

# FOREIGN WORKERS

## The Law And Practice In Malaysia

*Ashgar Ali Ali Mohamed  
Farheen Baig Sardar Baig  
Muzaffar Syah Mallow  
Mohammad Naqib Ishan Jan*



**CLJ Publication**

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# CONTENTS

Preface	i	2.4 CONTRACT OF EMPLOYMENT: A COMMERCIAL OR PERSONAL CONTRACT	33
Acknowledgement	iii	2.4.1 Employer-Employee Relationship: A Special or Personal Relationship	33
Foreword	v	2.4.2 Relationship between Employer and Employee - Regulated by 'Status' not 'Contract'	36
Biographies of Contributors	vii	2.4.2.1 <i>The Introduction of Statutory Protection and Erosion of Freedom to Contract</i>	38
List of Abbreviations	ix	2.4.2.2 <i>Against Exploitation of Workers in Employment: Implying Terms</i>	40
Table of Cases	xi	2.4.3 Implying Terms in the Contract of Employment	41
Table of Legislation	xxix	2.4.3.1 <i>The Recognition of the Implied term of Trust and Confidence</i>	44
Table of Foreign Legislation	xxxvii	2.4.3.2 <i>The Origin of the Implied Trust and Confidence Term</i>	46
		2.4.3.3 <i>The Employer's Conduct of Infringing the Implied Term of Confidence and Trust</i>	49
<b>CHAPTER 1</b>		2.4.4 International Labour Organisation Slogan: 'Labour is not a Commodity' and the Performance of Service is not Akin to the Supply of Goods	53
<b>MIGRANT WORKERS: AN INTRODUCTION</b>		2.5 CONCLUSION	55
<i>by Farheen Baig Sandar Baig</i>			
1.1 INTRODUCTION	1		
1.2 MIGRANT WORKER AND WORK PERMIT	9		
1.3 EMPLOYMENT OF MIGRANT WORKERS IN A FOREIGN LAND: THE REASONS	11		
1.4 EXPLOITATION OF MIGRANT WORKERS	15		
1.5 CHAPTERIZATION	21		
1.6 CONCLUSION	24		
<b>CHAPTER 2</b>			
<b>CONTRACT OF EMPLOYMENT: A NON-COMMERCIAL CONTRACT</b>			
<i>by Ashgar Ali Ali Mohamed</i>			
2.1 INTRODUCTION	25		
2.2 CONTRACT LAW IN RELATION TO EMPLOYMENT	28		
2.3 FREEDOM OF CONTRACT: A REALITY IN CONTRACT OF EMPLOYMENT?	29		

**CHAPTER 3  
MIGRATION OF FOREIGN  
LABOURERS INTO MALAYSIA**

*by Ashgar Ali Ali Mohamed*

3.1	INTRODUCTION	57
3.2	FOREIGN INVASION INTO THE MALAY PENINSULA	61
3.3	MIGRATION OF FOREIGN LABOURERS	62
3.4	CONDITIONS OF MIGRANT WORKERS	63
3.5	LABOUR LEGISLATION PROTECTING MIGRANT WORKERS	66
3.7	INFLUENCE OF THE DOCTRINE OF <i>LAISSEZ-FAIRE</i>	69
3.7	INFLUX OF MIGRANT WORKERS SINCE 1957	70
3.8	CONCLUSION	71

**CHAPTER 4  
INTERNATIONAL STANDARDS  
ON TREATMENT OF MIGRANT  
WORKERS**

*by Farheen Baig Sardar Baig*

4.1	INTRODUCTION	73
4.2	INTERNATIONAL LABOUR ORGANISATION (ILO)	74
4.3	ILO MULTILATERAL FRAMEWORK ON LABOUR MIGRATION (MFLM) - NON-BINDING PRINCIPLES AND GUIDELINES FOR A RIGHTS-BASED APPROACH TO LABOUR MIGRATION	76
4.3.1	MFLM - Principles and Basic Guidelines	77
4.3.2	Review of ILO's MFLM	92
4.4	ILO RELATED INSTRUMENTS ON MIGRANT WORKERS	93

4.5	UNITED NATIONS INSTRUMENT: INTERNATIONAL CONVENTION ON THE PROTECTION OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES	97
4.6	UNIVERSAL DECLARATION OF HUMAN RIGHTS 1948 AND THE UNIVERSAL ISLAMIC DECLARATION OF HUMAN RIGHTS 1981	99

**CHAPTER 5  
RIGHTS OF WORKERS FROM  
THE ISLAMIC PERSPECTIVE**

*by Farheen Baig Sardar Baig*

5.1	INTRODUCTION	103
5.2	HISTORY OF FOREIGN WORKERS IN ISLAM	103
5.3	TREATMENT TOWARDS SLAVES / FOREIGN WORKERS	105
5.3.1	Equality	106
5.3.2	Kindness, Maintenance as a Moral Duty	106
5.3.3	Masters/Employers Should Not Have Harsh Attitude towards Servants/Workers	108
5.3.4	Humility and Respect towards Slaves and Establishing Brotherhood between Master and Slave	110
5.3.5	Human Dignity	113
5.4	CONCLUSION	116

**CHAPTER 6  
EMPLOYMENT STATUTES  
AND THEIR APPLICATION  
TOWARDS MIGRANT WORKERS**

*by Ashgar Ali Ali Mohamed*

6.1	INTRODUCTION	117
6.2	EMPLOYMENT ACT 1955	118
6.3	EMPLOYMENT (TERMINATION AND LAY-OFF BENEFITS) REGULATIONS 1980	120
6.4	EMPLOYEES PROVIDENT FUND ACT 1991	121
6.5	EMPLOYEES' SOCIAL SECURITY ACT 1969	123
6.6	WORKMEN'S COMPENSATION ACT 1952	126
6.7	WORKMEN'S COMPENSATION (FOREIGN WORKER'S COMPENSATION SCHEME) (INSURANCE) ORDER 2005	127
6.8	INDUSTRIAL RELATIONS ACT 1967	127
6.9	TRADE UNIONS ACT 1959	130
6.10	OCCUPATIONAL SAFETY AND HEALTH ACT 1994	130
6.11	FACTORIES AND MACHINERY ACT 1967	131
6.12	WORKERS' MINIMUM STANDARDS OF HOUSING AND AMENITIES ACT 1990	132
6.13	SECTION 28A OF THE CIVIL LAW ACT 1956	132
6.14	CONTRACT LAW	137
6.15	PROTECTION AT COMMON LAW	140
6.15.1	Implied Term of Trust and Confidence	140

6.15.2	Employer's Duty of Care for the Health and Safety of Employee	144
6.16	JURISDICTION OF THE INDUSTRIAL COURT AND THE LABOUR COURT	145
6.16.1	Industrial Court	145
6.16.2	Labour Court	146
6.17	CONCLUSION	147

**CHAPTER 7A  
MIGRANT WORKERS: THE  
IMMIGRATION LAW, RULES AND  
PROCEDURES IN MALAYSIA**

*by Muzaffar Syah Mallow*

7A.1	INTRODUCTION	149
7A.2	THE GOVERNING BODY WHICH ENFORCES THE IMMIGRATION LAWS IN MALAYSIA	149
7A.3	IMMIGRATION ACT 1959/1963 (REVISED 1974)	152
7A.3.1	Admission and Departure	153
7A.3.2	Entry Permit	166
7A.3.3	Removal of Prohibited Immigrants from Malaysia	174
7A.4	CONCLUSION	175

**CHAPTER 7B  
HIRING MIGRANT WORKERS:  
RESTRICTION WITH  
REFERENCE TO EMPLOYMENT  
(RESTRICTION) ACT 1968**

*by Ashgar Ali Ali Mohamed*

7B.1	RESTRICTIONS UNDER THE EMPLOYMENT (RESTRICTION) ACT 1968	177
7B.2	RESTRICTION UNDER THE EMPLOYMENT (RESTRICTION) (EMPLOYMENT PERMIT) REGULATIONS 1969	184

7B.3 EMPLOYING MIGRANT WORKER WITHOUT A VALID EMPLOYMENT PERMIT: THE CRIMINAL OFFENCE	188
7B.4 EMPLOYMENT OF MIGRANT WORKERS IN CONTRAVENTION OF THE 1968 ACT: ITS EFFECT ON CONTRACT OF EMPLOYMENT	191
7B.5 REMEDY OF MIGRANT WORKERS WITH VALID WORK PERMITS WHOSE EMPLOYMENT CONTRACT WAS PREMATURELY TERMINATED	193
7B.6 CONCLUSION	196

**CHAPTER 8  
EXPLOITATION OF MIGRANT WORKERS: ITS FORMS**

*by Mohammad Naqib Ishan Jan*

8.1 INTRODUCTION	197
8.2 DEFINITION OF MIGRANT WORKERS	198
8.3 PULL AND THE PUSH FACTORS DRIVING MIGRATION	200
8.4 EXPLOITATION OF MIGRANT WORKERS	200
8.4.1 Forms of Exploitation of Migrant Workers	201
8.5 STATES' OBLIGATION TO PROTECT THE HUMAN RIGHTS OF MIGRANT WORKERS	209
8.6 CONCLUSION	218

**CHAPTER 9  
EXPLOITATION OF MIGRANT WORKERS: THE LIKELY IDENTIFIABLE CAUSES**

*by Muzaffar Syah Mallow*

9.1 INTRODUCTION	219
9.2 THE ABUSE AND EXPLOITATION OF MIGRANT WORKERS IN MALAYSIA	220
9.2.1 Inefficient and Inadequate Legal Protection towards Migrant Workers	222
9.2.2 Social Misunderstanding toward Migrant Workers	226
9.2.3 Lack of Religious or Moral Values of the Abuser or Exploiter	226
9.3 CONCLUSION	230

**CHAPTER 10  
EXPLOITATION OF MIGRANT WORKERS: A CASE STUDY**

*by Muzaffar Syah Mallow*

10.1 INTRODUCTION	231
10.2 AN OVERVIEW OF REPORTED CASES INVOLVING THE EXPLOITATION OF MIGRANT WORKERS IN MALAYSIA	232
10.3 ABUSE CASES INVOLVING MIGRANT WORKERS IN MALAYSIA: THE LEGAL IMPACT	240
10.4 CONCLUSION	241

**CHAPTER 11A  
EXPLOITATION OF MIGRANT  
WORKERS: CRIMINAL  
SANCTIONS PROVIDED UNDER  
THE MALAYSIAN PENAL CODE**

*by Muzaffar Syah Mallowa*

11A.1	INTRODUCTION	243
11A.2	AN OVERVIEW OF THE THEORY AND PRINCIPLES OF CRIMINAL LAW	244
11A.3	THE STANDARD COMMON LAW TEST OF CRIMINAL LIABILITY: <i>ACTUS NON FACIT REUM NISI MENS SIT REA</i>	249
11A.3.1	<i>Actus reus</i>	250
	<i>11A.3.1.1 Act</i>	251
	<i>11A.3.1.2 Omission</i>	252
11A.3.2	<i>Mens rea</i>	256
11A.4	EXPLOITATION OF MIGRANT WORKERS: CRIMINAL SANCTIONS PROVIDED UNDER THE MALAYSIAN PENAL CODE	260
11A.4.1	Possible Sanctions under the Malaysian Penal Code (Act 574)	260
11A.4.2	Case Study Involving Migrant Workers which Had Been Tried by the Courts under the Penal Code	267
11A.4.3	Criminal Sentencing Principle in Malaysia	279
11A.6	CONCLUSION	280

**CHAPTER 11B  
CRIMINAL OFFENCES AND CIVIL  
WRONGS BY OR AGAINST  
MIGRANT WORKERS**

*by Ashgar Ali Ali Mohamed*

11B.1	PHYSICAL ABUSE OR ILL-TREATMENT OF MIGRANT WORKERS: THE PUNISHMENT	281
11B.2	OFFENCES AGAINST MIGRANT WORKERS: ILLUSTRATION FROM DECIDED CASES	284
11B.3	A REVIEW OF SELECTED CASES	289
11B.4	CONCLUSION	306

**CHAPTER 12  
EXPLOITATION OF NATIONAL OR  
LOCAL WORKERS AND THE  
LIABILITY OF THE EMPLOYER**

*by Ashgar Ali Ali Mohamed*

12.1	INTRODUCTION	307
12.2	LABOUR IS NOT A COMMODITY	310
12.3	FORCED LABOUR PROHIBITED	311
12.4	RELATIONSHIP OF MUTUAL TRUST AND CONFIDENCE	315
12.5	EMPLOYEES' RIGHTS IN EMPLOYMENT AKIN TO 'PROPERTY RIGHTS'	317
12.5.1	Withholding of Salary or Failure of Salary Payment	318
12.5.2	Demotion or Reduction in Status and Rank	320
12.5.3	Transfer of Employee	322
12.5.4	Secondment Must Be <i>Bona Fide</i>	326



12.5.5	Retrenchment Justifiable on Genuine Commercial Reasons	329	13.6	CASES ON NON-RENEWAL OF FIXED-TERM CONTRACTS INVOLVING MIGRANT WORKERS	360
12.5.6	Outsourcing to Victimise Employee	331	13.7	CONCLUSION	368
12.5.7	Voluntary Separation Scheme Being Forced or Coerced on Employee	332	<b>CHAPTER 14</b>		
12.5.8	Other Circumstances	334	<b>MIGRANT WORKERS: ADEQUACY AND SUFFICIENCY OF LAW</b>		
12.6	CONSTRUCTIVE DISMISSAL AND REMEDIES	335	<i>by Farheen Baig Sardar Baig</i>		
12.6.1	Constructive Dismissal	335	14.1	INTRODUCTION	369
12.6.2	Remedies for Dismissal without Just Cause or Excuse	340	14.2	MIGRANT WORKERS' ACCESS TO JUSTICE	370
12.7	CONCLUSION	342	14.3	ADEQUACY AND SUFFICIENCY OF THE LAW	374
<b>CHAPTER 13</b>			14.4	PROBLEMS FACED BY MIGRANT WORKERS	378
<b>PREMATURE TERMINATION OF FIXED-TERM CONTRACT AND ITS REMEDIES</b>			14.4.1	Discriminatory Wages	378
<i>by Ashgar Ali Ali Mohamed</i>			14.4.2	Inadequate Housing	379
13.1	INTRODUCTION	343	14.4.3	Insurance	379
13.2	FIXED-TERM ENGAGEMENT ON GENUINE GROUNDS	347	14.4.4	Medical Facilities	379
13.3	LEGITIMATE EXPECTATION OF RENEWAL OF FIXED-TERM ENGAGEMENT	350	14.4.5	Cancellation of Work Permits	380
13.4	COMPENSATION FOR PREMATURE TERMINATION OF FIXED-TERM CONTRACT	356	14.4.6	High Costs for Renewing Work Passes	380
13.5	HIRING MIGRANT WORKERS OR EXPATRIATES ON FIXED-TERM CONTRACT	358	14.4.7	Other Related Problems	381
			14.5	RECOMMENDATIONS	382
			14.6	ESTABLISHING MIGRANT WORKERS' RIGHTS: ITS IMPORTANCE	385
			14.7	CONCLUSION	388

<b>CHAPTER 15</b>			
<b>ASYLUM SEEKERS AND THE RIGHT TO WORK</b>			
<i>by Mohammad Naqib Ishan Jan</i>			
15.1 INTRODUCTION	389	16.2.2 Malaysian Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Act 670)	430
15.2 THE DEFINITIONS OF ASYLUM AND ASYLUM SEEKERS	391	16.3 DECIDED CASES OF HUMAN TRAFFICKING: A REVIEW	454
15.2.1 Definition of Asylum	391	16.4 ISLAMIC APPROACH TO HUMAN TRAFFICKING	475
15.2.2 Definition of Asylum Seeker	393	16.5 CONCLUSION	477
15.3 PROTECTION TO ASYLUM SEEKERS EASIER SAID THAN DONE	394	<b>CHAPTER 17</b>	
15.4 CLASSIFICATION OF ASYLUM	395	<b>DILIGENCE AND TRUSTWORTHINESS: THE QUALITIES OF A MUSLIM EMPLOYEE</b>	
15.4.1 Territorial Asylum	396	<i>by Ashgar Ali Ali Mohamed</i>	
15.4.2 Extra-Territorial or Diplomatic Asylum	399	17.1 INTRODUCTION	489
15.5 THE RIGHT TO WORK: IS IT AVAILABLE UNDER INTERNATIONAL HUMAN RIGHTS LAW TO ASYLUM SEEKERS	404	17.2 EMPLOY HIM WHO IS STRONG AND TRUSTWORTHY	493
15.6 THE RIGHT TO WORK: IS IT AVAILABLE TO ASYLUM SEEKERS IN MALAYSIA?	412	17.3 CONCLUSION	504
15.7 CONCLUSION	414	<b>CHAPTER 18</b>	
<b>CHAPTER 16</b>		<b>IMMIGRATION LAW, RULES AND PROCEDURE FOR MIGRANT WORKERS: A COMPARATIVE STUDY FROM VARIOUS JURISDICTIONS</b>	
<b>HUMAN TRAFFICKING AND SMUGGLING OF MIGRANTS: THE INTERNATIONAL INSTRUMENTS AND DOMESTIC LAWS OF MALAYSIA</b>		<i>by Muzaffar Syah Mallow</i>	
<i>by Ashgar Ali Ali Mohamed</i>		18.1 INTRODUCTION	507
16.1 INTRODUCTION	415	18.2 IMMIGRATION LAW, RULES AND PROCEDURE FOR MIGRANT WORKERS UNDER VARIOUS JURISDICTIONS	510
16.2 HUMAN TRAFFICKING: THE INSTRUMENTS	416	18.2.1 United States of America	511
16.2.1 United Nations Convention Against Transnational Organized Crime	416	18.2.2 United Kingdom	516
		18.2.3 Australia	519
		18.2.4 Hong Kong	520
		18.2.5 Singapore	525
		18.2.6 Saudi Arabia	527

18.3 THE ISSUES ON THE EXPLOITATION OF MIGRANT WORKERS IN SINGAPORE, SAUDI ARABIA & HONG KONG	528	19.7.6 Protection of Informers or Whistleblowers	556
18.4 CONCLUSION	532	19.7.7 Implementation of Minimum Wages Order: The Guidelines	557
<b>CHAPTER 19</b>		<b>APPENDICES</b>	579
<b>THE LAW ON MINIMUM WAGES IN MALAYSIA</b>		Appendix A	579
<i>by Ashgar Ali Ali Mohamed</i>		Appendix B	582
19.1 INTRODUCTION	533	Appendix BA	599
19.2 MINIMUM WAGE FIXING CONVENTION, 1970 (NO. 131)	534	Appendix C	619
19.3 MINIMUM WAGE FIXING RECOMMENDATION, 1970 (NO. 135)	536	Appendix CA	628
19.4 MINIMUM RATE OF WAGES FROM ISLAMIC PERSPECTIVE	539	Appendix D	637
19.5 MINIMUM WAGE LAW IN SELECTED COUNTRIES	541	Appendix E	676
19.6 MINIMUM WAGES ORDER 2012 (MALAYSIA)	545	Appendix F	682
19.7 APPLICATION OF MINIMUM WAGES ORDER: AN EMPLOYEE UNDER A CONTRACT OF SERVICE	546	<b>INDEX</b>	697
19.7.1 The Rates of Minimum Wages	549		
19.7.2 Council to Review Minimum Wages Order	553		
19.7.3 Negotiation for Restructuring of Wages	553		
19.7.4 Enforcement of the Minimum Wages Order	554		
19.7.5 Compounding of Offences	555		

**CRIMINAL OFFENCES AND CIVIL  
WRONGS BY OR AGAINST  
MIGRANT WORKERS\*****11B.1 | PHYSICAL ABUSE OR ILL-TREATMENT OF  
MIGRANT WORKERS: THE PUNISHMENT**

An employer has a duty to protect their migrant workers from exploitation. It is immaterial whether the exploitation proceeds from the superior or the co-workers. When the employer is aware of the occurrence of any form of ill-treatment or abuse of foreign workers at the workplace or such is brought to the employer's attention, the latter has a duty to act immediately on the complaint and to take firm action against the perpetrator. This issue arose in *Kian Joo Can Factory Berhad v. Ng Kok Hooi*.<sup>1</sup> The case involved a supervisor who assaulted a foreign worker. It was stated that an employee, particularly a subordinate and also a foreigner, should not be required to work in such an environment shrouded with fear. The Court noted that physical violence should be condemned and that the punishment of dismissal in such an instance cannot be said to be excessive.

It is noteworthy to mention that despite the existence of labour legislations, migrant workers, in certain sectors, are still subjected to physical, verbal or psychological abuse with little or no consideration of their well-being. For example, poor and unsafe working standards, excessive working hours, non-payment or lower payment of wages, forced labour, child labour and sexual exploitation, among others are still being reported. An employer who physically abuses or maltreats their migrant workers may be charged in court pursuant to the Penal Code (Act 574) (Revised 1997). The Penal Code is the principal statute in Malaysia relating to criminal offences. If he is found guilty, an employer may be subjected to severe penalties such as imprisonment, fine and/or whipping.

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\* This Chapter is contributed by Ashgar Ali Ali Mohamed.

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