



# The Impact of Migration Bans on Female Nepalese Citizens



*Photo Credit: Dr Ayushman Bhagat*

The Consequences of the absence of Bilateral Labour Agreement in Domestic work

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## Overview:

The policy brief calls attention to the impact of migration bans on female Nepalese citizens aspiring for domestic work in the International Labour Markets. This briefing highlights the following impacts:

- 1. Migration bans legitimise several anti-migration activities resulting in multiple human rights violations.**
- 2. Migration bans confine several female Nepalese citizens within the territory without their consent thereby worsening their vulnerabilities.**
- 3. Migration bans force Nepalese citizens to undertake unauthorised labour migration journeys, thereby increasing their vulnerability.**
- 4. Migration bans potentially stigmatise and criminalise several citizens as ‘traffickers.’**
- 5. Migration bans result in the abandonment of Nepalese citizens in the international labour market.**

This policy briefing calls for urgent action by the government of Nepal (GoN) to address the deleterious consequences of the restrictive emigration policies on female Nepalese citizens.

(a) immediate abolition of migration bans;

(b) provision of sustainable employment opportunities;

(c) social audits of all anti-migration activities;

(d) regulation, monitoring, and social audit of anti-trafficking NGOs conducting interception along national highways, Indo-Nepal borders, and airports;

(e) unconditional safeguarding of all Nepalese citizens working in the international labour markets.

## Background: The absence of the Bilateral Labour Agreement in Domestic work

While lack of sustainable employment opportunities concerns Nepalese citizens residing in the Hilly and Mountain regions, years of civic and political unrest, frequent natural disasters, and structural discrimination based on caste, class, gender, race and religion accelerated their internal and international migration. While internal migration is not regulated in Nepal, to protect its citizens from exploitation in the international labour markets, the GoN relies on Bilateral Labour Agreements (BLA) with migrant hosting countries. These BLAs are labor migration governance instruments aimed at ensuring the labor market needs of hosting countries without compromising on the remittance needs of the sending countries and the welfare needs of the migrant workers. They represent a unique opportunity for the GoN to negotiate the terms of labor migration with the hosting countries to assure the protection and welfare of its migrant citizens abroad.

While the negotiation process makes BLAs a unique international migration governance apparatus, which hopes to ensure decent working conditions for migrant workers, sending countries seldom manage to negotiate every term with the hosting countries. For example, the GoN has failed to sign an exclusive BLA in domestic work with hosting countries (with an exception of Jordan).

Policymakers, activists, and scholars of Nepal assume that a separate BLA in domestic work

Some of the terms put forth by GoN are the employer's pay principle, standard employment contract, roles and responsibilities of the contractual parties, access to justice, skills and orientation, health examination, equality of treatment, employment mobility, special leaves, insurance, possession of personal documentation, end of service benefits, occupational health and safety, special provisions for female workers, return of migrant workers, and the establishment of a joint working group.

each hosting country (especially the Gulf countries and Malaysia) is the only solution to address the exploitation, akin to human trafficking and modern slavery, of its migrant domestic workers in the international labor markets. To solve the problem of exploitation of domestic workers in the international labour markets, the GoN has historically used various forms of migration bans. However, in 2017, following the recommendations of a parliamentary committee, which found "widespread abuse and exploitation of domestic workers" during a field visit in Gulf countries, the GoN once again imposed a total migration ban in domestic work until the hosting country signs an exclusive BLA on domestic work with Nepal. This policy brief highlights the impact of migration bans in domestic work.

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## Key Findings:

### ***1. Migration bans legitimise several anti-migration activities resulting in multiple human rights violations.***

Findings suggest that migration bans strengthen and proliferate interventions concerning mobility and labour in Nepal. For community members, safe migration awareness generation activities are seldom coupled with sustainable employment opportunities, discourage their mobility and encourage their confinement. For them, these safe migration programmes are anti-migration awareness generation activities which has created a sense of stigma, distrust, and fear among female citizens whose livelihood depends on labour migration. Such anti-migration activities discourage people to discuss their mobility plans with anyone.

Further, migration bans allow several organisations to raise funds for surveillance and policing along national highways and Indo-Nepal borders. These restrictive interventions and interceptions along Indo-Nepal 'open' borders legitimise human rights violations, often perpetrated by anti-trafficking NGOs, on female citizens of Nepal. Participant observation along these sites reveals the presence of more than 5 (sometimes 8) NGOs along these borders. Intercepted women face severe anxieties, traumas and mental health issues during multiple interactions with the anti-traffickers of Nepal. The rehabilitation centres/transit homes act as emigration detention centres, where women are intercepted, detained and deported on a regular basis, thereby causing stigma to them and their villages. As a result, migration bans enable a range of restrictive migration policies which harms Nepalese citizens' rights and dignity.

**2. *Migration bans confine several female Nepalese citizens within the territory without their consent thereby worsening the existing socio-structural constraints***

Migration bans are insensitive to the poor agricultural productivity and lack of sustainable employment opportunities in the Mountain regions of Nepal. They confine female citizens from these regions within their territories. As a result, many participants feel that these restrictive policies impose production and reproduction duties on them, especially when male family members migrate for employment abroad. Further, in cases of adverse circumstances, i.e., sudden halt in incoming remittance, partner's promiscuity abroad, workplace injuries and death, death of elderly in the family, criminalisation of their partners abroad – the socio-economic responsibility falls on women's shoulders which negatively impacts their mental health and wellbeing. Moreover, findings suggest that confinement imposed by migration bans often increases domestic violence in impoverished households. Hence, many female participants suggest that the only difference between exploitation in the domestic work sector in the middle eastern countries and abuses that they face in their households is that the former economically empowers them.

**3. *Migration bans force Nepalese citizens to undertake unauthorised labour migration journeys, thereby increasing their vulnerability.***

While migration bans in domestic work proliferated several restrictive measures in Nepal, most of the proponents of bans find it difficult to address the problem of widespread poverty and sustainable employment. As a result, the ban forces several citizens of Nepal to take unauthorised migration routes. In order to avoid interception, detention, and deportation conducted by anti-migration actors, citizens of Nepal take recourse to invisible spaces to actualise their migration projects. In several circumstances, they spend days, weeks, and months, in such spaces before they arrive in their hosting countries. This stretched time makes them vulnerable to various forms of abuse and exploitation, both by the anti-migration actors and their mobility facilitators.

**4. *Migration bans potentially stigmatise and criminalise several citizens as 'traffickers'.***

The question of mobility facilitators is crucial, given most of the anti-migration activities are conducted by anti-trafficking NGOs in Nepal. As a result, migration bans criminalise anyone who facilitates, helps or provides unauthorised passage to Nepalese citizens. Findings of this research suggest that, depending on the context, these facilitators could be anyone – family members, community members, recruitment agents, hotel owners, transport system owners and in some cases, government officials and anti-trafficking NGO members. Hence, migration bans invoke criminal justice provisions enshrined in laws like the Human trafficking and transportation (Control) Act (HTTA) of 2008. As a result, the migration bans increase the potential criminalisation and stigmatisation of several Nepalese citizens as 'traffickers'.

**5. *Migration bans result in the abandonment of Nepalese citizens in the international labour market.***

The female citizens of Nepal who escape such policy and practices by using unauthorized channels do not exist in the government records. Hence, in combination, the presence of migration bans and the absence of BLAs in domestic work in Nepal justify the suspension of the citizenship rights of those, often forced by socioeconomic constraints, who attempts to find a better life abroad. This rescindment of citizenship rights leaves female citizens of Nepal, working as domestic workers in the international labor markets, abandoned.

The abandonment of female citizens of Nepal was laid bare due to the covid-19 pandemic. In 2020, the government of Nepal issued a 'repatriation-order' to ensure the 'right to return' of its stranded citizens. The order included a priority list delineating the order of rescue only for those who had migrated with valid labor permits. This list excluded Nepalese citizens who had migrated via irregular channels,

thereby stripping thousands of female migrant domestic workers countries of their rights to rescue. These restrictive policies not only contradict the interest of various households where female labor migration has historically been considered as the most sustainable, sometimes the only viable, livelihood strategy, but render some of Nepal's most vulnerable female citizens devoid of rights, thereby impacting their agency to navigate already restrictive immigration state.

### **Conclusion**

The proponents of BLAs often justify their arguments with the only example of a BLA in domestic work, signed between Nepal and Jordan in 2017. Jordan has signed BLAs on domestic workers not only with Nepal but with other sending countries like Indonesia, the Philippines, Sri Lanka, Bangladesh and Uganda. This move allowed several sending countries to remove their migration bans in domestic work, although activists in Jordan suggest that this diplomatic tool changed nothing for the migrant domestic workers on the ground. Emerging research from Jordan suggests that despite the legal inclusion of migrant domestic workers, and the so-called 'robust labor provisions' for them, Jordan has failed to protect domestic workers from death, wage theft, confinement, confiscation, injuries, isolation, fabricated charges, and racist attacks.

While the effect of the presence of BLA with Jordan on Nepalese migrant domestic workers remains unresearched, the absence of BLA in domestic work produces intervention spaces for Nepalese actors concerned with international labor migration —government agencies, anti-trafficking/migration NGOs, trade unions, licensed recruitment agencies, unlicensed agents, and even some scholars. These actors valorize BLAs as the most effective solution to address exploitation of Nepalese domestic workers abroad thereby justifying the migration ban. The absence of BLAs in domestic work legitimizes their restrictive policies and practices, often looked upon as anti-migration initiatives by some Nepalese citizens who suffer from its deleterious consequences. This policy briefing reveals 'collateral damage' of unsubstantiated assumptions regarding BLA's ability to address labor exploitation of Nepalese citizens in the international labor markets which legitimises migration bans in Nepal.

### **Policy Implications**

The GoN should reinstate diplomatic conversation with the hosting countries and take measures to abolish Migration bans in domestic work

Awareness generation activities should be coupled with sustainable employment opportunities. Social audits of all awareness generation activities should be done in the community itself.

The GoN should strictly enforce its policy of prohibiting more than two-interception activities at one Indo-Nepal bordering site. Further, regular social audits should be done in the deportation centres at such sites.

The GoN should make provisions to unconditionally rescue its citizens in the immigration regime, irrespective of the migration routes they undertake.

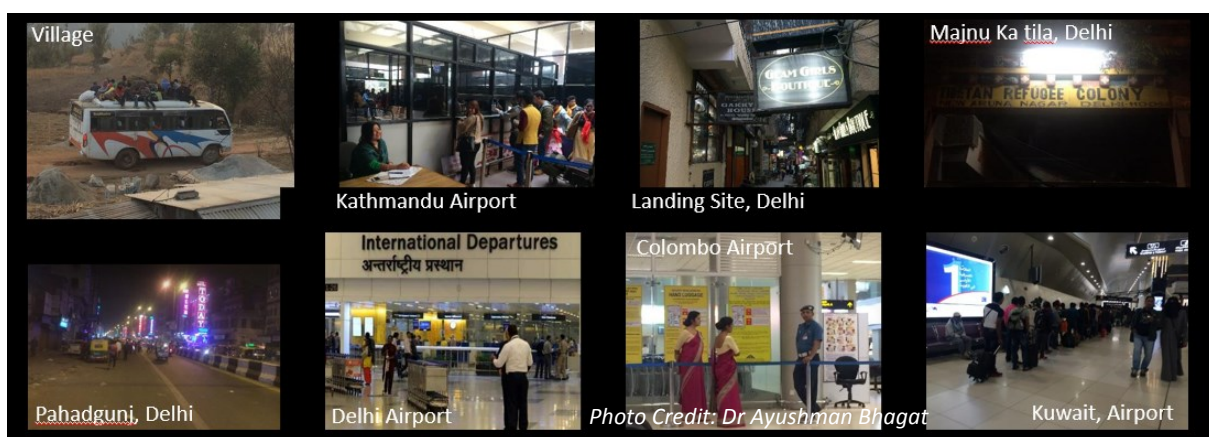
*Photo Credit: Dr Ayushman Bhagat*



## The Study

This policy brief draws on the findings of a participatory action research (PAR) project conducted from 2016 to 2020. The fieldwork for this project was done in a post-disaster site with high female mobility between 2017-2018. I selected the research site after a series of interactions with several actors concerning the international labor migration. The field work started with the organization of a general meeting in the community in the presence of several community members. We initiated the conversation on participatory research in the community on issues that the members found pressing. During the meeting, village members appointed a steering committee comprising a trafficking survivor as the president of the committee, and a women's group leader as vice president to oversee the project. The role of the steering committee was to backstop the research in the community. Once permission to conduct research was granted by the community members, the committee agreed on the interpreter and suggested some names for research companions – the label that was used by these participants to identify themselves. Five *research companions* were selected, after which we negotiated a safe space for action and reflection in the community. This was followed by a training process where we discussed and prioritized several issues faced by the community, negotiated the demands of the participatory research, finalized the timeline. Every week we met at the safe space to plan the project further, based on the analyzed data. This process set in motion an action and reflection cycle where we discussed, analyzed, and negotiated various aspects of the research—including a discussion on the interview criteria, names of the interview participants, and interview questions.

I along with the research companions conducted participatory exercises such as participant observation, pre- and post-disaster village diagramming, mobility and labor mapping, problem ranking, migration trend analysis, etc. We engaged with more than 150 members of the community in 18 focused group discussions. These interventions were complemented by 36 in-depth interviews in the course of which we managed to capture 48 *stories of mobility*. Stories of mobility comprise of participants detailing their choicest circuit of migration: village – transit – destination – village. It was found that many community members have multiple labor migration experiences – sometimes more than ten. Once the fieldwork was over, I conducted participant observations at several sites along the mobility routes taken by the research participants. These include, but are not limited to, government offices, national highways, Nepal-India border locations—Mahendranagar, Nepalgunj, Sunauli, and Kakarvitta—and the international airports in Kathmandu, Delhi, Colombo, and Kuwait. I conducted more than 50 semi-structured/open-ended interviews with various state and non-state actors engaged in the policing and surveillance of migrant workers.



### To discuss the report please contact:

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