

UNDOCUMENTED NEPALI MIGRANTS TO USA: ISSUES ON BORDER CUSTODY AND DETENTION

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ABSTRACT

International Migration is an ongoing phenomenon and its nature is dynamic adapting to various socio-economic, political and legal realities. Management of the international migration with full respect to the migrant's human rights is quite challenging even if it takes place through the adoption of legal means and it is even tougher for the undocumented migrants making them vulnerable. The migrants fall in trap of fraud and rely on them to reach to the destination crossing numerous countries via different modes of transport, physical abuses, starvation, border detentions for illegal entry and sometimes death too. They invest themselves economically, physically and mentally, though end up with bare hands and lifelong psychological pain. Thus, this paper attempts to cover the idea of undocumented migrant workers, causes of irregular emigration, overview of Nepal practicing emigration with special focus to Nepal-USA relation, the national and international standards highlighting the responsibility of Nepal and USA Government addressing undocumented migrants' issues and the and situational case analysis. The major quintessence of this paper is to limelight the issues of the undocumented migrants by the fraudulent activities of the caught in the borders and detained through the means of case study analysis. This paper adopts the primary source (including national and international legal frameworks such as; statutes, constitution and the treaty law) and the secondary source (journal articles, books, reports, newspaper articles, etc.) Moreover, the scope of this paper is limited within the study of undocumented migrants migrating to USA.

Keywords: *International, Migration, Illegal, undocumented, border, detention, responsibility*

Introduction

In hunt of good life, better socio-economic conditions, high rate of happiness, one aims to earn more and more. This need of wanting more is the greed nature of human, which leads them to various ups and downs throughout the journey. Some satisfy their thirst of good living in small earning, whereas some wonder place to place in search of good income. This exploration pulls them to foreign soil, whereas per say, people get more income in lesser time, thus, helps in uplifting their life style. Thus, one general person becomes a migrant worker.

A person who is to be engaged, is engaged, or has been involved in a remunerated activity in a State of which he or she is not a national is referred to as a "**migrant worker**". In addition to this, article 5(b) of the convention states that the non-documented or the people and their families in an irregular situation albeit they do not act in accordance with the conditions provided for being documented is also considered as "migrant workers".

According to Convention No. 143, adopted by the International Labor Organization (hereinafter ILO) Conference in 1975, the term "Illegal Migration or Clandestine" refers to movements where the migrants are exposed to dangerous situations while traveling, upon arrival, or during their residence, stay, and employment, in violation of relevant international multilateral or bilateral instruments or agreements, or national laws or regulations. This paper seeks to access the issues on border custody, detention and trial of undocumented Nepali migrant workers migrating from Nepal to USA and the responsibility of both the nations at national and international level to address such issues.

Theoretical Framework

Concept of Undocumented Migration. The word "Undocumented Migration" is used in the paper instead of "Illegal Migration" so as to avoid the overtly judgmental pessimistic idea of viewing the undocumented migrants as perpetrators. The term "Undocumented Migration" (throughout this paper) is referred to understanding the migration done by entering host country from the country of origin by evading migration scrutiny, visa and travel documents.

The aptitude of a government to set migration legislation, to regulate circumstances for the admission and residence of foreigners, as well as the granting and renewal of residence and work permits as per the legislation determines the number of irregular migration causing undocumented workers to migrate. The line between legality and illegality is defined by the strict execution of such laws. The current economic, social, and political situations of a home country i.e. the country of origin have a significant impact on migration decisions, and in certain cases,

migrants break restrictive regulations to migrate to a host nation, often at the risk of their lives.

Overview of Emigration in Nepal. Emigration is the act of moving from one's country of origin and residing to the host country across national boundaries for various purposes that is even induced by myriad of socio-economic, political, legal issues. Nepal has the documented and formal history of labor migration beginning from 1814-1816, after when Nepal-British India war took place. After the war was over and the Treaty of Sugauli was signed in 1816, a total of 4,650 Nepalese youths were recruited into the British military services as part of a British-Gurkha battalion. Not only in India, the migration of the people to the Middle East from South Asia thrives as soon as the oil boom took place in the early 1970s.

Furthermore, after the enactment of Foreign Employment Act, 1985 people of Nepal started emigrating to other countries. Nepal's migration situation is dominated by migration of Nepali for foreign employment and the census 2011 demonstrated that; one in every four households (25.42%; 1.38 million households) is absent or is living out of country working overseas. Nepali workers can seek employment opportunities in any country across the world under the permission of the Government of Nepal. But currently, GoN has approved 132 and 128 countries for labor migration through recruitment agencies in the years 2017/18 and 2018/19 respectively.

The Government of Nepal has its international migration governed by the national, bilateral, regional and international policy instruments. Till today, the Government of Nepal has conducted bilateral agreement with 9 countries regarding the Labor Migration; Qatar, UAE, Republic of South Korea, Bahrain, Japan, Israel, Jordan, Malaysia and Mauritius.

US-Nepal Relation. The United States of America (USA) and Nepal have established the diplomatic relationship on 25 April, 1947 and US had become the second country, only after the UK with which Nepal established diplomatic relation. The Embassy of Nepal in Washington D.C. and the Embassy of US in Nepal were established on 3 February 1958 and 6 August 1959 respectively. This has facilitated the migration at different levels including high level visits, tourism, military, labor exchanges, etc. As per the Annual Report of 2018/19 as published by the Ministry of Foreign Affairs, there are 290,000 Nepali Migrants residing in the USA. This data shows the documented migrant population in the USA but there is no clear data with regard to those of the undocumented ones.

Methods and Procedures

The paper was constructed on the mixed research design comprising of descriptive, analytical design. The research comes under descriptive research design as it deals with the concept of undocumented migrant workers, overview of emigration in Nepal, etc. The research was based on analytical research design pertaining to the quandary situations faced by the undocumented migrants and in connection with addressing those exigent issues of them.

The study was carried out using primary data collected from the Constitution of Nepal and National legislations. The secondary sources such as International Legislations, reports, newspapers, books, journal, etc. have been referred.

The first part of the paper dealt with the concept of undocumented migrant workers, the overview of the emigration in Nepal and the Nepal-US Relation. The second part reflected the causes of undocumented migration with a special reference to that of Nepal as the country of origin. The third half part inquired the national and international legal frameworks that addressed the migrants issues (mostly the undocumented migrants). Furthermore, the following part encountered the Nepal-US commitments at International Level and the situational case study analysis pertaining to the quandary situations faced by the undocumented migrants and in connection with addressing those exigent issues of them. The concluding part of the paper endeavored a perspective on the recommendations to be followed by the countries to cater the issue with regard to them.

Results

This section presents the results observed through the study under various themes.

Causes of undocumented migration. In this section, we present the results of the study related to causes of undocumented migration, which have been discussed under three sub-themes.

Emigration pressure due to socio-economic conditions. Emigration is observed as a reaction of people towards the existing socio-economic and political condition of the place of origin as many people find it convenient to migrate rather than struggling for a change to happen. It is observed that usually most unemployed people have a tendency to emigrate and thus even as temporary emigration may relieve the unemployment problem to some extent. International migration is inextricably related to such interconnections, manipulated and being influenced by the development process of the host nation as a pull factor. USA has become the temptation for people to quest for a better life, thus, determine to reach there at any cost. Worldwide migration is influenced by a diversity of reasons, counting the international economic imbalances, poverty, environmental degradation, as well as

a lack of peace and security, human rights violations, and differing degrees of development of judicial and democratic institutions. In this way people in order to cater the poverty and the increasing unemployment consider emigrating to be the utmost possible way further and emigrate at any cost to get relieved from the condition of their life in which they are living.

Lesser awareness level and the inclining fraudulent agents. Migrant smuggling is a genuinely worldwide issue affecting a huge number of countries being origin, transit, or destination. People are driven to other countries for many reasons, but the major reason has always been the human nature for seeking a better life. Many people are unaware about the laws and the need of legal means and measures to be adopted for migrating from one country to the other. This is the major point which the criminals take an advantage upon. They exploit the lack of legal opportunities available to migrants and offer services from illegal means at a cost which they make the people to believe it to be reasonable. Fraud Agents looking for quick money smuggle migrants over borders and countries firstly by deceiving them, making the people go to the foreign land with no or false legal documents from illegal channel posing greater risk on them. When migrants are unable to access legitimate migration channels, smugglers take advantage of the enormous number of migrants ready to face risks in quest of a better life.

Border security issues. After the conclusion of Treaty of Peace and Friendship, 1950 between Nepal and India, there was a promotion of the open border system to enhance Nepal's security with the movement of materials through India and vice versa. Political discussion and social protest are frequently fueled by immigration of people and the flow of products. States protect state freedoms from external dangers by enforcing tough immigration rules and tightening border security. A restricted border's main goal is to keep individuals from crossing illegally and settling in a new state and many states see groups of illegal immigrants as a potential threat. It is less important whether these immigrants are a genuine threat or not. India is the primary transit country for smuggled migrants from Nepal and most smuggled migrants from Nepal enter India overland to avoid the stringent border control in the Kathmandu Airport. The open border between Nepal and India and lesser security there has become the greater reason for the people moving undocumented from Nepal India border to India and then to other destinations.

National Laws

Constitution of Nepal. The Constitution of Nepal has guaranteed the Right to live with dignity of every person (article 16) and assured the right to justice (article 20) of the person which includes the right to get informed for the arrest and custody, right to consult legal practitioner of his/her choice from time of arrest and to be defended, right to confidentiality of information, produced before the incompetent and impartial adjudicating authority within 24 hours of arrest excluding the journey time, no retrospective effect of law, presumption of innocence, principle of *res judicata* shall be applicable, information regarding proceedings and right to free legal aid as per law. For this purpose, *res judicata* is a Latin term which refers to the principle that a cause of action may not be re-litigated once it has been judged on the merits.

Furthermore, the Constitution has stipulated the right of victim of crime (article 21) on having the right to get information about investigation and proceedings of a case in which he/she is the victim and right to justice including social rehabilitation and compensation. In addition it has also assured the right against torture (article 22) and the one who does so shall be punished as per law of the country.

Foreign Employment Act, 2064 (2008). This Act is specifically the act which governs the matters relating to the Foreign Employment. This act specifically is designated to institutionalize foreign employment by governing the procedure and for this it has obliged of Government of Nepal to resolve any kind of problems faced by migrant workers abroad (section 6(6)).

Muluki Penal Code, 2074 (2017). The Code has mentioned cheating to be a criminal offense (section 249(1) and no one should practice it. The code clearly states that no one shall make anyone believe by persuading, deceiving or by other reasons do any work or stop them from doing anything or by dishonestly causing harm or taking any benefit out of deceiving and if committed so is regarded as the offense of cheating (section 249(2)). For this the person shall after proving the guilt be punished for imprisonment till 7 years and fine for Rs. 70,000 (section 249(3)(c)).

International Standards

Universal Declaration of Human Rights (UDHR), 1948. UDHR is the regarded as the landmark document in the history of human rights which was adopted by the UN General Assembly. This document although non-binding from a legal paradigm, it consists of series of principles and rights that are specifically based on human rights which function as the Customary International Law and those principles are to be abided by everyone to protect, promote and respect human rights. It explains that all human beings are equal in dignity and rights (article 1). All human being is considered equal before the law and are entitled without any

discrimination to equal protection of the law (article 7). Furthermore, it is stipulated with the intention of obliging the state and the competent national tribunal to protect the right of effective remedy for acts violating the fundamental rights granted him/her by the constitution or by law (article 8). Similarly, in the determination of his rights and obligations, as well as any criminal charge against him, everyone has the right to a fair and public hearing by an independent and impartial judiciary (article 10). Furthermore, everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law (article 11).

International Covenant on Civil and Political Rights (ICCPR), 1966. This covenant has set out the provision that all people have their right to self-determination (article 1) and States Parties to the covenant have to respect and ensure all the rights recognized in the covenant with no differences of any kind on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or any kind of other status.

In addition to this, the covenant has provisioned that no one to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (article 7). Fair trial right is another major highlight as specified by the covenant (article 14). Fair trial rights includes the right of not being arbitrarily under detention, informing before arrest regarding the reasons of being arrested, promptly kept before the judge or other officer authorized by law within reasonable time, lawful detention, fair and public hearing by the competent, independent and impartial tribunal established under law, equality before the court. Moreover, presumption of innocence until proven guilty, providing adequate time and facilities for the preparation of the defense and communication with the counsel, tried without undue delay, to be examined and have examined, the witness against him and to obtain the attendance and examining the witness on his behalf, free assistance of the interpreter if he cannot understand or speak the language used in court, no compulsion on testifying himself or the confess guilt and the application of *res judicata* etc. also fall under the purview of fair trial rights. In addition to this, accused person be segregated from convicted people (article 10(2)(a) as well in order to ensure the fair trial rights.

International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966. ICESCR has clearly mentioned that all people have the right to self-determination (article 1) and the state's responsibility with regard to undertaking steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized by all proper means, including particularly the adoption of legislative measures (article 2). The

Covenant provides the guarantee of all rights without any sort of discrimination to anyone on any basis.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 (CMW). The convention elaborately explains the fair trial rights (article 18) provided to the migrant workers. As previously mentioned, according to the convention, both documented and undocumented migrant workers shall be treated equally and this includes rights relating to access to justice as follows:

- Migrant workers shall have the right to equality with nationals of the State concerned before the courts and tribunals.
- In case, if charged with a criminal offence, they shall have the right to be presumed innocent until proven guilty.
- They shall be informed promptly and in detail in a language they understand of the nature and cause of the charge against them.
- They shall have adequate time and facilities for the preparation of their defense and to communicate with counsel of their own wish.
- They shall be tried without undue delay.
- They shall have the free assistance of an interpreter if they cannot understand or speak the language used in court.
- They shall not be compelled to testify against themselves or to confess guilt.

ILO Convention no. 97 (Migration for Employment Convention (Revised) 1949). The Convention 97 of the ILO i.e. Migration for Employment Convention (Revised) has mentioned that the concerned authorities of the territories from where and to where the migration occurs have to enter into agreements for the accomplishment of objective of resolving issues of common concern that arise in the context of migration concerns (Article 10). This shows that the proper agreements among the countries under emigration and immigration can better address the issues of access to justice of the undocumented migrants issue to a great extent. The Convention better tries to reflect the fact that the best way to protect the migrants is to make sure they are legally employed. In addition to this, the Convention states that any person who promotes clandestine or illegal immigration shall be subject to appropriate penalties (part II, article 8).

ILO Convention 143 titled Migrant Workers (Supplementary Provisions) Convention, 1975. ILO Convention 143 titled Migrant Workers (Supplementary Provisions) Convention, 1975 has clearly stated that each member for the convention is in force undertakes to respect the basic human rights of all migrant workers (article 1). Moreover, it has evidently affirmed that the Member states shall take required and appropriate steps, both on their own and in conjunction with

other members to suppress clandestine movements of migrants for employment and illegal employment of migrants and against the organizers of illicit or clandestine movements of migrants for employment departing from, passing through or arriving in its territory and against those who employ workers who have immigrated in illegal conditions (article 3) at first hand.

The Convention 143 has been the first ever attempt at the international level to secure certain rights of even the undocumented and irregular workers and to combat clandestine migration and even the employment. Nonetheless, the convention has required the states to collect the information on illegal migration i.e. to seek to determine whether they are illegally employed or not in order to facilitate necessary measures to suppress such clandestine movements and act against the oppressor. Furthermore, it endows that the manpower trafficking can be prosecuted whatever the country from which they exercise their activities.

Although irregular and undocumented, they shall without any prejudice have their rights respected and enjoy equal treatment as state. Furthermore, in case of dispute about the rights referred, the worker shall be able to present his or her case to a competent body, either directly or through a representative. This also provides that even if they are irregularly residing, they shall have the right to stay and to take up legal employment.

Discussion

Nepal-USA: International Commitments. Since, the migration among the countries is facilitated by even the international policy and commitments, states channel their policy practices and diplomatic tools at their disposal to deal with various forms of mobility and migration. The key international instruments are important when considering the rights of irregular migrants because they recognize that some essential rights apply to all people, regardless of their formal legal status in a given country, and that certain rights will be applied without discrimination.

Human rights standards such as the Universal Declaration of Human Rights, 1948, Covenants on Civil and Political Rights and the Covenants on Economic, Social, and Cultural Rights, 1966 apply to all people within the territory of a ratifying state, including irregular and undocumented migrants. Both USA and Nepal are the state parties to these instruments and human rights being the inalienable rights make them bear the state responsibility to address the human rights even of the non-nationals.

Apart from the abovementioned standards, there are other various international instruments adopted by the International Labor Organization (ILO) and the United Nations (UN) in order to address the issues of all migrant workers, improve their conditions, etc. ILO Convention no. 97 pertaining to the migration for employment,

adopted in 1949, Convention no. 143 of 1975 concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment and the UN Convention on the Protection of Rights of All Migrant Workers and Members of their Families, 1990 (CMW) also refer irregular migration to be under the administration of them directly. Here, USA has ratified CMW but Nepal has not ratified it. Moreover, both the C 97 and C 143 have not been ratified by both.

In context of America, protection of human rights does not provide for a specific instrument on migrant workers. Migrant workers working there enjoys the general protection provided by the American Declaration on the Rights and Duties of Man, 1948, and American Convention on Human Rights, 1969, adopted by Organization of American States (OAS) respectively. The mentioned two instruments restrict any form of discrimination and provide a full-fledged freedom regarding access to rights. As per the American Convention on Human Rights, 1969 (American Convention on Human Rights, 1969), which specifies the fair trial rights guaranteed to an individual irrespective of being non-nationals. Additionally, this has made the state parties liable and obliged to fulfill and protect the rights guaranteed by the convention without declaring any form of discrimination between the victim, national, and non-nationals.

The American Declaration on the Rights and Duties of Man, 1948 states that all men are born free and equal in dignity and in rights related to every social and political activity of a man. Additionally, it elucidates that every human beings has the right to life, liberty (article 1) along the right to be treated equal before the law (Article 2). It generally means that, irrespective of being victim or perpetrator, nationals or non-nationals all hold rights of equality before law. With that, the declaration embraces fair trial (article 18) rights to be guaranteed to every individual.

Since the issues of migration is of the global concern, the inclusion of migration through the efforts of 164 members states who have signed Global Compact for Safe, Orderly and Regular Migration (GCM) in December 2018 eases out by making states responsible and accountable regarding the same. Nepal has signed GCM on December, 2018 which is a non-binding global framework to conduct global dialogues on migration and to develop common understanding and sharing responsibility to enhance safe, orderly and regular migration. Furthermore, one of the global forums known as the Global Forum for Migration and Development (GFMD) to which both USA and Nepal are the parties has the major objective to enhance the positive aspects of migration mitigating its challenges.

Interestingly, **Daniel McNichoas** of the United States Permanent Mission to the United Missions in Geneva outlined a commitment from the USA to collaborate to address common migratory concerns and establish solutions that preserve all people's human rights and dignity. This shows that both the countries; USA and

Nepal have to work with better collaboration to address all forms of migrant issues and deal with those challenges through the means of global dialogues, policy reforms and strengthening the national mechanism for the same.

Situational case analysis. Numerous of people in search of employment migrate foreign countries for growth of one's socio-economic status to uplift their own and their family members. A good number of Nepali youths migrate foreign countries like Dubai, Qatar, Oman, USA, and India, so on, to earn more in lesser time and with minimum investment. However, less that they know, a huge sum of money is supposed to invest when one pursue to go abroad. The population has limited level of information regarding the procedure of migrant workers, as its result public repeatedly falls in trap, is fooled and ends up landing in a well of problems.

Talking about the Nepali population migrating to USA for employment, they cross borders of various countries to reach to the destination. Generally the illegal route starts from Tribhuwan International Airport (Kathmandu, Nepal), then India- Brazil- Ethiopia- Bolivia- Peru- Ecuador- Cambodia- Panama- Costa Rica- Honduras- Guatemala- Mexico and at last to USA.

Initially, the person going for foreign employment does not know about procedures and is also unaware that they are being fooled by unauthorized agents and relatives. In expectation of earning more, one believes on the tempting words and promises made by the fraud agents and relatives.

Case 1: Pramod Kumar Pun: In the year 2018 (December), Pun was made fooled by an agent, who had promised him to sent him USA for employment. The agent had promised him that, he shall reach to USA within 6 months of duration. Pun travelled from Kathmandu to India (via bus), then to Russia- Spain- Bolivia- Peru and at last Ecuador (via plane). Then waterways were used to reach Panama from Columbia. After that, reaches to Mexico through railways covering borders of Costa Rica- Nicaragua- Honduras and Guatemala. At the end reaches to the USA by foot trails through the jungle. As soon as, Pun reached the border of the USA, he with other 4 Nepali migrants was caught by the 'border of security' and was kept in custody of the Department of Immigration. For entire a year, all 5 were kept at the detention center, only then they were sent back to the Nepal. As per the article, during the court trial, a total sum of a crore (approximately) was paid by the victims. Besides that, at the time of returning, they were handcuffed during the entire flight.

As per article 18 of the CMW convention, an undocumented migrant shall have the equal status of right as offered to the nationals of the host country. Additionally, it also includes the elements of fair trial, like providing free legal aid, provide interpreter, represent in court within reasonable time, so on. In the case mentioned

prior, the victim was kept in detention for over a year, with that during the period of trial his huge sum of money got in though the procedure was not been at end. Also, the situation of hand-cuffing the victim during the entire flight while deporting was against the rights of a human, mentioned under UDHR. Also, in case, such undocumented migrant workers are arrested, they have the right to be presumed innocent until proven guilty. It is believed that, merely on the basis being a trespasser in form of an undocumented migrant, he/she shall not be treated as any perpetrator and ILO convention 143 has specifically mentioned that, even the undocumented migrants shall have full-fledged rights of stay and legal employment without any prejudice.

Apart from this, the basic principles of human rights as stated by the UDHR, 1949, ICCPR, 1966 and ICESCR, 1966 and the other commitments made by both Nepal and USA governments make them obliged to secure the access to justice of the undocumented migrant workers and Both the countries shall not remain docile stating the fact that they have not ratified special international document related to the protection of migrant workers.

Case 2: Narendra Basnet Narendra Basnet, a local of Dang, Nepal aged 19 years, started his journey to the USA in 2017. His journey started from Delhi, India and ended at Mexico-US border. His journey was a roller-coaster ride, in the duration of his entire 7 months long journey; he did not get a single day relived from torture, pain, and emotional drainage. He was caught at the border and was sent to the detention center. As soon as, he was sent there, he started the legal procedure for refugee certificate, which latter was denied. He was kept in the detention center for more than a year, and then only he was deported to Nepal. His current status is so pitiful, as when he had left Nepal, he was of age 19 years and returned at the age of 21 years with physical, emotional and psychological pain.

In the above mentioned case, victim's numerous basic human as well as legal rights were curtailed. He was initially fooled by the fraud agent and was made sent USA through illegal passage. During the entire journey, he had to suffer different kinds of physical as well as mental injuries. On the day, he landed on the US soil; he was arrested and kept in detention center, without any kind of information about the next procedures that were going to be held. Also, when he tried to apply for being a refugee, it was rejected. According to the victim, he was not initially informed about the legal rights and facilities that are guaranteed to him. Neither the living condition was up to the standards, nor was the treatment by the officials good. According to article 18 of the CMW convention, both documented and undocumented migrant workers possess equal status of legal as well as human rights. Additionally, ILO convention 143 elaborately explains that even the

undocumented migrant workers shall have same and equal status of rights as possessed by the nationals of the host country. Here the victim was treated discriminately just because he reached there through illegal passage. On concluding, this situation is legally wrong, as it is also against the standards of the basic principles of human rights.

Responsibility of the Governments. The issues of undocumented migrants have not been the issues faced by Nepal alone, rather it has been a global concern and it is the responsibility of every country to work together to counter this problem. There is a very important legal principle; Ignorance of Law is no excuse but, in execution of the same, a huge discrepancies seen. The irony felt for migrants are that they are ignorant towards the immigration laws on one hand and on the other, their socio-economic condition make them choose an illegal means of migration. This is thus not the problem of persons; rather it is the failure of the policies, effective legislations and execution of those legislations and policies.

The case studies mentioned prior, the national and international commitments of Nepal and USA show their responsibility towards addressing these issues. Although Nepal has enacted various laws but we can see the inadequacy of the laws that address the undocumented migrant's issues. Furthermore, there also seems the problem in investigation of the cases on these aspects leading to the impunity and furtherance of research for formulating the legislations to tackle such issues. Moreover, the government of Nepal also lacks the mechanism to inspect the consultancies, application of tight border security measures, etc. In addition to this, the Home Ministry, Ministry of Foreign Affairs, Department of Immigration, Nepal Police, etc. must work hand in hand to address such issues.

Moreover, on part of the US Government, although it has committed on part of respecting the rights of the undocumented migrants but still today, various cases of detention without knowledge of the respective states, issues on fair trial rights practices are encountered. For this, the responsibility of the USA government is to ensure their fair trial rights and deport to their own country i.e. Nepal. Moreover, both the governments require to adoption of diplomatic measures to tackle such issues, as it has been a serious problems.

Conclusion

Undocumented migration is the burning issue of the time. Number of things contribute which encourages such illegal movement, they are, migrating person's socio-economic conditions, social pressure of earning more, low awareness and information about the legal procedure, no or lesser information about the routes so on. Whereas origin country's lack of accountability and irresponsible behavior towards those low-income population, border movement, security check at the border also encourages successful illegal movement from the country. With that, the routes to illegal passages, number of countries are included, those countries also seems less attentive towards those illegal movement of outsiders. Additionally, the laws and policies of the origin nation do not catch up the fraud agents and agencies fluently. Thus, in order to discourage undocumented migration of workers and to ensure access to justice of the detained migrants in the host countries following measures can be adopted by the countries:

- The host country as well as the sending country and the transit countries must have proper border security, as it shall help in any kind of irregular movement within and outside the country.
- The sending nations shall strengthen its policies regarding migrating workers.
- The sending nations must take strict and quick actions by collecting data regarding the illegal movement of its population and make rigid investigations on part of investigating the fraudulent agents involved in irregular migration and smuggling of migrants.
- The sending countries embassies shall work more quick and attentively in order to protect the detained undocumented migrant workers in the host countries. This shall protect them from being victim of different ill-treatment inside the detention center and also provide fast track legal aid.
- High level of awareness programs are required to be conducted by the nations, in terms of discouraging the illegal movement for employment abroad, and protecting the public to get in trap of human trafficking and other criminal incidents.
- General public shall be encouraged to make a quick complaint regarding the fraud agents.
- In order to protect the rights of the undocumented migrant workers (turned into victim), various civil society organizations must start working in the frontline.
- In each local units, a help-desk must be formed which shall be used to disseminate information and address the queries related to foreign employment and migration procedures.

- Conduct international dialogues and collaborations in addressing the migrant's issues, challenges and the problems.

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