

## CHAPTER ONE: INTRODUCTION

### 1.1 Background of the Study

Migrant Labours are casual and unskilled workers who move from one region to another offering their services usually on a temporary and a seasonal basis. The term “migrant worker” refers to international migrant individuals of working age and older who are either employed or unemployed in their current country of residence (ILO).

Treaty of 1816 A D is the first official recorded document found till date that formalized foreign employment in Nepal. While seasonal migration to India especially from certain areas of Nepal has had a long history, the liberalized economy and political environment of the nation after the 1990s formalized Labour migration as an opportunity for employment.

Migration for employment is an important issue globally, which now affects most countries. Two major Labour market forces in operation today that result in increased migration for work are: many people of working age either cannot find employment/adequate employment to support themselves and their families in their own countries, while some other countries have a shortage of workers to fill positions in various sectors of their economies. Other factors affecting migration of Labour include demographic changes, socio-economic and political crises, and widening wage gaps within, as well as between, developed and developing countries. Consequently, there is much movement across borders for employment.

Overall, worldwide migrant workers constitute 164 million, of which working age constitute 4.2 per cent of the global population aged 15 and older, while migrant workers constitute 4.7 per cent of all workers (ILO). Recognition that, as a policy field, international migration for employment requires both effective bilateral and global regulations have come very lately when compared with other issue areas such as trade, health and finance (Jönsson and Tallberg 2010; Betts 2011; Koser 2010).

Foreign employment is a major source of income for many Nepali households. *Labour Migration for Employment: A Status Report for Nepal 2013/14* shows that the

number of migrants leaving Nepal for work is increasing every year. Some major destinations for Nepali migrant labours are: Malaysia, Qatar, Saudi Arabia, UAE, Oman, Bahrain, Kuwait, South Korea and Japan (recently added).

Around four lakh youths enter into Labour market every year (DoFE Annual Report: 2018). As domestic market is not capable to absorb them, most of them ponder for foreign employment as the only available option. As a result around 4 million Nepali migrant labours are recorded to be in different parts of the world, 95 % being in the Gulf and Malaysia (DoFE).

Nepal government has recognized 108 countries for foreign employment (DoFE). The data collected from the Department of Foreign Employment indicates that migratory patterns to be majorly of unskilled workers. To be specific, 74 percent of migrant workers who received Labour permits in the last fiscal year were categorized as 'unskilled' (DoFE).

In Nepal, migration is regulated by an amalgamation of national, bilateral and international policy instruments. However, the major legislations that regulate Labour migration are the Foreign Employment Act (FEA) 2007, Foreign Employment Regulation 2008; and other Directives issued by Parliamentarian Committee of Federal Parliament and Ministry of Labour, Employment and Social Services (MoLESS) at several times. Besides these national laws, the Government of Nepal is also a party to some bilateral agreements, international conventions, and regional consultative processes, all of which are related to the management of labour migration from Nepal. The 2007 Act with few amendments, has several provisions in favor of migrant labours like: it has mandated the appointment of labour attachés in destination countries with more than 5000 Nepali workers, and the provision of a Foreign Employment Welfare Fund, Foreign Employment Tribunal.

There are number of actors and institutions in Nepal performing various roles- primary as well as supporting in relations to labour migration. The Ministry of Labour, Employment and Social Security (MoLESS) and offices under its aegis: the Department of Foreign Employment (DoFE), The Foreign Employment Board (FEB), Provincial Labour Offices, The Ministry of Foreign Affairs (MoFA), Foreign Employment Tribunal and Nepali Missions (embassies, consulates) in destination

countries are some of the institutions involved in the process. On the other hand, INGOS, Trade Unions and other activists in the sector also have played crucial role in shaping Labour Diplomacy of Nepal.

Nepal is also a party to several International Conventions and Regional Consultative Processes that help in the management of migration. Notably, Nepal has ratified 11 ILO Conventions until now and it is also a signatory of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979. Similarly, Nepal also chairs (from 2019) Regional Consultative Processes, the Colombo Process, a forum for Asian labour-sending countries to share experiences and best practices as well as optimize development benefits from organized overseas employment; and is active member of the other regional forum like: the Bali Process, a consultative process that aims to combat smuggling, trafficking and transnational crime; and the Asia-EU Dialogue, an inter-regional forum aimed at enhancing exchange of ideas between policy-makers, NGOs and researchers on issues pertaining to migration.

In narrow sense, Labour Diplomacy refers to the work performed principally by labour officers (also called labour attachés) at embassies around the world and, more specifically, the advocacy and promotion of core labour standards within the context of human rights and international trade policy. The five internationally recognized core labour standards, as developed by the International Labour Organization (ILO), are: freedom of association; the right of collective bargaining; the elimination of forced labour; the effective abolition of child labour; and the elimination of discrimination in employment and occupation.

Labour Diplomacy is more pertinent to the countries like Nepal where millions of their nationals are forced to leave their country for employment. This instrument will help to ensure basic work environment by protecting their rights and limiting their other obligations. Keeping this in mind, the Government of Nepal has signed Bilateral Agreements/Memoranda of Understanding (MoU) with Qatar (2005), the UAE (2007/2019), the Republic of Korea (2007), Bahrain (2008), Japan (2009/2019) and Malaysia (2018) with an effort of the government to expand its extra-territorial jurisdiction and accord more protection to its citizens abroad.

For some more years to come, Nepali market will not be vibrant enough to absorb the economically active youths. Also, most of the Labour forces that enter into the system are unskilled. Hence, there is no other choice than migrating to Labour destinations looking for better opportunities. Government of Nepal has been facilitating the process with various endeavors to support those labours. Signing and updating existing MoUs with Labour destination countries, extension of Labour offices to provincial headquarters, exploring for more potential markets besides Middle-East, ensuring social security and engaging them in state-owned activities through various national level projects are some of the initiatives undertaken by the government of Nepal.

As a welfare state it is the primary responsibility of government to ensure basic rights of her citizens wherever they are. Management of emigrant labours is important from the view point of development-migration nexus. In case of Nepal these migrant workers are the main source of national income contributing more than 30% of national GDP (NRB).

Despite these efforts of the government reports of casualties and mistreatment to labours is still a common phenomenon. Untimely rescue and repatriation of labours in problem are still common news. Mechanism both institutional and legal to address these situations seems insufficient.

In this backdrop, it's high time that this genuine effort of government and other stakeholders be studied with comparison to its performance. Hence, this research intends to assess the effectiveness of Labour diplomacy practiced by Nepal.

## **1.2 Defining Labour Diplomacy**

Labour Diplomacy, in narrow sense, refers to the various tasks performed by staff in particular labour attaché at diplomatic missions. This may include dealing with various officials, counterparts, employer, and labours. Main objective of pursuing Labour Diplomacy is to ensure proper working condition for labours in the destination countries until they safely get back home. Diplomats also put their strong efforts to prevent undesired environment for labours. Some countries employ special labour office in the destination countries (Philippines Overseas Labour Office: POLO), while after the enactment of FEA 2007, Nepal has provision of appointing labour attaché to the missions in the countries with more than five thousand migrant

labours. Bringing back labours to home country safely also come under the jurisdictions of Labour Diplomacy.

### **1.3 Labour Issues**

Most of the Nepali people who migrate for labour work are unskilled while few are semi-skilled. Most of them are dropout of high school with mere knowledge of other languages except Nepali and mother tongue language. They are unaware about the provisions of rights of labours and laws of the destination countries. Even though there is a provision of signing a contract paper between labour and employer it has become mere a formality. Two standards of contract paper are signed between employer and employee; one to be used for government offices to get labour permit and another 'illegal' one for employers where terms and conditions are harsh and completely different from original one; and beyond minimum standard set by Nepal government. Providing work other than mentioned in contract paper; compelling to work more hours than agreed without overtime incentives, giving additional work along with regular works, devoid of work, making workers missing/stray from airport forcing them to be undocumented, paying less than that mentioned in contract paper or denying payment or untimely payment are common problems faced by labours. In many cases, accommodations are of low standard that labour cannot adapt to local environment. Not ensuring labours with medical/health insurance as per contract paper, even not registered with General Organization for Social Insurance (GOSI, in case of Saudi Arabia), compelling them to work even during bad health, forcing them to sign on the documents in foreign language not understood by labours over strict conditions in regard to exit visa even in harsh conditions, less interested in making identity card, its renewal and providing only copy of them keeping original with employer, imposing heavy fine on minor mistakes or accidental mistakes, sending to jail for such minor mistakes and not taking the case to the court are some other common problems faced by migrant labours in destination countries. Recruitment agencies in destination country, manpower agencies and even government agencies including diplomatic missions to some extent are found, reluctant to the complaints and problems faced by migrant labours. Government officers of destination countries also don't respond on time to the queries posed by Nepali diplomatic missions, Jail administration do not provide detail information about the details of Nepali detained

in jail and other relevant information related to them. Other problems arise due to run-away of labour from the company they initially were recruited. Use of alcohol during work/residence, carelessness to the assigned duty, producing fake documents, abstaining from work without pre-information are some other problems created by labour themselves.

Former Ambassador of Nepal to Qatar Mr. Suryanath Mishra writes that there are numerous problems faced by labours in foreign countries. As per him, many Labour permit stickers are produced by recruitment agencies with the help of fake employment contracts. As a result, a diplomatic mission finds itself unable to get the workers' rights established in the Labour Court on the basis of such employment contracts. Lack of specific act and law protecting the interests of domestic workers in the Gulf Region, is challenge to the diplomatic mission. (Kantipur Daily, 2016)

Most of the Nepalese youths are compelled to engage on blue collar (low graded) works at destination countries due to lack of skill and higher education. This makes their life riskier. In addition, other facilities like accommodation, food, recreation, hygiene are very poor. These poor facilities sometimes spoil their life. FEB data shows that the death rate is about 0.18 and it is increasing in absolute number.

Several problems are faced by migrant labours in the destination countries such that they end up with accidents, mental disorder and committing suicide. Despite having enough legal provisions, perpetrators of these crimes are not brought under law and plight of these victims is lost somewhere. It is estimated that nearly 12 percent of our workers suffer by injuries due to accident at work places and they suffer from death and disability mainly owing to lack of proper and adequate training and orientation before departure. There is no proper provision for insurance coverage and compensation in many destinations. Legal solutions of the issues such as low salary, benefits and facilities of workers, and management in case of any unforeseen problem have remained very weak due to various domestic, regional and international dimensions. There is not even a simple defined set of criteria and process to open the new destination country for labours. Once it is open, there is no mechanism to reassess it. Skill is a major supporting factor to protect migrant's right. There is provision of skill development and training but it has not been made mandatory.

Consequently, about 75 percent people are going abroad without having proper skill. Pre-departure orientation is another component to safeguard migrant workers. Though it is mandatory (article-28, Foreign Employment Act 2007) different studies have shown that people often avoid taking these trainings. They receive certificate without participating and learning defined course. One monitoring report shows that only 16% people are participating in such trainings. It means that remaining 84% people are receiving certificate without joining training classes. Insurance is another means of protection in which people get compensation at the time of accident. Only those people who obtain labour permit before travelling abroad can legally claim this. Still there is no provision of safety nets for unhappy returnees. Foreign Employment Act, 2007, made health check-up as a mandatory (article 72) provision to ensure the safety of migrant worker at destination countries. There are some issues related to health facility: insufficient and outdated equipments, lack of well defined health practitioners, production of fake medical report, medical failure in destination country, fake reporting, and delay in providing compensation to the victims. Foreign employment related services are centralized in the capital mostly. It has created different problems in the industry. Now the few of its service have been decentralized through Provincial Labour Offices. Now the new initiatives are being under pipeline to delineate some of these services like renewal of labour permit from resident missions in destination country. This is expected to play an important role for effective service delivery.

#### **1.4 Role of MoUs/Bilateral Agreements/National Legal Arrangements**

Bilateral Agreements are reflection of the set of common laws agreed upon by two parties. Bilateral agreements are based on laws of particular country and reflect the best practices in either country. Bilateral agreements give more emphasis and moral/legal ground for safeguarding the rights and duties of various subjects under the scope of such agreements. So, it is also called modal law. Bilateral agreement/MoUs are quicker and easier to refer to for the execution of national legislation of any such policies.

Diplomatic missions with or without labour attaché have been assigned the responsibility to look after the cases of labours in labour destination countries. For this reason, a number of Nepali missions were also increased so as to enhance the

effectiveness of labour diplomacy in all the labour destination countries. Similarly, diplomatic missions of those labour recipient countries were also opened in Nepal on a reciprocal basis. To increase the efficiency of diplomatic mission labour attaché were attached to such diplomatic missions. With the continuous effort of diplomatic missions, Ministry of Labour, Employment and social Security (earlier Ministry of Labour and Transport Management) bilateral labour agreements (MoUs) are signed with many labour destination countries. MoUs have many salient features that foster and standardize foreign employment. Introduction of compulsory contract paper with provision of most essential information like duration, salary, cost, medical cost, accommodation, leave, insurance etc. prepared in three languages (Arabic, Nepali and English) has eased dealing of diplomatic missions with employer/recruitment agencies in the destination countries. As MoUs mentions clearly about the period of paid leave with return ticket, most of the complaints that are lodged regarding this will be minimized. Similarly, contract paper are to be done in four copies that will help to reduce deceiving by recruitment agency as government agency and labour will have their own original copy. Any addition and deletion to such contract paper can easily be found. Additionally, provision of joint monitoring committee comprising of members from both countries will facilitate diplomatic missions in resolving cases of labours. In general, MoUs between two countries have legitimized migration of labour between two countries.

Nepal government has enacted Foreign Employment Act (FEA) 2007 and Regulations 2008 to regulate and legitimize the activities in the sectors of foreign employment.

FEA has several provisions to manage foreign employment. Provision of labour permission sticker, minimum salary for a given country, limit of service charge to be imposed to labour, foreign employment contract paper, establishment of Foreign Employment Welfare Fund (FEWF) and Foreign Employment Board (FEB), Foreign Employment Tribunal (FET) and inviting foreign secretary as a member of the FEB are some of the remarkable features of FEA in managing foreign employment.

"Article 68 of the FEA has provision for appointment of Labour Attaché which states that"



The Government of Nepal shall appoint at least Gazetted officer as the Labour Attaché for a country where five thousand or more workers have been sent for foreign employment.

The functions, duties and powers of the Labour Attaché shall be as follows:

- (a) To give information to the Government of Nepal about the condition of labour and employment, factual information about immigration of the country where Nepalese workers are working and steps taken by that country for the protection of labour and international human rights and interests of workers,
- (b) If there arises any dispute between a worker, employer institution or licensee, to assist in the resolution of such dispute,
- (c) To make necessary arrangements for bringing back to Nepal any worker who has been helpless in the course of foreign employment,
- (d) If any work corresponding to the skills of the Nepalese worker is available in the concerned country, to provide information thereon to the Government of Nepal,
- (e) To take initiation in sending back the dead body of any worker, who has been a victim of natural calamity or who has died due to any cause, to Nepal with the assistance of the concerned country or employer institution,
- (f) To make efforts to make a bilateral agreement at the governmental level for the supply of workers from Nepal,
- (g) To provide necessary consultancy to workers, and discourage them to do any work other than that set forth in the agreement,
- (h) To supervise any activity that may affect the workers, and
- (i) To perform such other functions as prescribed by the Government of Nepal from time to time.

Similarly, INGOs like ILO, UNDP and trade union activities of International Trade Union of Confederation (ITUC) have been playing crucial role in achieving decent work for all migrant workers so that everyone benefits from working conditions that offer freedom, equity, security and human dignity. The ILO in Nepal has played an important role in developing a constructive and congenial social partnership between the Government, workers' and employers' organizations (ILO).

These all domestic and international arrangements have created an amicable environment for the conduct of labour diplomacy. Diplomatic missions have clear legal and institutional setup to execute efficient labour diplomacy. In spite of this foreign employment has not become a safe destination for Nepali migrants. A Number of cases are reported by media regarding problems faced by employees in the foreign country. Tribhuvan International Airport (TIA) receives in average 5 dead bodies daily (DOFE). A Number of casualties, defaulters, accidents reported to diplomatic missions/Department of Consular Services (DoCS) are significant. On the one hand, government aided by non-state actors is trying hard to achieve safe destination for migrant workers and on the other hand large sum of money is spent for the diplomatic missions.

### **1.5 Statement of the Problem**

There are more than 4 millions of Nepali Labours in Labour destination countries (DOFE). Remittance from them constitutes large share of national GDP (>30%; NRB). To manage this migration various acts, regulations have been brought into force. Accordingly, diplomatic missions have been prepared and equipped so as to facilitate them. Similarly, various INGOs and trade union have been supporting to manage this phenomenon. These institutional and instrumental arrangements both in home and abroad are expected to reduce the hurdles in the sector of foreign employment. Every day more than 1500 Nepali leave for Labour destinations and 5-6 dead bodies are repatriated from international airport (immigration department 2019). Labour attaché to each of the eight diplomatic missions have been playing crucial role to facilitate Labours in destination countries. Significant numbers of cases have been reported to the Nepali Missions in the destination countries and other offices in home country. Being important contributor to GDP and also subject to Human Security it is

the role of government to assess the overall situation of labours in the destination places. Also the effectiveness of existing mechanisms and management needs to be examined time to time.

Labour Diplomacy is carried out by various agencies of Nepal. This research attempts to assess the effectiveness of this conduct by these respective agents. Even being purely an academic research this can be input to the relevant agencies to assess their role.

Labour Diplomacy of Nepal should have been one of the most researched topics in context of labour sending countries like Nepal. However, this area of study lacks sufficient discourses. Even though this is an academic research conclusions drawn from the study is believed to provide valuable inputs to the stake holders during policy review and also work as literature for further research.

## **1.6 Research Questions**

- i. How has the efficiency of diplomatic staffs in local language helped to conduct the effective Labour Diplomacy?
- ii. How has the coordination among national institutions and departments contributed to the effectiveness of Nepal's Labour Diplomacy, particularly in dealing with extreme cases of victims (labours)?
- iii. How has MoUs or Bilateral Labour Agreement between Nepal and labour destination countries improved effectiveness of Nepal's Labour Diplomacy?

## **1.7 Objective of the Study**

- i. To appraise the tasks performed by diplomatic missions in Labour destination countries in relation to the resources and other constraints.
- ii. To analyse the status of coordination and collaboration between various institutions/agencies involved in addressing issues related to migrant labours.

- iii. To assess the situation, necessity and sufficiency of Bilateral Labour Agreements (BLAs) or Memorandum of Understandings (MoUs) between Nepal and Labour destination countries.

## **1.8 Organization of Thesis**

The organisation of thesis is divided as below:

### **Chapter One: Introduction**

First chapter explains about origin of migrant labours, its inception and current practices. Relation between labour issues and diplomacy is further explained in this chapter. It explains relation between diplomacy and migrant labours management. This chapter also describes various labour issues of Nepal, current measures initiated by Nepal and the achievements made from such conducts.

### **Chapter Two: Review of Literature**

Second Chapter is the review of literature where chronology of labour diplomacy is being traced. Review of available literature in this field show that this is one of the least researched topics in the context of Nepal. Contributions of authors like Tristan Bruslé, Nicholas A. Stigliani, Dr. Shreedhar Khatri, Dr. Harka Gurung, and Dr. Bandita Sijapati were reviewed in this section. Similarly, publications of INGOs like ILO Nepal, The Asia Foundation, and Amnesty International were also useful in this regard. Government statistics specially published by DoFE and DoCS were also very helpful in comparative study of the progress and impacts of labour diplomacy.

### **Chapter Three: Conceptual Framework and Methodology**

Third chapter is conceptual framework and research methodology which defines theories of international relations that explains developments in labour diplomacy. Mostly neoclassical economic theory, dual market theory and world system theory are used to analyse labour migration in this paper. Qualitative technique of research method is deployed to measure the effectiveness of labour diplomacy of Nepal. For this purpose primary data is accumulated based on

interviews with key persons involved in this sector. Issues like sufficiency in number and content of Legal instruments; and level of collaboration and cooperation between various agencies, impact of resources on overall service delivery is the subject matter of study.

#### **Chapter Four: Analysis and Results**

This chapter starts with findings from interview. Opinions and factual data are collected from the interview with key persons involved in day to day labour issues. Data were also collected from various INGOs/NGOs, persons involved in trade unions. Second part of this chapter is the analysis of findings from the first part. Such findings were analyzed through the perspectives of international relations and available theories. It shows that active participation in the various regional and global forums reflects the commitment of Nepal government to use available forums in support of migrant labours. Diplomatic missions in the host countries have also been working at its best to promote Labour Diplomacy of Nepal.

#### **Chapter Five: Discussions and Conclusions**

Finally, this paper concludes with summary of the research conducted and conclusion of the study with some observations.

##### **1.9 Delimitations of the Study**

Migrant Labours are travelling to destination countries through both formal and informal channels. Those travelling through registered channels are only subject of study. In another way only documented migrant labours are under the scope of study. Similarly, while studying the performance of diplomatic missions, cases that come to the notice of such missions are only included in data. There might be many more cases which are not reported to missions due to various reasons. Another limitation to our research is the time frame of data collections. Data of last five years have only been studied. Justification to the time period selection is that Labour Act 2007 envisioned the appointment of Labour attaché. Another reason behind selection of this time period is access to data. Department of Consular Services under Ministry of Foreign Affairs, responsible office for coordination between diplomatic missions

abroad and other various line agencies in Nepal started its online feature to record all its data recently (back 3 years).

Even though Labour Diplomacy is ought to be one of the fields that requires serious attention and expects various discourses, very less study has been found on the subject for review of literature. Few reports of Parliamentarian Committee that visited gulf countries to analyze the exact situation were helpful in the study. Labour Diplomacy of receiving countries is not analyzed due to various constraints.

Further as this research is conducted to fulfill the requirements of Tribhuvan University to gain a Masters in Arts degree, the research has been conducted as per the regulations and criteria set by the Master's Program in International Relations and Diplomacy. And, an attempt has been on turning up research on a precise and concise form including the relevant information and findings in a compressive form within the set criteria.

### **1.10 Significance of Study**

This research analyzes the roles of various institutions and actors in mitigating problems faced by migrant labours. Huge share of money is being spent for the deployment of diplomatic staffs in the host country. On the other hand, certain amount of money is being collected from employees before they depart in the name of Employees' Welfare Fund. So, it is the right of such migrant workers that they are being heard by state and its agencies. In this regard this thesis work aims to study the effectiveness of Nepal's Labour Diplomacy conducted by various actors and institutions. In addition to this, relevancy of Bilateral Agreements between labour sending and receiving countries also comes under the scope of this study.

This research helps the concerned agencies in two ways: for government agencies side it can be inputs to policy formulation and assess the functioning of prevalent mechanisms and agencies. It also helps to get the idea of key persons, who are playing crucial role in conducting Labour Diplomacy. Accordingly policy adjustments, if required, can be made. On the other hand it fulfills the literature gap in this sector. Labour Diplomacy is one of the most important factors to promote Economic Diplomacy of Nepal. Its contribution to GDP is remarkable. Also from the

humanitarian ground it is the duty of government to take care of its citizen thereby promoting working environment and facilitating the process of migration. This research draws the important conclusions about the salient features of Nepali Labour Diplomacy, its tools, outcomes and satisfaction of targeted groups and actors involved in the process.

## CHAPTER TWO: REVIEW OF LITERATURE

The UN defines migrant labour as “people who migrate for a limited period of time in order to take up employment and send money home” (UNESCO).

International migration is one of the key features of economic globalization today and, as a truly global phenomenon, migration implicates most, if not all, countries in the world in one form or another, as major migrant senders and/or receivers (Grugel and Piper 2007; Betts 2011; Koser 2010). There is no formal international organization to govern labour migration like UNHCR that looks after migration of refugees. Moreover, the International Labour Organization (ILO) as the central standard-setting International Organization (IO) in the realm of labour (migrant and non-migrant) and, arguably, the only global institution with the potential to combine migration with labour governance—has occupied a marginal position within the emerging migration governance in terms of its ability to assert influence on the direction of the current policy debate (Standing 2008).

Global migration governance has, in fact, come about at a specific, historic moment in time when labour in general (that is, migrant and non-migrant) has been subjected to the downgrading of standards through the loss of traditional union rights, which is attributed to the spread of neo-liberalism (Standing, 2011; Schierup and Castles, 2011) and economic globalization characterized by the ‘race to the bottom’ in the search for cheaper labour. This trend is reflected in the weakened position of the ILO, the key player in the upholding of migrants’ rights in their role as workers (Standing, 2008).

The concept of decent work has gained prominence because most forms of international migration have employment-related aspects attached, as cross-border movement of people is largely a response to a lack of economic opportunities ‘at home’, often accompanied by conditions of insufficient or non-existent social safety nets provided by states (Hujo and Piper, 2010).

Target 10.7 of the 2030 Agenda for Sustainable Development also envisions for safe, orderly and regular migration and mobility of the people through implementation of planned and well managed migration related policies (UN: 2030 Agenda for Sustainable Development). Migrating for labour is sometimes the only



plausible option to make money and gain a livelihood for people in under-developed countries like Nepal (Regulating Recruitment & Labour Migration).

The transformation in nature and structure of today's international migration highlights the need of international cooperation at governmental level regarding migration process and ensuring the security of migrant labour (World Migration Report, 2019). The cooperation on migration can happen at different level from regional to national level. Also, there are various forms of international agreements of migrant workers. Some of them are; The High Level Dialogue on International Migration and Development, the Global Migration Group (GMG), the Global Forum for Migration and Development (GFMD), Regional Consultative Process, Global Compact on Migration (GCM) and the on-going Post-2015 Development Agenda discussions all aim at promoting international cooperation in the area of migration. According to the research entitled "Study on Nepal's Bilateral Labour Agreements with Destination Countries" the bilateral labour agreement will reduce inequalities and solve different sorts of migrant issues. It mentions that:

The 2030 Agenda for Sustainable Development, adopted by the United Nations General Assembly provides for a strong link between decent work and migration in Sustainable Development Goal (SDG) on promoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. Other important targets relating to labour migration are found in SDG on reducing inequality within and among countries: and by 2030, reduce to less than 3 per cent the transaction costs of migrant remittances and eliminate remittance corridors with costs higher than 5 per cent" (target 10.c). Among these instruments and mechanisms, Bilateral Labour Agreement (BLA) is crucial to protect migrant rights in destination country (Luitel: 2014)

Investigations into Nepalese international migration have mainly focused on the mechanisms of migration, remittances and the social aspects of migration in Nepal and in India (NIDS, 2008). According to the Department of Foreign Employment, out of 3, 54,082 labour permits issued in the fiscal year 2017/8 permits to Gulf Countries consists of 2/3<sup>rd</sup>. Working environment of labours can be best studied in gulf countries where working environment is different than that of India or other part of the world (Tristan Bruslé, 2009).

Foreign Employment Act 2007 and Foreign Employment Regulation 2008 enacted in 2007 and 2008 respectively have many provisions in favor of migrant labours. Ministry of Labour, Employment and Social Security (MoLESS) and offices under its aegis have been playing crucial role in this regard. Foreign Employment Policy 2011 is also promulgated by the government of Nepal to have clear guidelines; and to make coherent and uniform actions regarding issues related to foreign employment. In addition to these, other various labour acts and regulations are in operation to manage labour field of Nepal and to ensure the fundamental right of Nepali migrant workers, right to employment, enshrined in the constitution of Nepal 2015. The ministry has taken various initiatives; having a common framework of bilateral agreements so as to have similarities and ensure minimum standards, updating existing bilateral labour agreements accordingly and initiation to sign new one where it lacks in labour destination countries, exploring new lucrative potential market for Nepali migrant labours. Nepal government, until domestic opportunities are self-sufficient, is trying to diversify its labour force to other lucrative destinations from gulf countries. Labour agreement with Japan and South Korea are the glaring examples in this regard.

According to the spirit of Labour Act 2007, labour attaché are appointed to eight labour destination countries. But diplomatic staffs along with labour attaché have more comprehensive role in the destination countries in making safer environment for labours from the recruitment until the return. Besides MoLESS and MoFA, various actors are involved in this process like ILO office in Nepal, The Asia Foundation, International Trade Unions, embassy of labour destination countries in Nepal are some of them.

Kathmandu declaration of the Ministerial Meeting of the Colombo Process includes skills and qualification recognition processes, fostering ethical recruitment practices, pre-departure orientation and empowerment, promoting cheaper, faster and safer transfer of remittances, and labour market analysis amongst various other initiatives (Colombo Declaration, 2019).

Foreign Policy of any country guides diplomatic conduct of the country. Foreign Policies of countries, towards bottom in the list of powerful nations, like Nepal seems disoriented from their primary motto. Epistemology, ontology and

research methodology of foreign policies of such countries has defined the hierarchy in their foreign policy is such a way that gives diplomacy the least priority (Paudel, 2019).

Gulf countries are indeed notorious for the indecent treatment of foreigner “temporary workers”, as local authorities prefer to call them. These workers are treated under Kafala System (sponsorship system), which binds the freedom of labour to the will of owner. The Human Rights Watch and other international agencies regularly attempt to raise public awareness about the conditions the migrants live in (HRW 2006), often evoking slavery-like conditions due to the sponsorship system (Longva 1999). Needless to say, migrants themselves are fully aware of their low status in the society, often depicting themselves as slaves (Brustle, 2008).

At the age of globalization, government cannot compel its people for not leaving the country, which is also against the fundamental human rights of any citizen. At the current pace of development it is definite that some time is required to create an environment for such potential labour markets in the country itself through modernization of agricultural sector and transferring surplus labour to industrial sector (influenced by Lewis Theory). Also, raising patriotic feelings for the country can halt migration to some extent. Until then, zero expenditure for foreign employment including provision of free visa-free ticket, assurance of work and payment as per contract should be ensured (Policy and Programs of Nepal Government 2076).

To protect the right of migrant workers it is required to work together with international community. Being a responsible member of international organizations, Nepal is working actively with international community, to protect the rights of migrant workers. Colombo Process, Geneva Conference and Abu Dhabi Dialogue are some key international forums that conduct discourses about migrant worker's right. In this regard, further one milestone is the endorsement of the agenda of migrant workers during 18<sup>th</sup> SAARC summit hosted in Nepal (Declaration of 18<sup>th</sup> SAARC Summit). This initiation obviously increases the strength of South Asian countries to work collectively to protect fundamental rights of migrant workers.

Very few researches conducted in this field, especially by policy framing bodies, have shown that there are rooms for improvement and suggested various ways

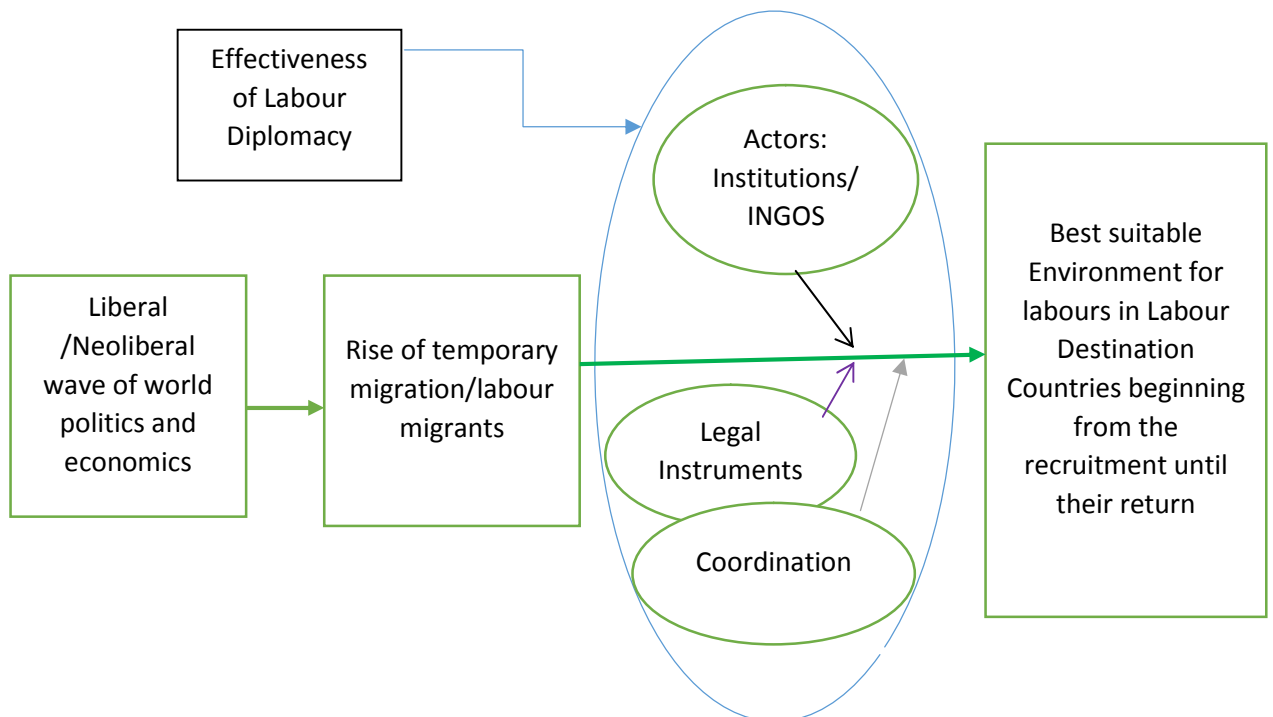
out for it. Nepal government has made investment financially, politically and in terms of time to facilitate migrant labours in labour destination countries. From the perspective of international relations, Nepal's diplomacy with these labour destination countries is mainly focused on executing various dimensions of Labour Diplomacy. To conduct this labour diplomacy Nepal has different institutional, legal and diplomatic arrangements. Use of bilateral, multilateral forums in this conduct is another salient feature of Nepali labour diplomacy. After all, satisfaction of the labour and their families back home matters to reflect the success of these instruments. To scale these efficiency and effectiveness literature available in this field have been sufficiently utilized. Government's focus is on signing bilateral agreement with the remaining countries and replacing by the new ones with the countries where such agreement are already inked. Also, the annual budget of all the missions is increased every year for the same purpose. But research works fail to study the effectiveness of such agreements and embassies. Obviously, having bilateral agreement and resident embassies would have been helpful in this regard but to what extent these instruments are successful in achieving their goals is uncovered by previous studies. Foreign policy of labour sending country like Nepal is to some extent oriented to execute effective Labour Diplomacy. This research work explores this knowledge gap in the field of Labour Diplomacy.

Role of these bilateral instruments and diplomatic officers are assessed in this research work.

## CHAPTER THREE: CONCEPTUAL FRAMEWORK AND RESEARCH METHODOLOGY

### 3.1 Conceptual Framework

Whole gamut of the Labour Diplomacy from theoretical perspective to different factors influencing this mechanism and desired output that measures the effectiveness of Labour Diplomacy of Nepal can be reflected in the conceptual diagram as below:



**Fig: Conceptual Framework in Measuring Effectiveness of Labour Diplomacy**

### 3.2 Research Methodology

The key sources of data presented throughout this report are the Department of Foreign Employment (DoFE), the Foreign Employment Board (FEB), the Foreign Employment Tribunal (FET) and the Department of Consular Services (DoCS), Ministry of Foreign Affairs. Labour permits issued by DoFE have been considered a primary indicator for international migration trends. The other sources of data are obtained from semi-structured interview of the key persons/office-bearers in various agencies involved in foreign employment. Respondents were chosen so as to include all agencies like: DOFE, DoCS, Representative of International Trade Union

Confederation, and ILO office in Nepal. Questionnaire was set so as to obtain necessary information related to diplomatic efforts of Nepal government.

Grievances of migrant labours lodged in the DoFE, DoCS and necessary action taken by responsible government agencies are taken as a quantitative tool to assess the effectiveness of Nepal's Labour Diplomacy.

For analytical discussion on the other objectives of this research, a range of literature was reviewed and consultations with high-level officials and focal persons from the government and non-government agencies were made to enhance the quality of research along with available data.

### **3.3 Defining Effectiveness of Labour Diplomacy**

Nepal's Labour Diplomacy is mostly conducted by Nepali diplomatic missions in the labour destination countries. This conduct is guided by various legal and diplomatic instruments. All other arrangements are supporting factor in the functioning of diplomatic missions in the destination countries. Hence, we limit our research of assessment of effectiveness of Nepal's Labour Diplomacy to the effectiveness of diplomatic missions. By effectiveness we measure the output generated with respect to inputs. Effectiveness is a broad term, which can be defined with various approaches. For this research, we define effectiveness of diplomatic missions with the help of certain three variables as below:

1. Number of cases that are handled by missions per month. Even though this value may differ from mission to mission due to variation in number of labours in each country, other factors that halt the functioning of embassies are kept constant, which will be considered a separate variable later on. There can be number of cases in the mission related to various issues of the labour. Performance of the mission can be analyzed with the study of how and to what extent mission has responded to these cases. For the purpose of this research this will be quantified and based on the performance of each mission the effectiveness of the particular mission is calculated.
2. Performance of Mission can also be related to the budget allocation. Economic constraints should be taken into consideration while conducting Labour

Diplomacy. Sufficient budget is most for the smooth functioning of labour missions. Management of shelter, providing return ticket, medical treatment, hiring lawyer are possible only with sufficient allocation of budget. So we use budget allocation verses service delivery as a tool to measure the effectiveness of Labour Diplomacy.

3. Effectiveness of mission to significant level will be affected by number of staffs deployed in the diplomatic missions. Presence of local staffs will also affect the service delivery. So, we define effectiveness of diplomatic missions as service delivery versus number of staffs.

### **3.4 Selecting Countries under Study**

Almost four million Nepali migrant workers are present across different countries in the world. Gulf countries and Malaysia have lion share in it. For the purpose of this study we have limited our study to two countries: the State of Qatar and the State of Kuwait. Reason behind selecting these two different countries is differing number of labours and nature of their jobs, prevalence of MoUs between two countries. Qatar welcomes second highest number of labours from Nepal after Malaysia numbering almost four lakh. Nepal and Qatar have signed bilateral labour agreement on 21/03/2005. Nepali labour in Qatar is Male dominated and most of the workers are welcomed in construction sector. Due to increased tension in the middle-east after Qatar was blockaded by surrounding powerful countries situation became worse. Many Nepalese workers were expected to lose their jobs. Diplomatic endeavors were supposed to be at high scale to address crises aroused after the blockade. But situation didn't deteriorate to that extent. How such situation was dealt? How such a huge number of labours were managed? became reasons behind selection of Qatar as a field of study. On the other hand, in Kuwait demand of house maid is high, in comparison to other labours. Nepal and Kuwait have not signed bilateral labour agreement yet. Kuwait has less number of migrant labours in comparison to Qatar numbering to around 70,000. Kafala system still exists in Kuwait. Implementation of international standards of human rights and other labour law is difficult. Significant numbers of domestic maids have been rescued as per report of the embassy of Nepal in Kuwait. Shelter house of embassy is always occupied by number of rescued female workers. Management of such situation demands diplomatic dealings, Labour Diplomacy. Prevalence of this all scenario favors choosing Qatar and Kuwait as countries under study.

### 3.5 Key Informants and their Selection

For the purpose of collection of data, information was collected from Department of Consular Services (DoCS) and the embassies under the scope of study. Regarding other research questions, key persons/office-bearers, who were/are parts of delegation while negotiating bilateral labour agreements; who are involved in deciding institutional arrangements or is directly involved with affairs related to labour activities in home and abroad are considered as key interviewers. Semi-structured questionnaire is prepared to collect information required to meet the research objectives. Some interviewers include from people advocating on labour rights nationally and internationally. Their role in creating favorable environment for labours is sought through questionnaire. Ambassador who is serving in the mission or who has recently served in the mission of both countries is also selected as the respondent to collect quality information. Questions are divided into four segments: Role of Bilateral Agreement, Coordination, Resources and Problems addressed as this paper tries to explore the effectiveness of Labour Diplomacy of Nepal in these respects. How the bilateral agreement between two countries helped in conduct of Labour Diplomacy is studied. Bilateral agreement is supposed to expand the number of tools and means to deal with the issues of labour. Bilateral agreements are not more positive than national legislation; however, after several rounds of consultation it is a document of common agreement where principles and values of both countries are respected. But, countries reach minimum agreement that will ensure labours' welfare. Labour Diplomacy comes into play during these negotiations. Countries must try to put their best in addressing their issues in such bilateral agreement. During the negotiation phase of bilateral agreement the other country can be convinced to understand the difficulties faced by local missions in the host country. It is not only that our people are getting employment, but there is other side of the coin, economic activities of those countries are vibrant due to human resources made available from us. Effectiveness of bilateral agreement can be measured through different parameters including from the achievement in phrases of the agreement itself. Its effectiveness can be reported from the ease in conduct of daily activities of the embassy in the host country. Its impact can be on repatriation of dead body, number of days it takes to send dead body to Nepal, number of days taken to make a complaint and receive compensation, documentation from the embassy while demanding human resources,



legal procedures while dealing with the issues of labour. These are the basic fields where bilateral agreement should be able to reflect in favor of Nepali workers. Coordination between agencies involved in conduct of Labour Diplomacy is also equally important. Availability of focal persons for quicker and smooth communication, seriousness of the agencies and alertness of the employee is also crucial factor in conducting activities of labour welfare. It is not a task of single employee or institutions.

## CHAPTER FOUR: GLOBALIZATION AND THEORIES OF MIGRATION

Globalisation has brought the world to a small village with seamless flow of information and technologies. Globalisation has broken down the physical boundaries formed by nation states and created an enabling environment for growth of business and thus making economic advancement possible. It is this inherent nature of globalization that resources from materials to human resource are moving from place with excess stock to places with higher demand and lacking such resources (Rosenberg J., 2000, P 1-5). Technological advancement has made possible to scan suitable resources for businessmen from across the world best suited for them. This is one of the factors resulting migration of labour. Many theories have been developed explaining international migration of labours that try to excavate the relationships between surging international migration and factors behind it. Migration questions a central inconsistency in neoliberal globalization because, if capital, money, information and knowledge can flow freely across the globe, then why not people? The migration phenomenon is far beyond a zero-sum game. Therefore a holistic critical analysis of migration on a global scale is required.

With the end of Second World War, Europe began the center of attraction to significant numbers of workers from abroad (Christof V.M. et. Al, 2016, Pages 31-35). By the late 1960s they mostly came from developing countries in Africa, Asia, the Caribbean, and the Middle East. The emergence of international migration as a basic structural feature of nearly all industrialized countries testifies to the strength and coherence of the underlying forces. With the rise of oil prices after 1990, Middle-East has become the center of for this exodus.

A number of theoretical models have been proposed to explain international migration which employs radically different concepts, assumptions, and frames of reference. Neoclassical economics focuses on differentials in wages and employment conditions prevalent in countries, and on migration costs; it generally describes movement as an individual decision for income maximization. Whereas the "new economics of migration" considers conditions in a variety of markets not just labour markets (ILO). It relates migration to a household decision taken to minimize risks to family income or to overcome capital constraints on family production activities. On

the other hand, Dual Labour Market Theory links immigration to the structural requirements of modern industrial economies and World Systems Theory sees immigration as a natural consequence of economic globalization and market penetration across national boundaries.

Beginning from Adam Smith's argument in *The Wealth of Nations* (1776) which advocates for minimal intervention by the government and markets are subject to “invisible hand” Classical liberalism and its variants also explain the migration of labours around the world. But modern liberalism which is being guided by social-liberation tradition focuses on impediments to individual freedom including poverty, inequality, disease, discrimination, and ignorance which could only be addressed through government intervention. This argument was supported by different schemes like worker's compensation, public funding for schools and hospitals, determining working hours that began from late 19<sup>th</sup> century. This promoted the concept of welfare state. This notion can also be fulfilled through effective diplomacy between states. Various Intergovernmental Organizations (ILO, Asia Foundation etc.) played crucial role in shaping the future of migrant labours worldwide. Both labour sending and receiving countries are guided by the principle of mutual benefits to cooperate with each other. Labour receiving countries get deficit human resources for their economy and employment to economic gain to labour sending countries. As a result, both countries have used various means to sustain immigrants' labour in destination countries. From the aspect of labour sending countries, Nepal government has been engaging with government of labour destination countries for the benefit of Nepali workers through various legal instruments and institutions.

A number of theoretical models have been proposed to explain why international migration begins, and they employ radically different concepts, assumptions, and frames of references. Neo-classical economics focuses on differences in wages and employment conditions between countries and on migration costs, it generally conceives of movement as an individual decision for income maximization. The new economics of migration, unlike old theories, considers conditions in a variety of markets, not just labour markets. It views migration as a household decision taken to minimize risks to family income or to overcome capital constraints on family production activities. Dual labour market theory and world systems theory operate at a much higher levels of aggregation. The former links

immigration to the structural requirements of modern industrial economies while the latter sees immigration as a natural consequence of economic globalization and market penetration across national boundaries.

Given the fact that theories conceptualize causal processes at such different levels of analysis the individual, the household, the national and the international they cannot be assumed a priori, to be inherently incompatible (Dorren Elliot & Uma A. Segal, 2012). It is quite possible; for example, that individual act to maximize income while families minimize risk, and that the context within which both decisions are made is shaped by structural forces operation at the national and international levels. Nonetheless, the various models reflect different research objectives, focuses interests; and ways of decomposing an enormously complex subject into analytically manageable parts.

#### **4.1 Neoclassical Economics: Macro Theory**

This is probably the best-known theory of international migration developed originally to explain labour migration by Lewis in 1954 modified further by Michael Todaro in 1970. According to this theory and its extensions, international migration is caused by geographic differences in supply of and demand for labour. Countries with excess of labour relative to capital have a low equilibrium market wage, while countries with a limited supply of labour relative to capital are characterized by a high market wage. As depicted graphically by the familiar interaction of labour supply and demand curves. The resulting differential in wages causes workers from the low-wage country to move to the high-wage country. As a result of this movement the supply of labour decreases and wages rise in the capital-poor country, while supply of labour increases and wage differential maintains at the value that reflects only the costs of international movement (Artus J., 1984))

Referring to the flow of labours from labour-excess to labour-scarce countries is a flow of investment capital from capital-abundant to capital-deficient countries. The relative scarcity of capital in poor countries results a rate of return that is high by international standards, thereby attracting investment.

To summarize the neoclassical theory, the international migration of workers is caused by differences in the rate of wage between countries and once the

elimination of wage differentials will end the movement of labour, and migration will not occur. The international flows of human capital, labour markets are the primary mechanism by which international flows of labour are induced. The way for governments to control migration flows is to regulate the labour markets in sending and/or receiving countries.

#### **4.1.1 Neoclassical Economics: Micro Theory**

Corresponding to the macroeconomic model, microeconomic is a model of individual choice. Under this hypothesis, individual are rational actors and they decide migration phenomenon based on cost-benefit scheme calculation expecting positive return. Essentials of microeconomic theory can be summarized as: the international movement stems from international differentials in both earnings and employment rates, individual human capital characteristics that increase the likely rate of remuneration or the probability of employment in the destination country relative to the sending country, other factors like qualification, individual expertise reduces the cost of migration hence rises the probability of international migration.

#### **4.1.2 New Economics of Migration**

The concept of new economies of migration has posed threat to the assumptions and conclusions of neo classical theory. As per this theory, migration decisions are not made by isolated individual actors, but by larger units of related people, families or households after assessment of the overall situation. Unlike individuals, households can control the risks to their economic well being by diversifying the allocation of household resources, such as family labour. In the developing third world countries the needed funds for labour migration might be lacking and families find difficult to borrow as family lacks collateral to qualify the banking system or mortgage in other lending places. The new economics of migration also questions the assumption that income has a constant effect on utility for an actor across socioeconomic settings. The new economic theories argue, in contrast, that households send workers abroad not only to improve income in absolute terms, but also to increase income relative to other households and hence reducing their relative deprivation in compared to other such groups (Douglass et.Al, 1993, P. 433).

## **4.2 Dual Labour Market Theory**

Even though neoclassical human capital theory and the new economies of migration lead to divergent conclusions about the origins and nature of international migration, both are essentially micro level decision models. The difference is in the units assumed to make the decision, entity being maximized or minimized, and the extent to which the migration decision is socially contextualized. However, dual labour market theory argues that international migration stems from the intrinsic labour demands of modern industrial societies. International labour immigration is largely demand-based and is initiated by recruitment on the part of employers in developed societies or by governments acting on their behalf. Due to the role of agencies in between, wage differentials remain undermined for labour migration, labour intensive economies always tries to import human resource from labour excess countries (Douglass et. Al, 1993, P. 431).

## **4.3 World System Theory**

Building on the work of Wallerstein (1974), a number of sociological theorists have linked the origins of international migration not to the bifurcation of the labour market within particular national economies, but to the structure of the world market that has developed and expanded since the sixteenth century. In this view, the penetration of capitalist economic relations into peripheral, non-capitalist societies creates a mobile population that is subject to migrate abroad. According to world systems theory, migration is a natural outgrowth of disruptions and dislocations that inevitably occur in the process of capitalist development. As capitalism has expanded outward from its core in Western Europe, North America, Oceania, and Japan, ever-larger portions of the globe and growing shares of the human population have been incorporated into the world market economy. As land, raw materials, and labour within peripheral regions come under the influence and control of markets, migration flows are inevitably generated, some of which have always moved abroad (Weeks, 2016, P 273).

Attempts to construct a theory of migration have been constrained by the differing types of migrations which have to be considered – professional and unskilled, compelled and voluntary, settler and temporary, internal and international,

and finally, undocumented and documented. In his book 'Theories of Migration' Robert Cohen has attempted to compile together some important advances that have been made across disciplines to create the building blocks of a theory which encompasses the many different forms of human migrations found in recorded history.

Economic geographers and pundits of labour migration now acknowledge that changes in the world economy have influenced the geography of international labour migration in different ways. One way has been the internationalization of manufacturing activities which brought with it a new international division of labour, characterized by the emergence of low-waged export processing zones. Another way has been through organizations bringing the workers to the work, within and between, their internal labour markets. In this case, the globalisation of Trans-National Corporations (TNCs) has developed new geographies of skilled contract, business and official migration. The conceptual framework, therefore, is that the latest phase-of the internationalization of capital, manifested in the world cities, and the geographies of labour market restructuring within them, are fundamental components for understanding new international patterns of professional and labour migration. The latest phase of the internationalisation of capital, manifested in the world cities, and the geographies of labour market restructuring within them, are the principal components of an explanatory framework advanced in his work for understanding new patterns of highly skilled professional and managerial labour.

Immigration may begin for a variety of reasons-an individual, systemic to community approach but the conditions that initiate international movement may be quite different from those that perpetuate it across time and space. Although wage differentials, relative risks, recruitment efforts, and market penetration may continue to cause people to move, new conditions that arise in the course of migration come to function as independent causes themselves: migrant networks spread, institutions supporting transnational movement develop, and the social meaning of work changes in receiving societies. The general thrust of these transformations is to make additional movement more likely, a process known as cumulative causation. Some other theories supporting international migration are Network Theory, Institutional Theory, and Cumulative causation and migration systems theory.

## **CHAPTER FIVE: CASE STUDIES OF LABOUR MIGRATION OF NEPAL**

### **Findings and Analysis**

Information was collected from former Ambassador of Nepal to Qatar, former Ambassador Nepal to Kuwait, former Director General of Department of Consular Services, Representative of Foreign Employment Promotion Board, Under Secretary of the Ministry Labour, Employment and Social Security, Representative of GEFONT, Under Secretary of Ministry of Foreign Affairs responsible for labour diplomacy, email correspondence with Pravasi Nepali Coordination Centre (PPNCC), NGO looking after labour issues, Officials of embassy of Nepal to Qatar and Kuwait and office bearers of various relevant organisations. Findings from the interviews are analyzed after careful study as below.

#### **5.1 Regarding Bilateral Agreement**

When we contemplate about the scope and content of bilateral agreement between Nepal and Qatar, often the questions regarding its effectiveness comes in the picture. Nepal as a smaller economy with rising number of migrant labours, Qatar will remain vulnerable labour market due to absence of updated bilateral agreement. Along with the wake of globalization and rising trend of immigration, the situation of labour migration in Nepal has also witnessed drastic change since 2004. In the context of rising foreign employment, Nepal has drafted 'common framework of comprehensive labour agreement to be signed with all labour destination countries (MoLESS). The new framework includes some relevant issues like temporary work provision for victims until the case is finalized by the court, equal treatment of Qatari local and Nepali workers; at least equal treatment between Nepali and other nation employees; and many more perks can be found in the new provision. Similarly, Nepal should strive to solve the labour related issues in gulf countries and try to explore and expand the migration trend in other potential market as well. As the world is moving towards outsourced economy it is important for Nepal to map its migration scope in various strategic geographic locations. Likewise, it's not a rational thought to consider the existing bilateral labour agreement as problem because if implemented properly, the contents of current bilateral labour agreement has potential to minimize various issues faced by Nepali migrant labours in destination countries. Regarding the issues



of labour migration and migrant's security, even the local laws can advocate and establish minimum rights of labours. But somehow if the provisions of existing bilateral labour agreement could be implemented effectively then the doomed context of labour phenomena could actually be reduced to minimum number within few years. Speaking precisely, many experts view that the provision under Article 6.1 of the BLA, between Nepal and state of Qatar is very important in this regard and with if some of the provisions could be revisited to incorporate new labour challenges, the agreement can be best mechanism to response labour related issues.

Further the bilateral labour agreement between Nepal and Qatar can be pointed as a very brief and unsustainable arrangement that doesn't cover all issues of migrant labours. The agreement predominantly emphasizes more on labour induction. However, while keeping special focus on the issues of minimum wages it actually puts other aspect of labour like human rights as afterthought and such dimension of labour problem has always remained in exception. Even despite such drawbacks, having bilateral agreement is always the advantage for labour sending country like Nepal because to some extent it ensures safety of Nepalese labours in foreign land.

Moreover, with regard to the provisions to be included in the proposed Bilateral Labour Agreement with Kuwait, in favor of workers is still a matter of discussion. Among academic and diplomatic circle it is believed that some mechanisms must be ensured in the bilateral labour agreement itself regarding ID card, Dual Labour Agreement, Medical Insurance and Health Issues. Many experts also view that proposed revision of Bilateral Labour agreement should consider the issue of fair recruiting system. In case of the question of sufficiency regarding some systematic arrangements like workers' protection, wages, benefits and holidays; and remittance, we still need to make some effective institutional framework. Even though there are extensive efforts in implementing provisions of existing BLA but in practice the effective implementation of these provisions will still not solve the problems unless the government updates existing BLA. Of course the existing BLA has many arrangements in this regard; however we need the comprehensive BLA that ensures zero payment by workers as per ILO Fair Recruiting System. If we analyze the situation from another point of view or by keeping short term circumstance in immediate focus, it seems that the arrangements on those headings are satisfactory but implementation is still lacking. Some of the optimistic initiatives includes the

provision that employer is responsible to bear all the costs of migration is in the favor of labours as per international standards. And the endeavor to push equality of treatment, at least paying equal for equal work among all workers in all destination countries is also praise worthy. Apart from these steps, case of Remittance Wage Protection System (WRPS) of the Qatar government has compelled many Nepali employees to use formal channel while sending money to home. To summarize as a whole, this paper found some of the provisions on the agreement like those mentioned above are more advanced than those prevalent in other South Asian countries.

These arrangements in bilateral agreement are very crucial while conducting Nepal's Labour Diplomacy. Despite some lacking within bilateral labour agreement, the recent arrangement has actually contributed to the effective conduct of Nepal's Labour Diplomacy. BLA along with ILO conventions are our backbones in dealing with counter parts while negotiating labour issues. Conflict between local law, BLA and International Standards sometimes may cause a problem but that is not the case with Qatar. Till date these agreements have been very useful but owing to the changed nature of labour migration it should now be comprehensive and include all missed out aspects to effectively respond labour issues. Additionally, many diplomats in Nepal view that, MoUs are modal laws that reflect best practices of both countries. In no ways, the contents of BLAs are more flexible or rigid than prevalent local laws. This only reflects the level of cooperation between two countries which becomes an easy reference in case of any disputes. It helps to sensitize/aware both parties regarding issues/management unfamiliar to them. These BLA creates obligations to signing countries which finally helps in protection and promotion of rights of labours in the destination countries. In the changed global setting we now have two types of labour markets: Traditional and Non-Traditional markets. BLA helps in the extension of new markets like recent addition of Mauritius, Japan as new labour destination countries for Nepali labours after signing BLA between two governments.

Now while talking about the provisions of the Bilateral Agreement to be included in case of Kuwait, in favor of workers, the issues of inclusiveness comes in the discussion. Such bilateral agreements should encompass all issues so as to give maximum benefits to the workers and provides leverage to the diplomatic staffs to cooperate with them. But the contents of bilateral agreements differ accordingly with countries. Provisions should so as to be placed so that repatriation and rescue

including other aspects of labour diplomacy for ease. Like in case of Qatar, systematic trend must be ensured in the BLA itself regarding ID card, Dual Labour Agreement, Medical insurance and Health Issues. As the nature and flow of migrant in both countries is somehow similar the proposed revision of BLA should also speak about fair recruiting system alike Qatar. So, there is high importance of these arrangements in bilateral agreements between two countries while conducting Nepal's Labour Diplomacy. Having bilateral agreement is helpful because in absence of such agreement the local laws of the country prevail which is often one-sided and tends to put workers in vulnerable front. However in the case with Kuwait, for now the absence of BLA is not a serious problem as there are other existing mechanisms that provide sufficient ground to address the labour issues.

Bilateral agreements are felt necessary when national legislation fails to address the demands of migrant labours. Labour receiving countries specially gulf countries, have their own steadfast rules for labours under Kafala system that does not entertain privileges enjoyed by modern international laws on labour. Countries are reluctant to give access to more rights for migrant labours because that will, to some extent, impeditment their citizens. In some gulf countries they have consumers' rights where labours are treated as consumable goods also to some extent protected by Consumer Act. Under the Kafala system, the most difficult hurdle to labours' freedom, sponsors have the full right to treat their employee as commodity. Basic human rights are violated specially in the case of domestic servants. Number of working hours/days per week is not fixed. Payment schemes are not through standard banking systems. This necessitates BLA between two countries where both parties agree to maintain minimum standard to be lodged for labours. Mechanisms to address grievances are well built. This is the most important tool for the functioning of diplomats in the destination countries. Through this agreed arrangements diplomatic missions will have sufficient legal ground to support their fellow citizens in the destination countries. Otherwise very negative impressions have been popular among the workers in Gulf countries that Embassy hardly helps you and knocking them is creating more problems.

## **5.2 Regarding Coordination**

The coordination between government and non-government agencies and missions abroad is very essential in dealing with the extreme cases. However, in the case of dealing with the extreme cases, the process is on snail pace to address the

issue on time. If the rapid response team could be made to so as to deal in such issues a timely decision could be made to benefit labours as well as the reputation of the country in diplomatic front. Level of coordination involves multiple actors to furnish a single issue related to labour. For example, suppose in the case of accidental death of one labour in foreign country, first responsibility would be to send the dead body to Nepal. The local agencies in the host country involved in this work are employer, police, hospital, cargo agencies, and ministry of foreign affairs and agencies in the home country would be Department of Consular Services and the family of victim itself. Role of each individual/agency is very much crucial in completing this process in time. After sending the dead body to Nepal, next step would be to claim for death compensation besides final settlement from the company. Case might reach up to court for final decisions if insurance doesn't agree to pay with ease. For this purpose, power of attorney is required from legal heirs of the deceased in the home country. Even after receiving compensation it needs to be sent to family of victims through ministry of foreign affairs which generally takes several days until it is collected by the legal heirs of the deceased. Coordination among various agencies is essential while conducting these transactions. To address issues of human trafficking under the disguise of foreign employment coordination with security agencies is also essential. The research found that the referral mechanism of Nepal is good in comparison to other South Asian countries. Even though the existing traditional form of coordination is also satisfactory, but the formation of dedicated team comprised of key people from relevant ministries/organisation would contribute further to existing mechanism. Developed and open media, NGOS and other active actors also play crucial role in coordination during extreme cases.

Likewise there should be strong coordination between Missions, MoFA, MoLESS, MoHA to ensure quality labour market. And for the flow of money via remittance, Central Bank of Nepal, Nepal Rastra Bank, also has crucial role to play. While sharing his experience former ambassador of Nepal to Qatar mentioned that:

During my tenure once I had to face an extreme situation when, all the Nepali employees (around 200) of one company were fired from the job at once. So, they came to the embassy for help. I coordinated with MoFA and MoLESS regarding their logistics, until their stay in Qatar and regarding ways out for repatriation and finally helped them in the difficult situation without much delay. I also coordinated with

Qatari line minister to settle some of them within Qatar as that company was already bankrupt. (Interview)

With this statement it is clear that, a kind of prompt coordination should always be there among government agencies, non-government actors, recruiting agencies and labour sending agencies. Talking about extreme circumstance, there was a history of one case of collapse of a company, where numbers of Nepali workers were employed. In that case embassy had to coordinate with many stakeholders to repatriate them. The coordination between government agencies and missions to deal with the extreme cases seems quite satisfactory in recent context, though it's a bit procedural but it will be of maximum benefit for the workers.

In some cases migrant labours also receive support from local Diaspora organizations in case of difficulty. Their informal networks and ease to avoid diplomatic procedures help them to support cases in labour court, in repatriation, in claiming unpaid wages, rescue from forced labour situations and in further cases against them. But most of these activities happen in close coordination with the embassies. Also, there are number of organizations, pressure groups and volunteers who help migrant labours during difficult times. These institutions will support them with legal, financial and other any needs as per their requests/problems. This support mostly happens in collaboration with Embassy, Local Trade Unions, International Human Rights Agencies, ILO and other related line agencies. In many cases such organizations do help, but most of the Diaspora organizations are linked to the manpower agencies in Nepal or recruiting agencies (Interview). So, they in the other hand try to get some unusual benefits for helping others and there seems to be conflict of interest. So, it would be better to recognize such money monger even though a quite difficult task. Apart from the professional Organizations the concerned institution should also coordinate with international missions, human right office at labour destination countries to solve labour issues through indirect means.

Many people believe that it depends upon the competency of Mission to engage Diaspora in foreign space. Help of Diaspora is necessary due to various limitations of Nepali missions. Mainly, embassy cannot fund the undocumented workers over there. In that case, fund raising is specially done with the help of local Diaspora. But there still exists room for mobilizing Diaspora communities, local

organizations in promoting rescue cases, repatriation and other labour issues. Similarly, any information regarding the forced labour cases, unpaid wages of the worker being collected from these communities are taken up by the Embassy and solved accordingly. The Embassy seeks help from local communities to help undocumented workers, mainly to repatriate the dead body of the worker or buy a ticket for the worker, settle case in court as there is no provision in the law to financially help to those workers without work permit issued by DoFE).

Lack of dedicated focal person in the institutions dealing with labour issues including MoFA, MoLESS, host country organisations and other concerned agencies is one of the problems in handling the situation in time. This dedicated focal person would also help to receive/disseminate directives and other necessary guidance from the higher authorities in Nepal on time. As embassies have to abide by the decisions of ministries in Nepal, requirement of focal person is also augmented from the need to clarify some ambiguous circulars and its nuances while applying it in the real field.

Also, coordination problem is reflected in the decisions made by the policy making bodies. The decisions made do not include the actual need of migrant labours. They are circumventing around the issue. If authorities in the mission could be consulted while making decisions and various guidelines then it would be comprehensive so as to include the real field problems. As a result after decisions are made again number of exchange of letters are to be made to make the particular decision workable.

Coordination between different stake holders is required to address issues of migrant labours. In regard to focused issues related to migrant labours, various factors play important factor in coordinating and addressing the issues of migrant labours. Some of these issues explained below depend upon labours themselves while others depend upon diplomatic missions and other related organisations.

- a) Aware of the law- Labours have some awareness of local law by hearing from their colleagues, training from recruiting company. It is obvious that the worker aware of the law and literate feel easier to solve the problem. But this is not always the case. The legal proceedings are time taking and not effective to address the problem. Also, the knowledge of local law does not cover up to

the level to address the issues and deal with the local authorities accordingly based on legal footings. Even our employee at missions seems to have little knowledge of local laws and company laws.

- b) Late to complain-Even the time to ask help and lodge complain in proper authorities also matters. If worker is being suppressed for too long period it is difficult to deal with. For example, employees turn to embassy after not being paid for several months or expiry of visa for several months. This will cost more to employer as well. If the victim had registered case at early hour than problem would have been solved as the load to such sponsor would also be less.
- c) Distance-Distance/Location of workers from their company to the embassy or labour court is one factor as labours have tight schedule and are occupied with overtime works. It was previously a bit tough for the Embassy to help the persons who are at far distance but now this problem is not a great hurdle. In countries like Saudi Arabia distance might affect but in Kuwait and Qatar, countries of this case study, distance does not matter. This paper also discovers that for city states like Kuwait distance is not a problem because distance can be overcome easily by use of technology, mobile connectivity etc.
- d) Female workers-Regarding gender sometimes it is difficult with regard to domestic workers. As cases related to female domestic workers are sensitive of nature. This is due to the special treatment to women in Arabic countries. Sharia law prevalent in Gulf countries is more stringent in case of women. Their daily activities and lineage to society are defined in such a way that their movements are limited in comparison to male member of the society. Female domestic workers have to work under the supervision of their female owner. Due to religious practices, pressure of the works and limited mobility in the society such housemaids are entitled with excessive works. Number of working hours is also not fixed. Most of them have to work until the work is completed and completing household tasks is almost impossible. Thus they face domestic violence from their owners. Many of them also face sexual harassment from their male owners to which female owner close their eyes.

There is no proper mechanism to address such issues. Thus, sending female workers in domestic works is not a good practice. Hence helping them to divert in formal or company work from domestic work will be helpful considering their right to work. Embassy is bound by the local law. If the worker is in company then it is easier to solve the problem than for domestic workers. Every month around 50 maids come for help (Embassy of Nepal, Kuwait) and equivalent number are repatriated to Nepal, but some have to wait a bit long to complete the clearance report process from local authorities.

- e) Connectivity- Support from co-workers and the others are also increasing day by day, as most of the worker gets information from the other person regarding the help provided by the Embassy. Even from time to time the labour awareness programs are conducted by embassy to provide information to target groups. But mainly maids are affected with such problems
- f) Contract Agreement - Contract Agreement is sometimes re-signed or adjusted by the owner in Arabic which is not in the favor of the workers. There is problem of dual agreement which devoid employee from their main rights and compels them to do works not under the scope of international labour law. In order to make one's worker safe and sound, the Agreement plays a vital role.
- g) Employment Permit- At last, coming to country without the labour permit and not renewing them at regular interval is the main cause which puts them out of government service radar. Those undocumented migrant labours are not eligible to get government benefits during difficulties and compensation in the case of any accidents.

While talking about the conduction of meeting with counterparts, many stakeholders believe that they seem responsive to concerns of the embassy about problems of migrant labours. As per trade union personnel, there is a dedicated room in the office of counterpart in Qatar where both frequently meet and conduct joint field study. During this research it is found that the concerned personnel's of embassy often meet, every month, with their counter-parts and discuss more than one hour during every



meeting over several matters. For regular coordination they had appointed focal person from embassy as well as requested the same from counterpart. The interviewee suggested that full documentation of the problems be discussed and prepared in detail will help to put forward our points clearly and confidently. So they can be counted as responsive.

### 5.3 Regarding Resources

In this section, the paper will discuss on the role of human resource and budget allocation in diplomatic missions and its impact on addressing the labour issues. To respond the problem regarding human resources some additional posts of labour attaché and diplomatic staffs have been added in the missions. But upgrading them and adding some local staffs might be more helpful. Another approach is the budget allocation and human resources should be in proportion to the number of Nepalese people over there. For Qatar allocation of human resources seems in proportionate. As per the former ambassador of Nepal to Kuwait, human resource and budget are not problems in the embassy of Nepal in Kuwait. Even if the concerned agency lacks fund, MoFA, DoFE would send the required budget as per the demand from the missions. But most other interviewee mentioned that fund and its management is also major problem. As per representative of FEPB, more than 60% *beruju (expenses that are not supported by accounting system)* of FEPB is related to diplomatic missions. FEPB provides fund up to 15 lakhs to hire lawyer if embassy feels that it is required and requests same to the FEPB. But fund from FEPB cannot be utilised in buying vehicles or other facilities not related to the welfare of labours. Also, FEPB has provided fund of NRs. 25 lakhs to all the labour missions to upgrade and built shelter in the mission. According to interviewee from FEPB the money collected from labours in the name of "labours' welfare" is used for the betterment of themselves. Provision of scholarships to their children up to school and high school level and also providing some minimum economic support to the undocumented (without labour permit) workers in need. Interviewee from FEPB mentioned about the extreme case of Mr. Bansha Mainali, one of the victim migrant labour in Qatar, FEPB allocated sufficient fund to hire strong lawyer to support his rights. Final decision of court was in his favor. This research finds that incase of housemaids, the Ministry of Women and Children also have some budget for domestic female workers. However, the central issue is even the available funds cannot be used for illegally migrated workers. If they have legal documents the concerned agencies can be liable. Some

expert view that these two issues are not the immediate threatening problem as budget allocation has been facilitated by FEPB wherever required. From another perspective, we can also argue that the Labour issues vary from time to time, country to country and in the context of workers those who have employment permit it is easier to deal. Any fixed budget is not allocated for the labour issues as it vary. But according to the need, the missions can ask to the Foreign Employment Promotion Board for the help and it is granted according to the procedures. In some cases, almost equal numbers of labour attaches are deployed in the labour destination countries, two for Qatar and one for Kuwait. Most of the interviewee said that countries like Qatar and Malaysia need more number of labour attaché than other countries with lesser number of Nepali workers where difference of labours is more than ten folds. Volume based allocation of human and economic resource is required to effectively coordinate the issues of migrant workers in the destination countries and address them on time.

During the discussion about labour attaché, the question may arise that, are personnel in the missions including labour attaché efficient enough to address the issues of labours in the destination countries? This paper discovers that the personnel in mission are competent up to the level of trainings and other inputs they have received. On the basis of interview, this research found those personnel competent in their duties. But their expertise in different sectors like economic diplomacy, negotiation or some other qualities of diplomat has room to improve. Lack of exposure, training, experience is reflected in their performance. According to the former Ambassador of Nepal to Qatar appointment of labour attaché is very useful and helpful in solving labour issues. Selection of them should be based on their experience in the field in home country. Because it helps them to have better knowledge of the scenario of labours back home. They are familiar with the almost all recruiting agencies in country and their background. They have idea of the mentality and attitude of labours and recruiting agencies. So, these skills of labour attaché have made the work easier. But still the Nepalese staffs are not as competent as staffs of other countries. To thrive further, at least they should maintain level with other countries' colleagues which can be achieved even by regularly interacting with similar staffs of other embassies in the destination country. Representative of GEFONT claimed that Nepali officials in the missions don't have ideas about the provisions of local laws and other favorable laws to the labours. Further elaborating on the matter interviewee assertively claimed that officials of other missions are very smart in this

regard which has made their diplomacy perfect in comparison to the officials of Nepali missions.

While talking about the importance of the knowledge of local language to diplomatic staffs it seems to play crucial role in conducting labour diplomacy. This is very much crucial part as the knowledge of local language, local law and other local practices are very much important in the conduct efficient labour diplomacy. Speaking in local language will be very helpful to develop interaction level relationship with other party. In case of domestic workers, many sponsors don't speak other than their native languages. Diplomats have to completely depend upon local staffs to address the issue. Also, crux of the issue can only be understood while interacting with the main sponsor. This is possible only with the translator in most cases of the domestic workers. In such cases, knowledge of local language would be very helpful and practical. Communication in local language gives extra inputs to the efforts and helps to put forward the matters more precisely. Local language gives human touch to every diplomatic endeavor. On the other hand, the knowledge of local language can be an additional asset of diplomatic staffs as it makes meeting/communication positive and increase the possibility of desired outcome. Most of the interviewee said that communicating through translator shall not be as efficient as talking directly. Because translator may have his/her own opinion about the matter and there is high chance that they mix up their ideas during translation. They also suggested for the training of local language before diplomatic personnel are deployed to their respective missions.

#### **5.4 Regarding Problems Solved**

One of the major problems in Qatar identified by this research is that diplomatic staffs are not allowed to visit labour camp, only labour attaché have permissions for that. In general that our labour missions are not allowed to visit labour camps and working sites without the prior permission of foreign ministries. Taking permission is a time taking procedure. This will decrease our effectiveness as it depends upon the interest of host country. Embassy of Nepal in Kuwait had published a Pocket Book on local law of Kuwait so that labours could be benefited. The main hurdles to addressing maximum number of such cases are the nature of the cases itself. Sometimes budgetary constraints are also the cause. Sometimes situation

is such that instruction cannot do anything. According to interviewee talking about Qatar, explains that during blockade in Qatar almost all authorities in Qatar were helpless. So, even the government authority of the host country could not help to address the issues of Nepali migrant labour. Some of the other problems are like: lack of immediate fund, long time span in court, less support from embassy than expected, weak financial condition of family members in Nepal, serious health issue. As per the recent report, the main issue in case of Kuwait is the problems related to house maids. Sometimes the institution receive call that they are captivated in some house, but the authority cannot enter the house without permission and taking permission will definitely take some time. Local law has empowered employer than employee. Despite this maximum possible number of complaints that have been filed at the embassy are solved.

Every month the institution/mission related to labour issues receives hundreds of cases/complaints out of which many such cases get settled through institutional means. There also exists some mechanism to supervise the tasks performed by missions. Most of the cases are related to unpaid salary, compensation, azaad system (Qatar), alcoholic cases. To put it into number, approximately 10 to 15 cases per month including, the Company cases and the Housemaid cases, are received in Nepali mission in Kuwait while, Nepali mission in Qatar receives more than 100 cases every day. During the interview it was found that the institution receives only extreme cases while normal cases are solved through other channels including embassies. So, such cases are very few in number. The number of cases varies every month as the institution has separated cases to domestic and corporate. And for supervision, these data are regularly sent to the MoFA as the Monthly Reports and receive instructions accordingly to decide on the case and way forward.

With the long history of labour migration, it is learnt that Labours prefer to visit diplomatic missions only for making government documents like passport renewal, recommendations or attestation other documents.

Problems related to the lack of orientation training both pre departure and post arrival some measures have been taken. FEB is working for the pre-departure training program with collaboration with private institutions. The agency has ensured 100% attendance in such classes with introduction of Biometric attendance. Now challenge

is to make sure that they get some knowledge about destination countries laws. The government is in verge of planning to conduct such training separately for each country instead of putting all in same basket. It's mutually beneficial for the labour receiving countries as labours will have some knowledge on local laws and regulations. Likewise, on the other hand by learning from the practice of POLO (Philippines Overseas Labour Office) organizing post arrival training at destination countries could also be equally beneficial. Role of Embassy is very important in this regard as well as the roles of Employer, Supporters, Migrant workers, state actors of host countries, trade union activists are also equally important. And regarding awareness of law what it is found that even diplomatic staffs are not fully aware of major provisions of local labour laws.

## **CHAPTER SIX: NEPAL'S LABOUR DIPLOMACY: ASSESSMENT OF ITS EFFECTIVENESS**

Assessment of effectiveness of labour diplomacy of Nepal was done through different perspectives. Being a country whose 1/3 GDP depends upon remittance sent by migrant labours it is one of the fundamental aspects of foreign policy of Nepal. Nepal has given high priority to the labour issues while conducting diplomacy with other states, especially labour destination countries, in addition to various aspects of diplomacy. Establishing its diplomatic missions in the countries with significant number of migrant labours in spite of huge economic burden shows importance given by Nepal to its labour diplomacy. Eight Nepali missions out of 39 Diplomatic missions are established mostly to deal with labour issues. The basic objective of establishment of these embassies was to facilitate easy dealing with the labour issues and reflect among migrant labours that Nepal government has considered them as an important asset. Embassies and Consulates are at the forefront of conducting daily tasks in dealing with issues of migrant labours in the host country. While, Ministry of Foreign Affairs, Ministry of Labour, Employment and Social Security and other various departments and agencies under the aegis of these ministries are also equally responsible for conducting labour diplomacy in home. As described by neoclassical theory of economics and dual labour theory many Nepali people have left their homeland in the search of employment due to complex cycle of unemployment and excess employment in the home and destination countries. Even government promoted this exodus to support the national economy. Hence, it comes under the responsibility of the government to manage this sector of employment. Management of this responsibility of government is done through various agencies, institutions and instruments of diplomacy to coordinate among all these stakeholders. Among them the diplomacy conducted by governmental agencies to promote safety and security of migrant labours in destination countries until their return is most predominant. As research work aims to assess this responsibility of government, various methods were deployed from conducting interview to analyzing data provided by the authorities involved in the conduct of labour diplomacy before arriving at this conclusion.

Nepal's Labour Diplomacy began since Nepal started sending Nepali army to participate in World War I and II. This was only a type of available foreign employment to then Nepali people. In fact most lucrative till date to Nepali brave fellows who compete in British and Indian Army as Gorkha regiments. Due to good

diplomatic relation between Nepal and Great Britain and also with the skills and hidden interests of Rana regime at that time this became possible. However, it can be regarded as a beginning form of Labour Diplomacy. Recently labour diplomacy flourished with the industrial revolution in the middle-east countries. Since then Labour Diplomacy of Nepal has also become vigorous as a separate tool of diplomacy implemented to make it more effective and efficient.

To be precise with exception of Japan and South Korea Labour Diplomacy these days is confined within MENA region and Malaysia. To make this concerted effort fruitful and in the favor of Nepali migrant labours Nepal government has made remarkable attempts. Formulating new rules and regulations and amending them as per the situation and demands of migrant labours is one of the commendable attempts of Nepal government. Foreign Employment Act 2007 and Regulations 2008 and various other directives and circulars are the legal frameworks that support the daily conduct of diplomatic missions in host country and other authorities in home country. Similarly, Bilateral Agreements between Nepal government and host countries is other strong instrument in the conduct of Labour Diplomacy for Nepali diplomats. Some other instruments that have promoted the effectiveness of Labour Diplomacy of Nepal are the international conventions and its protocols to which Nepal is a party. The documents of international human rights Conventions and agreements also provide guidelines and form the basis to deal with the issues of migrant labours. After analysis of the related subjects, this paper concludes that various instruments and institutions have contributed significantly to conduct daily activities related to labour issues of Nepali migrant labours. In addition to it, new initiatives of Nepal government to sign BLA with other remaining countries and update the existing ones with common framework for agreement will further contribute to intensify the functioning of diplomatic missions so as to give positive direction in the conduct of Labour Diplomacy of Nepal.

One of another factor that contributes to the functioning of actors in this sector is the level of coordination between various stakeholders in the sector. Coordination between various stakeholders to make prompt decision and quick response in the case, if any, matters the effectiveness of the diplomacy. It is found that missions have developed good diplomatic relations with host country's counterpart that they can address the issue on time. Also, time delay in response from the capital has affected functioning of missions abroad. Overall coordination between agencies and stake

holders including Diaspora have been found sound and mutual. This part can be improved further by creating a focal person at each agency to coordinate and follow up the matter. Also, good relation with the authorities in the host countries like human rights commission, immigration and police will help to address the issues timely. This part of diplomacy of Nepal seems lagging behind. Missions have tried to develop relation with such authorities but not the extent of helping our mission in helping the migrants over there.

Discussing about other factor influencing conduct of Labour Diplomacy is resources available to our missions and efficiency of diplomats at the missions. As per the capacity of Nepal government there are sufficient numbers of diplomats in most of the labour destination missions. But the number of labour attaché at different missions seems to be disproportional to the number of workers in such countries. Also, there are issues of incompetency with regard to local language in dealing with the employers. Lack of clear mandate from the capital is also another hindrance in the maximum utilization of the resources and human capital in the missions abroad.

Assessing status of labour diplomacy from all different perspectives gives a picture that it is going in the right track. Even when we compare the level of effectiveness of our small missions in labour destination countries, we find that our missions are competent enough to address the issues related to migrant labours. On the other hand, lack of awareness and lower literacy rate among Nepali migrants also has increased the burden of diplomats in such labour destination countries.



## CHAPTER SEVEN: SUMMARY AND CONCLUSIONS

Data obtained from various sources in last three years depicting problems of migrant labours in destination countries were studied and analyzed in this research. Also, the comparative study of Labour Diplomacy of Nepal with diplomatic practice of other labour sending countries was carried out. The comparative progress in institutional and legal framework aimed at addressing the issues of migrant labours was studied in this paper. Relative decrease in the number of complaints of migrant labours and curbing the response time to address problems of the labours shows that our diplomatic missions are improving their service delivery. By utilising the forums provided by international obligations and membership and playing active role in such regional and global forums, Nepal has delivered a clear message that it is best utilizing its resources to promote safety and security of its migrant labours. Also, initiating different programs back home providing secure investment opportunities to hard earned money of the migrants for the capital formation thereby also contributing to national productivity is another remarkable policy of Nepal government. Labour Diplomacy though emerging concept in the field of diplomacy has been effectively put into practice by Nepal government.

However, Labour Diplomacy of Nepal is not found as effective to meet the expectations of the labours and even to meet the target of government itself. This study finds this mainly due to problems in three factors: Coordination, Competency and Legal instruments, followed by other similar doomed contexts like; lack of exact data of workers abroad and returnees, unskilled workers, difficulty in monitoring, lack of information sharing. Despite the efforts of the government satisfactory result has not been achieved to meet the expectations of common people. Information exchange and interactions among stake holders would help to solve the problem to some extents. Other reasons behind this are: Lack of effective bilateral agreement, Illegal entry of workers, Lack of timely response from MoLESS and department under its aegis. Also, this research finds that the main issue in inability to address the problems or proactively reduce problem is inability to make Manpower agencies responsible for all these problems to labours sent by them in case they face such problems. Manpower agencies try to circumvent the problems once they send labours abroad. They are less interested to address problems of the workers after sending them.

Recruiting agencies from both sending and receiving countries have to be brought under strict regulations with mechanism of proper coordination between government agencies of both countries. This demands the important role to be played by diplomats and activate diplomacy; Labour Diplomacy.

Labour diplomacy is not simply the part of diplomatic missions only. It is comprehensive process comprising of various actors and institutions. High level initiation is necessary to take up the issues seriously and activate the intermediate agencies accordingly. All the agencies involved directly or indirectly in this process should be responsible and accountable to make this sector more reliable and increasingly safe.

According to the findings of my research, problems related to the migrant labours found out during course of discussions and research can be improved with following constructive inputs. Also, some new avenues of Labour Diplomacy have been enlisted below:

- i. It is highly expected from a diplomatic mission to launch awareness campaigns in co-ordination with the Foreign Employment Board, the Nepalese communities abroad and the Government of recipient countries.
- ii. A labour-friendly atmosphere needs to be created inside the chancery or separately made Shelter house to save the workers who approach embassy of those being rescued from detrimental working conditions.
- iii. Labour attaché should have proper knowledge of the concerned country's labour law and of local and English languages and the tenure of labour attaché should be increased to at least three years to ensure his/her level of experience that benefits the workers. Also, number of labour attaché should be increased so as to look after the issues of every 50,000 Labours by one officer being assisted by local staffs. There should be at least one Public Relation Officer for every fifty thousand workers for properly and timely addressing the grievances of workers'.

- iv. Employers not cooperating with diplomatic missions, making false contracts, imposing extra hours of work without pay should be black-listed and their demand letter should not be attested again without such correction.
- v. Diplomatic mission should make a request for general amnesty in cases of overcharge or other exorbitant obligations to labour.
- vi. Diplomatic missions should develop safe measures with the help of the measures adopted by other similar labours sending countries and also recommending them to the Government of Nepal.
- vii. Nepal is erroneously known for country supplying unskilled labour in the international job market. A diplomatic mission is expected to launch sufficient awareness program to eliminate such a misconception and explore better and safer job opportunities.
- viii. Arrangement of frequent bilateral visits between labour sending and receiving countries is one of the ways to sort out problems of this sector. High-level visit is also supportive to protect the right of migrant worker. This will help to open the door of new opportunity, to forge bilateral labour agreement, and to provide amnesty to the worker. Nepal is increasing such types of mutual visits in these days.
- ix. Proper pre-departure and post-arrival orientation trainings are needed regarding legal awareness, health hazards, safety and traffic awareness and local rules, regulations and culture. Pre-departure orientations and country specific trainings if could be executed as per recent plan of DOFE, it would contribute to the further welfare of labours. Also starting post arrival training will definitely produce better results.
- x. Role of various actors (State and Non State) involved in this process should be strengthened and coordination between them be made more frequent and ease.
- xi. Now with Federalization, role of each federal and provincial government is also equally important. Vertical communication between these local

governments and provincial labour offices and with central authorities to transmit correct message in same form is equally important.

- xii Decisions implementation arm comprising of representatives from all the stakeholder organisations should be made strong. It is seen that existing high level committee which hardly meets once a year cannot address the problems of labour issues. Visits of such committee should be made more frequent. Proactive role of diplomatic missions is expected. As embassy is the permanent body situated in the host country it should be empowered with resources, and authority. Formation of Technical Monitoring Committee comprising members from host country and mission would be helpful.
- xiii. All the workers including in the domestic sectors should be managed rather than simply prohibiting from domestic works. Prohibition of domestic workers in foreign employment has not stopped problems in Gulf countries including field of study country like Kuwait and Qatar. They travel through various illegal channels and government agencies face more problems as they are illegally migrated and undocumented in the destination countries. Hence, it has to be managed with rigorous study of the causes of the problems. One of the solutions to it can be treating cases under each country differently. Also, another idea can be asking heavy amount of deposits from sponsors until they work with them. Providing them cell phone with tracking app, linking each domestic worker to the embassy will help all the workers to know about the embassy and services provided embassy and places to contact in case of difficulty. Also, in the beginning one most suitable country can be tested as pilot program. If such improvisations work then other countries can also be opened up slowly.
- xiv One of the major problems in most of the destination countries is managing undocumented labour migrants. It is very true that they are illegally migrated but after all they are Nepali citizens and they have contributed to Nepali Economy through indirect means. It is also the duty of welfare state to take care of her vulnerable citizens despite their mistakes. But Foreign Employment Act 2007 doesn't have provision to help them officially except

for repatriation of dead body from airport to their home. This has been managed from crowd funding. So it would be better if government could have some mechanism to allocate funds of FEPB or other sources in helping them.

- xv. Monitoring Committees should be strict in implementation of provisions mentioned in BLA and contract paper between employee and employer.
- xvi. Improvements in the competency of officials both in quality and in number learning from other labour sending country's practice will also be helpful.
- xvii Comprehensive Bilateral Labour Agreement Framework is exemplary to even other nations as well. Such agreement should be signed with all labour destination countries including updating the existing BLA with some countries.
- xviii Rescue and Repatriation specially repatriation of dead body in Saudi Arab is very problematic and time consuming. It takes almost 28 days to repatriate dead body from Saudi Arab to Nepal. It reflects inefficiency of Nepali labour diplomacy which needs to be improved. The main delay in sending body is due to delay in receiving medical report of the deceased. This can be shortened with high level negotiation to cut down the procedure. There is one technical issue regarding medical certificate of the deceased. In Arab countries, post-mortem of all the deceased is not done except in accident cases, they relate it to the Arabic religion and practice. This sometimes has led to the suspicion in finding cause of death in some cases. High-Level negotiation is required with GCC countries to amend this provision. This would help to assure Nepali side about the exact cause of death, which if found other than by natural cause would produce good sum of ransom to the bereaved families.
- xix One working level team established in the capital comprising of responsible officers from MoLESS, MoFA (DoCS), MoLJPA to deal with extreme cases and timely response can contribute to coordination problems timely. Such committee should have complete authority to decide on matters related to migrant labours.

- xx Very important perspective in the case of Foreign Employment is that till date it has not been included in the negotiation is about our human capital. Our youths are our capital. When we are supplying large number of youths to support the deficient human resource of destination countries government should be able to reflect this matter. Specially sending to Malaysia and Gulf countries is different than that of sending to Europe and America. We have to negotiate for their assistance in development works or any other form through their huge aid funds in return of such labour force. If we have upper hand from this perspective than definitely all our negotiations would be fruitful.

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## APPENDIX-I

### QATAR AND KUWAIT

#### State of Qatar

It is a sovereign and independent state in middle-east, occupying a peninsula that extends into the Arabian Gulf. It is spread over an area of 11,500 square kilometers (i.e., about thirteen times smaller than Nepal). It is one of the world's most important suppliers of oil and gas since its independence from the United Kingdom in 1971. It is an Islamic State where laws and customs follow Islamic traditions based on Sharia law. Arabic is the principal language of the country and Islam is the official religion. The average life expectancy is 76.8 years for men and 81 years for women. The Qatari Riyal is the local currency of the country (USD 1 = QAR 3.64). It was ranked 54<sup>th</sup> globally in terms of the size of economy with a Gross Domestic Product (GDP) of USD 167.0 billion in 2017. With its large gas reserves, double-digit economic growth rates, large construction projects, and high demand for labour, Qatar is among one of the major destinations for foreign workers, including Nepali. There has been consistent growth in Qatar's migrant population in the last six decades, from about 14 thousand in 1960 to over 1.7 million in 2017. Qatar ranks among the top countries globally in terms of the share of foreigners in the total population. The foreign population in Qatar outnumbers natives by a huge margin, out of which share of Nepali labours is remarkable numbering more than four lakh.

Following intense criticism from human rights organizations all over the world, including National Human Rights Commission of Nepal, over the Kafala system for the exploitative conditions migrant workers, Qatar issued Law No. 21, in October 2015, to regulate the entry, exit and residency of expatriates and replaced the Kafala system with a contract-based one. It also removed the corollary that an expatriate worker can only return after a two-year waiting period to take up another job after his or her departure from Qatar. Law No. 1 issued on 4 January 2017, which amended several provisions of Law No. 21, granted expatriate workers with the right to leave the country simply after notifying their employers. Further, Law No. 13 issued in September 2018 abrogated the 'exit permit' system that required all

expatriate workers employed in Qatar to receive such a permit from their sponsors before leaving the country.

### **Nepalese in Qatar**

Nepal and the State of Qatar are in diplomatic relations since 1977. It is not possible, though, to determine the exact date when Nepalese started migrating to Qatar. One source says that the first Nepali migrants to Qatar were Muslims from Nepal's Terai region who could read and write Arabic and who had found employment within Qatar's Ministry of Religious Affairs. It is likely that Nepali Muslims had settled in Qatar as early as the 1990s to work in the Ministry of Islamic Affairs. An official from the Nepali Embassy in Qatar claims that in the 1980s, a Nepali Muslim from the Terai had found employment with the Qatari police. But Nepali migrants to Qatar numbered in the hundreds and it was only in the early 2000s that there was a significant growth in labour migration from Nepal to Qatar. The Nepali migrant population in Qatar was estimated to be just over one hundred and fifty thousand, or 9 per cent of the total migrant population, in 2017. These figures are misleading though. Given that more than 100,000 Nepalese have been receiving labour permits to work in Qatar annually since 2013/14, and that contracts are generally for two-year periods, it can surely be assumed that there have been much more than 150,000 Nepalese working in Qatar at any given time for the past several years.

### **State of Kuwait**

The State of Kuwait is a small emirate enclosed by Iraq and Saudi Arabia. It is a low, sandy region spread over an area of 17,818 square kilometers (about one-eighth the size of Nepal). It gained independence from the United Kingdom in 1961. Kuwait is a constitutional emirate, where the Emir is the head of state and the Prime Minister is the head of government. Kuwait's weather is usually dry and hot, although it also has a short warm winter with occasional rainfall. Islam is the official religion of the country and Arabic is the official language. Kuwaitis have a life expectancy of approximately 76 years, with men (74 years) living two years less than women (76 years) on average. The Kuwaiti Dinar (KWD) is the local currency (USD 1= KWD 3.29). Oil is the main natural economic resource of the country. Kuwait holds

approximately 8 per cent of the world's proven crude oil reserves and ranks fifth globally as of 2017. Kuwait was ranked 58<sup>th</sup> globally in terms of size of its economy with a gross domestic product (GDP) of USD 120.1 billion in 2017. Like other oil-rich countries in the Gulf, Kuwait relies heavily on migrant workers to keep its economy vibrant. Kuwait entertains number of housemaids from different countries. A large number of female Nepali workers are in Kuwait as a domestic servant. Even though government has put ban on domestic workers to any countries from Nepal since 2016, many undocumented housemaids find ways to reach Kuwait through India, Sri Lanka, Maldives and other routes. Human Traffickers have crucial hand in this illicit transport of Nepali women through these countries to Kuwait.

### **Regulation of Migrant workers in Kuwait**

Consistent with the other Gulf countries, foreign workers in Kuwait are recruited and regulated through the Kafala system, a sponsorship system that gives sponsors complete control over the mobility of migrant workers. The main objective of the Kafala system is to monitor migrant labours employed in the country, with the prerequisite that all workers have a citizen sponsor, known locally as the kafeel, who assumes the responsibility for maintaining the migrant workers' legal status and visa requirements. Kuwait's labour law of 2010 (New Private Sector Labour Law, No. 6 of 2010) regulates all migrant workers in the private sector. This law, however, does not apply to domestic migrant workers. In response to intense criticism from different human rights organizations, in February 2011, Kuwait announced that it would abolish the Kafala system. However, the Kafala system remains in place even though since 2016 (through decree 378/2016) contracted workers in the private sector are allowed to transfer their visa without the employer's approval three years after the issuance of work permits.

### **Nepalese in Kuwait**

Large-scale labour migration of foreign workers to Kuwait had started in the 1950s to fulfill the demand for workers in infrastructure development spurred by Kuwait's oil wealth. While foreign workers, mostly Arabs, outnumbered Kuwaitis by 1960, the exact date of Nepali workers' first migration to Kuwait is difficult to trace. However, it can be assumed from available data that Nepali workers had travelled to

Kuwait since the 1980s as there were over 1400 Nepalese in Kuwait by 1990, the year from when data is available. The number of Nepali migrants in Kuwait has grown significantly over the years, and although there were nearly 15,514 Nepalese in Kuwait in 2017, they still made less than 1 per cent of the country's total migrant population. These figures are misleading though. Over 50,000 Nepalese have received labour permits to work in Kuwait in the last two years alone, 2016/17 and 2017/18 as per the official record of DoFE. Given that more than 15,000 Nepalese have been receiving labour permits to work in Kuwait annually since 2010/11, excepting the year 2014/15, and that contracts are generally of two years' duration, it can be safely assumed that there have always been many more than 15,000 Nepalese working in Kuwait at any given time for the past several years. As per the data of the Government of Kuwait in 2018, there are 60,095 Nepali nationals working in Kuwait. Out of them, 37,284 are in the company sector (male-35,054 and female-2,230) and 22,811 in the domestic sector (female-20,904 and male-1,907). Approximately 4,500 Nepali nationals are reported to be living in Kuwait illegally.

## MAP OF QATAR





## MAP OF KUWAIT



## **APPENDIX-II**

### **QUESTIONNAIRE**

Considering the significance of exploring the contemporary issues in Nepal's labour diplomacy, based in Qatar and Kuwait, this questionnaire has been designed to collect information from various authorities dealing with labour issues including Nepal's diplomatic staffs serving in Kuwait and Qatar. This research, entitled "Nepal's Labour Diplomacy: Assessment of its effectiveness", is carried out for the fulfillment of Masters' Degree in International Relation and Diplomacy (MIRD) of Somesh Thapa, student in MIRD, TU.

*(It is not mandatory to answer the question if interviewee is not comfortable to reply. However, all the questions are integral part of the thesis. The researcher assures of the anonymity of the information provider.)*

Name: Position:

Organization (Mission, Ministry/Department or any other):

Date:

Country/Mission Referred: (Qatar, Kuwait or Other):

#### **Section- A**

#### **Bilateral Agreement**

1. Is the Bilateral agreement between Nepal and Qatar sufficient in its content and scope? Or do you feel the necessity of Bilateral Labour Agreement between Nepal and Kuwait?
2. What are the provisions of the Bilateral Agreement (to be included in case of Kuwait) in favor of workers with regard to workers' protection, wages, benefits and holidays; and remittance?
3. How helpful are these arrangements in bilateral agreements while conducting Nepal's Labour Diplomacy?

**Section- B**  
**Coordination**

1. How has the coordination between government agencies and missions, and other Non-State actors helped to deal with the extreme cases? Could you please refer an example of such coordination?
2. Does the embassy receive support from Nepali Diaspora/Organizations to settle cases in courts, in repatriation, in claiming unpaid wages, or rescuing from forced labour situations and in further cases?
3. What are the problems to support the workers effectively and carryout labour diplomacy with regard to location/distance of workers/, support from co-workers and from other individuals, gender, and awareness of local law?
4. How frequently do you meet with your counterpart in the host country? How essential is such meetings?

**Section- C**  
**Resources**

- A. How has the human resource and budget allocation to diplomatic missions impacted on addressing the labour issues?
- B. Are personnel in the missions including labour attaché efficient enough to address the issues of labours in the destination countries?
- C. How important is the knowledge of local language to diplomatic staffs? Is there any particular incidence where such efficiency has become much helpful?

**Section- D**  
**Problems Solved**

1. What is the number of cases/complaints received by your institution/mission related to labour issues per month? How many such cases are settled per month?  
  
(Death, Injuries, Accident- traffic, natural, or work accident, problems regarding work hour, work situation, food, salary etc.)
2. What are the main hurdles that you have found to address maximum number of such cases received by your office?