

Restrictive Labour Migration Policy on Nepalese Women and Consequences

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Abstract This study seeks to understand the governance system of women labour migration as practiced by the Nepali state through various institutions on the basis of rules, regulations and laws, and explores the interface between the regulations introduced against women migration abroad, existing popular practices, and consequences experienced by women migrants and their families. After a review of the Nepal government's rules and regulations introduced in the recent past, the paper concludes that Nepal still follow restrictive migration policy for women even if it is facilitating male out-migration in the job market abroad by introducing various schemes, rules/regulations and institutions. The often cited positive aspects of migration helped increase the aspiration of women to go abroad even women migration has become more costly, complicated and vulnerable due to the continued restrictive policy by the government of Nepal.

Keywords Labour Migration, Restrictive Regime, Protective Regime, Feminization of Migration

1. Introduction

In 2011, women comprised 12.5 percent of Nepalese people migrating for work outside Nepal. Current migrants are better educated than the past ones, and to manage their household poverty, opportunity comes to break the restrictions on their mobility (Peskin 2016). Women are increasingly working to increase their access to income on equal terms, and demand equitable migration laws. They pursue employment opportunities in the global labour market and need state protection when seeking foreign employment in the form of provisions for better safety and access to safe remittance procedures. The increasing involvement of women in voluntary work migration has been captured with the concept of "feminization of migration" (Pillinger 2007). This paper deals with the current labour migration policy on women in Nepal. Since there has been a significant increase of labour migration of

Nepali women to the Gulf countries over recent years, the focus of this paper is to analyse the consequences of restrictive or "protective" (Parrenas 2008) policy of Nepali state on those women who aspire to work as labourers abroad.

Primary data used for in this paper were collected from December 2013 to May 2014 in Nepal. In-depth interviews were conducted with women migrant labourers already working in the Gulf, who were present in Nepal for holidays during the time of this research. Policy makers, i.e. former ministers, former secretaries and serving secretaries of the concerned ministries; senior officers of implementing agencies, especially government officers of the passport department, etc. were interviewed as Key Informants for the purpose. Government's Labour policies, laws, rules, regulations, journal articles, books, book chapters, papers and migration related reports published by different organizations were reviewed and used as secondary sources of data.

2. Recent Trend of Labour Migration of Nepal and State approach in Women's Migration

States are important actors in the process of migration. Earlier migration theories tried to undermine the role of the state in the process of migration (Reveco and Mullan 2014:10). Economic theories of migration said that migrants were free, had complete information about their migration that included the information about the place they would migrate. All migrants have to pass through administrative borders of the state and states are important in migration as senders and receivers.

In Nepal, the Foreign Employment Act (FEA) of 1985 opened avenues for the private sector to facilitate foreign employment. There has been a steady increase in the percentage of the Nepalese population migrating out of Nepal from 3.4% in 1961 to 7.3% in 2011 (Government of Nepal, 2014). After the restoration of democracy in Nepal, the country gradually moved to free market economy which highly encouraged out migration (Government of

Nepal, 2014). Until 2001, the most popular destination for Nepali workers was India. After the liberalization of Nepalese economy in 1990 and the oil boom in the Gulf Countries, the trend of going to the Gulf countries and Malaysia for work has increased (Sijapati et al. 2015:i). New destinations since 1993 have been Kuwait, Malaysia, Qatar, Saudi Arabia and the UAE among other countries. Between 1993 to 2008 nearly 97 percent of all labour migrants from Nepal went to these countries.

The number of educated women is increasing and the improvement in the literacy rate among women has motivated well-educated women to break with their traditional roles of doing household chores and taking care of children and other family members. Women are increasingly breadwinners of their families and are encouraged through education and socialization to earn and contribute to the family (Gaye & Jha, 2011), and they have started migrating to foreign countries in search of better employment opportunities. However, mostly women with poor economic backgrounds are found going abroad for labour migration with the hope of getting better jobs (Bhadra, 2007).

In terms of governance, the Nepali state initially pursued a restrictive regime for labour migration of women. Getting a passport was extremely difficult until 1990s. In the

Seventh Five Year plan (1985-1990), the government initiated pro-labour migration policies along with liberalized access to passport for those who sought employment abroad. The Eighth and Ninth Five Year Plans increasingly prioritized foreign labour migration as an avenue to promote employment, but not with equal access for men and women. The Foreign Employment Act 1985 had prohibited a recruitment agency from providing “foreign employment to children and women without the consent of her guardian” The Second Amendment to the Act in 1998 expanded the permissions required for women and children so as to take “permission of His Majesty’s Government and guardians”, and it also defined “guardian” to be either a mother or a father of an unmarried woman or husband of a married woman. In May 1997, the then His Majesty's Government for the first time decided to permit women to work in foreign countries in certain organized sectors. The subsequent decisions taken by the government, sometimes allowing women to go abroad for work and sometimes banning or restricting this practice based on certain incidences indicates that the government did not have long term vision for women labour migrants. The table below shows varying bans and restrictions by the government on women's access to international labour migration.

Table 1. Provisions Adopted by the Government of Nepal on Female Migrant Workers under the Policy

1985-1998	Women are required to obtain consent of a ‘guardian’ (parent, husband, or other relatives) to go for foreign employment.
16 May 1997	Decision to permit women to work in foreign countries in certain organized sectors.
5 March 1998	A ban on international labour migration for women is introduced.
16 November 2000	The ban on international labour migration for women is withdrawn with a condition that a woman must obtain a guarantee for her security by the Nepali mission in the destination countries; this provision was not applicable in the case of the Gulf countries, hence women could not migrate to these countries.
21 January 2003	Women are allowed to go for work in the Gulf countries on the condition that the Nepali embassy or consulate provides a certificate guaranteeing full security at the destination.
27 March 2003	Additional conditions are imposed for female migrants, such as getting re-approval from the government after temporarily visiting Nepal.
8 May 2003	A requirement for women to obtain approval from the local government and family members before departing for foreign employment is introduced.
31 May 2005	Foreign employment to Malaysia for female migrants is opened for employment in the organized sector.
17 January 2007	Various decisions pertaining to restrictions and bans on female migrant workers are withdrawn so as to permit women to go for foreign employment in the organized sector.
5 September 2007	All additional conditions for female migration (i.e. age, working condition in the destination, etc.) are withdrawn.
5 September 2008	Female migrant workers allowed to go for work to the Persian Gulf countries and Malaysia but not as a domestic help.
Jan 2009-May 2009	A complete ban is introduced on female domestic workers going to Lebanon
2010	Government allows women to go to Saudi Arabia, Kuwait, the United Arab Emirates and Qatar for work
October 2011	Nepal lifts the ban on women migrant workers going to work as domestic helps to the Gulf countries and aims to send about 150,000 female workers to the region.
9 August 2012	The government decided to bar women less than 30 years of age from working in Saudi Arabia, Qatar, Kuwait and United Arab Emirates as domestic workers.
July 2014	Nepal imposes a temporary ban on sending housemaids citing the need for stronger “regulations to protect them from widespread abuse and exploitation”.
April 2015	Prohibition on women under 25 years of age migrating to the Gulf countries as domestic workers
May 13, 2016	The government allows Nepali women aged 24 and above in domestic jobs in the Gulf and Malaysia with the help of selected recruiting agencies on the basis of signing separate labour agreements with the host countries.
August 2017	The government stopped sending women to the Gulf countries after the parliamentary committee had ordered the government to ban Nepalis traveling to the Gulf countries as domestic workers along with their field visit report

Source: Computed by Author 2018.

The data presented above demonstrate that the government imposed various provisional bans for women labour migrants since 1990 in order “to protect women from many risks, including long working hours, sexual violence, physical abuse and economic exploitation” abroad. These major steps taken by the government of Nepal were considered “for the security of women migrant workers in order to prevent exploitation and trafficking”. Cases such as the alleged sexual abuse and eventual death of a Nepali migrant worker named Kani Sherpa in Kuwait in 1998 lead the government to prohibit female workers from going to all the Gulf countries. The ban was partially lifted in 2003 as Sherpa’s case faded from public memory and no other cases of abuse and death of Nepali women workers abroad were reported in the media. Malaysia was opened for female labour migration in the organized sector from May 2005 onwards, and restrictions were withdrawn and permits were given from the beginning of January 2007. Following the suicides of two female nationals (Sunit Bholan, 22, allegedly committed suicide October 8, and Mina Rokaya, 24, died in hospital on October 23, 2008), Nepal reintroduced a work deployment ban for Lebanon, highlighting growing international concerns over the treatment of migrant domestic workers following a wave of suicides over the last two months. Following the same pattern, the ban was lifted completely in 2010. Soon in 2012, a new rule was imposed because of which women below the age of 30 years would not be able to go to the Gulf as domestic workers (Paoletti et.al, 2014). All these bans and conditions were justified by the government as “necessary to protect Nepalese women migrant workers, particularly domestic workers in Gulf States from exploitation and physical abuse” (Amnesty International, 2011).

While labour migration for men has been encouraged by through social dynamics and legal procedures, women have generally been discouraged from going abroad for job due to social practices and corresponding legal arrangements. Still, even if the majority of migrant workers are men, the number of females going from Nepal to work in these countries has increased in the past few decades (Malit Jr. and Youha 2013). In spite of the bans and restrictions, women continued to go abroad for work through different channels some of which were illegal. The number of female migrants increased 74 times from 2006/07 to 2013/14 and that is significantly higher than that of males which rose just 2.5 times in that period (Sijapati et. al. 2015: 1: 18). As of January 2015, about 350,000 Nepali women were estimated to be working in the Gulf countries, of which 70,000 were in Saudi Arabia alone (Sedhain 2015a). In this scenario, restrictions and bans compelled women to take illegal routes while going for labour migration abroad. The recruiting agencies made it a business to make aspirant women migrant workers pay more because they were to travel illegally, increasing the risk of women being trafficked because the migration route

went through India where trafficking of women from Nepal is frequent.

Sijapati & Limbu, (2012) and Guichon, (2014) have shown that the Nepali many female migrant workers abroad suffer from mental, sexual and physical abuse by their employers. Going through illegal routes increases vulnerability to sexual harassment, unpaid labour and physical torture (Sijapati & Limbu, 2012). Therefore, rights activists consider bans and restrictions to be discriminatory for aspirant women migrant workers and argue that such provisions have become a source of more abuse. Due to the open border between Nepal and India, some brokers take aspirant women migrant workers to India and arrange their flight from there to destination countries (Amnesty International, 2011). According to a report by Mahato (2012), more than 3,200 Nepali women had been intercepted at New Delhi Airport within a few months after the government requested Indian authorities to stop Nepali women in transits en route to the Gulf on visitor visas. *Nepali Times* (2012) quoted Immigration officials at New Delhi airport and reported that they (the officials) intercept up to five Nepali women every day on forged passports or visas.

The following two cases illustrate “illegal” migration and government responses to it. The Nepali Government encourages Nepali migrant workers, especially women, to go through Kathmandu’s Tribhuvan International Airport. Otherwise, the migration would be considered as “illegal” or “irregular” and such migrants workers will be excluded from access to justice and other services provided by the state to the migrant workers. The narrative below is provided by a woman belonging to the Bote ethnic minority who went abroad with forged documents using other routes than those specified by the government.

I didn’t even have a citizenship certificate. One of my villagers took me to India, and I was given a passport with visa to Qatar. The passport which belonged to a Brahmin girl was given to me for going to Qatar. I reached the destination, worked there for 2 years and returned home. Though I took a route via India to reach there, while returning I a booked direct flight and landed at Tribhuvan International Airport in Kathmandu in my own country Nepal. While returning, Hakim [Immigration Officer] seemed to have identified that I was travelling with a fake passport. Since the passport I was carrying was for a Brahmin girl, it was not difficult for a Nepali officer to know that the passport was not my own one. He saw the photograph in the passport, looked at me and told me that it was not good to travel with a fake document. Initially I denied the allegation and said that my documents were not fake, but genuine ones. Then, he tried to be a bit harsh and started questioning about how I dared to defend such fake documents... However, he was nice enough to settle the issue in a cool manner once I stopped arguing with him. He said “though it was a blunder, I was trying not to make it an issue

because the mistakes were done by a poor and uneducated lady from a village." He then asked me to give 20 Qatari Riyal to him. I replied by saying that I did not have Dinar but would be able to give 20 Rupees. Then he got so irritated with me and told me to just disappear from there. At the end, he returned my documents to me and told me not to repeat the mistake.

Like in the case presented above, most of the people going abroad through illegal and irregular channels are from lower class backgrounds. Since they do not have basic information about recruitment and migration processes and work opportunities abroad, they often end up using such irregular channels which the government considers to be illegal. In contrast, the state representatives in the form of bureaucrats are willing to accept a bribe to allow such migrants to pass through the border control. The story of Sita (name changed) does not directly tell us about corruption but points to a lax migration control:

We were having great difficulties running our household activities in our village in Eastern Nepal. We did not even have money to pay tuition fees for our son in the school. In the meantime, I met a person who was working as middleman sending women abroad for work. I discussed about the cost and process of going abroad. I did not share anything about these discussions with my family members [including her husband] as I had a fear that they would not allow me to do it if I would disclose the truth. One day, I went to the District, Headquarter and applied for a passport. Once it was issued, I contacted the broker and left home without telling my family members. I was taken to Delhi first, and from there to Kuwait. Fortunately, the process went smooth, and everything went well. Then only, I called home and shared the truth. Initially all of my family members were unhappy, but eventually I could convince them by saying that I had done everything for the betterment of the family. I came back to Nepal on vacation after completing two years in Kuwait. While doing so, I did not use the route via Delhi but landed directly in Tribhuvan International Airport in Kathmandu. Then onwards, I have been using Kathmandu airport while coming and going. I never experienced different treatment at the airport even if I initially used the 'illegal' route via Delhi to reach there.

Sita's story states that the government either has no data of such migrants or it wants to overlook the issue of migration through irregular routes. The cases described above – the excuses granted to the Bote woman by the duty officer, and the positive treatment received by Sita at the airport even after she went abroad violating Nepal government's policy – points to a particular form of tension of migration created through the contradictory policies. It is a tension between the women's need to engage in labour

migration and the increase of vulnerability created by the ban in the form of irregular routes of migration that involve unpredictable bureaucratic processes, sometimes corruption, in addition to lack of protection by the Nepali state during their stay abroad. Agents who would take them through 'difficult' routes such as India, Bangladesh and Sri Lanka demanded higher fees (Wadhawan 2015:196). Movement of women migrants going to work as domestic workers in the Gulf countries did not decrease after the bans and restrictions were imposed, but increased manifold, with the domestic sector being the most significant for Nepalese women (Wadhawan 2016:196). Here, it seems that the policy makers introduced restrictive mechanism without trying to understand how women perceive the situation. As Parrenas (2008) examines the social, cultural, and political as underlying constructions of gender in neoliberal state regimes in Phillipines and coins a term "women's domesticity in migration" to state that there are many adverse steps migrant women and their family have to negotiate. He illustrates how the operation of globalization enforces notions of women's domesticity and creates contradictory messages about women's place in society, simultaneously pushing women inside and outside the home (ibid).

The question here is how to see it in perspective and whom to be consulted before formulating the suitable perspective. Feminist standpoint theorists point out, the knowledge is always situated in time, place, experience and relative power, as opposed to knowledge from nowhere that's supposedly value-free. That is why focus should be on the idea that there is no possible way to have an unbiased perspective or viewpoint of the world. As Paul and John (2005: 942) share their experience and argue people live in a social hierarchy, and therefore, all have different ways of life and have viewpoints of the world according to one's place in the world. However, none of the policies were introduced following the arguments. Rather the restriction was imposed from the top bureaucracy with different intension.

In fact, rigid laws are not always helpful in directing decisions of aspirant migrants, where foreign labour migration is considered necessity rather than merely an option (Haines 2013:81). Rather, such restrictive policy may give rise to more complicated and costly migration (Haines 2013: 80). Recruitment agents easily acknowledge that they can make more money if the government tightens the process or imposes bans or restrictions on particular sector for particular groups, such as women (Pyakurel 2016). In other words, rather than regulating migration the restrictions encourage corruption and black market transactions. An agent states:

"What I understood from my ten-year experience of interaction with Department of Labour is that they tighten the process not to control or stop something but to get more money out of the process...It doesn't matter for agents like us. If the officers ask for 3,000

rupees as bribe, we will add Rs. 10,000 more for us and charge 13,000 rupees from the client. That is why the real sufferer is the client, not us” (cited in Pyakurel 2016)

So, while it seems that media coverage of abuse of women migrant workers induce government action in the form of restrictions there may be a hidden underlying motivations at play, creating a less transparent dynamics between abuse, regulation and corruption that interact in mutual interdependency. Even the government estimates that a majority of female migrant workers take informal routes due to the state's restrictions on women going abroad for job (Sedhain 2014a). Since this has become known issue, why the same governments continue to impose restrictive clauses to women migrants? In fact, decisions on restriction on women's labour migration usually come after pressure following media coverage of incidents of abuse, injuries or deaths, and the migration industry such as manpower agencies subsequently lobby to get the restrictions lifted. For example Nepal, in August 2012, had banned women under the age of 30 from going to work in Middle Eastern countries amid growing concerns that they are being exploited. This move came 18 months after the government lifted a 12-year old ban on women working in Gulf countries. The then Information Minister Raj Kishor Yadav was quoted as saying "Young female workers are reported to have been sexually and psychologically exploited in Gulf countries...so the cabinet decided to set the age bar for women migrant workers in the Gulf. Women above 30 years of age are at low risk of such exploitation". Subsequently, pressure from overseas employment agents and from the workers themselves caused the government to relax the bans or altogether lifting them.

On one hand, government introduced a pro-poor and pro-marginalised category policy on foreign labour migration including the reservation of ten percent quotas on foreign employment through recruitment agencies, for disadvantaged groups such as the Dalits, Janajatis, women, and the victims of conflicts and disasters since 2002. In the Interim Plan of 2008/09-2010/11 the government even aimed to send 175,000, workers in the first year, 250,000 in the second and 300,000 workers in the third year. On the other hand, the Government often imposes bans, restrictions on women labour migration. Once we observe many similar incidents of ban and lift including the recent case of Nepalese migrant workers in Kabul, Afghanistan, it becomes apparent that the Nepali Government does not have a clear strategy and policy regarding labour migration in general and women labour migration in particular. While lifting the ban in May 2016, the Labour Ministry officials argued that they decided to lift the ban after realizing that many women were going abroad through India with the help of recruitment agencies, unauthorized agents and travel agencies using travel visa, but they same ministry

circulated a notice to concerned authorities not to allow women to the Gulf countries for domestic works in August 2017.

Here one can say that most of these government decisions were taken on an ad hoc basis rather than having a thorough understanding. If something happens in the host countries, the easiest response by the government is to ban or impose restrictions on migration. Once the tension is over and out of the public memory, the government again lifts the ban. Such cases happened in the aftermath of killings of Nepalese in Iraq in the past and recent killings of Nepalese security guards in Afghanistan. As stated earlier, almost all bans were not free of negative consequences. Rather it opened the gate for women going abroad with the help of unauthorised agents and travel agencies using illegal routes. The latest report the Parliament's International Relations and Labor Committee, which was made public in August 2017 with some recommendations stated that "widespread abuse and exploitations of domestic workers, mainly females" in Qatar, Saudi Arabia, United Arab Emirates and Kuwait. It in fact tried to substantiate the argument which states that many housemaid women have been using air routes of the South Asian countries like India, Bangladesh and Sri Lanka, while many manage to leave the country via Tribhuvan International Airport, the country's only international airports, by bribing government officials including immigration. "Our field investigations have found that many others were using air routes of India and Sri Lanka. It is a matter of grave concern that our own immigration officials were also found complicit in 'smuggling'. We are recommending the government to carry out a thorough investigation," media quoted Sah, who led the probe team that had conducted investigations in four labor destinations -- Qatar, Saudi Arabia, Kuwait and the United Arab Emirates.

Here the question comes whether the suggestions made by parliamentary committee help decrease the number of women migrants to Gulf countries as domestic workers and whether women workers working there have better working environment than before. The answer for the both concerns could be negative. It was told that the 'smugglers' started collecting more money from the aspirant women to go to the Gulf saying that the system is further tightened along with the intervention of Parliamentary committee. "We used to pay 40,000.00 before August 2017, and have been asked to pay double amount (80,000.00) than earlier if we want send a woman to Gulf countries" a manpower agent states comparing the situation. In fact, the situation become too complicated where one could easily get exit stamp to go to the Gulf countries even to work there as domestic worker if she is ready to pay a handsome amount to bribe officers. Contrary to this, some genuine tourists to wish to travel to Gulf countries as visitor to their family members were stopped, and harassed by the same airport authority citing the ban

and recommendations of the Parliamentary Committee.

Whether policy rigidity always works to control migration? As Haines (2013: 81) describes, rigid policies without realizing that rigid laws are not always helpful in changing decisions of migrants of aspirant migrants. Government has to understand why there is strong aspiration to go abroad before imposing the restriction. Since there is increasing social network, migration becomes self-perpetuating over time because movement of an individual creates additional social capital for other members of family or society which can both motivate them to migrate and make their process of migration easier (Bohra and Massey (2009: 631). Bohra and Massey (2009) have outlined several factors that trigger international migration of people for work. Household conditions are one of the main factors triggering migration because households tend to send migrants to work to accumulate capital and overcome credit constraints. They further state that social ties to current or former migrant can increase the probability of migration because people with migratory experience can provide information, resources and assistance for the aspirant workers. Networks of migrants and non-migrants or aspirants can connect the place of origin with place of destination and help aspirant migrants by reducing costs and increasing expected benefit of migration. If the aspiration of women for labour migration abroad is 'with the greater feeling of familial obligation rather than individualistic orientation' as discussed by Williams et al. (2014 800), it is worth to quote Janet Napolitano, (former secretary of homeland security and former governor of Arizona, USA) who expressed her doubts about the effectiveness of only physical barriers at the border and said, "You show me a 50-foot wall and I'll show you a 51-foot ladder at the border."

3. Conclusions

The feminization of migration has created a need to study the ways in which migration is gendered and in this context the present paper has analysed the issue of women's migration to work outside Nepal. The concept of *bidesh jani* or going abroad for work appeared in Nepal in the 1990s in the context of working abroad to earn money for purchase of land or a house. More recently, *bidesh jani* has become a way of securing a livelihood (*jiw palni*), involving education, food and lodging, and luxurious items. Consequently, rich and poor, educated or uneducated are going to *bidesh*, abroad, and there is a strong enthusiasm among Nepali women for *bidesh jani*. In connection with the discussion of democracy, human rights and gender equality in recent years, Nepali women have started asking why women cannot to *bidesh* like men do. Media stories about independent working women nourish women's aspirations to go to *bidesh* to exercise their freedom.

Agents and recruitment agencies send people abroad

through illegal channels if the legal channels are blocked as it is their business. Women migrants who had gone through illegal channels were found to be more vulnerable and risked sexual abuse and other types of violence including physical torture. Frequently, they were also made to work for longer hours and paid less than initially agreed.

Despite growing awareness of the demerits of using these illegal channels, people are still using them. In some cases, they also forged documents to create access to labour migration. Government seems to be busy in restricting and controlling the flow of women migrant workers. However, there is no mechanism to consult stakeholder especially women returnees and aspirant migrants to understand their experiences with and aspirations for foreign labour migration when drafting national policies. In addition to formulate policies by learning from these experiences, there is a need to understand the dynamics of the migration industry, including local agents and recruitment agencies to better predict the effects of government policies on women migration. Unless this is done, restrictive rules on labour migration alone cannot solve the problems; rather they push people to find alternative routes some of which may be illegal.

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