

CONTRACT LABOUR IN NEPAL

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INTRODUCTION

Employing worker on job contract or wage contract is not a new phenomenon in Nepal. When the Government of Nepal initiated its planned development in 1950's with construction of road, bridges, airports, dams, hydropower and buildings, contracting-out of the job started. The engineers, technicians came to work from other countries and workers were hired through labour contractors. In 1960s, the industrialization process initiated in the country with the establishment of state-owned enterprises that normally hired all workers on pay roll. The only labour law of that time- the Nepal Factory and Factory Workers Act enacted and enforced from 1960 with little opportunity of social dialogue between employer and worker. Few private sector manufacturing establishments were also operating at that time, but in a minute form.

From 1980's, when the private sector enterprises got opportunity to export carpet and garments to European countries and USA, enormous numbers of workers were involved in wage earning activities. With a very little or no scope of forming a labour union in real sense, those workers were mostly exploited. Workers were forced to work with minimum job security. And, employing contract labour became a normal phenomenon in these export oriented high-value adding sector.

Immediately after the restoration of the democracy in 1990s with a firm advocacy from all corners, two labour laws were enacted and implemented. The Labour Act, 1992 was intended to cover the rights and welfare of the workers of other sectors beside the manufacturing sector like tea-plantation, construction, travel and transportation. The Trade Union Act, 1993 was intended to cover the right of association and the process of industrial dialogue between employer and workers. These Acts with some amendments recently done on them have helped somehow to protect the rights of the worker working in an organized sector.

The contract labour who are working in informal sector, or even in the formal or organized sector does not have any established identity within the establishment they work, and are not getting the benefits intended by the Acts. Ironically, contract labour exceeds much more in number than the workers recognized formally by the Act. Official statistics of contract labour is not available. The trade unionists are not successful to collaborate with them to aware them for their right to work and job securities. The government has no mechanism to recognize and formalize them. The contract labour does not have direct interface with the employer. And, the contract labours are left aside from the main stream of social justice.

Nepal is getting WTO membership in early 2001. The government has already started adopting liberalized economic policy in trade and investments. Business is becoming more competitive with globalized. This competitive environment demands the flexibility in business. The permanent nature of employment system may not be able to compete in the worldwide competition.

In this context, there is a big threat that more works will be done through contract labour and the chances of exploitation by the employers are high. Globalization is not an intention but a necessity to live in this millennium. Now it is right time to initiate for developing some mechanism to safeguard the rights and welfare of these vulnerable working people.

COTNRACT LABOUR

Defining contract labour is not as easy as it looks like. Generally in Nepal, from the union's perspective, the contract labourers are found in the following three forms.

- "*Kara*" a fix time contract
- "*thekka*", a fix job contract
- "*Piece-rate*" wages fixed as per production

Actually, contract labour takes many forms. The easiest way to recognize the contract labour is through its triangular employment relationship. The principal employer asks some contractor or intermediary or *thekedar* for labour. The intermediary then supplies labour to the principal employer. This is one of the simplest forms of contracting labour through intermediary. Now, the question arises as to what is the responsibility of the intermediary towards the labour he supplies. What is the responsibility of principal employer towards the labour he utilizes. Two different forms of relationship may exist.

- a) Intermediary does not have any responsibility towards the supplied labour. Principle employer supervises the labour and pays wages to the labour directly, deducting some amount of their wages to pay for the service of intermediary. Intermediary thus, works on a fee or commission basis.
- b) Intermediary supervises the labour himself or herself. Principle employer pays total wages to the intermediary who in turn pays to the labour by his own terms.

Besides, some employers hire employees directly without any intermediary, but do not want to have permanent relationship with them. The relationship between employer and labour may take the following forms.

- a) Employer may hire a labour for a particular service and pays the labour directly, either on daily-wage basis for some period or, on piece rate basis for the job he performs. No permanent relationship exists between employer and labour.

- b) Employer may hire a labour with specific skills to perform some service for which the labour works on his own or, if necessary uses extra labour as per his need. Employer pays the total labour charge for the service.

Thus, two types of contracting works exist with the participation of contract labour. One, the indirect contracting and another, the direct contracting. Contracting work can be characterized as two different types. One being contracting for employment only, and another being contracting for commercial purposes. This classification is nicely present in a matrix form by Philippe Eagger of ILO as follows.

	EMPLOYMENT CONTRACT	COMMERCIAL CONTRACT
Direct	Employer/Labour	Employer/Self-employed
Indirect	Employer/Contractor/Labour	Employer/Goods, Service producer

There is a specific distinction between employment contract and commercial contract. In employment contract, the responsibility of goods produces and services provided will be that of the employer. The employer hires only the labour of the employee for which he is willing to pay. Where as, in commercial contracting, the responsibility of producing goods and services lies on the employee for which he is paid by the employer.

Some examples may clarify the different types of contracting jobs given above.

- Direct employment contract or Employer/labour contract: some skilled workers or professionals hired for specific job for specific period falls under this type. Master of garment industries, mechanics of a steel mill, tea-tasters of tea-estate are some of the examples.
- Indirect employment contract or Employer/contractor/labour contract: Intermediary supplies labour to the employee, with or without his supervision on the labour falls under this type. Workers of the *Thekedar* of carpet weaving, security men on contract, workers sent overseas by manpower employment agency are some examples.

- Direct commercial contract or Employee/nominal self-employed contract: Employer hires the labour directly, who are self-employed but in small scale for some specific service, falls under this type. Household handloom weavers, wood carver, wool spinners are some examples.
- Indirect commercial contract, or Employer/goods, service producer contract: Petty contractor taking order from employer adds value on goods by employing other labour, falls under this category. Fabricators, petty-building contractors, sweater knitting contractors are some examples.

Contract labour is said to exist in a complex and non-standardized employment situation. First, it is necessary to enlist the type of works within contract labour system that are existent in Nepal and to categorize them understand their extent and characteristics. This may help to formulate an appropriate policy and guideline to safeguard the interest of both employees and employers.

LABOUR MARKET AND CONTRACT LABOUR SYSTEM

The situation of the labour market existent in a particular place plays a vital role to develop the contract labour system of that place. In labour market, two situations may mainly evolve. One, surplus labour supply, i.e. labour supply is more than the market demand. Another, tight labour supply, i.e. labour supply is less than the market demand. In both the cases, contract labour system exist, but in different forms.

- **Surplus Labour Supply Situation:** If the economic growth rate is unsatisfactory or declining, the market cannot create more demand for growing population. Labour in such situation either migrates to better situation, inside or outside the country, or if they do not get any opportunity to migrate, then they work for any condition that are set by the employers. Textile labour in Pakistan and India, fruit and vegetable farming labour in USA and Europe are some of the example of labour surplus situation. The agricultural labour in rural areas of Nepal is also in the same situation. The labour who do not have the market demand have option but agree to work on the employer's terms. In this situation, the employer does not want to keep a permanent relationship with the labour, and thus the informal temporary contract labour system develops.
- **Tight Labour Supply Situation:** When some opportunities of business expand very fast and the supply of local labour is not sufficient, then migrated (in-country or out-country) labour are used to cope up with the business expansion. The sugarcane plantation workers from India to Africa and South America, rubber plantation worker from South India to Malaysia, farmers from Japan to South America are some of the example of out-country migrated workers. Similarly, the carpet worker from neighboring districts to Kathmandu Valley. The *Bihari* going to work in Punjab/Hariyana state of India for harvesting are some of in-country migrated workers. Migrated workers, naturally have little social linkages and power to speak for social justice. This situation calls for keeping employer-employee relationship

informal and temporary. Thus again, contract labour system automatically develops.

The employer and the employee both have their own perception regarding the contract labour system. The employer thinks that he will get more flexibility in hiring labour on contract under the system. He can keep the optimum number of manpower of different skills as per the fluctuation of the market. After all, the employer can feed the labour only when he can compete cost wise in the market. So, employer's action will always be to reduce the wage bill for his products or services. Contract labour system can help in this regard.

The employee or the contract labour has a different opinion about the contract labour system. Initially, they prefer to work at whatever terms the employer set. Then, after working for some period, they use to feel insecurity on their job.

Intermediary plays a vital role in this situation. The job of the intermediary is to sustain this contract labour system in the job market, so that his job is also secured. Intermediary or the *thekedar* assures the supply of labour to the employers as well as assure the job seekers to find them new jobs even in the case of slump job market. Thus, the contract labour system is continuing for centuries in other parts of the world, and has been already considered an established employment system.

In Nepal, the economic development does not have a long history. Some instances of contract labour system do exist in carpet, textiles, tea-estates, construction and others. Now, the question is, whether the contract labour system should be totally abolished in view of the present global business environment. The reference of the following factors attributing to the existent of contract labour system may provoke to think rationally to answer this question.

- Gain in flexibility at work
- Optimizing the overall wage bills
- Circumvent labour laws
- Coping the labour absenteeism

- Acquiring new specialized job
- Ease in supervision and managing
- Avail higher productivity and reduced administrative cost
- Adjustment in seasonal and flexible market
- Weakening trade-unionism and collective-bargaining
- Ease of employment through labour supply agencies
- Employing illiterate surplus labour supply
- Employing migrant (in-country and out-country) labour

Some effects of utilizing contract labour system, however, can be enlisted for reference as follows;

- Cost competitiveness of the business increases in the market
- Business grows, ultimately sharing the gain to the employer, intermediary and the labour
- Flaws and inaccuracy develops in labour information and statistics
- Individual labour faces insecurity problems on job
- Social dialogue for social justice for labour weakens

CONTRACT LABOUR IN NEPAL

No statistics yet published in Nepal refer to any information regarding the extent and characteristics of contract labour in Nepal. A short visit to some relevant organization of Nepal and discussion with the authorities revealed interesting information regarding contract labour. Some studies done on informal sector also provided information to understand the contract labour situation in Nepal.

The first ever comprehensive survey of the labour force in Nepal was conducted in 1998/99. The Nepal Labour Force Survey (NLFS) Report estimates that the unemployment ratio of Nepal is 1.8%. Though this estimate gives us satisfaction, we must realize two very important issues before we conclude and satisfy our-self on the country's employment status.

- 1) This estimate is based on the fact that fetching water and collecting fire wood are also considered as economic activity, and
- 2) 27 percent of the currently employed population work less than 40 hours a week, so they can be considered as under employed.

From the statistics published by NLFS, 1998/99, one cannot deduce the information on the number of labour, as per the type of employment; whether regular employment, or contractual employment. Some references are given occupation-wise, industry-wise, but not on type of employment. Also, some statistics on the employment status like, paid employee, family member without pay, or other self-employed. As contract labour can fall in all these above three statuses, it is difficult to really estimate how many workers are contact labours or how many are regular wage earning labour.

NLFS employment figure suggest that out of 9.5 million of the currently employed population (increasing by 15% for adjustments as suggested by the report) 2.6 million (27%) work less than 40 hours a week, and 6.9 million (73%) work 40 or more than 40 hours per week. And, among the employed population 16% are only paid employee, 43% are family member without pay, and 41% are self-employed.

Basically, contract labour exists in Nepal in maximum number, in one or other forms. The important sectors that employ contract labour are as follows.

- Manufacturing establishments
- Construction works
- Commercial agricultural farming
- Handicrafts and home-based works
- Mining and quarry
- Minor forest products and herbs collection
- Small scale businesses

Manufacturing Establishments

Most of the small scale-manufacturing establishments employ labour on contracts. Lack of supervising capability, interest in producing more output per worker, the employer as well as employee both like to agree working on contract labour system. The employer can earn more profit and employee can gain more wages under short-term perspective.

Among the medium and large-scale private sector manufacturing establishments, many entrepreneurs are hiring Indian technicians on contract basis. As Nepalese technicians do not have the experience of operating and maintaining modern equipment and machinery, employers are comfortable to hire migrant labour/technicians, and as they are paid much higher than Nepalese technicians, the migrant technicians are also happy to prolong to work as contract labour. Moreover, the Indian migrant technician some time works as intermediary to bring labour from India to work in Nepal. Often, the machine manufactures of India helps by sending the experienced highly skilled technicians and workers to work in Nepal.

The export oriented manufacturing establishments like garment and carpet has tremendous number of contract labour. The garment industry which developed in Nepal since 1980s due to the overflow of US quota to Indian businessmen were established, naturally, on a temporary basis. Indian businessmen in cooperation with few Nepalese traders developed most of the factories. The high skilled technicians

called *Master* and tailors were brought from India and few Nepalese were trained on some other finishing and packing jobs. Most of the workers in garment factories are working on contract job. The Indian and Nepalese *tarai* migrant workers outnumbered in the garment industry. It is said that in about 150 operating garment industries at present, there are about 50,000 workers. But, due to contractual nature of job, the labour statistics is never found to be correct.

The carpet industry initially started with the help of Swiss Development Agency for helping Tibetan refugees in Nepal is one of the prime export oriented industry. When the growth rate of carpet export was on maximum scale, to fill-up the gap of labour market demand, many workers migrated to Kathmandu Valley from adjoining districts. In this process, all migrated workers were kept as contract labour. Thus, a very strong intermediary on *thekedari* system developed within carpet industry. It is said that in about 700 carpet factories in operation at present, about 250,000 workers are working under the contract system. But again, the information cannot be realized accurately with the statistics available. There are many studies conducted on this subject, especially to look at the problems of child labour in carpet factories, but all give different statistics. In the entire carpet industry system, some other areas where contract labour system exists are - Wool spinning, dyeing and washing. Wool spinning is generally given to home-based women workers by intermediary, or wholesale traders. In wool spinning activities, either the intermediary hires labour on contract for spinning wool on his premises or send the wool for spinning to individual women workers on piece rate basis. Dyeing job is given on a petty contract to some job doers. And, washing again is a specialized job and hence, Indian migrant technicians are given this job on a contract basis.

Construction Works

Construction works in Nepal is generally carried out by "A" to "D" class of contractors and some nominal self-employed technicians like carpenters, mason, plumbers etc. Contractors are involved in large-scale infrastructure building like hydro

power, road, bridges, commercial public and residential buildings. Its scope is wide as well as deep. However, on the issue of contract labour system, the practices are almost similar to the other sectors.

The large-scale contractors hire few engineers and technicians on permanent basis to design, plan and supervise the work. However, the contractor gives the execution and implementation job to smaller or petty-contractor. As the construction works is a time bound project, the workers are hired on contract through intermediary who is generally an intermediary petty- labour-only contractor. There will be no direct contact between the real employer and the employee. Even the wage rate for working is haphazardly fixed by the petty contractor. Generally, the contractor takes care of the food and sheltering of the labour on contract site that is generally far from the workers residence. When one job finishes, then either the contractor shifts the labour to another site where he gets another labour- only supply contract, or he simply sends the labour back home. In the construction works, the petty-labour contractor actually plays the role of employer to the contract labour.

Commercial Agriculture Farming

In Nepal, tea-plantation is the only commercial farming system in the business front. Some private sector has fruit horticultural farming but only on a meso level hiring local agricultural labour on daily wage system. The government is operating few agricultural farms, not exactly on commercial basis but mainly using it for conducting research and extension programs.

All tea -plantations, whether the government owned Nepal Tea Development Corporation and the one operated by private sector, both employ the contract labour system. The tea-estate employs some local labour on their permanent roster. However, as per the seasonal nature of the agricultural farming, some flexibility in labour demand exists. On the peak season extra labour are hired on contractual piece-rate basis. The contract labour system is a little bit amicable between tea-estate employer and employee. It is because the extra labour contracted is hired through

intermediaries who are mostly the social guardians of the labour. The statistics reveal by the tea -estate and other agricultural farming indicates that there are only 10,000 labour employed. This data probably indicates only the regular permanent labour and exclude seasonal contractual labour.

Besides in the Commercial Agriculture farming where contract workers are involved, another prominent systems prevalent in the agricultural sector are the *kamaiyal* bonded force labourers. About 25,000 workers are believed to be working as bonded labour in western Terai of Nepal. The employees are *Jamindars* or landowners who provide shelter to the workers family who in turn work to pay off the loan they or their ancestors had taken. These people are considered as one of the most exploited workers of Nepal.

Handicraft and Home-based works

Nepal, as other countries of the world, also has its own traditional crafts. These craft skills are generally transferred from generation to generation and so mostly they are home-based than organization-based. On one hand, many traditional crafts are in the process of extinction; on the other hand new crafts are developing due to their commercial viability in the market. All home-based works are carried out through contract labour. The major role played to assist in the growth of these home-based handicraft products is the export potential of these products in foreign market. Some traditional crafts that still have market demand for labour are Jewelry, wood carving, handloom, *thanka* paints and few other souvenir products. Few craft skills that are in the presently demand in market for home-based works are woolen sweaters, paper products, doll making, and few other domestic products. Beside these handicraft works, some manufacturing establishments are recently adopting the system of sub-contracting of some job to home-based workers. Few examples are, candy wrapping, *bidi* making, slipper finishing, bead work etc.

In all these systems, the trader/exporter/industrialist/intermediary provides the raw materials and the design to the home-based worker and hires the service of the

worker to make the desired product on piece rate basis. All of these workers work under the informal sector without any formal contract.

Mining and Quarry

In Nepal, virtually speaking, there is very little organized mining industry. Though, some coal and copper quarry have been identified the major portion of labour demand is found only in stone quarry. One marble stone quarry and few limestone quarries exist. Ordinary stone quarries and sand or small-scale aggregates producing works exist in abundant in all over the country. These works help to supply raw materials for construction industry.

Almost all workers, either working in stone quarries or aggregates producing works are employed by the employer (petty-contractor) on piece-rate or daily wage-rate-contract basis. All these workers work under informal sector again with no legal contract.

Minor Forestry Product and Herbs Collection

Nepal has many types of important herbs useful for oil and medicines production. Also, some minor forest products like *Sabai* grass and *Lokta* are found wildy in the hilly region of Nepal. The Government gives contract authority to the producers and traders to collect these wild minor forest items once a year in their respective seasons. These traders or producers, in turn appoint petty-contractors to collect these items on price rate basis. The petty contractor then hires labour on very cheap rate, either in piece- rate or daily wages to collect the herbs and or minor forest products. The government makes written contracts with producers and traders on piece-rate and royalty basis. In turn these producers or traders do their business of collection through verbal means.

Small Scale Business

Small traders, whole sellers, retailers and small-scale restaurants hire labour on piece-rate or daily-wage rate basis. The small traders use the porters in abundant quantity and hire them on piece-rate verbal contract basis. The numerous small restaurants hire plate -cleaners on daily-wage verbal contract basis. Though not necessarily an intermediary exist in these sectors, many workers are working under contract system without really having any legal written contract and recognition to the contract labour.

In the present condition, even to make a wild guess on the total number of contract labour and intermediary contractor in different sector is a difficult job.

STATUS OF CONTRACT LABOUR IN NEPAL

A brief note on the status of contract labour in Nepal is prepared on the basis of secondary information and discussion with the representative of concerned associations. The status, here, is studied under three major issues- working condition, social security, and employer/employee relations. A thorough survey and study on specific issues of specific area of contract labour is necessary before deciding on the corporate strategy to cope with the specific type of contract labour situation.

Working Condition

The working condition of the contract labour is generally poor. The status of working condition depends solely on the attitude and interest of the employer. Employer means principal employer as well as intermediary employer or contractor. As most of the contract workers are employed without any formal or legal contract the chances of raising a voice for this is minimum. In general, the working condition of contract labour in Nepal can be expressed as follows:

Petty-Contractor in Dilemma

In Kathmandu Chamber of Commerce, Mr. Nar Bahadur was requesting the executive secretary "please help me find out the address of our contractor Mr. Shyam Sundar Bhandari, or take some action against him. I have to take more than 80,000 from him to pay my workers at Lamahi, Dang." Mr. Bhandari had taken a petty contract from a contractor who was awarded to construct a road at Lamahi, Dang. Mr Bhandari employed Nar Bahadur to supply labour for his work. Nar Bahadur worked with about 60 workers for 2 months. When the work was nearly completed, Mr. Bhandari disappeared from Dang. He has paid Nar Bahadur only Rs. 2,00,000 till now, where as he is supposed to pay Rs. 288,000. Nar Bahadur was telling the secretary that he could not go back to his village as the workers may kill him. The executive secretary can do nothing but just give some words of assurance."

- The wage earned by the contract labour solely depends on the labour market supply/demand situations.

The unskilled labours that are in surplus position and working in the informal sector are not receiving even the minimum wage set by the government. Even, in some cases it is learnt that some petty contractor runs away from the

construction site without paying a single *paisa* to the workers who worked for him.

The highly skilled technicians who are brought mostly from India as a contract labour earn much more (3 to 5 times) than the minimum wages set by the government. The wage depends mostly on the capacity of the contract labour.

- There is no legal binding to the employer to be precautionous on the safety and health of the contract labour. It again depends solely on the attitudes of the employer. Generally, it is learnt that in the case of accident or sickness, with little first aid or no treatment at all, the labour is freed from the job. In an organized establishment, definitely the position of safety and health is at par of other regular employee. The safety and health condition of contract labour working in the organized establishment is better than the one working in the unorganized or informal sector.
- All contract labourers are deprived from social holidays and most important factor is that there is no fixed working time for contract job. As the contract worker gets wage, on the basis of his output, in most cases he works as much as he can. Sometime even 12 to 18 hours a day for seven days a week for three hundred sixty five days as long as he has the job.
- Chance of employing child labour is more on contract labour system. Specially, the work under informal sector and home-based work, there is a big chance of children helping their parents to earn more money.

Social Security

Generally, there are no social security benefits to the contract labour. Though, some non-government organization are trying to develop some social security benefits to the contract labour under their fair-trade group scheme, it is not widely spread. As one of the main reasons of employing contract labour is to avoid the extra cost burden to the employer, the employer can pay the amount what he can pay right now.

The worker getting job under contract labour system does not expect to get social security for the present, how can they voice for their future social security. In general, the social security of the contract labour in Nepal can be expressed as follows.

- In medium scale and large scale manufacturing establishments, the highly skilled foreign technicians are hired for a limited period of one to two years. High wage paid to contract labour itself is considered as social security amount. Otherwise, in other form of contract

Insecure Carpet Girl Worker

Reeta Lama is forced to marry a Kathmanduite boy in Swoyambhu. She came to Kathmandu along with her maternal uncle to work in a carpet factory at Bouddha five years ago. At that time she was just ten years old. She is beautiful and little smarter than her other colleagues. She wanted to work more to earn more money and be independent. Mr. Gurung, her maternal uncle always paid her deducting some percentage, saying that he has to pay that money to her parents in the village. She did not like that. She wanted to be an independent worker. Last month, her father came to Katmandu and told her that she cannot come back to the house in the village. Since her maternal uncle could not take responsibility of her in Kathmandu, no boy in the village is willing marry her. If she want to be independent then she could be independent. After her father went back, her maternal uncle fired her and said, I cannot take your responsibility and you can be independent as you like. Now, She has no job to do. And the only thing she can do is just marry any boy available in Kathmandu.

job, there is no provident fund or gratuity payment scheme, on leaving the job.

- In carpet, garment factory and tea-estates some provisions are made for residential quarters. Construction workers working as contract worker gets some shelter as residence.
- Other provisions required for welfare of the workers as directed by the existing law, such as rest rooms, canteens, child care centre are not provided to most of the workers working in contract labour system. The employer of contract labour considers this as a luxury rather than social security and welfare to the workers.

Employer/Employee Relations

In contract labour system, in most of the cases, there is a triangular relationship between employer and employee. Principal employer asks the intermediary or *thekedar*

to hire labour, The *thekedar* or the labour contractor then hires or supplies labour to the principal employer.

Due to this relationship, the chances of industrial dispute or conflict are on a minimum level. The intermediary plays a role of guardian of employee and settles any disputes immediately without even giving notice to the principal employer. There is very little change of dialogue between the principle employer and the actual employee.

- In the organized sector, the contract labour are considered as outsiders and not counted in their master roll by the establishment. The labour are exchanged frequently by the principal employer with the consent of the *thekedar* or intermediary.

Unrecognized Migrated Contract Labour

Mr. Chaudhary, designated as General Manager of a relatively large steel mill in Eastern region of Nepal once said that he alone can control the profit margin of the company. Dangerous, even to hear! He further said, "I own all employees here in production line. They do what I ask them to do." Mr. Chaudhary, a diploma holder in mechanical engineering was hired two years ago by the company on salary wage of RS. 50,000 per month, and was asked to manage the workers by himself. He hired 5 technical staffs, 3 machine operators and one labour contractor from India. The Indian Labour Contractor has brought about 45 workers who have experience in a similar job at India. These workers work all day and night as per the instruction of the labour contractor. In addition to this, one labour contractor was also hired to bring Nepalese labourer as per the requirement of the factory. Mr. Owner is happy that Mr. Chaudhary has increased the capacity of the company five folds in two years. Mr. Chaudhary is happy that he is controlling the company's profit. Workers and Staffs are happy that they are getting more wages than in India.

Hence, there are very little chances to organize and bargain collectively by the contract labour. Sometimes it is learnt that the contract workers are confused as to even who is their real employer and where to raise their voices for their grievances.

- Trade union cannot take up the grievances of contract labour formally with the principal employer, as most of the contract labour system operates in an informal sector. Trade unions right now are mostly concentrated in formal organized sector.

LEGAL INSTRUMENTS AND TRADE UNIONS

The no. 26 (6) sub clause of the constitution of Nepal, 1990 addresses the state policy related to the working people as:

*"The state shall pursue a policy of increasing the participation of the labour force, the chief socio-economic force of the country, in the management of **enterprises** by gradually securing employment opportunities to it, ensuring the right to work, and thus protecting its rights and interests."*

The word **enterprises** is noteworthy here. The intention of this policy definitely does not only address the labour force working in the organized establishment, but also to the entire labour force working in different forms. The contract labour working in unorganized sector in an unrecognized form are also the chief socio-economic force of the country.

His Majesty's Government of Nepal has recently issued the Labour Policy, 1999, with the intention of providing social and economic justice to the labour force of Nepal. The policy is not very specific on various types of labour, and is very difficult to really understand the intention of the Government towards the contract labour and labour contractor. The sub-clause 3 (10) of the Labour Policy, 1999 some how addresses on the relevant issues of contract labour. The wordings are as follows

"creating environment to organize free associations even in unorganized sector."

The country is now on the mid-evaluation stage of the Ninth 5-year Plan (1997-2002). It is time now is to review the plans and programs formulated on it. Regarding contract labour of some specific sector one of the beautiful thing on the Ninth Plan document is the realization of their problems. In the 14th bullet point of the section entitled existing problems, it says that:

"The programs on education, security, health and production oriented skill development for the labour working in carpet, garment,

*transportation and other sector could not be planned and implemented.
Also, even the rights provided by the laws could not be enforced.*

Let's forget about other forms of contract labour. The Ninth Plan has not addressed any plan and programs to the labour force working on these specifically identified sector. Many contract workers fall under these identified sector.

Before the restoration of democracy in 1990s there were two acts which were relevant to the contract labour- the Nepal Factory and Factory Workers Act, 1960 and the Contract Act, 1967. The first one is annulled and two more new Acts to cover employment issues have been enacted. These are the Labour Act, 1992 and the Trade Union Act, 1993. The Contract Act, 1967 is still operative. Moreover, amendments to this contract Act, 1967 is in process. It is already passed by the parliament and has been sent for Royal Assent.

In Nepal, the legal instrument, though enacted properly have some how practical difficulties for implementation or enforcement. The case is very much similar with these Acts too.

The Labour Act, 1992

The labour Act provides full rights and welfare benefits to all contract labour as per the regular labour. The working condition, social security and opportunity to bargain collectively is same for all labour, whether employed as permanent, temporary, piece-rate basis, or contract (*thekka, or Karar*) labour. [Section - Definition 2 (Gha)]

Two problems may be clearly observed here. The Labour Act, 1992 is applicable only to the formally established organization which employees 10 or more employees. Therefore:

- a) If the contract labour is employed by the unorganized informal sector, the Act is not operative.
- b) Even within an organized establishment, if the principle employer employs less than 10 intermediaries with hundreds of contract labour, the Act is not operative.

The Labour Act with these practical difficulties is not efficient to safe guard the interest of millions of contract labour working in organized as well as informal sector.

The Trade Union Act, 1993

The Trade Union Act provides an opportunity of freedom of association as per the spirit of International Labour Standards. Moreover, the first amendment of the Act has added the provision of right to form associations for the labour in the informal sector, too. This has given a good opportunity for trade unions to organize the contract labour working in informal sector.

However, there is this practical difficulty of organizing the contract labour and bargain with employee for social justice. The principal employer is generally not visible. The intermediary or *thekedar* has flexibility to hire or fire the individual labour, because there is no permanent nature of bondage between the *thekedar* and the employee. At present, there is inadequacy of the Act that can provide the legal binding between the *thekedar*-employee relations. Hence, the provision given in the Trade Union Act with good intention can only create power lobby and advocacy support but cannot solve the real problems of the contract labour.

The Contract Act, 1967

The Contract Act, 1967 is basically enacted to safe guard parties involved in mutual contract to buy or sell goods and services. It is applicable to the contract labour for legally binding employer and contract labour. The articles 7(Kha 1 & 3), 8 (Ja) and 9 (Ka) of the Contract Act, 1967 have provisions which may not help the contract labour. Due to impractical provisions spelled out in the Contract Act, 1967 many amendments have already been made and will be enacted in near future. May be, after the amendment and enactment of this Act, contract labour can be provided more social justice. However, it will not be an easy job to enforce in such a complex contract labour system operating mostly in the informal sector. The new amended Contract Act,

1967 has already been passed by the parliament and is sent for Royal assent. Trade unions have to play a vital role in this regard.

Trade Unions and Contract Labour

Immediately after the enactment of the Trade Union Act, 1993, many trade unions emerged in the labour environment of Nepal. At that time, the social dialogues between employer and labour, and even with government were very rare. At present, among many trade unions, three federations of trade unions are sincerely working for the cause of workers in Nepal. They are the Nepal Trade Union Congress (NTUC), the General Federation of Nepalese Trade Unions (GEFONT) and the Democratic Confederation of Nepalese Trade Unions (DCONT).

These trade unions are mostly involved in strengthening their institutional and organizational capability, as well as organizing and representing the workers working in organized establishment that employs 10 or more workers. The main focus of their dialogue with employers is to provide on appointment letter to the contractor and all contract labour. Instead of identifying them as contract labour, the intensified efforts from the trade unions are found to be in regularizing the contract labour. And, in the industrial relation front, most of the conflicts lie on this issue of regularizing contract labour in all sector of organized establishment.

The employer wants flexibility in hiring the contract labour for specialized job, and the trade unions are insisting on providing appointment letter to contract labour. There is a conflict of opinion between the employers/employees associations and workers/trade unions.

More than this, though most of the contract labour are at present working in the unorganized informal sector, trade unions have not gone intensively to recognize the mass of contract labour and protect their rights and welfare.

CONTRACT LABOUR IN OTHER COUNTRIES

A cursory review of some of the cases presented by experts on contract labour situation at different sector and different parts of the world indicates that the working condition, social security and social dialogue situation is comparatively poorer than those of the regular workers directly employed by the principal employer. The existence of the intermediary or labour-only contractor has created non-warranted problems to the working class population everywhere in the world. Few excerpts of some of the cases are provided here for good reference.

Contract Labour in USA (Forestry)

"The nature of contract between employees and contractors and between contractors and forestry enterprises is as variable as individual relationships..... Generally, workers in full time employment enjoy high levels of social protection..., covering safety and health, working condition, wages, social security (retirement), unemployment, discrimination, collective bargaining, and other work related issues. Particularly about forestry sector, however, is that many contractors and employees evade enforcement of some of the laws.... Small firms and those using employees practices seem to avoid enforcement. They are mobile, with no fixed assets and they go in and out of business when opportunities or problems confront them. "

- John J. Garland, Labour Education, 1997/1-2

Contract Labour in Britain (Construction)

"In 1968, a government committee attacked what is called "nominal self-employment". The Phelps Brown Committee accepted that some workers were genuinely in business on their own account, but criticized a new, bogus form of self-employment generated by workers for the tax

advantage of the self-employed tax schedule and companies seeking to escape "employment-relation contributions. Contract labour -whether it has been known as labour-only subcontracting, the lump, or self-employment, has been recognized as a problem for the construction industry for more than a century, but it is a problem that is still waiting for a solution. Not only the contract labour system reduced employment and social protection for workers, but it also threatens the fabric of the industry as a whole."

- Julian Birch, ILO Labour Education, 1997/1-2

Contract Labour in France (Forestry)

"The practice of subcontracting is quite wide spread in the forestry sector and is not without its problems. Written contract between contractors and sub contractors remains exceptional. Their (farmers who work as casual forestry worker) social security contributions, particularly for occupational injuries, are much lower than those of full time, forestry entrepreneurs may hire casual workers for up to maximum of 60 days per year, provided that these employees can show that they have appropriate social security coverage..... the flexibility allowed by the legislation is being widely abused as a way of concealing the employment of undeclared workers, who can always be identified as occasional helpers."

- Bernard Cougnet & Christophe Deparaz, ILO Education 1997/1-2.

Contract Labour in Sweden (Forestry)

"The employees of contractors comprise a rapidly growing category in Swedish forestry. Until recently, forestry work was either performed by forestry company employees, employee-owner or forestry contractors. ... Mixed teams of company employees and contractors are not desirable,"

- Ewa Liden," ILO Labour Education, 1997.1-2

Contract Labour in Brazil (Construction)

"Working conditions in the construction industry are very poor. Housing and canteen facilities are inadequate. Many workers eat and sleep at the work place..... Safety standards in the construction industry are usually low.... Unfortunately, most contract workers are not covered by benefits given by law because they are not registered. The usual behavior of employers in the construction industry is not to care about the training of their workers"

- Joao Saboria, ILO Labour Education 1997/1-2.

Contract Labour in Chile (Fruit agriculture firm)

"All workers working for labour contractors expressed the view that they earned more than other temporary workers.... They (employers) state that they can afford to pay such workers more on account of their higher productivity. The working hours of temporary worker recruited through labour contractors are usually longer than the normal eight- hour day meals and accommodation are not usually provided by the labour contractors The lack of social protection in case of illness, injury or retirements is most frequent among workers working for labour contractors. "

- Jorge Echenique, ILO Labour Education 1997/1-2.

Contract Labour in Malaysia (Plantation, construction and saw milling)

" In terms of earnings, contract workers appear to earn more than workers in similar occupations and industries. Their higher earning are principally due to longer working hours, and work done during public

holidays and rest days.... Most principal employers enter into written contracts with their contractors but the provisions of contracts do not extend to contract workers. Principal employers are not concerned that their foreign contract workers (mostly Indonesian and Bangladeshis) do not receive statutory and other benefits. There is little concern for industrial and occupational safety."

- Lee King Hock & A. Sivananthiran, ILO Labour Education, 1997/1-2.

Contract Labour in Srilanka (Tea processing & hotel trade)

"There is a poor official recognition of the impact of contract labour and other forms of non-standard labour use on the labour market..... The larger segments of the wage earning working population in the country works outside the normal form of employment relations and are engaged in work arrangements such as contract labour, seasonal, temporary, fixed term and casual employment... The employers, especially the principal employers, perpetuate the system as it offers several advantages: namely lower labour costs, labour market flexibility, means of avoiding labour management problems, lower overheads charges, and management costs and an escape from what the employer consider to be exercise labour laws especially in respect of termination of employment..... Except for the payment of the basic minimum wage rates, Contract labour do not enjoy other stipulated benefits. The inspection and enforcement arrangements in respect of contract workers are ill -equiped"

- D. Wesurnperuma, Contract Labour in south Asia, ILO/ACTRAV, 1999.

Contract Labour in Pakistan (Manufacturing)

"Of the total number of firms surveyed, 40 percent were utilizing the services of a regular contractor for the supply of the supply of workers to the factory.... In the province of Sind, the contractor is the most important

factor in keeping the factories open, employing labour and ensuring uninterrupted production..... The contractor provides them (workers) to sleep and food to eat. The workers become obligated to the contractor for a while. (The Labour) had the choice of moving or leaving the job or the contractor, if they so wished, but none of them (workers) showed any desire to do so.... "

- F.A. Fareedy, ILO labour Education, 1997/1-2

Contract Labour in India (Manufacturing, construction, plantation & forestry)

"The use of contract labour remains wide spread in India. Under conditions which violate basic Labour Standards..... . India is fortunate in already having enacted legislation on contract labour. "

- B.B. Patel, ILO Labour Education, 1997/1-2.

INTERNATIONAL STANDARDS FOR CONTRACT LABOUR

The Article 1 of the Declaration of Philadelphia 1944 that "Labour is not a commodity" is always vital when talking about the right to work, or more precisely right to decent work to economically active population of the world.

The contract labour should be kept in the main stream of all working people. However, to make business competitive in the global environment, the flexibility of job and productivity has become necessary. Realizing this, after long and arduous exercises and deliberation, recently in 1997, the ILO General conference have adopted the Convention no. 181 Private Employment Agencies Convention, 1997 and the complementary Recommendation no. 188. The content of the Convention no. 181 is provided as appendix with the paper.

The General Conference of the International Labour Organization have adopted this convention number 181,

Noting the provisions of the Fee-Charging Employment Agencies
Convention (Revised), 1949, and

Being aware of the importance of flexibility in the functioning
of labour markets, and

Considering the very different environment in which private
employment agencies operate, when compared to the conditions
prevailing when the above-mentioned Convention was adopted, and

Recognizing the role which private employment agencies may play
in a well-functioning labour market, and

Recalling the need to protect workers against abuses, and

Recognizing the need to guarantee the right to freedom of
association and to promote collective bargaining and social
dialogue as necessary components of a well-functioning
industrial relations system, and

Noting the provisions of the Employment Service Convention,
1948, and

Recalling the provisions of the Forced Labour Convention, 1930, the Freedom of Association and the Protection of the Right to Organise Convention, 1948, the Right to Organise and Collective Bargaining Convention, 1949, the Discrimination (Employment and Occupation) Convention, 1958, the Employment Policy Convention, 1964, the Minimum Age Convention, 1973, the Employment Promotion and Protection against Unemployment Convention, 1988, and the provisions relating to recruitment and placement in the Migration for Employment Convention (Revised), 1949, and the Migrant Workers (Supplementary Provisions) Convention, 1975.

The major features of this convention are:

- This convention has not yet come into force. (reference date 10:05:2000)
- There are 24 articles in the convention.
- This convention applies to all private employment agencies except to seafarers.
- The purpose of the convention is to allow to operate private employment agencies as well as the protection of the workers using their services.
- A system of licensing or certificate should be introduced to identify private employment agency.
- The workers recruited by the private employment agency must be protected on the freedom of associations and the right to collective bargaining.
- Private employment agency shall not charge fee or costs to workers in any form.
- Government should make a provision to look after whether some basic rights of workers are protected from private employment agencies (contractor) or user enterprise (principal employer)
- This convention is the revision of the Fee-charging Employment Agencies Convention (revised) 1949, and the Fee-Charging Employment Agencies Convention, 1933.

CONCLUSION

To conclude on the subject of contract labour, a wider and deeper discussion is necessary. Then the balance between the economic development and social justice may be derived on consensus. The following facts are, however, clear and undebatable.

- As Nepal can not escape from the globalization phenomena after being a member of WTO in early 2001, hence, to be competitive in the business environment, the flexibility in productions is essential.
- In Nepal, majority of the workers work in the informal sector, thereby, the enforcement of the existing laws are facing practical problems.
- Workers in the informal sector are exploited, not getting the legal recognition and are kept aside from the social justice intended by the government.
- Intermediary, or labour -only contractor is working as employment agent not falling under any government's regulatory mechanisms.
- There is no statistics available on the extent and magnitude of the contract labour in Nepal.
- In most of the developed countries, it is found that some system of regulating private employment agency is undertaken to safeguard all parties concerned; principal employer, intermediary, and contract labour.

Now, on this background, some issues are enlisted below which requires due consideration

- Identification of the employment sector where there is a wide practice of contract labour
- Classification of contract labour system to distinguish their nature of employment
- Identification of opportunities and constraints on existing contract labour system

- Identification of differences on the labour benefits situation between regular and contract labour
- Prioritization of the employment sector where some intervention is necessary
- Observation of the Nepalese business environment of that particular sector vis-à-vis its standing on the global business environment
- Identification of regulatory and structural constraints for safeguarding the interest of contract labour
- Identification of the status of private employment agency who act as intermediary to supply the contract
- Identification of the roles of the Government, principle employer, labour contractor, employers association, trade unions and contract labour to safeguard the business growth, employment opportunities, decent working condition, social security and conducive environment for social dialogue.
- Preparation of the action program for the future to cope with the problems of inequality being created between regular and contract labour.

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