 63). Therefore, Malaysian authority should take a proper action to preserve migrant workers' rights especially at construction industries (Islam, 2018).

### **Unequal Treatments at workplace**

There are many unequal treatments between local and migrant workers at construction sectors in Malaysia. The most unequal treatment is inefficient arrangement of giving salary from the employers to migrant workers. There is no punctuality in payment of the salary which affects the families who are dependable on migrant workers. After the conversion of their salary scale, they found that the total proportion of their wage is not as similar as to local workers which is also a clear discrimination (Elias, 2008, pg. 286-291). Furthermore, there are some other unequal treatments can be witnessed in terms of leaves. For instance, local labours enjoy greater number of public holidays, vacation leave and sick leave while migrant workers are excluded from most of these leaves particularly in construction sites (Islam, 2020).

Moreover, migrant construction workers are serving most of the time at their workplace as spending more than compulsory eight hours in a day. However, they are segregated from extra benefits like free medication, bonuses as well as shift duty grants because the Employees' Social Security Act 1969 does not protect such rights of the migrant or non-citizen employees. It is stated in section 101 of the Act 1969 that migrant workers are exempted from those additional benefits as this order is given by the Minister for Human Resources. Therefore, it is understood from the theme of this important legislation that migrant workers are locally isolated from their basic rights which are applicable for their Malaysian counterparts. There are basically two main reasons why this significant legislation should protect the foreign labours' surplus rights. The first



point is that the Act is mainly designed for the purpose of governing insurance policy which is a regular input by both the employer and employee. The second idea is that migrant workers are generally involved in the hazardous working zones like building projects where such coverage is logically and really essential (Mohamed, 2005).

Therefore, it is seen that the migrant workers are not treated equally in the construction sectors of Malaysia even though they are contributing a lot to the economy of the country. Hence, the government and all employers should come out with mechanism which will speak equality about all construction workers regardless of citizens or non-citizens, and that will validate the hard efforts of migrant workers in construction sites as well as other job sectors (Elias, 2008).

### **Low salary**

The construction industry is the most neglected labour market not only in Malaysia but also in most of the countries in the globe though it is the most risky and hazardous working sector in the world. Their contribution to the world economy cannot be denied. However, the wages of the construction labours are not valued based on their working involvement in the risks. Local manpower always tries to leave this job as it is involvement of high risk and low salary even no future hope in this sector. On the other hand, the manufacturing industry's workers who are not facing much risk are earning more salaries compared to the construction industry's labours. Sometimes, the employers also purposely and selfishly make low wages in the construction industry to take out local labours from it. As a result, many migrant workers involve in this sector in order to fill the gap in the construction projects (Mohamed, 2015). They truly deserve more honour and respect than they get for their contribution and persistence in the construction industry of Malaysia. Thus, the Malaysian job and wage related policy makers should be more rational on the needs of workers while making policies to preserve and promote all labours rights regardless of citizens or non-citizens.

### **Arbitrary mechanism in workplace**

The construction industry of Malaysia disregards the international core labour standards due to the 'hire and fire' approach adopted by the employers. There is no suitable mechanism to challenge the so-called 'freedom of contract' tactic and to ensure the responsibility of the employers. Almost all constructions contracts of the country are centred to benefit the employers and disregard the benefits of the employees. A little importance is absorbed on their accountability towards labours. In some cases, the labour laws of the state apply only to certain formal sectors and ignore informal sectors where migrant workers are normally involved. In this condition, most of the migrant workers are deprived of their opportunity and rights which is contrary to the spirit of the ILO's Equal Remuneration Convention (No-100) (Chowdhury, 2017). There is also no

job security system in the country, therefore, in many instances, foreign labours are arbitrarily dismissed from their occupations.

Migrant works in Malaysia have been treated unequally and also ignored from their legal rights without adequate reason by the employers and legal instruments of the country. It is renowned that they are working for long hours in construction projects, in dangerous working environment though in marginal payment. They also provide their services during weekends as well as holidays as demanded by the employers. Despite all these barbaric challenges, there is no association or legal authority which speak out the rights of the migrant construction workers. Even though the Malaysia Construction Industry Development Board (CIDB) is established for the settlement of labour rights and reformation of labours' legal issues, there is no adequate mechanism for migrant workers to claim and obtain justice in a situation when their legal rights are being violated.

### **CONCLUSION AND RECOMMENDATION**

The sacrifices and contributions of the migrant workers in Malaysian construction industry can never be ignored and even can never be evaluated with money. They are truly more worthy than they achieve because of the consistency in their job. However, they are not given equal treatment to their counterparts of Malaysian construction workers. The construction development related authorities as well as the government have to identify the errors and weaknesses in the local legislations and mainly in the safety and risk aspects in the construction industries. Consequently, they will be able to overcome the most relevant problems to make a profitable construction market in Malaysia. It is identified that the Malaysian construction industry is dirty, difficult and dangerous due to the lack of proper acknowledgement of migrant workers' rights. Thus, it is recommended that the relevant authority should find out the abusive issues and eliminate them through implementing logistic and better regulations and safety mechanisms.

Furthermore, there would be no benefit by having many impressive construction projects and having many technological developments if the workers are not happy with their working conditions and treatments. In Malaysia, it is the primary task of the CIDB to form healthy construction policies for the local as well as migrant workers and to inform government for proper implementation. It is suggested that the CIDB should take few steps like forming the labour laws in accordance with international core labour standards, strengthening national capitals to fulfil future needs of people and workers, improving the safety and security of migrant workers in line with the ILO's framework, developing a unique labour mobility policy which will establish fairness in job sector, and providing social and income security equally for all workers. In addition, all construction related companies should assist local government for implementing the designated construction working policies. Thus, their collective attempts will build up a stronger and more justifiable construction industry in

Malaysia which will provide equal treatment between local and migrant construction workers.

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