

Assessing Legal Provisions and Policies for Improving Decent Work Conditions in Nepal

Prakash Shrestha, *PhD**

Lecturer, Nepal Commerce Campus
Faculty of Management, Tribhuvan University
Email: prakash.shrestha1@ncc.tu.edu.np
<https://orcid.org/0000-0002-6973-9343>

Abstract

The purpose of this paper is to assess the legal provisions and policies for promoting decent work conditions in Nepal. It follows an integrative review of different legal documents including laws, policies, and provisions related to decent work in the Nepalese context. The evidence shows that laws and policies enacted by the government form the legislative foundation for the labor markets and decent work conditions in Nepal. Mainly, the Constitution of Nepal, 2015; Labor Act, 2017; Trade Union Act, 1992; Child Labor Act, 2000; and Sexual Harassment at the workplace (Elimination) Act, 2015 have paved the foundation for decent work in Nepal. Furthermore, Industrial Policy, 2010; Social security Fund, 2016; Youth and Small Entrepreneurs Self-Employment Fund; Agriculture Development Strategy, 2015; National Employment Policy, 2015; Foreign Employment Policy, 2012; Sustainable Development Goals, 2017; and Decent Work Country Programme for Nepal (2018-2022) have also presented the guidelines for enhancing the supportive work environment. It is found that the role of government in the transformation of business sectors and enhancement of decent work conditions is imperative, ensuring its freedom of choice, particularly in matters relating to employment relations in countries like Nepal. The findings of this paper can offer guidance for future studies on decent work and can be a milestone for open discussion on numerous legislative norms and regulations on the issue.

Keywords: decent work, law, legal provisions, policies, government

Introduction

Everywhere in the world, it is desirable to have some issues such as human rights, workplace democracy, equality, security, income, and dignity. They are also desired and necessary in the context of Nepalese workplaces. Decent work is a concern in relation to these issues. In today's context, modern industries and business communities also need to

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embrace the idea of decent work. The phrase "decent work" (DW) refers to employment that upholds workers' rights to fair compensation, safe working conditions, and other fundamental human rights (Shrestha, 2021). Additionally, the worker's bodily and mental integrity are respected while performing this work (United Nations Committee on Economic, Social, and Cultural Rights, 2005). The first time the concept of decent work was developed globally was when the International Labour Organization (ILO) was established in 1919 as part of the Treaty of Versailles to address concerns with global labor policy (Ferraro et al., 2016; Treaty of Versailles, 1919).

The concept of decent work primarily evolved in the late 1990s. "Opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security, and human dignity," was how the ILO first defined this idea in 1999 (cited in Adhikari, 2012). According to the ILO notion, decent work is a useful job that brings in a respectable wage. Workers' rights are upheld in such work. As far as freedom, equality, security, and human dignity are concerned, this work offers both men and women the chance to find rewarding employment. GEFONT (2012) reported that decent work is a fair income that ensures a decent livelihood. It provides equal treatment and opportunities for all. Kroon (2018) argued that decent work relates to moral behavior and worthwhile employment. In fact, decent work is a basic necessity for having working conditions that allow for an adequate standard of living at the workplace (Shrestha, 2021). Thus, decent work provides enough social protection to workers (ILO, 1999). Both the formal and informal sectors use the decent work concept. It covers a variety of occupations, people, and families (www.ilo.org).

Decent work appears to involve the total of everyone's working-life objectives (Pereira et al., 2019). It is concerned with generating a fair income through productive work while also providing security and social protection (Shrestha, 2022). It provides opportunities for personal growth, guarantees the fundamental rights of employees, and promotes equality of opportunity and treatment. Decent work gives employees the chance to be acknowledged and heard. It is a key component of initiatives to fight poverty and a means of attaining inclusive, equitable, and sustainable development. Such work supports societal peace and security (www.ilo.org/asia/decentwork/lang--en/index.htm).

Decent work is evolving into a more comprehensive term that encompasses the overall evolution of the difficulties and challenges in both the official and informal sectors (Adhikari et al., 2012). It asserts that pursuing workers' rights in the absence of employment is pointless. In actuality, today's organizations' top priorities should be actions that increase employees' dignity through job satisfaction and humanize work by giving them meaningful jobs, guaranteeing job security, making provisions for adequate

pay and benefits, providing safe and healthy working conditions, giving opportunities to develop human potential, ensuring growth and security, social integration, constitutionalism, and obtaining the freedom of expression (Hian and Einstein, 1990; Nachmias, 1988; Carlson, 1980; Guest, 1979; Suttle, 1977; Walton, 1974 cited in Adhikari & Gautam, 2010). All of these actions will support greater individual productivity, which in turn will support greater organizational performance.

The promotion of decent work conditions in the nation requires strong government involvement (Adhikari & Gautam, 2010). Freedom of choice must be guaranteed, especially when it comes to issues involving employment relations. Like in other countries, the Government of Nepal (GoN) is taking many activities to maintain and enhance the working environment. The government has taken on a number of tasks to improve the working conditions at places of employment, even though they are insufficient given the changing circumstances in Nepal. It started by implementing several labour-related acts, rules, and regulations. It has been making an effort to guarantee that the working mechanism is correctly created and that businesses are operating in compliance with the law. Furthermore, as it continues to be the largest employer in the economy, the government is present at the negotiating table to work out a deal with trade unions on a variety of labor and human resource-related concerns (Adhikari, 2005). Based on this observation, this paper aims to assess Nepal's laws, regulations, and other measures for ensuring decent work conditions in the country.

Review of Legal Context for Decent Work

The legal context and provisions are very essential for creating effective work conditions in a country. They serve as the tools to encourage both worker protection and worker emancipation. They control both individual and collective employment relationships. In order to prevent an employer from firing a worker without cause, to establish and maintain procedures that allow for workers to be recognized as "equal" partners in discussions about their working conditions, and other goals, legal context and provisions aim to balance the power between the employer and the employee. By limiting the discretion of the contracting parties to negotiate their own terms and by establishing minimum standards for safety and remuneration, such legal context and provisions also attempt to avoid a race to the bottom. Legal provisions also regulate labour market (<https://wageindicator-data-academy.org/countries/data-academy-garment-indonesia-english/labour-regulations-english/labour-law-why-we-need-it>). Such legal context and provisions really help to improve decent work conditions in a country.

In the case of Nepal, when the ILO office in Nepal started putting together its Decent Work Country Programme (DWCP), the decent work idea first appeared here in 2005. To enhance the working conditions in both the formal and informal sectors, the GoN is somehow devoted to a decent work agenda. Through the provision of full employment and good work, one of the MD goals seeks to abolish extreme poverty and hunger and reduce the percentage of the population that experiences hunger by half (NPC, 2010). Several institutions are involved in helping to achieve development goals. The Ministry of Finance, the National Planning Commission, the Poverty Alleviation Fund (PAF), Local Government Organizations for Social Mobilization, business sector organizations, and a variety of NGOs and INGOs working at national, regional, district, and village levels are a few of them (Adhikari et al., 2012). Recently, following the Sustainable Development Goals Status and Roadmap: 2016 - 2030 (NPC, 2017), the GoN has accepted the UN-mandated SDGs, included them in the 14th and 15th national development plans, and pledged to speed up the implementation of 17 SDGs (Adhikari & Shrestha, 2022). Among 17 SDGs, goal 8 supports enhancing decent work and economic growth in Nepal. The GoN has responsibly promulgated several labor laws and regulations over time as institutional frameworks for enhancing decent working conditions. These regulations have established the standards for decent work. Nepalese organizations are expected to follow these rules in order to create effective workplaces.

Method

This is an integrative review-based study. It primarily examines major labor laws and policy documents, including the Constitution of Nepal, 2015; Labor Act, 2017; Trade Union Act, 1992; Child Labor Act, 2000; Sexual Harassment at the workplace (Elimination) Act, 2015; Industrial Policy, 2010; Social security Fund, 2016; Youth and Small Entrepreneurs Self-Employment Fund; Agriculture Development Strategy, 2015; National Employment Policy, 2015; Foreign Employment Policy, 2012; Sustainable Development Goals, 2017; and Decent Work Country Programme (DWCP) for Nepal (2018-2022). These all address the legal guidelines and initiatives for enhancing decent work conditions in Nepal.

Legal Provisions and Policies related to Decent Work for Nepalese Workplaces

The role of government is vital for creating a decent work environment in a country. The government enacts many laws, policies, and provisions for achieving the objective of a decent work situation whereas; companies/employers are also responsible for implementing and are forced to comply with the provisions of such laws. This section presents some of the decent work-related legal policies and provisions formulated by the GoN and other related institutions to create a better work environment in the country.

The constitution of Nepal, 2015 is the basic law for Nepal. It includes clauses that address how to maintain law and order in the country. The constitution also includes many legal provisions that aim to improve working conditions in Nepalese workplaces (Table 1). With its emphasis on promoting rights, choice, and voice in the workplace, the new Constitution represents a significant shift from earlier welfare-based policies.

Table 1

The Constitution of Nepal, 2015

Decent work-related legal provisions

- Right to equality and non-discrimination on grounds of gender concerning remuneration and social security for the same work.
- Right to employment; ensuring every citizen shall have the right to employment and the right to choose employment
- Right to Labor; with the right to practice appropriate labor, right to appropriate remuneration, facilities, and contributory social security, right to form and join trade unions, and to engage in collective bargaining, as provided by the law.
- Right of Women, with the right to inclusive participation in public positions, and the right to obtain special opportunities in employment and social security based on positive discrimination.
- Right of Dalits (*members of low caste*); giving special priority to Dalits in modern business related to their traditional occupations and provision of skills and resources required work.
- Right to Social Security for all workers including workers engaged in informal work.

To ensure decent work in Nepal, some additional policy promises have been made under the new Constitution, including:

- Achieving decent work through rights, freedom, protection from exploitative labor practices, and elimination of all forms of labor exploitation;
 - Modernization of work through the use of information technology;
 - Pursuing land-use policies to enhance agricultural produce and productivity, while protecting and promoting the rights and interests of the farmers;
 - Developing competence and professionalism of labor force and development of enabling environment for work;
 - Guaranteeing social security, ensuring the basic rights of all laborers in consonance with the concept of decent work;
 - Abolishing all forms of exploitative labor, including child labor;
 - Ensuring participation of labor in management and enhancing congenial relations between entrepreneurs and workers;
 - Ensuring safe, systematic, exploitation-free, and decent foreign employment, along with guaranteeing the employment rights of laborers;
 - Encouraging mobilization of capital, skills, technology, and experience gained from foreign employment in productive sectors in the country;
 - Developing livelihoods and employment based on the inclusion of marginalized sections of the population;
 - Strengthening monitoring and accountability mechanisms for the effective implementation of such policies set forth by the Constitution (MoLJPA, 2015a).
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In order to maintain effective working conditions at Nepalese workplaces, the GoN has also implemented ***Labor Act, 2017*** (previously, Labor Act, 1992). This Act offers a legal foundation for putting ILO treaties relating to "work" into effect. It has contributed to improving Nepal's position for decent work through the following provisions:

- Hiring
- Working hours and probation period
- Leave and holidays
- Terminal benefits (provident fund, gratuity, leave encashment)
- Other benefits (housing fund, festival expenses, disability compensation, compensation against injury, death compensation, medical insurance, accident insurance)
- Safety and health arrangement
- Special provision for women
- Disciplinary action and termination of employment
- Flexibility in retrenchment
- Collective bargaining
- Sanctions for the violation of the provision of such an Act
- Social security (MoLJPA, 2017a)

Trade Union Act, 1992 has helped to enforce labor standards and gives workers' organizations a legal platform to actively participate in improving industrial relations through social dialogue. The Act assigns trade unions the duty to play a crucial part in formalizing work, defending workers' rights, and increasing the capacity for social protection for all workers. It also encourages cooperation with business owners to produce prospects for gainful employment. Due to the following factors, this Act has significantly contributed to the promotion of decent work in Nepal:

- Formation of enterprise-based unions
- Duty relating to collective bargaining
- Presentation of claim
- Appointment and functions of Registrar
- Special power of GoN (MoLJ, 1992)

Concerning child labour, ***Child Labor Act, 2000*** also outlined some important clauses pertaining to decent work. The main guidelines are:

- Restriction on employing child labor
- Approval to be taken for the employment of child labor
- Certificate of fitness
- Health and safety measures
- Time-to-time inspection and direction from the Labor Office and GoN
- Child Labor Prevention Committee

- Labor office approvals
- Deputation of child labor Inspector and action
- Punishment measures
- Child Labor Prevention Committee and Fund
- The Government can give direction time-to-time (MoLJ, 2000).

Now-a-days, more and more female workers are engaged in Nepalese workplaces.

Therefore, the GoN has implemented the ***Sexual Harassment at the workplace (Elimination) Act, 2015***. The goal of this Act is to make workplaces more respectable, decent, and harassment-free. The main guidelines are:

- Applicability and scope (government entities, entities owned (fully or partly) by government, corporate bodies or institutions, any firm, institution or corporate body registered or licensed to carry out any business, trade, or provide services)
- No one should be sexually abused in the workplace
- Unsolicited acts (physical contact and advances, showing or displaying of pornographic material, expressing sexual motives by way of written, verbal, or non-verbal means, demand or proposal for sexual favors; and flirting or harassing with sexual motive)
- Responsibilities and duties of the employer or manager
- Protection of the victims
- Complaint mechanisms (internal and external complaint mechanisms)
- Filing a complaint
- Compromise
- Inspecting and monitoring
- Reporting
- Punishment
- Compensation for any damage
- Procedures for hearing complaints
- Provisions of appeal
- Implementation of decision or compromise
- Preparation of a code of conduct
- The right to make rules (MoLJPA, 2015b)

Industrial Policy, 2010 has also addressed some issues of decent work. The critical concerns of a weak industrial culture, negative labor relations, a lack of qualified human resources, low levels of productivity and technological adaptation, and low intensity in industrial employment are all addressed by this policy.

- This policy aims to achieve growth in national income and employment through the expansion of industries in terms of productivity, technology, and investment.
- Its major strategy is entrepreneurship development and the development of industrial skills for achieving meaningful industrial works (MoI, 2010).

Social security Fund, 2016 can be important for improving decent work conditions in Nepal. It is designed to offer protection to those who are in danger socially and economically as well as to retirees from the formal economy. The following are the fund's details:

- Around 2,464 organized institutions have been included under the coverage of social security tax, among them, 82 percent are from the government sector, while the remaining 18 percent are from the non-governmental sector.
- A working manual has also been prepared for social security programs like maternity security, accident insurance, medical insurance, and sickness insurance (MoF, 2016).

Youth and Small Entrepreneurs Self-Employment Fund has also made some decent work-related provisions:

- It is an instrumental program framework to help reduce youth unemployment in the country and encourage aspiring youths to engage in productive activities.
- Effective implementation of such intervention will prove to be a transformative departure to give effect to drive the future of decent work in Nepal (ILO, 2016).

Agriculture is the primary source of employment in Nepal and requires significant reforms in order to realize rights to a decent wage, the ability to work and earn a living, the advancement of agricultural production technology, and improved production management. Major features of the suggested intervention provided by *Agriculture Development Strategy, 2015* include:

- Improvement of governance for agriculture works through achieving policy effectiveness in generating results in productivity and competitiveness.
- Productivity enhancement through improved management and business orientation of agriculture works; occupational empowerment of farmers through development of skills, knowledge, production systems, and value chains, and integration of gender and social inclusion in agriculture works for ensuring distributive justice (MoAD) (2015).

National Employment Policy, 2015 is also considered a key policy document to create decent work conditions in Nepal. For optimizing the utilization of sector-specific competitive advantages in employment and work, the policy has included sector-focused employment policies. It is connected to the areas of water resources/energy, manufacturing, construction, tourism, and agriculture. By tackling Nepal's unemployment and labor market inefficiencies, it seeks to increase job prospects. This strategy primarily attempts to create a more competitive workforce while also guaranteeing workers' productive, decent, and safe employment by boosting the national economy and reducing poverty through greater employment. Among its primary strategic goals are:

- To increase productive employment opportunities

- To transform informal work and improve the quality of employment
- To develop knowledge and a skill-based workforce
- To ensure appropriate management of migrant workers and immigrant workers
- To generate youth employment
- To institutionalize a labor market information system
- To develop congenial labor relations
- To promote employment-friendly investment (MoLE) (2015)

With the help of the economic and non-economic benefits of foreign employment, ***Foreign Employment Policy, 2012*** strategy seeks to "*ensure safe, organized, respectable, and reliable foreign employment to contribute to poverty reduction along with sustainable economic and social development through economic and non-economic benefits of foreign employment.*" Its major provisions are presented in Table 2:

Table 2

Foreign Employment Policy, 2012

Decent work-related policies

- Identify and promote employment opportunities in the international market.
- Develop skilled human resources to a competitive capacity to maximize the benefits of foreign employment.
- Make each step of the foreign employment process simple, transparent, organized, and safe.
- Address the concerns of female migrant workers and ensure their rights in the overall migration cycle.
- Ensure good governance in the management of foreign employment.
- Marshal local, national, and international resources for managing foreign employment and promoting collaborative efforts by increasing sector partnerships.
- Help foreign labor migrants utilize their remittances for their own "human development" as much as possible.

Following are some crucial strategies to implement the policy:

- Foreign employment as an integral component of economic diplomacy
- Institutional strengthening for safe foreign employment
- Private sector development through collaboration and partnerships
- Labor market research and development
- Occupational skill development of potential migrant workers
- Decent jobs for migrant workers

(<http://dol.gov.np/ckeditor/kcfinder/upload/files/ForeignEmploymentPolicy2068eng.pdf>)

Sustainable Development Goals, 2017 is also concerned with creating effective decent work conditions in Nepal. It assumes that by 2030, Nepal hopes to be recognized as an inclusive, equitable, and successful middle-income nation that upholds welfare state ideals. The nation also wants to significantly reduce poverty and foster human growth

that is less vulnerable and more secure for people. The nation is also satisfying its people's growing hopes for peace, progress, and prosperity as well as their claim to a bigger say in politics and society, particularly by giving them more influence over setting public policy and safeguarding human security (NPC, 2017).

ILO has formulated the *Decent Work Country Programme (2018-2022)* for Nepal. Under the joint framework of action between the GoN and the ILO and through tripartite partnerships of the government, employees, and employers/companies, this program offers a framework to identify priority areas of involvement. Its top concerns are:

- Enabling decent work for all through sustainable, inclusive, and gender-responsive economic growth
- Strengthening institutional capacities, enhancing social dialogue, and applying ILO fundamental conventions and other international labor standards (ILO, 2018).

From the assessment, it appears that so many laws, policies, provisions, national goals, and programs are facilitating to create a better decent work conditions in Nepal.

Discussion and Conclusion

To protect the rights and interests of various employers and employees in Nepal, the GoN has enacted some labor laws (Shrestha & Parajuli, 2020). Promoting decent work in the context of Nepal is a requirement of the International Labour Organization (ILO) programs. In Nepal, decent work is concerned with strengthening social interaction, expanding employment and employment rights, and giving social protection (Shrestha, 2022, 2021). Decent work is a fundamental right that is enshrined in Nepal's new Constitution (2015) as well as other important laws, initiatives, and policy documents. The adoption and implementation of a decent work framework across all business sectors have become a top priority for improving Nepal's workplaces (ILO, 2016). Numerous industrial sector changes, expansions, and growths have increased the possibilities for achieving sustainable decent work conditions in Nepal. Some laws Labor Act, 2017, Trade Union Act, 1992, Child Labor Act, 2000, and the Sexual Harassment at the workplace (Elimination) Act, 2015 have made the legal frameworks for creating and promoting decent work situations in Nepal. In the same way, some national policies including Industrial Policy, 2010, Social security Fund, 2016, Youth and Small Entrepreneurs Self-Employment Fund, Agriculture Development Strategy, 2015, National Employment Policy, 2015 and Foreign Employment Policy, 2012 have also provided an environment for creating decent work situation. Likewise, Sustainable Development Goals, 2017, and Decent Work Country Programme (DWPC) for Nepal (2018-2022) have also provided a key framework for creating a decent work environment in Nepal. Besides these, GoN has enacted many legal documents like the

Women Entrepreneurship Development Fund Procedural Guidelines, 2013, the Special Economic Zone Act, 2016, the Social Security Act, 2017, and the Industrial Enterprises Act, 2020 for providing some basic norms of decent work in Nepal. However, Adhikari (2012) observed that institutions that support the implementation of labor laws are poor in Nepal. Furthermore, in a study, Kyloh (2008) argued for specific institutional reform measures in terms of implementation of the mechanism to put labor legislation into action strengthening the role of trade unions in the public labor inspection system to monitor compliance with labor laws at the workplace and thus to bring complaints to the Labor Court. It is also argued that the up-gradation of skills and authorities of bureaucrats should be responsible for conciliation, mediation, and arbitration. Thus, authorities should bring justice to those who failed to implement provisions of the Labor Act and Trade Union Act. To improve decent work conditions, the concerned ministry should give more priority to labor administration and labor relations management in Nepal.

However, the institutional frameworks and arrangements that enforce the law are usually quite complicated in Nepal. They are often overlooked or neglected as a result of the debate about rigidity or flexibility. In the tripartite system, the GoN, companies/employers or their agencies, and trade unions are responsible for the proper implementation of these laws in Nepal (Khanal, 2015). These all discussions indicate that the matter of decent work, in Nepalese workplaces, is under consideration by GoN, its ministries, and agencies. The proper execution of different laws, regulations, and legal provisions obviously enhance the effective working environment in the country. Therefore, the GoN and its agencies should constantly ensure that these are all executed effectively.

Implications

This paper focuses on labor laws related to improving decent work conditions in Nepal. It offers guidance for future studies into the circumstances of decent work in the context of Nepal while also presenting a clear and open discussion of numerous legislative norms, regulations, and provisions.

Limitations

The outcomes of this paper are based on a review of various legal and policy documents, including laws, policies, and provisions about decent work in the context of Nepal. It excludes the perceptions of employees, employers and trade union leaders. Their perceptions can matter a lot in creating and improving effective decent work conditions in the country.

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