

# Migration Problem in Nepal: Lacking of Critical Overview

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In Nepal, there are very few empirical researches are conducted on 'issues of overseas migration, especially focusing on women'. One of the serious hurdles reported by few researches is the unavailability of statistical information on such workers, and this problem is really frustrating with regard to 'women migrant workers'. While press reports, seminar papers and available studies invariably agree to 'increasing feminization of overseas migration for works', the empirical data to support the fact are largely lacking. Obviously, available studies mostly conclude 'conjectures' but not on the 'established facts'. The present study has reviewed the latest researches carried out by national and international institutions.

One more fact needing highlight at this juncture is that 'overwhelming majority of available studies have dealt with the issue of 'migration of women for works with reference to the problem of trafficking'. Hence, the number of studies that have independently taken up the 'situation of migrant workers' with focus on women is undoubtedly negligible. Based on these facts, one can conclude that like 'trafficking is stereotypically connected with prostitution; the issue of women's migration overseas adopts the similar stereotypical approach and essentially associated with trafficking by researchers'. This attitude or trend indirectly stigmatize the 'overseas migration of women', and consequently indirectly justifies the 'protectionism' in the government's policies concerning overseas migration of women.

The following few studies make some reflection on the problem:

## **Writing against Trafficking (Media Activism for Support to Prevent Trafficking in Women and Girls in Nepal):**

This study was conducted by ASMITA Women's Publishing House, Media and Resource Organization in 2006. In this report, the migration of women has been dealt with some scant statistics on women migrated for works in overseas countries. To quote:

*"The proportion of the women migrated abroad to work in organized sector or in unorganized sector as domestic laborers through a foreign employment company or personal efforts taking the government's permission is not so much encouraging. The data provided by the Labor Department show that among the 91,540 persons migrating abroad for employment through foreign companies in the fiscal year 2060-61 BS only 542 (0.493%) were women. Among these women, 63 had gone to South Korea, 156 to Israel, 190 to Hong Kong, 40 to UAE and 3 to Kuwait. Similarly, the same year 448 women had gone to several countries by self-efforts, obtaining the permission of the Labor Department. Among them 351 had gone to Hong Kong and remaining had gone to countries like Cyprus, Maldives, UAE, Qatar, and Isreal".*

This report, however, suggests that proportion of women 'illegally migrating in search of jobs is very large'. While there are no explicit and obvious documents or other evidence to exactly show the 'true number' of the migrated women, the fact is

undeniable. The government's prohibition on women to migrate for works in the unorganized sectors in the Gulf countries is making not effect in fact. Despite the prohibition, the size of migrant workers in countries like Saudi Arabia, Oman, Qatar UAE, Jordan and so on is very large. This is a naked truth. From this perspective, one can conclude that the 'vulnerability of the injustice in matters of remuneration, terms and references of works, facilities and benefits, protection of jobs and personal interests of the workers, and most importantly the probability of economical as well as sexual exploitation is a serious problem facing the migrant women of Nepal. This study is based on interviews with some migrant workers and agents and brings forward the following facts into limelight:<sup>1</sup>

- Women are inclined to take risks of illegally migrating because of unemployment, and lack of sources of income in villages.
- Since migration from Nepal is difficult due to government's ban on migration to Gulf countries' unorganized sector, the larger numbers of women migrate to these countries via India, where agents are freely working in cities like Bombay.
- It is also economical to travel from Bombay.
- Employers from Gulf countries send free Visa as well as expenses for round trip fare to the women going there to work as domestic workers. Whereas if they have to go straight from Nepal, the cost incurred is over thirty thousand per person charged by the local agent.
- These incidents show that the prohibitive policy of the government is effective and thus has not been able to stop women from migrating to Gulf countries.

One of the serious problems attached to the 'illegal migration' is that it covers the transparency of process. As entire process is conducted in 'clandestine', the employers or agents are not obliged to 'divulge' all information to the workers. Consequently, the migration process is largely undocumented and unhelpful for any legal proceeding if unwanted event occurs in future. This condition is a boon for the people engaged in 'illegal trade of workers'. In the present context of anarchy and state of resignation in Nepal, the vulnerability of the 'exploitation of women workforce' is obvious. While the law on 'Foreign Employment' is expected to improve the condition, in lack of adequate implementation mechanism the expected outcome of the Act can be suspected.

The issue of 'remedy and compensation' is therefore a matter of great concern in this regard. The present Act provides for remedy for exploitation. However, the same is very difficult in absence of 'documents and evidence'. This aspect of problem, however, finds less attention of researchers. The said study too has not delved into the 'situation of effectiveness of laws and law enforcement mechanisms' to deal with this crisis.

### **The Dynamics of Migration in South Asia: An Overview**

This overview study was carried out by International Organization for Migration in 2005. This study presents a comparative scenario of the 'migration of women' for works from Nepal and other South Asian countries. While this study has supported its findings by statistics and facts provided by the government and non-governmental agencies, the 'analysis of the effectiveness of laws and enforcement mechanisms' is left unaddressed.

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<sup>1</sup>. ASMITA, 2006. *Writing against Trafficking (Media Activism for Support to Prevent Trafficking in Women and Girls in Nepal)*, Kathmandu.

**Status and Dimensions of Trafficking within Nepalese Context:** This study was conducted by IDS as commissioned by UNIFEM. This research in Nepal is the first study that has made attempt to 'investigate and analyze the legal framework against trafficking and enforcement mechanisms'. In Chapter 4, the report has dealt with anti-trafficking enforcement mechanisms, which includes examination of the role of Police, Attorney General, and Judiciary. However, this study also has not taken migration into consideration. Thus, provides not much help to 'migration issue'.

c. **Resisting Trafficking in Women: Auditing Testimonies and Restoration Approaches:** This study was conducted by Human Rights with Action Aid Nepal in 2003. While this study highlights one of its objectives as 'to use the study as an awareness raising too in trafficking risk areas in order to provide sufficient information on trafficking and restoration strategies, it has not made any efforts to 'see if there is any nexus between trafficking and migration'. The study finds poverty, ignorance and illiteracy as factors of increased phenomenon of trafficking, and also finds the increased trend of women migrating to urban areas for employment, it does not elaborate as to how much the 'undocumented migration' subjects women to vulnerability of trafficking. As a matter of fact this study does not provide information with regard to the situation of 'migration for works', and the danger it poses for being a source of trafficking.

d. **Human Trafficking: Zero Tolerance-South Asia Policy Dialogue on Human Trafficking:** This is a 'report prepared based on proceedings' of regional seminar held on 21-22 December, 2003 in Nepal. This seminar was organized by Him Rights and Plan International. The seminar documented a number of research articles from South Asian countries, and one of the sectors of intervention was the 'migration of for works'. At the end of the seminar, the participants drew up a number of 'recommendations'. In recommendation No.6, it was suggested that the 'transparent legal and informed movement' would help safe migration, and the 'deceptive, fraudulent, coercive movement would subject women to exploitative slave-like condition'.

This research-based seminar too did not project the 'migration' in dimensions of its entirety, and most importantly it paid no attention to 'need of ensuring a prompt and effective access to justice'.

e. **Analysis of Laws and Policies on Labor Migration and Trafficking:** This study was conducted by Center for Legal Research and Resource Development (CeLRRd) in collaboration with Kathmandu School of Law and The Asia Foundation (TAF) in 2002. This study particularly concentrated on the issue of migration for works, but it too did not investigate the 'effectiveness of laws and enforcement mechanisms'. While it adequately analyzed the causes and factors of migration, and delved into issues of legal frameworks dealing with the issue, the review of 'judicial proceedings' is lacking. One of the major findings of the study is 'highlighted as follows":

*"The Nepalese government's response to the problems and issues of the migrant workers in India and overseas is not promising. Government bureaucracy is often slow to act, and corrupt in many spheres. Most importantly, it is largely insensible to the problems of migrant workers; as a matter of fact its protective measures are limited and insignificant... The most basic problems that face migrant Nepalese workers are the lack or absence of protection from embassies*

*and diplomatic mission of Nepal abroad. In the recent years, however, the continuous efforts of for sensitizing the government concerning the plights and many sorrow stories of the migrant workers have helped to highlight the interventions of the government. The pressure has resulted in the following developments:*

- *Establishment of the labor desk at Tribhuvan International Airport.*
- *Appointment of labor Attaches in some receiving countries like Saudi Arabia.*
- *Opening of Embassy in Qatar.*
- *Legal Actions against some companies or agencies, resulting in cancellation of registration of 47 such companies.*
- *Government Claims that ban on employment of women in some countries like Saudi Arabia as positive response to the problem. However, this policy mirrors the protectionist role of State over females, and in consequence it results in violation of Article 11 (1) of the Constitution of Nepal. Therefore, the policy should not be taken into consideration as positive development".*

Like other studies, the present study also has lacked to review the effectiveness the 'judicial proceedings' to address problems and interests of victimized workers. The injustice in this sector is rampant as the study itself has reflected.

- f. Migration, poverty and development in Nepal:** This research-based paper was prepared by Prof. Bal Kumar KC, Head, and Central Department of Population Studies, Tribhuvan University, for Economic and Social Commission for Asia and the Pacific. This study projects that the Nepalese human resource has been emigrating temporarily or permanently since the first quarter of the 19<sup>th</sup> century leaving behind women, children and old people to take care of agriculture in rural areas of Nepal. The reasons cited for this kind of emigration were forced labor within the country, forced recruitment in the British Army and British- India, indebtedness at home and extreme poverty. Later waves of migration to foreign countries expanded from a few neighboring countries like India, Myanmar, to many other labor importing countries in South-east, east and Far-east Asia, Middle-east, Europe and North America. Africa and South America are the only two continents that remain to be penetrated by Nepalese.

*"Nepalese who have been absent for more than six months from their place of origin in Nepal and were living in foreign countries increased substantially since the people's revolution for democracy in 1951. The 1952/54 census enumerated 198,130 persons or 2.3 per cent of the total population being absent from the country for more than 6 months and living abroad. Of this absentee population, 97.3 per cent were originally from the mountains and hills of Nepal. This flow of emigration increased to 328,470 (3.4%) in 1961, 402,977 (2.7%) in 1981, 656,290 (3.7%) in 1991 and 762,181 (3.4%) in 2001. Such a movement during the last 50 years period until 2001 was overwhelmingly destined to India. For example, in 1952/54 census, absentee population from Nepal destined to India constituted 79.4 per cent (157,323/198,130). The proportion of Nepalese going to India increased to 92 per cent (302,162/328,470) in 1961. More than four fifths of this absentee from Nepal remained in four states of Uttar Pradesh, Bihar, Assam and West Bengal. In 1981, Nepalese going to India constituted 93.1 per cent (375,196/402,977). The 1991 census recorded 89.2 per cent (587,243/658,290) of the total number of Nepalese emigrants residing in India. The 2001 Nepalese census recorded even larger number of Nepalese emigrants to India (589,050) but the proportion of India*

bound Nepalese for the first time decreased substantially to 77.3 per cent (589,050/762,181). This was because many Nepalese were bound towards Saudi Arabia (8.9%), Qatar (3.2%), United Arab Emirates (1.7%), Hong Kong, China (1.6%), and Anglo America (1.3%). A huge number of Nepalese used to reside in India for agricultural labor until 1971. The pattern now has changed. For example, personal service, business, institutional service and other reasons accounted for 95 per cent of all reasons, while agriculture merely 13 accounted for less than one per cent (CBS, 2002). Out of the total absent population from Nepal in the 2001 census, males comprised 89.1 per cent and females 10.9 per cent (Table 5). Almost 90 per cent of the total absentees were from rural areas of Nepal and 10.3 per cent were from urban areas. Females from rural areas comprised 85.3 per cent compared to 14.7 per cent from urban areas. About 70 per cent of this absent population was from the poverty-stricken mountain and hill districts in the mid-western and far-western region of Nepal. Private jobs or personal service alone accounted for 63 per cent of all reasons for absentee. Out of this, 76 per cent were destined to India.

The census data gives a much smaller volume of Nepalese emigrants to foreign countries. A recent statistics (April 2003) revealed that the number of people who have gone to various countries for employment is much higher than the number enumerated by the 2001 census. Within the last ten years, about 337,319 Nepalese (only 200 females) are said to have already gone to various foreign countries for employment. Out of this total number, 75,885 went to Saudi Arabia followed by 45,825 in Qatar, 43,831 in Malaysia, 21,905 in United Arab Emirates, 3,831 in Bahrain, 3,014 in the Republic of Korea, 2,668 in Kuwait and 1,566 in Hong Kong, China. The Nepalese workers in these eight countries constituted 198,525. These figures are not comparable to the census figures because the definition of the absentee population is based upon being absent from home for more than six months and living abroad before the census enumeration day. This does not mean that absentees always live in foreign countries as many of them might have returned home. Absentees also include housewives, dependants and students who do not work. Since it has already been two years after the census was taken in June of 2001, the additional number of Nepalese workers to these countries might have increased. Statistics for six major labor importing countries except Hong Kong, China and Kuwait (reported less than the census figures) amounts to 77,661 persons. Statistics by the Department of Labor and Employment Promotion adds more numbers of Nepalese workers abroad to the census figures of 2001 such as 37,018 in Malaysia, 21,428 in Qatar, 9361 in United Arab Emirates, 8425 in Saudi Arabia, 1,094 in Bahrain and 335 in the Republic of Korea. It is likely that there might be many more Nepalese workers who had gone abroad for employment during the last two years. Even if one simply adds 337,319 Nepalese foreign workers to the figure of 762,181 absent population enumerated by the 2001 census, the total number would be 1,099,500 persons living abroad. This means that the total number of Nepalese going to various foreign countries for various purposes would be more than one million during the last twelve years".

As it is obvious from the text above, this report like other fails to give the exact figure of female workers migrated to abroad.

These research studies reveal some important facts needing in-dept research and analysis in future.

- While the government and non-governmental organizations invariably agree that the number of women migrating without documentation to overseas countries is huge, the attempt to address this problem is not seriously

undertaken. Migration without documentation poses serious problems of human rights violation. The protectionist approach adopted by the government has been one of the serious factors for pushing women to resort to 'undocumented and illegal migration'.

- The protectionist approach of government has been unable to stop illegal or undocumented migration. It is rather helping the agents and foreign employers to entice women for migration, and is a boon for them to 'deceive' workers. The approach is therefore one of the most heinous factors 'to disable women to combat injustice and exploitation'.
- The protectionist role of the 'government promotes stigmatization of women's migration'.
- The exploitation of all kinds is one of the risks of migration involved in the case of women. This risk can be substantially reduced by 'improving the effectiveness of laws and their enforcement situation' This in turn requires efficiency, transparency and accountability of the mechanisms involved in enforcement of migration laws. The national judicial system's role is paramount in this regard. An effective and prompt access to judicial proceedings may create deterrence against possible offenders as well as ensures 'effective remedy or compensation' to the affected persons.

The research of migration process and its lapses and lacunas cannot be adequate and complete without an empirical analysis of the standards of the judicial system. In view of this need, the present study has been an attempt to 'address the gape' left by research studies in the past.