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### **Labour Migration in Nepal: Policy, Institutions, and Governance**

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### Abstract

The annual reports of the Commission for the Investigation of Abuse of Authority (CIAA) point out that complaints related to the education sector for financial misuses occupy the largest share consistently in the past few years. Nepal's labor migration has a colonial connection, although the country never experienced its direct invasion. Due to the historical legacy of the British India Company as *Lahure* culture, India became the primary destination for Nepali unemployed youth. The decision of the youths to go abroad as labor was a strategy to escape from the potential threat, livelihood options, and get new country experience which ultimately became the major source to bring back remittance. Though low-skilled, foreign labor migration has been the major phenomenon for the country, which is now fully dependent on the remittance economy and counts for over one-fourth of the total national income. The phenomenon of female migration is not still through a formal channel to major destination countries. Due to it, there is a greater room to choose illegal migration channels, and thus the scope of female migration is becoming more vulnerable. Nepal has undertaken several policy measures to overcome these anomalies. Although the implementation aspect is fragile to meet the ground reality, and from the notion of strategic intervention, it is necessary to revisit the policy measures to make foreign labor migration safe, secure, and informed choice based.

*Keywords:* labor migration, Nepal, colonial legacy, neoliberalism, governance

### **Labour Migration in Nepal: Policy, Institutions, and Governance**

Labor migration in Nepal is considered a livelihood strategy (Seddon, 2007), male-dominated (Sharma, 2007), and has a colonial legacy (Bashyal, 2014). The cultural and economic status motivates out-migration (Gardner, 2004). The notion of ‘Kamaune’ [earning] is the social reality of the migration process (KC, 2014). As a result of the way system built in Nepal, foreign labor migration has turned out to be low-skilled, less educated, and a livelihood strategy for families. This phenomenon has created many vulnerabilities as the migrants fall prey to uncertain promises, recruitment fraud, abuse, wage theft, human trafficking, and similar risks.

Historically, Nepal used to be known to the rest of the world as the country of *Lahure*, *that is*, a tradition of Nepali muscular youth recruited to serve in the British Army and then British India as a part of livelihood for their family in the remote Nepali living with abject poverty (IOM, 2019; Kangsakar, 2003; Seddon et al., 2002). The scarcity of jobs and opportunities continues in Nepal even after the promulgation of the Constitution, which guarantees the right to employment (Article 33), the right to labor (Article 34), and the right to live with dignity (Article 16) (Nepal Law Commission, 2015). Seven years have elapsed since the promulgation of the Constitution, and even today, Nepali youth are pursuing better labor work in India, Gulf countries, Malaysia, Korea, Japan, and different parts of the European and American countries. An estimated five million Nepali are employed in foreign countries. The last population census of Nepal held in 2011 showed that around 40% of migrant workers leave for India, while the other 60% leave for the third countries (Khatiwada, 2014). Although Nepal has witnessed an increase in the number of Nepali women seeking work abroad and being gradually recognized as important economic actors, the percentage is

quite below, close to 9% (IOM, 2019; Khatiwada, 2014). IOM (2019) further elaborates:

The risk of exploitation and abuse of women migrant workers is high, particularly in largely unregulated sectors such as domestic work, and the Government has put in place a series of measures seeking to protect women migrants. To date, these measures have met with limited success and there is still evidence that many women migrants are in situations of risk.

Existing research pointed out that, like in other South Asian countries, Nepali migration is also considered a masculine phenomenon (Sharma, 2007). It is because of the traditional belief that males are breadwinners and females are housewives, and the culture of mobility is also limited for them in public places. In 1985, the Government of Nepal started to formalize the migration process abroad except in India, and the process is highly dependent on private recruitment agencies.

Every day about 1500 Nepalis officially leave the country to work abroad. About 2 to 3 million Nepali men and women are currently working abroad, other than India, mainly in low-skilled jobs and mostly on time-limited contracts. Nepali workers working abroad are about 10% of Nepal's total population. Since 2000, more than 8,500 Nepali migrant workers have died in Gulf Coordination Committee (GCC) countries and Malaysia (MoLESS, 2020).

### **Theoretical Context**

Presumably, migration has taken place in the world since the origin of human beings. However, its studies, concepts, and theories date back late 19<sup>th</sup> century only. The 'laws of migration' first defined by Ravenstein (1885) and later elaborated and critiqued by Stouffer (1960) and Lee (1966) are known as the outcomes of classical studies. Ravenstein concluded in 1885 that migration and

distance; migration by slopes; stream and counter stream; the urban-rural difference in the propensity to migrate, and the predominance of females among short-distance migrants. Later in 1989, he added technology and migration and the dominance of economic motives as the primary laws of migration (Ravenstein, 1889). These facts hold to even today. Whereas Stouffer (1960) introduced the concept of intervening opportunities and competitive migrants, Lee introduced migration relationships between origin and destination, associated with the area of origin, destination, intervening obstacles, and personal factors (Khatiwada, 2014). Lee elaborated and revisited Ravenstein's theory and emphasized the context of push-pull factors and intervening obstacles during the migration process. He argued that distance and physical and political barriers could impede or prevent migration.

The framework of human movement suggests two categories of migration: 1) complete spatial displacement and displacement of only part of the everyday reciprocal movements, that is, partial displacement migrations). Zipf (1946) elaborated on this concept and stressed inverse distance law based on mathematical statistics, which refers to the fact that many types of migration data studied in physical and social sciences can be approximated.

Migration creates positive vibes and vulnerability, especially in the case of being unemployed among those involved in the informal sector. The Harris–Todaro model (Todaro, 1969) stressed the rural and urban wage rates and the probabilities of obtaining employment. Migration as a social process defined by Zelinsky (1971) stresses the 'hypothesis of mobility transition' developed as a five-phase model of mobility transition: 1) pre-modern traditional society, 2) early transitional society, 3) late transitional society, 4) advanced society, and 5) future super-advanced society.

Migration is an outcome of the differential characteristics of streams regarded as the consequences of social and cultural constraints upon the head of a household. It has become a significant concern for policymakers. DaVanzo (1981) stated that population flows could significantly affect local political, social, economic, and ecological structures for both sending and receiving areas.

Regional economists, demographers, sociologists, and geographers have made numerous similar contributions to the patterns and trends of migration. (Greenwood,1969; 1975) stressed that early economic studies used aggregated data to treat migration as an equilibrating mechanism that minimizes geographic wages and employment differentials, while later studies have shifted to a microeconomic approach to study why individuals and families move, which was later also approved by DaVanzo (1981).

The Decision-making model of migration came into discourse in the 90s when Judson (1990), who attempted to develop a formal theory of decision-making in human migration, indicated several shortcomings, such as examining residential preferences without reference to other constraints impacting the migration decision, which are addressed in this chapter. Hampton later (2007) concluded that "many actual decision-making problems incorporate higher-order structures, involving interdependencies between stimuli, actions, and subsequent rewards. It is not known whether brain regions implicated in decision making, such as the ventromedial prefrontal cortex, employ a stored model of the task structure to guide choice (model-based decision making) or merely learn action or state values without assuming higher-order structures, as in standard reinforcement learning (Khawaja, 2014).

### **Theoretical Construct in Nepali Context**

Migration is not only the solution but also a problem that depends on the policies and programs of both the origin and destination countries. The personal

characteristics of migrants regarding knowledge, choice, skills, and resources determine their outcomes. The more vulnerability it may appear, the more incidences of intolerance and crime may appear. Nepal is a sending country with fewer skilled migrants; the vulnerability issues in the origin and destination have been witnessed. The overall facts and narratives available so far further justify that Nepalese migration trends did not remain within the limited scope of classical push and pull factors; it got a paradigm shift from the traditionally economic motive to a 'voluntary forced dichotomy' (Shanmuguratnam, 2003) to the post-conflict relative deprivation, decision-making and livelihood approach.

### **Colonial Legacy in Nepal's Migration**

With motives for expanding territory and resources from land, colonial ruler British India started to enroll the Nepali youths in their army. Rana regime of Nepal was also influenced by the British and praised them in their favor. They used Nepali youths to fight decisive battles to suppress the Indian uprising in 1857. The British established the Gurkha Brigade, which was developed as an institution for trading the Nepalese hill-youths. The total number of Gorkha soldiers who died in the wars is still unknown. Neither the Government of Nepal nor the British government attempted to ascertain the exact figures of the war casualties. It could be more than 200 thousand (Sangraula, 2018).

### **Nepali Migration to India**

Contemporary migration between Nepal and India has resulted from various formal and informal ties based on the two countries' historical, cultural, and social legacy. These historical legacies facilitated the unrestricted movement of people across the border, except in some conflict-ridden areas. Keeping the border open between Nepal and India is the legacy of the colonial regime in India, the product of the shared culture of the colonial past (Bashyal, 2014). The historical migration trend between Nepal and India started with the recruitment in



the Indian Army during the time of the British India Company. This tradition continues, and according to the Indian Ministry of External Affairs, there are over 32,000 Nepali citizens in the Indian Army service (Ministry of External Affairs of India, 2017).

Migration of Indian citizens to Nepal has also been a common phenomenon with the provision of reciprocal treatment of citizens of either country by the state stated in the Nepal India Treaty of Peace and Friendship 1950. The Articles VI and VII quoted in the Treaty are mostly related to explaining the status of both countries' migrants, which read:

Article VI: Each Government undertakes, in token of the neighborly friendship between India and Nepal, to give to the nationals of the other, in its territory, national treatment with regard to participation in the industrial and economic development of such territory and to the grant of concessions and contracts relating to such development.

Article VII: *The Governments of India and Nepal agree to grant, on a reciprocal basis, to the nationals of one country in the territories of the other the same privileges in the matter of residence, ownership of property, participation in trade and commerce, movement and other privileges of a similar nature* (Bashyal, 2014)

The continuation of the open border between Nepal and India to date has been attributed to the security needs, socio-political as well as cultural ties, and historical legacy. The cross-border movements along the 1,870 km-long open border with India have resulted in an undocumented situation of the migrant workers in both countries (Bashyal, 2014).

The Population Census of 2011 indicated that nearly two-fifths (37.6%) of the total 1,921,494 absentees from Nepal were in India. This percentage looks like a heavy reduction from the 2001 Census (77.3%) out of 762,181 (CBS, 2012).

Since the country witnessed massive labor migration to Gulf countries and Malaysia afterward in 2001 in Nepal, the percentage of Indian migration reduced, but the volume increased from 520,500 in 2001 to 605,869 in 2011. India thus looks still a popular destination for Nepali people as wage earning activities. Going to India as seasonal migrants or long term is easier for Nepali people due to the 1950 Treaty signed between Nepal and India on Peace and Friendship. This Treaty allows population mobility between these countries on political, social, and cultural grounds and now is taken as the basis of the relationship between the two countries (Khatriwada, 2014).

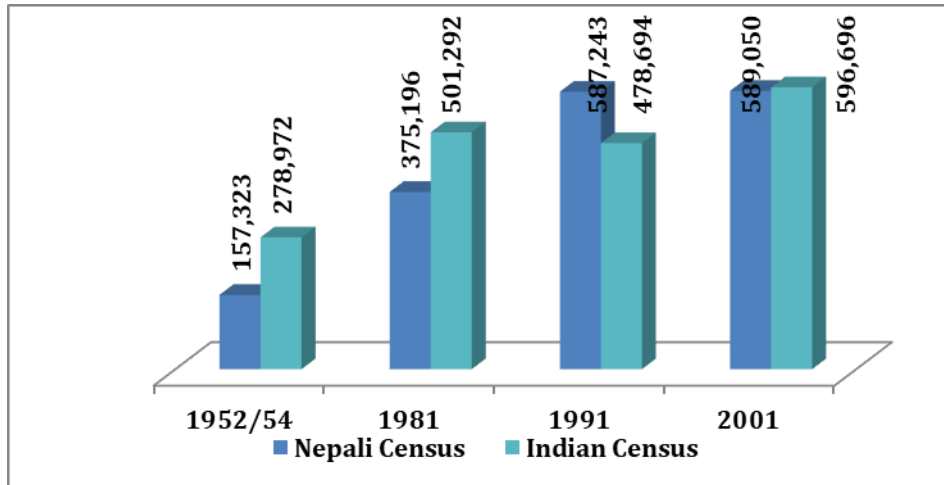
The Nepal Demographic and Health Survey (NDHS - 2011) showed that men primarily migrate to India for employment (87% of those who had gone to India). The reason for the migration was found to be quite different for women who mainly migrated to India as dependents or for marriage (MoHP, 2012). As the border is geographically long and culturally porous, it remains with a proper mechanism developed for border data registration system, it is difficult to track movements, including seasonal migration between Nepal and India. No records are available to say categorically how many Nepalis work in India or where they are (IOM, 2019).

IOM (2019) has further indicated a variation in census data of Nepal on absentees and from India on Nepali migrants living in India. For example, Nepal's census put the proportion of women migrants at 12 percent in 2001, whereas the Indian census indicated that it was 55 percent. This wide divergence indicates that the figures cannot be relied upon. Unofficial estimates also vary widely, from 3 to 4 million at one end of the scale to under one million at the other. The variations may be attributable to a large number of Nepalis working in the informal sector, trafficked, or migrating seasonally or even more frequently. It is also worth noting that if whole families migrate to India, they will not be shown at all on the Nepali

population census. Additionally, if people leave on a seasonal basis for only a few months at a time, they will not be counted as absentees. Figure 1 shows the number of Nepalis in India.

**Figure 1**

*Nepalis in India as per Indian and Nepali Censuses*



*Source:* Sharma & Thapa (2013).

Nevertheless, there are frequent movements across the border, long-term, short-term, seasonal, and even more frequent, with some workers living near the border crossing for work daily or weekly (Sharma & Thapa, 2013). It is unknown to everyone how many Nepali seasonal migrants are in India. However, seasonal migration for Nepali to India is an essential aspect of the livelihood, not only from the hills but also from the Tarai. IOM (2019) states:

Nepalis leave for India during the off-season, usually from January to June, and may return to Nepal for planting and harvesting. This is a means to bridge the off-season with some, albeit meager, income. Other Nepali migrants going to India for contract work may be able to return to Nepal with small savings in cash and/or clothes or cooking utensils. As there is no official Nepali survey that tracks

absentees who are away from home for less than six months, there is little reliable data on the extent of seasonal migration. Some researchers have, however, conducted studies (IOM, 2019).

Many Nepali migrants work in the informal sector in India, in restaurants, as domestic workers, as guards or porters, and in brothels, meaning that they are potentially exposed to exploitation with no legal recourse. Trafficking women and girls into prostitution, children into circuses, and men for body part harvesting are all known to exist, but the lack of data means that the extent and volume of these crimes, while presumed to be significant, are largely unknown (NHRC, 2018).

India has become the main route for many Nepali migrant workers to the third countries. Previously, Nepalis did not need to show labor permit documentation when traveling to a third country via India. However, given a rise in Nepalis going abroad without proper documentation and the risk of human trafficking, the Nepali Government has put in place a procedure whereby Nepalis who wish to depart India need to obtain a No Objection Certificate (NOC) from the Nepali Embassy in New Delhi (Department of Immigration, 2019). This NOC needs to be shown to Indian airport authorities to obtain clearance to leave (IOM, 2019).

While some migrant Nepalis work in government offices, police, or the army, most young migrants work in menial and low-paid informal services, including security, construction, manufacturing, and agricultural jobs. Nepalis working as chowkidars in factories is declining, although there is an increasing demand for Nepali workers in hotels/restaurants (Bashyal, 2014). Social networks and cultural tradition have played a crucial role in sustaining the migration circle between the original villages in the western hills and specific destinations in India. Nepalis' most common destinations in India are Delhi, Mumbai, Bangalore,

Pune, Ludhiana, Amritsar and Almora, Nainital, Shimla, and Pithauragadh (Thieme, 2006).

As the number of Nepalis who work in India is significant, a considerable portion of the labor migration sector is “outside” the sphere of Government influence, policymaking, and protection. Nepal’s migration landscape is an issue that deserves a careful review (IOM, 2019).

**International Migration (Other than India)**

Over the past 60 years, Nepali migrants to international destinations beyond India have increased significantly from about 200,000 in the 1950s to approximately two million by 2011. The most visible change occurred between 2001 and 2011 when Nepali migrants increased twofold.

**Table 1**

*Population Absent from Households Abroad by Sex, Nepal, 1981–2021*

Census	Absentee Population	Migration to Abroad (Except India)	Male	Female
1981	402,977	27,781	20,277	-
1991	658,290	40,481	32,477	7,120
2001	762,181	173,131	158,989	-
2011	1,921,494	1,178,926	1,062,755	4,865
2021	2,169,478		1,763,315	406,163

Source: CBS (2014; 2022)

In terms of the proportion of the migrants, the ratio of females going to the West (USA, Canada, and the European Union) is higher than those going anywhere else. Of the total migrants in the ‘USA and Canada’ and ‘European Union countries, about 33 percent and 37 percent, respectively, were females, with those going to ‘Other Asian’ countries (at 21.9 percent) a distant third

(Khatiwada, 2014). After enacting the Foreign Employment Act (FEA), 2007, the trend of labor migration from Nepal concentrated in the Gulf Cooperation Council (GCC) countries and Malaysia. There is a greater demand for migrants in GCC countries. From 2008/09 to 2014/15, labor migration to these countries accounted for 85 percent of all migration activities.

Similarly, among them, labor migration is highly male-centric, and it is more than 95 percent of all those obtained labor permits. The Department of Foreign Department database shows that over 3.5 million labor permits had been issued in nine years till 2016/17 since the enactment of the FEA Act in 2007. Table 2 presents the top destination countries for foreign employment.

The number of Nepali migrants abroad is estimated to be bigger than government records. This has been attributed to the Nepal government's lack of an effective monitoring system and controlled permit mechanism. Agents very often mislead Nepali youths to go abroad through illegal channels. In this process, agents generally do not provide original agreements and contracts to the migrant workers and send them through unrecorded routes. In this process, even if migrants successfully land in the destination countries, they remain undocumented. In such cases, they will experience difficulties in receiving legal and institutional support from the government agencies of Nepal (Bashyal, 2019).

Similarly, migrants undergo several bad experiences during the migration process, putting their physical, mental, and social well-being at risk. Upon reaching the destination too, migrants often face various forms of exploitation, low income, and social exclusion, which negatively impact the family and their health, especially in their countries of destination and at home.

**Table 2***Top Destination Countries for Foreign Employment, 2008/09–2016*

Destination Countries	Percentage (%)
Malaysia	29.88
Qatar	21.57
Saudi Arabia	20.37
UAE	10.62
Kuwait	2.54
Republic of Korea	1.32
Bahrain	0.86
Oman	0.63
Japan	0.35
Lebanon	0.21
Other countries	11.65

Source: DoFE (2018)

The labor permits are acquired either through recruitment agencies or personal initiatives. There is a variation in the proportion of labor permits issued. More than two-thirds of the labor migrants sought permits via recruitment agencies, and there is a corresponding decline in the labor permits issued at the individual level, which stood at about 25% in the year 2008–2009 and declined to almost 8% in 2016–2017 (MoLE, 2016/17).

In July 2015, the Nepali Government adopted the ‘free visa, free ticket’ policy, but the amount migrants can pay recruitment agents at about USD 170. However, this policy has been flouted with the full knowledge of the government of Nepal<sup>5</sup>.

<sup>5</sup> Diana Eltahawy, Gulf Programme Manager, Annie S. Khan, South Asia Researcher & Representative, and Alex Janczenia, Development Officer, at Business & Human Rights Resource Centre, 2020/2/11

### Women Migration

Due to a lack of livelihood options to sustain their family, women are also forced to migrate. Among women, there is a very low level of awareness of legal provisions and necessary documentation for foreign employment (Pourakhi, 2017). Women constitute a significantly lower percentage of international migrants, a ratio that has remained almost the same even in the inter-census decade between 2001 and 2011 shows a slight increase in international migration, registering only 12 females for every 100 males abroad in the 2011 census, a marginal increase compared to 11:100 in 2001. Eighty-six percent of women who migrated from their original places moved to Nepal. Eight percent migrated to India and very few to other countries. About one-third of women who migrated for work moved to countries other than India. Women were less likely to migrate to other countries for non-work-related reasons. Region-wise, women from the far-western Tarai were more likely to migrate to India due to cross-border marriage practices. India was the second common destination for women migrants from the lowest wealth quintile, while those in the highest wealth quintile were more likely to migrate to other countries (NDHS, 2016).

Lebanon was a major destination for women migrants until 2009, when the Nepal government banned women from working as domestic workers. The ban brought a drastic decrease in the number of labor permits issued to Nepali women going to Lebanon. In the fiscal year 2007/08, 2,490 women were issued permits to work in Lebanon; this number reached 3,696 in 2009/10, but in 2010/11, it decreased to 84, with a marginal increase to 369 in 2012/13. Later, the UAE became the prime designation for Nepali women migrants, followed by Malaysia, Kuwait, and Qatar. As stated earlier, the government's ratio of permits

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<https://www.business-humanrights.org/en/nepalese-migrant-workers-in-qatar-face-exploitation-companies-employing-them-should-take-action>



issued to males and females indicates a huge difference in the labor migration from Nepal. Women are assumed to be more vulnerable in terms of the risk of sexual assault in a foreign land (Oishi, 2005; Piper, 2009). In 2012, a temporary ban on migration to the Gulf region was placed for women younger than 30 years of age, and this ban was extended to women of all ages in 2014. Though this restriction was partially relaxed in 2015 by reducing the minimum age for migration to 24, women's migration to most destinations still requires strict oversight (ILO, 2015).

In 2010, the government revoked the ban, and data shows that the number of female migrant workers in the GCC countries soared thereafter. According to the records maintained by the Department of Foreign Employment, there was a threefold increase in Nepali women migrants employed in the GCC countries between FY 2008–2009 and FY 2011–2012. The numbers of women migrants in two primary destinations stood in Kuwait (12,495) and the UAE (4,523) in FY 2011–2012, absorbing nearly 90 percent of all registered female labor migrants in the GCC. The number indicates that there is a demand for women migrants in the domestic work sector in Gulf countries. Women seek these avenues as a way of improving their livelihood options. The government instituted an age-restrictive ban for women in the domestic work sector in 2012. The government policy of restricting women seeking to work aboard contributed to the increased irregular migration. Research conducted by Paurakhi says that out of 15 women returnee migrants, seven of them used India as a transit because of restrictions on migration from Nepal. A few of them reported that the Indian route was quick, easy, and economical. Recruitment agents often take advantage of ignorant and powerless migrants.

### **Neoliberalism and Migration**

The structural adjustment program (SAP) brought by the IMF and World Bank was implemented in Nepal in the mid-1980s. The World Bank and the IMF, unlike in the past, have given priority to the internalization of ownership of policies and programs in developing countries (Khanal, 2015). Despite implementing SAP and neoliberal policies for more than two decades, Nepal is still experiencing a low level of human development ranking (Shrestha & Prakash, 2010). Nepal has liberalized external accounts financial sector and privatized some public enterprises, dismantled industrial policy intervention, and allowed a more significant private sector role in economic activities by downsizing the role of the government. However, all of these IMF-supported structural adjustment programs failed to focus on generating employment to reduce the unemployment problem in Nepal (ibid). The widening gap in unemployment occurred during the 90s as the then government decided to disinvest, dissolve and liquidate public enterprises in Nepal (SAAPE, 2016). Due to financial deregulation, the number of banks and financial institutions (BFI's) exploded between 1992 and 2011 – from 8 to 31 commercial banks (often joint efforts with foreign investors), from 4 to 87 development banks, and from zero to 80 finance firms (Sapkota, 2011). While Nepal's massive remittance economy ensures that deposits in the capital's private banks continue to grow due to the flow of remittances, those financial institutions have emerged in large numbers. It benefited very few persons involved in these financial activities (ibid).

USA and Australia are an attraction for thousands of Nepali students each year. However, remittance inflow to Nepal has a long history, and it began with the entry of Nepali youths into the British Indian Army in the nineteenth century and has continued to date. Likewise, the increased number of Nepali migrant workers in India also brought substantial remittances from India (Bashyal, 2014).

This initial phase of foreign employment came to a change in the second stage in the 1990s when a large number of Nepali opted for jobs in Malaysia and Gulf countries. Foreign employment of Nepali youths is still concentrated in India, Malaysia, Gulf nations, and South Korea.

According to the World Bank reports (2017), recruitment and transaction costs are the major bottlenecks of the remittance regime. The report concludes that recruitment costs paid by low-skilled workers are often more than a year's worth of income. This happens to be true in Nepal's case, too, in important remittance corridors. Despite the "free-visa-and-free-ticket" provision of the Government of Nepal, the deceitful manpower agencies in Nepal are charging huge fees to the poor migrant workers, mostly from rural communities. Migrant laborers are generally compelled to pay such a high amount of money to the manpower agents. This policy supported dismantling the industry-based economy, created more dependency, and made society more unequal (SAAPE, 2019).

#### **State Response to Migration (Policies and Institutions)**

While the growing number of Nepali migrants has contributed substantially to the National economy through remittances, it has also created various issues in Nepal as well as in the destination countries. As reported earlier, the issues of vulnerability and lack of safety and security systems, frequent incidents of injuries and deaths are common. At the same time, the restrictions and conditional restrictions placed on women migrants and limited options to migrate through official channels have compelled women to take unofficial routes to migrate. In order to tackle these issues, the government of Nepal has enacted laws, policies, rules, and regulations to guide migration, thereby influencing the pattern and flow of Nepali migrants.

The Nepal government's first legislation for foreign employment was the Foreign Employment Act of 1985. The Act aimed to regulate the migrant workers

leaving for foreign employment abroad other than India. During the time until the 1990s, the volume of migrants was relatively low. However, after restoring democracy in 1990, the government adopted a liberal approach to address labor migration. It opened the doors for private sectors to engage intensively in the migration process. Since then, out-migration flow has been steadily increasing. Table 3 presents a timeline of key events in the foreign employment governance.

Under Article 51 (i) (5) of the Constitution of Nepal 2015, “Policies relating to labor and employment”, it is recognized that the government would work “to regulate and manage the sector in order to make foreign employment free from exploitation, safe and systematic and to guarantee employment and rights of the labourers.” (Nepal Law Commission, 2015).

**Table 3**

*Timeline of Key Events in Foreign Employment Governance in Nepal*

Year	Description
1985	Enactment of the first law on foreign employment: Foreign Employment Act
1992	Final amendment of the Foreign Employment Act
1998	The second amendment of the Foreign Employment Act
1999	Enactment of Foreign Employment Rules, 1999
2003	The Nepal government becomes a member of the Colombo Process – a regional consultation forum on the management of foreign employment and contractual labor
2007	Enactment of the new law: Foreign Employment Act, 2007
2008	Establishment of Foreign Employment Board Establishment of the Department of Foreign Employment Enactment of Foreign Employment Rules, 2008
2010	Establishment of Foreign Employment Tribunal

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2011	First amendment of Foreign Employment Rules, 2011
2012	First Foreign Employment Policy, 2012
	Development of the five-year National Strategic Action Plan on
2015	Foreign Employment Act, 2007
	First SAARC level regional consultation on labor migration held by
2016	Government of Nepal together with SAARC secretariat
2017	Nepal becomes the Chair of the Colombo Process

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Source: IOM, 2019

Almost two decades after adopting the first FEA, the government was inclined to govern the issues of migrant workers and shifted most of the responsibilities to private sectors and individuals providing services for foreign employment. There is a significant gap in the policy and implementation of complaint mechanisms, which currently leaves migrant workers without adequate means of protection from vulnerabilities and fraud to seek redress for rights violations during recruitment and employment.

**Table 4**

*National Instruments Guiding Nepal's Foreign Labor Migration*

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Foreign Employment Acts	Other National Instruments
Foreign Employment Act 1985	Nepal's Constitution 2015
Foreign Employment (First Amendment) Act 1992	Labor Act 1992
Foreign Employment (Second Amendment) Act 1998	National Labor Policy 1999
Foreign Employment Rules 1999	Labor and Employment Policy 2005

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Foreign Employment Act 2007	Trade Union Act 1992
Foreign Employment Rules 2008	Child labor (Prohibition and Regulation) Act 2000
Foreign Employment Policy 2012	Children Act 1992
	Human Trafficking and Transportation (Control) Act 2007
	Immigration Act 1992
	Passports Act 1967
	Nepal Citizenship Act 2006
	Non-Resident Nepali Act 2008

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Source: SAAPE (2019)

**International Instruments Governing Labour Migration**

Nepal is a party to core international human rights treaties, which provide normative standards and protect all human rights, including migrant workers. Such international treaties and conventions, which Nepal has ratified, are equally applicable in Nepal as per Section 9 of the Nepal Treaty Act, 2047. In addition, Nepal has ratified several other relevant international instruments, including (a) the United Nations Convention against Transnational Organized Crime; (b) the ILO’s Worst Forms of Child Labour Convention, 1999 (No. 182); and (c) the Constitution of the WHO and the International Health Regulations as well as the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combatting Trafficking in Women and Children for Prostitution.

**Table 5***International Instruments Governing Labor Migration in Nepal*

Convention name	Ratified
International Labour Organization (ILO)	
Migration for Employment Convention (Revised), 1949 (No. 97)	No
United Nations Convention Relating to the Status of Refugees, 1951	No
United Nations Convention Relating to the Status of Stateless Persons, 1954	No
United Nations Convention on the Reduction of Statelessness, 1961	No
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	No
United Nations Convention on the Rights of the Child, 1989	Yes (1990)
United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990	No

Source: SAAPE (2019)

Despite being involved with numerous ILO Conventions, Nepal has yet to ratify the two major ILO Conventions governing the rights of migrant workers, namely the ILO Convention, 1997 - Migration for Employment Convention (Revised) and the ILO Convention 143- Migrant Workers (Supplementary Provisions) Convention, 1975. Ratifying these Conventions is necessary since it provides important provisions regarding undocumented migrant workers.

The assessment of governance of compliance with the provision of the foreign employment Act in 2009 carried out by the National Human Rights Commission (NHRC) found that the degree of compliance with the law is moderate. NHRC identified foreign employment as the weakest part of monitoring, investigation, and persecution of crimes was related (NHRC, 2009). Foreign Employment Act has not governed the employment of Nepali workers in India, although more than one-third of Nepali migrants work there. It also does not guarantee and is responsible for all employment documents and authenticity.

### **Conclusion**

Nepal's out-migration has a long history, which dates back to establishing the modern state. For a long time, India remained the primary destination for labor migration, unregulated and lacking official documentation. Although migration from Nepal to Gulf countries and Malaysia is comparatively a recent development, they are becoming an important source for the low-skilled Nepali workers. Due to the conditional restrictions for women migrants, there is a greater chance that women might choose illegal migration channels, and thus women migrants to these countries are becoming more vulnerable.

There is a gap in the policy and implementation of complaint mechanisms, which currently leaves migrant workers without adequate means to seek legal support and redress their grievances. Generally, effective mechanisms do not exist for resolving cross-border labour-related disputes, such as contract substitution, delay in payment and compensation and redressal of grievances of migrants, and taking action against abuses by the recruiting agencies and employers in the destination countries. National policies on labor migration need to be seen in the context of the goals of development and from the perspectives of migrants.



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