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Foreign Labour Migration and Governance in Nepal

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Abstract

This paper examines the history and current situation of international foreign labour migration in Nepal. The volume of foreign labour migration in Nepal is in increasing trend. This paper highlights the volumes of absentee population including countries of destinations of labour migrants. The objective of paper is to discuss historical and current aspects of foreign labour migration including governance of labour migration in Nepal. The paper is developed with the help of secondary sources of information and discussed only in Nepalese context in relation with the bilateral, regional and global context. Some major push and pull factors related to foreign labour migration including frequently changing governance acts, policies are also discussed. To govern international foreign labour migration provisions on national, bi-lateral, regional and international level with Nepal's position are highlighted. The lack of stable and foreign labour friendly migration policies are being unable to address problems of Nepalese migrants properly.

Key words: Labour migration, pattern, act, rule, policy & governance.

Introduction

International labor migration has surged in recent years with an increasing number of workers moving across international borders for work. The stock of international migrants increased from 154 million in 1990 to 244 million in 2015 (UNDESA, 2015). In 2017, migrant workers accounted for approximately 59 *per cent* of the world's international migrant population (ILO, 2018). Crossing national borders to work is one of the key motivation behind international migration mainly driven by economic inequalities, seeking employment or both.

More than 1,750 Nepalese leave the country daily for foreign employment. According to the data available a total of 6,39,167 aspirant migrant workers left for various countries in

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the last fiscal year 2016/17, up from 4,18,713 in the previous FY 2015/16 (MOLE, 2018). This figure does not include the population being employed in India, which is estimated to be more than 3 million. Massive increased in foreign labour migration, remittances flowing into Nepal as a share of GDP doubled from 14.9 *per cent* in 2005/06 to 32.1 *per cent* in 2015/16. Close to 50 *per cent* of Nepalese rely on financial help from relatives abroad, the highest rates in the region. The top-five destinations for Nepali migrant workers are Malaysia (40.9 %), Saudi Arabia (22.9 %), Qatar (20.3 %), United Arab Emirates (11.2 %) and Kuwait (2.1 %), (ILO, 2017). Government data shows that a majority of the migrant Nepali workers are engaged in 4D works (Difficult, Dirty, Dangerous and demeaning) in countries, from Qatar to Malaysia and from South Korea to Israel (MoLE, 2014).

Nepalese workers have sought foreign employment in both the agricultural and non-agricultural sectors and struggling to generate new employment opportunities. At the macro level, the remittances represent a valuable source of foreign currency. At the household level, remittances reduce poverty by providing much-needed money for basic necessities, such as food, clothes, health care and children's education. Between 2005 and 2011, the poverty headcount in Nepal decreased by 4 *per cent* (from 29 to 25 %) (CBS, 2011).

History and Trends of Labour Migration in Nepal

Scholars do not take uniform approach regarding migration to and from Nepal. The arrival from the north of people speaking Tibeto-Burman languages between the 5th and 10th centuries, and of Indo-Aryan groups, especially Brahmins and Kshatriyas, from the south from the 9th to the 13th centuries to what is present-day (Adhikary & Gurung, 2009). Nepal's links were equally strong with both the north and the south. Most parts of Nepal had greater economic ties and closer cultural affinity with Tibet until the early 19th century than with any other country. There were more Nepalese in Tibet than anywhere else outside Nepal, and more people of Tibetan origin than of Indian origin were known to be living in Nepal at that time (Bisth, 1980).

The history of formal foreign labor migration begins in 1814-1816, after the Anglo-Nepal war. A total of 4,650 Nepalese youngsters were recruited to the British armed forces in the British-Gurkha regiment after the conclusion of the war and signing of the Treaty of Sugauli in 1816 (ILO-DFID, 2002). The 1947 Tripartite Agreement between Nepal, India and Britain opened the way for a newly independent India as well to recruit Nepali men into its army. Hence, even two centuries later, the tradition of recruiting Nepalese youth into foreign armies (the British and Indian as well as the Singapore police) continues unbroken (Nath, 2006).

The 1950 Nepal-India Treaty of Peace and Friendship formalized the free movement of people between the two countries without requirements of any formalities like passports and visas. During the 19th and 20th centuries, the Nepalese migrant population dispersed to other countries as well, namely, Bhutan, Burma, Malaysia (then Malaya), Thailand, Bangladesh (then part of India) and Tibet. While Nepalese emigrants to Tibet were essentially traders, migration to Malaysia is associated with Nepalese working in plantations growing rubber, sugar and palm, and in Thailand Nepalese worked at important market places in Bangkok (Kansakar, 2005). As reported in the Nepal Living Standards Survey (NLSS) 2010/11, 53 *per cent* of households in Nepal have at least one absentee living within or outside the country. According to the census data, between 2001 and 2011, there was more than a two-fold increase in the number of Nepalese living away from the country (Table, 1). The implication of this trend is significant, the average annual growth rate of Nepal's absentee population between 2001 and 2011 was 9.2 per cent (CBS, 2014).

Table 1: Total Number of Absentees¹ Residing Outside of Nepal

SN	Years	No. of Absentees
1	1952/54	1,98,120
2	1961	3,28,470
3		NA
4	1981	4,02,977
5	1991	6,58,290
6	2001	7,62,181
7	2011	19,17,903

Source: Population Censuses of Nepal 1952/54, 1961, 1971, 1981, 1991, 2001 & 2011
NA= Not Available

During the Fiscal Year 2013/14, approximately 44.2 *per cent* of the total labour permits issued were to migrants going to the Gulf countries 23 and a further 39.6 *per cent* to those going to Malaysia (MoLE, 2014). A majority of Nepalese migrants continue to go to India and other most migrant workers are destined either for countries in the Middle East or ASEAN member states, primarily, Malaysia (Table, 2).

¹ The National Census defines the 'Absentee Population' as 'any member of a household who has been abroad for six or more months prior to the time of enumeration

Table 2: Destination Countries of Absentee Population, 2011

SN	Destination Countries	Percent of Migrants
1	Middle East	37.60
2	India	37.60
3	ASEAN Countries	13.00
4	European Countries	3.30
5	Other Asian Countries	2.90
6	USA and Canada	2.50
7	Other Countries	2.10
8	Not Stated	1.10

Source: Central Bureau of Statistics, 2014

Various migration related policies, laws and coercive measures are responsible for the lack of appropriate migration management in Nepal. As a result people, especially who settled in remote areas of Nepal are deprived of various socio-economic and development opportunities. Nepalese emigration to India has hindered Nepal to implement effective policy to control immigration from India. Emigration was primarily induced by the State apparatus through oppressive land and labour policies, agricultural indebtedness, and recruitment by the British Army in the 19th Century, the Nepalese government deliberately invited Indian immigrants to the Tarai for agricultural colonization (KC, 1998).

Nepalese people accepted the spread of Indian immigrants over Nepal in terms of trade and business, seeing it as an opportunity to gain access to goods and new markets. Although the Nepalese benefited, Indian immigrants occupied most of the main markets leaving the Nepalese behind. With the establishment of joint industrial ventures in the Tarai in the 1930s, more Indian industrial labourers came to Nepal for work in factories (Conway & Shrestha, 1981). This discouraged and deprived Nepalese treating them as less efficient and skilled personnel to be employed in factories.

India has been a main destination for Nepalese labour migrants. The primary reasons for this are geographical similarities, religious, cultural and historical links on a 1,800 Km long of open border with India. The 1950 Treaty of Peace and Friendship between India and Nepal has formalized free movement of people crossing the border from both countries. Majority of migrants are unskilled and semi-skilled and employed in private and informal sectors like restaurants, factories, domestic works, security guards and other such areas. Similarly, the labour migration of Nepalese people for other purposes, like to work in the tea states of Darjeeling, the forest of Assam, India. International labor

migration from Nepal to Gulf States, Malaysia and other South East Asian countries is a new phenomenon.

Objectives:

The objectives of this study are:

- To introduce the history, levels and trends of labour migration in Nepal,
- To highlight the major policies and acts to governance foreign labour migration in Nepal.

Data and Method

This paper is based on secondary sources of literature surveys related to foreign labour migration of Nepalese people and government policies and acts related to governing labour migration introduced by Government of Nepal.

Evolution of Foreign Employment and Policy Frameworks

Labour migration is a complex phenomenon as it involves labour, households, community/society, and recruitment agencies including middleman, employers of destination, including laws and policies of countries of origin and destination. Due to variation of interest of above mentioned stakeholders, it is very difficult to design and implement smooth labour migration governance act and policies in the countries like Nepal. Frequently we are receiving the cases or issues of victims and exploitation of Nepalese labours within country and abroad. Now, foreign labour migration is an essential part of everyday life for Nepalese people. Lack of employment opportunities within country foreign labour migration has been one of the attractive employment sector of economy in Nepal. Labour migration have shown various multi-dimensional impacts in every sphere of Nepalese people and society.

Foreign labour migration in Nepal is governed by national, regional, bilateral and international policy instruments and understandings. The foreign employment governance policies and frameworks were developed to address the unprecedented increase in foreign labour migration and to protect the rights of Nepalese migrant's labours. In brief, most of the foreign labour related governmental mechanism and their responsibilities, policies, acts including bilateral, regional and initiations at global level are discussed below.

Organizational Framework at National Level

Ministry of Labour, Employment and Social Security (MOLESS)

An apex body with responsibility of formulating guidelines, policies, laws for the regulation and management of foreign labour migration. Under MOLESS department of foreign employment (DOFE) has responsibilities of management, regulations, monitoring and coordination of foreign labour migration. Foreign employment promotion board (FEPB) provides welfare related activities to migrants and their families like; skill development, orientation, returnee and integration and compensation for injuries and deaths of migrants at their working place. Foreign employment tribunal (FET) a semi-judicial body, established to provide justice to victims labour migrants due to fraudulent practices during foreign labour migration process. Labour employment offices and vocational and skill training academic are working for labour approvals and skill development initiatives respectably (MOLESS, 2020).

Ministry of Foreign Affairs (MOFA)

Ministry of Foreign Affairs (MOFA) is working to strengthen foreign labour promotion as a part of foreign labour policy of the country with various countries of destination and organizations. Under MOFA, department of consular support (DOCS) provides coordination and facilitation services like; rescue, compensation of disability and during work, handling of insurance issues and repatriation of death bodies. Similarly, department of passport issues passports, immigration department keeps records of exist and arrival the diplomatic missions coordinates between migrant's labour and employer as well as labour migration related organizations at countries of destination (MOLESS, 2020). Therefore, MOFA is responsible to documentation, assist in case of crisis occurred to workers including protect of Nepalese migrants at countries of destination.

Nepal Restrya Bank (NRB)

Nepal Restrya Bank (NRB) manages and regulates remittances, keeps records and conduct research in the field of remittances. According to Nepal Rastra Bank's (NRB) Nepal in better light in terms of remittance received throughout FY 2075-76 (2018-19) and Nepal received a total of NPR 784 billion in remittance from as many as 189 countries in FY 2075-76, an increase of NPR 8 billion from around NPR 776 billion in FY 2074-75. (MoF, 2019).

Private Sectors

Recruitment in foreign labour of Nepalese labor force largely depends on private sectors. In search of employment, matching of work force at per need of foreigner employer, management and processing of required documents and intermediary role between employers and Nepalese workers are the major contributions of private sectors. Orientation centers informs on employment process, legal provisions, travel information, security measures at working places to migrants workers prior their departure. Medical centers conducts medical test and provides medical certificates. Insurance companies manages insurance, bank and financial institutions manages migration related loan (if necessary?) and transferring remittances and skill development training centers provides various types of skill training as per need of employers to the migrants workers before their departure. In Nepal, there are 854 recruitment agencies, 148 orientation centers, 226 medical centers, 23 banks and 14 insurance companies working in the field of foreign labour migration ((MoLESS, 2020).

Civil Society

National Network for Safe Migration (NNSM) is an umbrella organization of civil society organizations in Nepal working in the field of labour migration and development. It was established in 2007 with a sole purpose of integrating efforts of civil society organizations especially for policy recommendations. NNSM is working to protect migrant's rights including for synergistic cooperation. Major national Medias are covering labour migration issues and playing vital role relating safe migration and to aware concerned government authorities, people migrants and their family. Non-Resident Nepali Association (NRNA) are being engaged fund raising, rescue and repatriation, legal support to victims foreign labour migrants (ILO, 2015).

Policy and Legal Frameworks

National Level

The government of Nepal has mentioned foreign labour issues in constitutions and already developed various policy and legal framework to govern foreign labour migration. Foreign employment policy, act and rules are the major policy and legal frameworks at national level.

Constitution of Nepal, 2072

Constitution of Nepal 2072, emphasizes to regulate and manage foreign employment

safe, systematic and free from any types of exploitation and encourage capital, skills and technology and utilization of experiences gained from foreign employment in productive sectors of Nepal (article, 51) (GoN, 2072).

The Foreign Employment Act of 1985

The Foreign Employment Act 1985 is the first legal document to address foreign labour migration of Nepalese people beyond India. This act is guided to manage, control and regulate economic interest of Nepalese people who have interest to join foreign employment. It is also known as providing licensing of institutions that wanted to be involved in the foreign employment business (GoN, 1985).

Foreign Employment (First Amendment) Act 1992

The original foreign employment Act (1985), was amendment in 1992 mainly for better management of foreign employment as well as control over it. Amendment prohibited the transfer of ownership and liability of the licensed agency, selected workers be sent for foreign employment within four months of the date of selection, and in case the company failed to do so, have to pay back the amount received from the workers along with an interest (at 18 per cent per annum) within 15 days were main amendments (MoLTM, 1992). This amendment was made as per need of changed context at national and international level of labour issues.

Foreign Employment (Second Amendment) Act 1998

The Foreign Employment Act of 1985 was further amended in 1998 mainly to introduce certain flexibilities in order to make foreign employment business more accessible and convenient. Immovable assets were accepted for the licensee obtaining, effort to make the selection process more transparent, details of the type of employment, the licensee also had to furnish a duplicate copy of the requisition notice of the employer institution, and a copy of its license, provision of merit list of the applicants with alternative candidates or name and submit to DOFE. Restrictions on children under age 18, provision of specific information to the worker about the nature of work and working condition, submission of an annual report with detail activities and information on nearest relative country who consents to bear responsibility for the migrant worker were included (MoLTM, 1998).

Foreign Employment Act 2007

The 2007 Act also has provisions similar to those mentioned in the 1985 Act and its amendments.

This act is mainly guided to consolidate laws relating to foreign employment. Migrant's more rights-based approach, information dissemination to migrant workers, removal of the discriminatory clauses relating to women, provisions on producing skilled manpower, bilateral agreement or treaty, right to specify remuneration, service charges, free visa free ticket, insurance, labour desk, use of national airport, labour attaché, foreign employment welfare fund, foreign employment tribunal, foreign employment promotion board were included in this act. In addition, provision of medical examination from recognized government institutions, agencies detail information of lenience holders' organizations, permission from DOFE prior taking passport from applicants, provision of compensation and labour permission sticker were included (GoN, 2007).

Foreign Employment Rules 1999

The Foreign Employment Rules were issued in 1999. This rules had detailed provisions regarding the issuing and renewal of licenses. The licensee was to establish an office within three months of obtaining the license and equip it with at least five employees and basic facilities like telephone, email, etc. The rules also specified that the contract had to mention all the necessary details, including the position of the employee and details of work to be done, remuneration, details about probation period, compensation in case of injury, disability or death, arrangement to bring back the dead body of the worker, procedure for settling disputes between the employee and the employer, and arrangements about leave and insurance (MoL, 1999).

Foreign Employment Rules 2008

The Foreign Employment Rules 2008 sets out the rules and regulations for the implementation of the 2007 Foreign Employment Act. It deals with the selection of companies and their licensing, requirements for bank guarantee, renewal and cancellation of manpower companies. Provisions on the selection of workers, including advertising and an application process, workers at the point of departure, insurance, and pre-departure orientation training and skill training, details on the establishment and utilization of the Foreign Employment Welfare Fund, the formation and duties of the Foreign Employment Promotion Board; the establishment and functions of a Foreign Employment Tribunal, agents, licensed agencies, remittances and awarding the best agency were mentioned. In addition, appointment of a woman labour attaché in countries where 1000 or more Nepali women workers are employed, mentioned in the Act of using Welfare Fund, establishment and operation of child-care centers for the protection of children of female migrant workers (GoN, 2008). As per the changing context of labour dynamics and to address the foreign labour related problems, foreign employment rules, 2008 has been

amended in five times (in 2011, 2014, 2017, and two time in 2019) in Nepal.

Foreign Employment Policy 2012

The Foreign Employment Policy of 2012 has been formulated to give direction to the effective management of foreign employment keeping the views on overcome from the shortcomings of the prevailing Acts and Rules. This policy attempts to incorporate the provisions of various international conventions, including the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, 1966, Convention on the Elimination of All Forms of Discrimination Against Women, 1979, Convention on the Rights of Child, 1989, and ILO Convention 97 – Migration for Employment Convention (Revised), 1949, and ILO Convention 143 Migrant Workers (Supplementary Provisions) Convention, 1975. Policy is guided to make friendly with foreign employment laws, Interim Constitution of Nepal 2007, the Three-Year Interim Plan (2010/11 to 2012/13), the National Human Rights Action Plan 2004, and the Beijing Action Plan 2005 with regard to migrant workers and migration (GoN, 2012).

Monitoring Recruitment Agencies and Other Related Stakeholders

In 2019 MOLSS issued guidelines to strengthen monitoring of recruitment agencies and other service providers to ensure control over fraudulent activities through mobilizing rapid response team. This guideline provides more systematic structure with legal basis to DOFE, which can conduct systematic and spontaneous monitoring and inspections over recruitment agencies. Minimizing recruitment cost, effectively implementation of free visa free ticket policy through unilateral and bilateral efforts and guidance to service charge to recruitment agencies were other main guidelines (MOLSS, 2020).

Bilateral Level

The Government of Nepal has given more priority on bilateral agreement with countries of destination keeping view of safe migration (MOLSS, 2020). Till now the government of Nepal has conducted bilateral agreement with nine counties those are Qatar, UAE, Republic of South Korea, Bahrain, Japan, Israel, Jordan, Malaysia and Mauritius. The Memorandum of Understandings (MOUs) with those countries are varied due differences in objectives and modalities of agreements. Employer pay principle, standard employment contract, role and responsibility of contractual parties, access to justice, skills and orientation, health examination, equality of treatment, special leaves, insurance and occupational health and safety to the migrants labour are the major areas included in MOUs (MOLSS, 2020).

Regional Level

Labour migration has positive and negative impacts within country and between countries, regionally and globally too. Realizing this fact, Nepal has shown her commitments in regional level which are discussed below.

Colombo Process (CP)

An increased in population of Asian migrant worker and seeking employment, labour sending countries of Asia formed the Colombo Process (CP) in 2003. It is an informal and non-binding consultative process for informed, safe and decent contractual overseas labour migration. Sharing of experiences, and best practices on overseas employment, problems faced by overseas workers and better practical solution, wellbeing of overseas labour and optimizing development benefits are the major objectives of CP. Including Nepal there are twelve member² and eight observer³ countries in CP (IOM, 2018).

Abu Dhabi Dialogue (ADD)

A regional forum of labour sending and receiving countries was established in 2008 for coordination cooperation on labour migration. It composed of eleven CP members⁴ countries from labour sending and seven labour receiving countries⁵. IOM, ILO and UN women are part of ADD as observer status. ADD conducts pilot projects to implement and improvement labour migration governance. Initiative to protect migrant's rights, provision of insurance, enhancing skill development, fair recruitment, and exploring opportunities are the major area of work of ADD (IOM, 2018).

South Asian Association for Regional cooperation (SAARC)

Eighteen SAARC submit have been held after its establishment in 1985. Most recent (18th) submit was held in Kathmandu in 2014, which agreed on 36 point of declaration. In article 21 it is mentioned collaborate and cooperate on safe, orderly and responsible management of labour migration from South Asia. Setting up Institutional mechanism to facilitate collaboration and cooperation on the management of key labour migration issues, identifying priority thematic issues, facilitating information exchange and knowledge building on labour migration issues, preparation of zero draft of SAARC declaration on

2 Afghanistan, Bangladesh, China, Cambodia, India, Indonesia, Nepal, Pakistan, the Philippines, Sri Lanka, Thailand and Vietnam

3 Bahrain, Italy, Kuwait, Malaysia, Qatar, Republic of Korea, Saudi Arabia and the United Arab Emirates

4 Afghanistan, Bangladesh, China, India, Indonesia, Nepal, Pakistan, the Philippines, Sri Lanka, Thailand and Vietnam

5 Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates and Yemen

labour migration are plan of actions related to migrant labour of SAARC region (SAARC Declaration, 2014).

Global Level

Migration phenomenon has been attraction in global level. The inclusion of migration in sustainable development goals (SDGs) and efforts of most countries of world to develop and adopt Global Compact for safe, orderly and regular Migration (GCM) have made migration as an inseparable part development for world community. Nepal has signed several international conventions and frameworks related to labour migration.

Sustainable Development Goals (SDGs) 2030

The United Nations has set universal agenda of sustainable development goals (SDGs) for peace and prosperity of people of world. According to SDGs, goals eight and ten are related with labour migration. According to goal eight “promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all”. Similarly according to goal ten “reduce inequality within and among countries”. To achieve these two goals United Nations has set five targets; which are mainly related with; labour rights, productive employment and decent work, eradication of forced labour, modern slavery and trafficking. Similarly, elimination of worst forms of child labours, facilitate orderly, safe, regular and responsible migration, reduction in transaction cost of migrant’s remittances and eliminate remittances corridors. National Planning commission (NPC), Nepal has introduced “Nepal’s Sustainable Development Goals: Status and Road Map 2016-2030” (NPC. 2017). Labour migration related issues are incorporated in NPC’s goals.

Global Forum for Migration and Development (GFMD)

Global Forum for Migration and Development (GFMD) is a global forum to address migration and development phenomenon. It is an informal, non-binding and voluntary government led forum, established to enhance the positive aspects of migration mitigating its challenges. It is also considered a pathway to internalize global migration phenomenon and its implication on development in an international framework. The main objectives are; to provide platform for policy makers and to discuss issues and challenges, to provide opportunities to sharing experiences among governmental and non-governmental organizations and experts at national, bi-lateral and international level. In addition, sharing of good practices and experiences, to help analyzing the data and information and to create atmosphere of partnership and cooperation are other mentioned objectives (IOM, 2007). Nepal has joined and committed on GFMD since 2008.

Global Compact for Safe, Orderly and Regular Migration (GCM)

Global Compact for Safe, Orderly and Regular Migration (GCM) is also a non-binding global framework. It is also considered as a milestone in the history of global dialogue and international cooperation on migration. UN General Assembly adopted GCM on 19 December 2018 with 152 votes of its member. The main aim of GCM is to develop common understanding and identifying objectives among member states including sharing responsibilities to enhance safe, orderly and regular migration. GCM recognize multiple forms of challenges, risks, vulnerabilities and abuse of migrant workers at various stages of migration cycle. Problems and challenges cannot be addressed by a single state or agency as migration has transnational and multi sector dimension also acknowledged. Recognizing this reality, there is a need of strong local, national, bilateral and international cooperation for improving labour migration governance. There are 23 objectives of GCM (UN, 2018). Nepal is part of GCM since its early inception declaration in 2016. MOLESS has already organized four different multi-stake-holders consultations to discuss the template them, to receive feedbacks for stocktaking on GCM and to provide inputs for “zero draft” of GCM. There has been already release of “Zero Draft” and “Zero Draft PLUS” on GCM with special consideration in the context of Nepal and Nepali migrant workers (MOLSS, 2020).

Conclusion

There is long history of foreign labour migration in Nepal. Because of the exiting open border with India, there is no availability of the exact data of Nepalese migrant labour to India including their earning from their worked place. Foreign labour migration act 1985 is the first governance tool to address foreign labour except the country India. This act has been amended as per need to address the international labour markets. Now Acts, policies and rules are based on constitution of Nepal. In addition, there is commitment of Nepal on various bi-lateral, regional and international agreements, conventions and guidelines to promote foreign labour migration and protection of migrant’s rights. There is significant contribution of private sectors to enhance foreign labour migration in Nepal. Foreign labour migration has been one of the main issues at national, regional and global level. Therefore, the government of Nepal should be more sincere to protect rights of labour migrants including to protect them from exploitation and interrelate out comes of labour migration in every aspects of national development. Now organizational frameworks to address foreign labour migration are scattered with various ministries and department by which labour migrants are facing various problems. It would be better to introduced umbrella act to handle foreign labour migration issues more efficiently.

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