

Liberating Nepali Enterprises

COST OF FIRING IN NEPAL

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The paper at a glance

With the liberalization of the Nepali economy and the restoration of multi-party democracy, the churnings in the political and economic environment set the ground for a recalibration of industrial relations in the early 90s. At a policy level this was furthered by the enactment of the Labor Act, 1992 and the Trade Union Act, 1993 which continue to govern industrial relations today. These Employment Protection Legislations (EPL) were enacted to protect the employees and strengthen workers collective bargaining rights and improve employment conditions. As these policies still continue to do so, by and large, many questions have been raised as to their efficiency in improving industrial relations.

In particular, the provisions for firing in Nepal are tedious to say the least, with at least a dozen sub-clauses dictating actions for dismissal and/or retrenchment with associated calculations for severance packages under numerous headings. Direct dismissal, as stated in the law, is only possible when the worker in question is found to have engaged in theft or violence against the enterprise. Remaining absent from work for more than 30 consecutive days without notice also calls for dismissal, but apart from this, getting to dismissal takes at least three successive counts of repetition of the offense within 3 years. To put dismissal into effect requires evidence of the said crime and recorded evidence is almost impossible to come by. Popular argument suggests that dismissal incurs zero costs to the employer because the worker in question has no rights to claim severance pay thereafter. But considering that workers usually take the case to court to challenge the ruling, lengthy litigation costs ensue. In addition, if awarded wrongful dismissal then the employer has to reinstate the employee and remunerate him/her for the period of litigation and make due severance provisions.

Retrenchment, like dismissal, involves worker removal from the enterprise when the company is no more in a profitable position, is moving in a new direction and/or is closing certain operations. The more flexibility an entrepreneur is allowed in handling his/her operations, the more lucrative the economic ground of a country is going to be. Unfortunately, retrenchment in the country is fraught with excessive bureaucratic red-tape and requires too many stopovers at various state departments for the application to be even considered by authorities as legitimate. Other associated problems, such as the lack of adequate labor courts in the country and the absence of adequate labor inspectors with conflict-handling capacities further cripple the already dismal labor-employee relations in Nepal.

Firing a laborer in Nepal thus, cannot be conducted in a vacuum. It 'requires' the interference of many state and third-party actors. As evinced by calculations shown in the following paper, the average estimated cost of firing one worker reaches between **Rs. 293,000 – 302,000 (USD 2935.87 – 3026.05 at the rate of \$1=Rs 99.80 at 07/04/2015) notwithstanding the amount to be reimbursed by the employer to the worker in case the court decides that the case was of wrongful firing. This cost calculation is based mostly on expert consultation.**

Though Employment Protection Legislations are generally thought to be protective of workers' interests, increased labor regulations can backfire and cause extensive damage. Increased compliance to such regulations shall cause undue harm to young and temporary workers, who are amongst the first to be

retrenched, not because the enterprise wants to but has to. These regulations also cause the wage of the informal economy to be driven down as laid-off workers, who are typically from lower income backgrounds, will not be able to wait for too long for reopening of suitable positions causing infiltration into the informal economy and conversely, reducing overall wages due to an increase in supply of workers. Furthermore, an enterprise's ability to hire flexible workers is curbed by these prescriptions and the provision of having to make employees permanent workers after the 240 day-rule in Nepal, investments in capital and technology also suffer.

Labor regulations such as the right to collectively bargain among others, which allows the worker to engage in dialogue with the employer to formulate an enabling environment for both the employee and employer are important. However, stringent regulations that curb innovation and progress should be heavily revised. We can learn from a number of countries who have fared better than Nepal on international labor regulation indicators such as Japan, that employs a joint-consultations mechanism to close gaps of communication between the top and bottom levels in an organization or even Cambodia who have provisions for voluntary firing-costs in initial contracts. Increasing number of labor courts in the country particularly in industrially heavy areas and revising the scope of the existing Arbitration Act to address labor contentions are major provisions as proposed in the paper. A fast-track office for retrenchments and the re-introduction of the classification of work in the new labor bill shall make for easier retrenchments.

ACRONYMS

DOL	Department of Labor
EPF	Employment Provident Fund
EPL	Employment Protection Legislations
FDC	Fixed Duration Contract
GCI	Global Competitiveness Index
GoN	Government of Nepal
MPF	Mandatory Provident Fund
OECD	Organization for Economic Co-operation and Development
UCD	Undetermined Duration Contracts
USD	United States Dollar

The Nepali year is based on the Bikram Sambat Calendar and is approximately 57 years ahead of the Gregorian calendar. (2062/1/1=2005/4/14)

Therefore, fiscal year 2014-15 = Fiscal Year 2071/72

Introduction

Nepal currently ranks 102 out of 144 countries in the World Economic Forum's Global Competitiveness Index. One of the reasons pushing down Nepal's standing is the pressure of labor market inefficiency. The index places Nepal at a lowly 141 in terms of Cooperation between Laborers and Employers, and 119 in terms of Hire and Fire Policy¹. The message is clear: if Nepal wants to improve its competitiveness, it is now imperative to tackle the challenge of an inflexible labor policy. Without dynamic labor flexibility, a firm's ability to respond to economic fluctuations will forever remain attenuated and doing business in Nepal is perpetually going to be an unwelcome burden. But this needs to be done by keeping in mind the current social, economic and political realities. That is the challenge ahead.

The goal of this paper is to understand the challenges employers face when dismissing or terminating an employee. These challenges usually transcend legal obligations and include a gamut of factors including but not limited to "informal" negotiations with trade unions and political parties, out of court settlements, and severance packages beyond the call of law. It is our attempt to capture and quantify the financial and administrative burden on firms and offer policy solutions for the same.

¹ For details on Nepal's performance at the Global Competitiveness Report, visit: <http://www3.weforum.org/docs/GCR2014-15/NPL.pdf>

The issue of 'hire and fire' in Nepal is further complicated by the ambiguity involved regarding the type of employment and the type of dismissal. The paper will also outline the different typologies of employment and simply the process.

With the liberalization of the Nepali economy and the restoration of multi-party democracy, the churnings in the political and economic environment set the ground for a recalibration of industrial relations in the early 90s. At a policy level this was furthered by the enactment of the Labor Act, 1992 and the Trade Union Act, 1993 which continue to govern industrial relations today. These Employment Protection Legislations (EPL) were enacted to protect the employees and strengthen workers collective bargaining rights and improving employment conditions. As these policies still continue to do so, by and large, many questions have been raised as to their efficiency in improving industrial relations².

The debate over whether or not the living standards or living conditions for workers should be improved has been a permanent fixture across the period of industrialization. Like in many developing nations around the world, the process of industrialization in Nepal

² For an analysis of the impact of Nepal's Employment Protection Legislation on industrial relations in Nepal, refer to two previous studies conducted by Samriddhi Foundation available here: <http://samriddhi.org/publications/industrial-relations-an-institutional-analysis/> and here: <http://samriddhi.org/publications/policy-options-for-improving-industrial-relations-in-nepal/>

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is at a nascent stage. Most of Nepal's labor force is concentrated in the informal economy. The formalized labor force, however, constitutes millions of individuals under the protection of labor law of the country. According to Central Bureau of Statistics, the country has about 11.7 million work-force and only 1.8 million are in the formal sector and around 3.5 million are in foreign jobs.

The Nepal Living Standards Survey 2010/11 claims that at least 33% of all Nepalese households have at least one international absentee. These figures beg questioning.

As with most labor market regulations, EPL was first introduced with the aim of enhancing workers' welfare and improving employment conditions (OECD, 2004). It includes employees' protection against dismissals, limitations on the use of temporary forms of employment, regulation of working hours, but in a broader sense also health and safety, protection of employees in less favorable conditions (Eamets & Masso, 2004). EPL has also

been essential in the shaping up of the labor market flexibility—stringent laws curtail flexibility and laws that cater to all parties involved without bias add to the market flexibility.

In Nepal, the EPL would encompass laws like The Labor Act, Trade Union Act, Industrial Enterprise Act, National Labor Policy etc. These laws reflect that employees need to be protected against the abuse and domination from the employers. While taking the view of protection, sometimes, these laws can go to the far extreme of curtailing labor flexibility in the market. There have also in fact been numerous proven instances of how increased job security regulation has reduced employment and promoted inequality (Heckman & Serra, 2000). Curtailing labor flexibility fosters stagnancy of labor in unproductive sectors and does not allow a Schumpeterian 'Creative destruction' to take place. It is in this light that such laws need to be reviewed to strike the right balance between labor protection and ensuring labor flexibility in the market.

Hiring and Firing Provisions in Nepal

Provisions related to hire and fire in Nepal protects existing jobholders by limiting employers' ability to fire workers. EPL reduces the re-employment chances of unemployed workers thereby exerting upward pressure on long-term unemployment. Indeed, in deciding whether to hire a worker, employers will take into account the likelihood that firing costs will be incurred in the future. In sum, EPL leads to two opposite effects on labor market dynamics: it reduces inflows into unemployment, while also making it more difficult for jobseekers to enter employment (i.e. lower outflows from unemployment) (Kuddo, 1945 as cited in Aslund, 2002).

Some of the provisions as dictated by Labor Law 1992 and Labor Rules 1993 that show the duality of rules have been described as follows:

1. Agreement for permanent employees

All employees must be given permanent employment status on the completion of one year (240 days) of interrupted service. This would imply a period of twelve months of continuous work in an enterprise. In case of a seasonal enterprise, this would imply continuous work in the specific season. Public and weekly holidays are also counted in the 240 days' period.

Section 4 of the Labor Act, 1992 lays down the provisions for permanent employees. An appointment letter is to be provided to the employee before engagement in work and the person is to be kept under probation for a year. Once the probation period is complete, as per sub section 2, an appointment letter for permanent employment is to be given which would clearly state remuneration and conditions of work and the Labor Office needs to be informed of the same. They must perform, be honest, disciplined and dedicated towards the work and meet the stated specifications if they want a permanent employee contract. Both piece rate and contract workers are entitled to permanent employment. When an employee meets all the conditions, provision of the appointment letter by the employer is mandatory.

This condition of permanence incentivizes non-performance at work as soon as an employee is made permanent because of the difficulty in firing non-performing workers. Similarly, due to this clause, there is reluctance to provide letter of appointment on the part of employers. Also, as permanent employment translates into added costs (owing to the additional benefits that permanent employees are entitled to) for employers, they prefer to keep the engagement temporary and are not keen on spending resources on developing the skill set of employees.

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2. Dismissal

Termination of employment cannot be carried out at the discretion of the employer. An employee is to be terminated at the retirement age as fixed by the law, which in the case of Nepal is 55 years of age. Most employees ask for an added 5-year term—this is also provided for by the law given the services of the employee in question are indispensable to the betterment of the establishment.

The Department of Labor may also impose 'any punishment pursuant to Section 52 (of the Labor Law) to any worker or employee who causes violence illegally in any Enterprise, other than his/her Enterprises or in any government office, or if he/she directly or indirectly encourages others to do so.' (Labor Law, 1992)

When an employee is laid off at the initiative of the employer, such is termed as dismissal. All dismissals are overseen by government as per provisions in the Labor Act and subsequent rules. The employer gets to dismiss employees as per the misconducts specified in the Labor Act. Those who have remained absent from work for more than 30 consecutive days without notice, have engaged in theft or violence, and those who have repeatedly, in spite of formal warnings, infringed upon disciplinary norms can be dismissed by the employer. Before any form of punishment is imposed by the employer, a notice of at least 7 days needs to be sent to the worker in

question for clarification. If the worker does not submit clarification for his/her actions or the clarification is found to be unsatisfactory, the worker may be duly punished within two months of the date of having sought clarification. If the worker refuses to acknowledge the receipt of the notice, a copy of the letter sent by post is to be publicly displayed at the enterprise and a copy of the same is also to be sent to the respective Labor Office. A statement in the form of a letter when wanting to impose any form of punishment needs to be sent to the respective Labor Office. (Refer to Figure 5, Page 11 for a figurative representation of the mentioned process).

It is, however, difficult to make case against defaulters, more so if they are permanent employees. Even when such employees slack in their work and show no commitment whatsoever, dismissing them has never been easy for the employers in Nepal.

Table 1 shows what actions are taken against the employees in case of repeated misconducts, which include both termination and dismissal from work.

Table 1. Types of punishments and misconducts as per Labour Act, 1992

S.No.	Punishment	Misconducts
1.	Reprimanded	In case the employee intentionally violates the orders or directives issued under the Labor Act or the Labor Rules frequently or the bylaws made by the enterprise, or misbehaves with the customers of the enterprise. (Section 50, Sub-section i)
		In case the employee remains absent from work frequently without obtaining permission or comes late on a regular basis. (Section 50, Sub-section j)
		In case the employee abuses items which are kept for the interest, health and safety of the workers or employees or intentionally causes damage to them. (Section 50, Sub-section m)
2.	Withholding the annual grade of remuneration	If the employee commits embezzlements in the transactions of the enterprise. (Section 50, Sub-section c1)
		In case the employee participates or compels any other person to participate in any unauthorized strike or in a strike which is declared illegal. (Section 50, Sub-section f)
		In case the employee strikes without fulfilling the legal requirements or intentionally slows down the work against the interests of the enterprise. (Section 50, Sub-section g)
3.	Suspended for up to three months	In case the employee creates or causes to create any stir within the enterprise with an intention of affecting the production process or service works of the enterprise, or prevents the supply of food and water, or connection of telephone or electricity, or obstructs the entry into or movement within the enterprise. (Section 50, Sub-section b)
		In case the employee accepts or offers bribes (Section 50, Sub-section d)
		If it is certified by the doctor that the employee has come to duty after consuming or has consumed alcoholic substances during working hours. (Section 50, Sub-section k)
4.	Dismissed from service	In case the employee causes any bodily harm or injury or fetters or detains to the Proprietor, Manager or Employee of the enterprise with or without use of arms or injury or causes any violence or destruction or assault within the enterprise in connection to a labour dispute or on any matter. (Section 50, Sub-section a)
		In case the employee steals the property of the enterprise. (Section 50, Sub-section c)
		If the employee remains absent from the enterprise for more than 30 consecutive days without notice. (Section 50, Sub-section c2)
		In case imprisoned on being convicted on a criminal offence involving moral turpitude. (Section 50, Sub-section e)

Source: Labor Act, 1992, Government of Nepal

Offences that call for the worker to be reprimanded, suspended or have his/her grade withheld need to occur at least thrice in three years for the employer to dismiss the worker. Though seemingly well-spelt out in the law, provisions for dismissal in particular are excruciatingly difficult for the employer to carry out because of a number of problems, inclusive but not limited to, the offender's membership with a politically strong trade union

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which shall try and intervene with the employers on his/her behalf), lack of manual or electronic record keeping of the offender's history and given warnings, if any, and sheer refusal of the offender to accept the notice of dismissal (which has its own laws of how to pass it on to the offender in question).

3. Severance package

As per the number of years of service, the employees get some gratuity amount from the employers. Permanent employees who have served for more than three years and whose employment is to be terminated are entitled to a lump-sum amount. Those dismissed by the employer or those terminated by the Department of Labor are entitled to no such gratuity. The amount is calculated based on

the number of years of service and the salary drawn at the time of job severance.

Many employers are said to retain most employees only on temporary basis because of the gratuity they would have to be paid in case of them being permanent employees. Outsourcing of contracts to middlemen has hence become a dominant practice which further affects workers.

Section 23 of the Labor Rules, 1993 has the gratuity amount fixed as shown in Table 2.

Based on this information, Table 3 shows how much lump-sum amount an employer would need to pay if he/she wishes to do away with his employees for numerous reasons, except that of misconduct leading to dismissal.

Table 2. Gratuity amount as dictated by years of service

S.No.	No. of years	Gratuity Amount
1.	For the first seven years of service	An amount equivalent to half of the current monthly remuneration for every year of service
2.	For serving between seven to fifteen years	An amount equivalent to two third of the monthly remuneration which he/she had been receiving for every year of service rendered
3.	For more than 15 years of service	An amount equivalent to a one month's remuneration which he/she had been receiving for every year of service rendered

Source: Labor Rules, 1993, Government of Nepal

Table 3. Total gratuity calculation for given number of years
(All amount in NRs.)

Year	Basic Salary* (per month)	EPF (10% of salary per month)	Gratuity** (yearly)	Total contribution*** (EPF*12+Gratuity)	Total payment****
1	8000	800	4000	13600	13600
2	8800	880	4400	14960	28560
3	9680	968	4840	16456	45016
4	10648	1064.8	5324	18101.6	63117.6
5	11712.8	1171.28	5856.4	19911.76	83029.36
6	12884.08	1288.408	6442.04	21902.936	104932.296
7	14172.488	1417.2488	7086.244	24093.2296	129025.5256
8	15589.7368	1558.97368	10445.12366	29152.80782	158178.334
9	17148.71048	1714.871048	11489.63602	32068.0886	190246.422
10	18863.58153	1886.358153	12638.59962	35274.89746	225521.3195
11	20749.93968	2074.993968	13902.45959	38802.3872	264323.7067
12	22824.93365	2282.493365	15292.70554	42682.62592	307006.3326
13	25107.42701	2510.742701	16821.9761	46950.88852	353957.2211
14	27618.16972	2761.816972	18504.17371	51645.97737	405603.1985
15	30379.98669	3037.998669	20354.59108	56810.5751	462413.7736
16	33417.98536	3341.798536	33417.98536	73519.56778	535933.3414
17	36759.78389	3675.978389	36759.78389	80871.52456	616804.8659
18	40435.76228	4043.576228	40435.76228	88958.67702	705763.5429
19	44479.33851	4447.933851	44479.33851	97854.54472	803618.0877
20	48927.27236	4892.727236	48927.27236	107639.9992	911258.0868
21	53819.99959	5381.999959	53819.99959	118403.9991	1029662.086
					1029662.086

*Basic salary assumed to be rising by 10% every year.

**The gratuity is calculated at an amount equivalent to half of the current monthly remuneration for the first seven years, then again at 2/3 of current monthly remuneration from the seventh to fifteenth year of service, increasing to one full month's pay after the fifteenth year of service.

***The total contribution is calculated by multiplying the current EPF by 12 (months in a year) and adding gratuity for each year with the corresponding value.

****The total payment that the worker is liable to be paid at the end of his/her service is calculated by adding every previous year's salary to the current year salary.

As stated in Section 24 of Labor Rules 1993, every Enterprise needs to have and maintain separate accounts for each and every employee of the enterprise in a Gratuity Fund, from which final gratuity amounts shall be withdrawn when needed. However, as revealed by experts, most enterprises lump together all workers' funds, in one account. If the enterprise faces litigation in such a case then gratuity will be awarded. Gratuity is awarded to employees who are employed for particular number of years as shown by the previous table, and is also a base amount for employers to outline how much they may have to compensate for when firing employees.

However, termination is rarely a streamlined process in Nepal (as can be evinced in the following pages). Our consultations also reveal that because legal cases of labor take years to solve (as shown in Table 4) and this only adds to the existing burden of the litigation cost, therefore out-of-court settlements become the preferred mode of issue settlement. Unfortunately, these settlements almost always culminate with the employer having to pay the worker gratuity amounts equal to or higher than the current rate of salary.

While the act seems to be clear on laws prescribing retrenchment, our consultation with law experts reveal additional steps for the same.

4. Retrenchment:

Labor Act 1992 allows for an enterprise to retrench workers if production or service has to be curtailed for more than three months. As stated in the law, the proprietor is to make an appeal for retrenchment to the Department of Labor, whereby the DOL, on behalf of the GoN, is to conduct necessary inspection and give its decision within two months of application. It further elaborates how the last workers to be appointed will be the first in line to be retrenched or if the order needs to be broken, a notice stating reasons for the same needs to be presented to the DOL. The law further dictates that while practicing retrenchment, reasons for the said action and/or one month's salary at current rates (in advance) to permanent workers/employees also needs to be presented. The final compensation for workers is calculated by multiplying number of years of service and present salary for 30 days. Additionally, for this clause, work exceeding 6 months in any given year is counted as 1 year of service.

While the act seems to be clear on laws prescribing retrenchment, our consultation with law experts reveal additional steps for the same. In order for an enterprise to retrench, as stated, it must justify 'special circumstances' on why it should be allowed to lay off workers. These 'special circumstances', as duly prescribed in Labor Act 1992 is stated as follows,

....."Special Circumstance" shall mean damage, break down or failure of machines or the Enterprise and thereby causing stoppage in the production or failure in the supply of fuel, electricity, coal or similar energy or due to any kind of force majeure or insufficient supply of raw materials or stock piling of the produced goods due to loss of sale or other similar situations.

After having done this, a list of workers currently employed by the enterprise is to be made and sent to the DOL with a letter asking for approval for retrenchment along with said justification. The DOL sends the documentation to the respective labor office for inspection on the matter. The office then begins its due inspection, which involves scrutinizing stated special circumstances of the enterprise and asking for recommendations from workers, union-representatives and employers. These recommendations are compiled by the labor office and sent to the DOL. The labor office also reserves the right to ask for further clarification.

The compiled recommendations and the labor office's inspection notes are sent to the Ministry of Labor via the DOL. Though the retrenchment decision can be taken by the Labour Office, the decision reaches Minister of Labor in practice, thereby increasing the time taken and bureaucracy.

Thus when retrenching in Nepal, there are a number of costs that a proprietor bears, in addition to the 'usual' costs of providing compensation. There are usually lawyer and documentation charges to be taken care of in addition to having to sit in on numerous consultations with union heads and workers in order to allow amicable retrenchment. Though the law stipulates 2 months for retrenchment decisions, consultations with legal experts reveal that retrenchment cases could take up to years. A tabular explanation of costs associated with firing workers can be evinced by table 6 in the following pages.

5. Procedural safeguards

The law requires the employer to notify the employee/worker before dismissal on disciplinary grounds, with explicit reference to alleged misconduct and the punishment to be meted with a reply period of seven days given to the employee. If the employee fails to submit an explanation within the given time or his explanation is not found satisfactory, he/she is dismissed. Most employers choose not to seek this form of dismissal as individual dismissals are often turned into collective cases post the intervention of trade unions.

This Act does not acknowledge 'employer/management prerogative' to terminate employment as sought by the Employers' Association (Chapagain, 2003). Because the law requires severance pay to be given to those

employees who have stayed on for longer periods of time, employers thus tend to try and keep workers only on contractual or temporary basis in order to avoid having to pay extra benefits in case of later termination.

6. The labor court and labor offices

An employee who feels that his/her dismissal has been unjustified may file a complaint with the Labor Office within 35 days from the date of receipt of the dismissal notice. An appeal can also be made to the labor court.

Given the judicial inefficiency in Nepal, most cases are sought to be settled out of court. The cost of claim for enforcing contracts in Nepal is very high. It requires 910 days on an average for contract enforcement in the country (World Bank, 2014). The labor court, being the sole respite for both workers and employers, is singular in nature and thus, inefficient at handling mounting casework. If a certain case has been registered this year, chances are rare that the verdict shall be awarded in the same year as ascertained by the Table 4, page 10.

Labor offices, numbering 10 in the country, are also constantly criticized for lacking conflict-handling mechanisms. There are also only 12 certified labor inspectors in the country as of 2012 for a record 1,380,000 workers and equipped with only technical knowledge with no background in conflict resolution, these inspectors are

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Terminological Problem of Hire and Fire

Even as “hire and fire” is the standard term by which labour flexibility is understood, the term itself has been heavily criticised in Nepal. In our interaction with Employer groups, they were quick to point out that what they seek is not a ‘hire and fire’ policy – it would be unreal in Nepal — but a flexible labour law instead, that balances protection of labour with opportunity to do business.

ill-equipped when it comes to handling labor disputes and issues of contentions (Samridhhi Foundation, 2013).

In the year 2071, there were 73 complaints filed in the Bagmati Labor Office asking for clarification of actions of the worker/s in question by a number of enterprises. As can be seen in Table 5, 14 of these resulted in preliminary warnings, 1 in grade/salary withholding, 4 in suspension and a mere 10 in termination. Out of the initial 73 letters that were filed for worker clarification, it is to be assumed that (subtracting punishments for all other offences) the entire remainder of 44 presented substantial clarifications. Most cases, as observed by files in the labor office, are primarily filed when violence is instigated by the worker in question, or in other cases, when the worker has taken a non-notified prolonged leave of absence. Even if we assume that a prolonged absence of more than 30 days may be backed by substantiated clarification, instigation of violence has a much narrower room

of valid reasoning. We should also be clear here that 73 letters of need of clarification does not mean it was only targeted at 73 workers; a single letter can include listing of offences of a number of people. While the same logic dictates that 10 letters of termination does not necessarily mean having fired only 10 people, the boiling down of the numbers from 73 to 10, in addition to the number of procedural hassles that one has to go through as discussed previously, showcases just how much time and effort of an enterprise is consumed to get to that insignificant number of fires.

In addition to this, we should also keep in mind that the table shows only cases of number of letters stipulated under a certain heading. Thus, when an enterprise files for a termination of an employee, though legally the worker can be removed, the worker may challenge the decision in the Court of Appeal and refuse to comply with the termination.

Table 4. Cases as filed in the Labor Court under respective years

Years	No. of cases filed	No. of cases decided upon (including pending from past years)	No. of cases registered broadly under the category of dismissal
2068/69	11	103	
2069/70	149	124	44
2070/71	171	149	84
2071/72	108	95	42

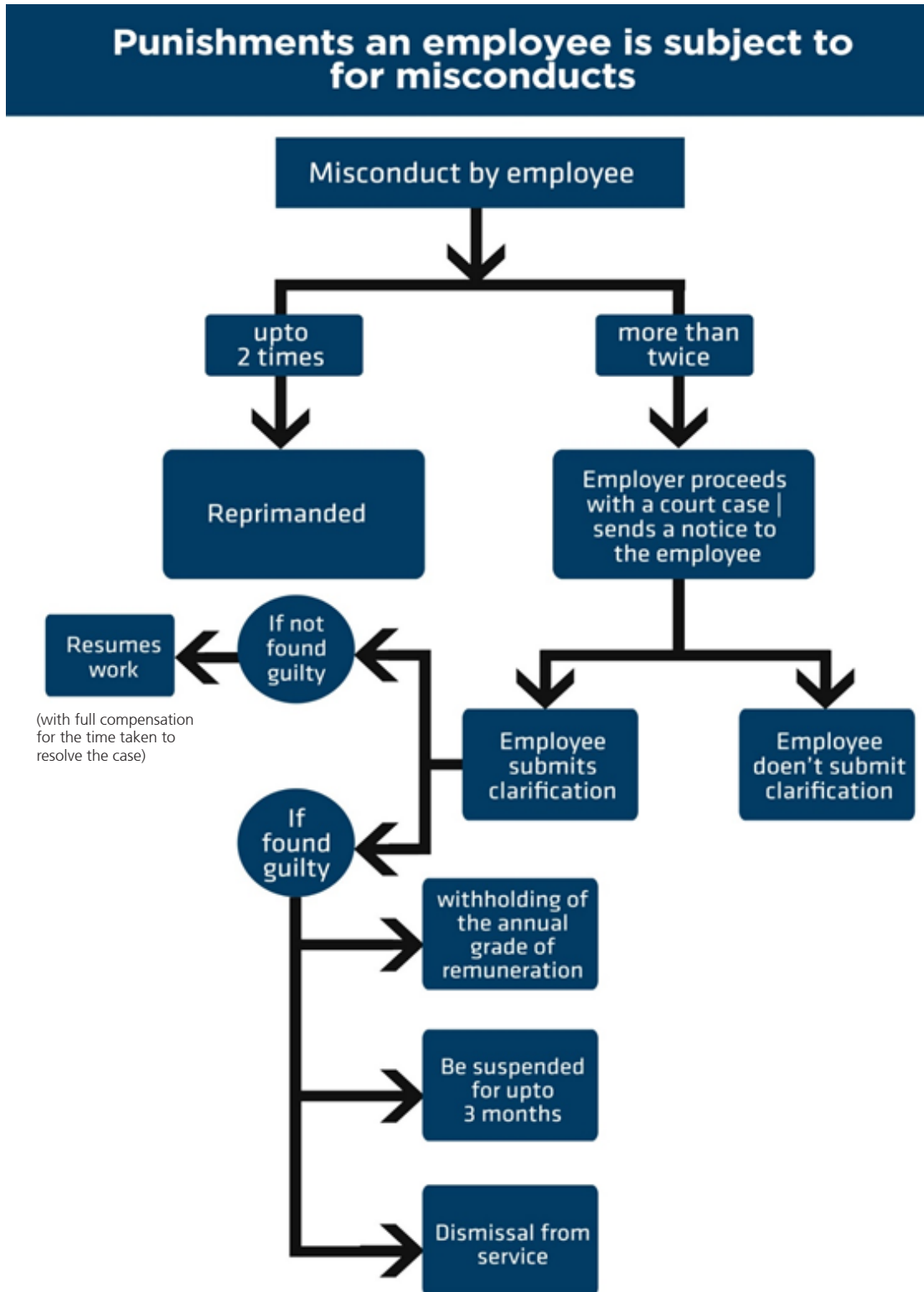
Source: Labor Court records, Kathmandu

Table 5. Letters as filed in the labor office until 09/2071

No. of cases of preliminary warnings given	14
No. of cases of grade obstruction/withholding of salary	1
No. of cases of suspension	4
No. of cases of termination	10
No. of letters asking for clarification from worker as filed by the employer	73

Source: Labor Office, Bagmati, Kathmandu

Figure 1. Flowchart on types and procedures for punishment for workers in Nepal



Source: Author compilation as per Labor Act 1992

Because of lack of evidence, proprietors find it extremely difficult to dismiss a worker even when they have engaged in violence.

The Cost of Firing

There are two scenarios in terms of firing a) retrenchment b) misconduct. In the case of retrenchment, the employer needs to make the severance pay as per Table 3. Added to this are other costs associated with firing as stipulated in Table 6. In the case of misconduct, cost associated with firing (dismissal/termination in this case) is limited to Table 6.

As previously explained, dismissal is only truly possible when a worker is found to have engaged in acts of violence, theft or is absent from work for more than 30 consecutive days without notice. The major hindrance to this clause's implementation lies in the fact that evidence of such acts are very hard to come by as they usually go unrecorded. Because of lack of evidence, proprietors find it extremely difficult to dismiss a worker even when they have engaged in violence. In a scenario where the proprietor does in fact wish to go on with the dismissal process, there are a number of costs that he/she needs to bear as tabulated in Table 6. These costs are based on our interviews with experts and entrepreneurs and are estimates rather than accurate descriptions. The table is also based on the assumption that the laborer in question would have ties with at least one union in his/her enterprise, and looking at Nepal, where in industrial area Biratnagar alone, there are 270 unions for 19,004 workers (see Annex 1), this is a rather believable scenario.

Table 6 is a projection of quantifiable costs, which emerged from our consultations. There are a number of other costs that are harder to quantify unless a specific case of a factory or enterprise is taken into account but important nonetheless. For example, the investment and orders lost when a factory shuts down its operations for a number of days when under threat or attack because of its decision to dismiss certain employees (The Kathmandu Post 08/18/2011)³, the loss of productivity of employees under threat (The Kathmandu Post 20/06/2014)⁴ and forced monetary contributions to election campaigns (National Business Initiative, 2014). It is generally thought that when a worker is dismissed on disciplinary charges, the cost to the company is 0 because he/she is not liable to get severance pay (Sanchez and Guell, 2001). This amount is evidently not 0 as could be witnessed from Table 6. A worker dismissed on charges of misconduct is most likely to lash out at the company and demand action for supposed 'wrongful firing' leading to lengthy litigation costs, among other expenses.

³ 'Surya Nepal shuts down garment factory'. The Kathmandu Post on 08/18/2011. For more information: <http://www.ekantipur.com/the-kathmandu-post/2011/08/17/money/surya-nepal-shuts-down-garment-factory/225302.html>

⁴ 'Private Corruption'. The Kathmandu Post on 20/06/2014. For more information: <http://www.ekantipur.com/the-kathmandu-post/2014/06/19/oped/private-corruption/264104.html>

Table 6. Costs associated with firing a worker in Nepal

S.N.	Task to be conducted	Actors	Time Taken	Expenses
1.	HR to begin by collecting evidence of misconduct and addressing letters to the stipulated Labour Office and the worker in question to inform them of the offence. This is followed by a waiting period of 7 days by when the worker needs to address the notice and provide clarification both to the enterprise and the labour office. This is followed by preparation of documentation of the worker; of his/her particulars on years of service and salary drawings to determine severance/gratuity pay (if any)	Senior HR Manager and Senior HR Officer	1 month	At an average drawing rate of Rs.90,000 of a Senior HR Manager and Rs.60,000 of a Senior HR Officer- the total cost= Rs.150,000
2.	Hiring of a legal consultant (mostly in case of accusations of wrongful firing and/or handling other legal ordinances for the enterprise in the case)	Legal consultant	Dependent on case complexity	Rs.30,000 per month
3.	Multiple Consultations with Trade Union representatives on behalf of the worker	8-10 members from the management's side and the Trade Union representatives	A minimum of 10 seating (usually more)	Rs.1500 per person on the management's side per seating: (Rs.12,000 – Rs.15,000)
4.	Security measures for the factory and other employees	Security guards		Rs.21,000 – Rs.22000 per month
5.	Negotiations with political union leaders which usually results in 'favour banking': hiring their recommended person in a white collar position	Person/s to be appointed		Rs.30,000 – Rs.35000 per month (salary drawn)
6.	Political contributions every year to maintain good relations with all the politically affiliated unions	The entrepreneur	On an annual basis by the entrepreneur	Rs.50,000 per annum*
7.	Payment for differential time (between when the employee was dismissed and when the employee was reinstated) if the case is legally challenged and the court decides on wrongful firing	The entrepreneur	Dependent on time taken for the litigation process to conclude	Dependent on time taken for the litigation process to conclude

*Interdisciplinary Analysts' 2010 survey as cited in *Forced donation, political funding and public security in Nepal: The private sector's perspective and responses by National Business Initiative, 2014.*

The firing costs of Rs. 293,000 – 302,000 (USD 2935.87 – 3026.05 at the rate of \$1=Rs 99.80 at 07/04/2015) notwithstanding the amount to be reimbursed by the employer to the worker in case the court decides that the case was of wrongful firing. needs to be seen in line with certain economic facts about Nepal. This cost of firing is obviously high considering Nepal's GNI per capita which is \$730 (World Bank, 2014). The annual GDP growth dropped to 4.2% in 2015 from 5.5% in 2014 (World Bank, 2015) and the contribution of the private sector to Gross Fixed Capital Formation remained at 18% throughout 2010 to 2014 (2014, World Bank). Making firing costly has obviously deterred employers from hiring and has not helped the mass outflow of people looking for job opportunities. A total of 521,878 Labour permits were issued in 2013/14 and from the Department of Labour, which is a 137% increase from the year 2008/09 (GoN, 2014).

**Estimated
total cost
of firing
(dismissal/
termination):
Rs.293,000
– 302,000 +
amount to be
reimbursed
by the
employer to
the worker in
case the court
decides that
the case was
of wrongful
firing**

Case study: Laxmi Shrestha, The Button Lady

Many know Laxmi Shrestha as the Button Lady and also as the first lady tempo driver of Nepal who went on to become a successful entrepreneur establishing an enterprise in producing buttons. Countless others tell stories of her strength and determination—of how a single mother battled it out every single day to ensure that her children had better lives.

For the lack of a better word, she truly is inspirational. She shared her story with us—of having started work at a tender age of 6 and of having been married by the time she was 13 years old, of having had kids to take care of after being separated from her husband, of being cheated by the landlord, of having battled the odds to start an enterprise that employs countless such women who would have otherwise had nowhere else to go. Having worked for the last 40 plus years of her life, she was filled with stories of struggles; the good part being that she was a story of success; a woman who was able to overcome obstacles and someone who still continues to hope and fight against the odds.

She believes that her Laxmi Wood Crafts Udhyog has given much to her and many women like her. Sadly, however, her enterprise has not retained its initial glory. She talked of how her workers barely ever notified the management when taking prolonged leaves of absence and how her factory that made buttons for international fashion brands Zara and Ralph Lauren had to continually cut back on orders now. Her factory, that used to presumably buzz with work a few years earlier, is now barely open and as she states, continually under seize, from workers and political powers. She was forced to close her factory for four months at one time that lost her two important international contracts. As a result, she lost over Rs.3-4 crores in raw materials having gone to waste and orders being cancelled. She has been also unable to fire a number of workers who engaged in misconduct even while having followed all required legal procedures because the workers refused to comply with legal orders and feigned ignorance of the notice's receipt.

Laxmi Wood Crafts Udhyog, begun by 3 people went on to employ over 375 people by 2058 B.S, only to be reduced to a mere 82 workers in recent times. She has been fighting legal cases set against her factory for as long as 15 years now.

Analysis of the actual and hidden costs of dismissal:

As presented in the previous table, dismissing, or more correctly, trying to dismiss a worker is wrought with financial burden and is hardly the zero cost affair that it is often thought to be. Innovation Policy Platform outlines major OECD employment protection indicators, the two of which are most relevant here are borrowed as follows⁵:

Individual dismissal of workers with regular contracts: This incorporates three aspects of dismissal protection:

- procedural inconveniences that employers face when starting the dismissal process;
- notice periods and severance pay;
- difficulty of dismissal, as determined by the circumstances in which it is possible to dismiss workers, as well as the repercussions for the employer if a dismissal is found to be unfair (such as compensation and reinstatement).

Additional costs for collective dismissals: Most countries impose additional delays, costs or notification procedures when an employer dismisses a large number of workers at one time.

Once a worker is presented with his notice of dismissal or even that of warning, it should also be noted that his/her productivity will decline and this will ultimately hamper the productivity of the enterprise as well (Heckman and Serra, 2000). Considering that it takes three counts of a misconduct in three years time to terminate a worker, this means an overlong procedure that shall only work to hamper the enterprise's as well as the employees' growth.

It is also interesting to note that Nepal requires third-party intervention when a firm wishes to dismiss even only 1 employee when most other South Asian Nations and a number of others do not have this requirement as evidenced by Table 7:

It is understandable that this requirement would be present when there are a larger number of employees to be dismissed and third party intervention, meaning that of the union or a mediator, would make sense. But having to sit in on multiple consultations with the union representatives on every individual case of firing makes very little sense, only aiding to increase management costs and reduce number of active work days.

Table 7. Selected countries that require third-party intervention when firing one worker

Countries	Third-party approval if 1 worker is dismissed?	Countries	Third-party approval if 1 worker is dismissed?
Afghanistan	No	India (Delhi)	No
Bangladesh (Chittagong)	No	India (Mumbai)	No
Bangladesh (Dhaka)	No	Maldives	No
Bhutan	No	Nepal	Yes
China (Beijing)	No	Pakistan (Karachi)	No
China (Shanghai)	No	Pakistan (Lahore)	No
		Sri Lanka	Yes

Source: *Doing Business Report 2015*

⁵ See more on Costs of hiring and firing at <https://www.innovationpolicyplatform.org/content/costs-hiring-and-firing>

Stringent labor regulations also work as deterrents to market entry or re-entry to workers.

Problems with increased labor regulations

Labor market regulations eventually hamper not only employers but also workers and employees. An analysis of the previously mentioned EPL laws and associated time and costs reveals that this in particular is harmful to the young and temporary workers, who are usually among the first to be retrenched or laid-off when a company begins to retrench (Abowd and Kramarz, 2003), usually due to irrecoverable financial losses. These workers are those that typically demand a lesser fee for their services as compared to permanent members; an understandable phenomena considering that permanent workers are seen to have more experience and thus demand a higher fee. However, only this segregation is not enough to having to do away with young and/or temporary workers as retrenchment is hardly based on work review. Therefore, it is difficult to determine that the permanent workers are in fact better suited to keep their jobs than their temporary counterparts. As is often seen that these temporary workers are minorities and/or women, their hopes of a sustained wage greatly dwindles when this scenario unfolds (Heckman and Serra, 2000). It is also true that hiring employees on long-term contracts or on permanency clauses greatly dilutes the employer's power to fire at will, particularly in a country like Nepal, because of which

employers have begun favoring short-term contracts over regular contracts (Abowd and Kramarz, 2003).

Stringent labor regulations also work as deterrents to market entry or re-entry to workers (Heckman, & Pages-Serra, 2000). When faced with economic losses, the enterprise may look to dismissing a number of workers to bring it back to levels of optimum cost saving and production. However, faced with mandatory dismissal costs such as severance pays, the enterprise might cut back on a lesser number of workers than required in order to cut costs. Conversely, when the enterprise faces a 'positive shock', it may look to hiring a number of employees but shall be cautious in doing so because of its previous experience of the need to fire workers when facing economic downfall. Due to this phenomenon, it shall hire lesser number of people than required in fear of having to pay higher costs for dismissal in the future, effectively curbing the growth of employment. In a similar line of reasoning, because formal job openings become limited, there is more likelihood for people to fall into the non-formal sector. As dictated by economics, drive down the wage rates of the informal sector even further as more workers infiltrate existing workload. As noted by Jones (1997), when a rise in the minimum wage cuts employment levels and those in developing nations rarely have the choice to fall on unemployment

benefits, the workers face two choices, either to work in the 'uncovered' sector (informal sector sans formal regulations) or become unemployed and search for work in the 'covered' sector (the formal sector). Because most unskilled workers have little or virtually no savings in developing countries, it is unlikely that they would be willing to wait for job prospects too long in the formal sector. Jones (1997) further elucidates that because of this, workers shall be more likely to try and find work in the informal economy causing the sector's wages to fall due to rise in supply of labor and a lack of a matching demand for the same.

Assessing the previous paragraph, one can make a connection between stringent labor regulations and the reduction in a firm's ability to hire workers. As argued in Almeida & Carneiro (2005) enforcing labor regulations affects firm performance by decreasing the firm's access to flexible labor. As explained in the document, when compliance to stringent labor regulations increases, the amount of informal workers hired decreases. This also follows that the cost of accessing the informal economy thus increases, decreasing a firm's flexibility of the labor force and conversely increasing the price of labor, because of increased compliance to social security payments. But informal workers, who are not

liable to be paid social security benefits, might benefit from being hired by these firms after all because the enterprise could share with them the benefits of social security savings by hiring them, a phenomenon also termed a 'fiscal kink' (World Bank, 2005).

Additionally, Besly and Bergess (2003) in Almeida & Carneiro (2005) note:

.....it is interesting that weaker enforcement is also associated with higher investment in capital and technology. This suggests that labor productivity increases because the firm operates more efficiently and the capital stock is higher.

A reduction in the cost of labor causes firms to channel savings to investments in capital and technology, making for more efficient production. Strict regulations thus ultimately hamper investment and growth channels.

Regionally, Nepal is a country with the highest minimum wage rate in South Asia. In May 2013 after a hike of 29%, the new minimum wage (including basic wage and benefits) was fixed at Rs.8, 000 (US\$85) per month. As of 2013, Nepal has approximately 116 trade unions, with an aggregate membership density of around 10% of the labor force while only 5% are covered by Collective Bargaining Agreements (LO/FTF Council, 2014).

Strict regulations thus ultimately hamper investment and growth channels.

Employment laws in Cambodia are marked by a clear distinction between fixed duration contracts (FDCs) and undetermined duration contracts (UDCs).

What are other countries doing different?

A comparative study of Nepal's laws with that of other regional and global actors helps illuminate key structural and legal problems that constraint Nepal's competitiveness. It can also provide us with policy solutions. This paper will look at EPL from Cambodia and Japan.

Cambodia

Cambodia ranks 13th on the World Economic Forum's Global Competitiveness Index in terms of efficiency of hiring and firing practices⁶. Employment laws in Cambodia are marked by a clear distinction between fixed duration contracts (FDCs) and undetermined duration contracts (UDCs). While FDCs are characterized by a fixed term that is typically either a set period of time or a defined task, UDCs do not contain a fixed term.

An employer can terminate an FDC before its ending date if both parties agree in writing to terminate the contract early, if the employee has engaged in serious misconduct or in case of force majeure.⁷ If an employer does not wish to continue to employ a worker after the expiration of an FDC of more than six months duration, the employer must inform the employee

prior to the expiration of the contract. In case of UDCs, although a UDC can be terminated at will by either of the parties, an employer can only terminate a UDC for "a valid reason relating to the worker's aptitude or behavior, based on the requirements of the operation of the enterprise...." by providing written notice of termination⁸.

Serious misconduct justifies the termination of both FDCs and UDCs. If an employee engages in serious misconduct, the employer is not required to give prior notice of termination. However, the employer must dismiss the employee within seven days of learning about the serious misconduct⁹. Some examples of such serious misconduct are theft or embezzlement; fraudulent acts upon hiring (e.g., presenting false documentation), or during employment (e.g., sabotage, divulging confidential information); serious infractions of disciplinary, safety and health regulations; threats, abusive language or assault against the employer or other workers; encouraging other workers to engage in serious misconduct; political propaganda, activities or demonstrations within the establishment; committing violent acts during a strike; and failing to return to work within 48 hours of a court declaring a strike illegal, and absent without a valid reason.

Another significant feature of Cambodia's employment laws is the

⁶ See <http://reports.weforum.org/global-competitiveness-report-2014-2015/rankings/>, last retrieved on 1/3/2015

⁷ Cambodian labour law, article 73

⁸ Cambodian labour law, article 74

⁹ Cambodian labour law, article 26, 82

Arbitration Council. The Arbitration Council in Cambodia, although not a substitute for a labor court, is an important actor in settling labor disputes including those relating to termination. The Council's functioning mechanism is considered exemplary across the globe; it first seeks to mediate the dispute and proceeds to arbitrate only when mediation fails. Even when arbitration takes place, parties first agree on whether or not the decisions will be accepted as binding. If either party is dissatisfied with the decision made by the council, they can take their case to any other court within eight days of the Council's decision. The Arbitration Council is mandated to make a decision within fifteen days. This period of mediation and arbitration is considered a "cooling off" period and calling a strike during this time is considered illegal.

The formal structure of the Arbitration Council is kept separate from the Ministry of Labor in order for the Arbitration Council to be accepted as an independent and unbiased body by both unions and employers. The Council is a statutory body receiving its mandate from the labor law. The Ministry forwards non-conciliated collective disputes to the Council and the Council eventually reports back to the Ministry. Despite some interaction with the Ministry, the Council receives funding and support from non-governmental institutions. In addition, in order to maintain neutrality amongst

individual arbitrators, the Council has a tri-partite structure, with the unions, employers and Ministry each nominating ten individual arbitrators. These arbitrators work only part-time and are called when a decision or award is to be made. For each case, an arbitration panel of three arbitrators is required. Unions and employers nominate one arbitrator each and these two arbitrators pick a third one. The Arbitration Council is received by both unions and employers as an independent and efficient body, with a success rate of 80%¹⁰.

Japan

Perhaps one of the most common reasons accounting for lengthy legal trails and a lack of compromise in out-of-court settlements between the employer and worker is due to an air of general mistrust between the two. Workers and employers both seem unwilling to give in to either's demands which is one of the most obvious reasons that stretch firing processes. Though collective bargaining is a given and often decides worker wages and conditions, the absence of communication between the worker and employees of important changes in the enterprise only aids in establishing the idea of a faceless corporation.

Japan, with a score of 4.7 in Labor Market Efficiency and overall rank of 22 in the Global Competitiveness

¹⁰ The Cambodia Daily. <http://www.cambodiadaily.com/news/at-10th-anniversary-arbitration-council-faces-funding-shortage-25887/> last retrieved on May 28, 2013

Another significant feature of Cambodia's employment laws is the Arbitration Council.

Joint-consultations are voluntary and more frequent than collective bargaining agreements and can be called for precisely when something as drastic as a retrenchment is to occur.

Index, has long been hailed as a success story in terms of instilling enterprise ownership in employees and workers. De Silva (1996) demonstrates how the Japanese combined 'enterprise-level bargaining' and 'shop-floor mechanisms' (such as joint consultations) to allow workers and employers both to take into account specific enterprise conditions (such as retrenchment). De Silva (1996) further elucidates how joint consultations are a corner-stone for information sharing between hierarchies in an organization and account largely for the cooperation between labor and management in Japan.

Joint-consultations are voluntary and more frequent than collective bargaining agreements and can be called for precisely when something as drastic as a retrenchment is to occur. While the process for retrenchment in Nepal dictates that the respective labor office will take recommendations from workers, employees and enterprise unions when deciding whether to approve the enterprise's application for retrenchment or not, joint consultations can serve as a prior discussion of the same. This allows a direct flow of information to workers from employees and makes workers feel more responsible towards the fate of the enterprise. This established feeling thus of enterprise ownership makes for easier retrenchments and amiable relationships between workers and employers.

Recommendations to reduce the cost of firing

It is evident from previous assertions that stringent market regulations in hiring and firing do more harm than good, to both workers and employers. As noted by Heckman and Serra (2000):

.....while substantial evidence indicates that unions reduce earnings inequality in industrial countries, there is no evidence that job security provisions reduce income inequality. Indeed, given that job security reduces the employment prospects (and possibly wages) of younger and less experienced workers, who bear the brunt of regulation, it is likely that regulation widens earnings inequality across age groups. Job security provisions do not present a trade-off between employment and inequality. Such provisions worsen both.

1. Voluntary firing costs

One major provision that could help firms and workers both in reducing conflicts on the issue of severance pay to be given when being laid-off or dismissed is the introduction of an enterprise level voluntary firing cost in initial contracts (Sanchez and Guell, 2001). These costs would be negotiable between the worker and employee when being hired itself and its implementation would be contractual

and binding, thus diluting either's claim of contradiction of the said package when the firm practices retrenchment or dismissal. The document would hold in both court and/or out-of-court settlements if any, making matters much easier in terms of additional costs for litigation to be given in by the firm in question.

2. Revising the scope of the existing Arbitration Act

A problem inadvertently highlighted by the previous section of analysis is the lack of effective conflict resolving mechanisms in the country with only 1 labor court in the country and 10 labor offices throughout. Existing labor officers are also ill-equipped at handling conflict (Samriddhi Foundation, 2013). In particular, the number of labor courts in the country need to be increased in industrial corridors where labor disputes are burgeoning. Labor officers need be trained in dispute handling and highlighting ADR mechanisms. Although there already exists an Arbitration Act (1999) in the country, labor disputes are hardly ever brought under its jurisdiction. The scope of this act thus, also needs to be revised and include handling of labor disputes, much like that of countries like Bosnia and Herzegovina with a score of 7.01 on labor regulations in the 2014 Economic Freedom of the World report

One major provision that could help firms and workers both in reducing conflicts on the issue of severance pay to be given when being laid-off or dismissed is the introduction of an enterprise level voluntary firing cost in initial contracts.

It is important, to understand why almost all cases of dismissal are contested in court.

3. Re-implementation of classification of work

Another simple mechanism of ensuring effective hiring and firing would be the re-implementation of the division of classification of work. The draft of new labor bill proposes a more sophisticated classification on the basis of type of contract, namely as:

- a. Regular employment
- b. Contractual employment
- c. Time-bound employment
- d. Incidental employment

These employment categories are self-descriptive and take over the rudimentary classification of workers as unskilled, semi-skilled, skilled and highly skilled. Classification of work is important because it determines all other kinds of benefits that a worker is liable to be get and makes firing, particularly during retrenchment or when the company decides to change its direction, easier. Workers can also then classify themselves based on employment type and look for hire at suitable positions.

4. Removing third party approval for any kind of dismissal

The provision of having to seek third party approval (the Labor Office in Nepal's case) to dismiss an employee needs to be removed. The concerns regarding unjustified dismissal could be

addressed by challenging the decision in a court. Several reports have shown that even without the mandatory third party approval, workers do not get unfairly dismissed in large numbers in the South Asian region. It is not to acknowledge that there could be exceptions to this and they need not be addressed. However this should not be done at the cost of imposing regulations that greatly affects an enterprise's growth.

5. Joint consultation meets

It is important, to understand why almost all cases of dismissal are contested in court. Of course, if a case is deemed unfair, the worker lays claims to not only a hefty severance pay but also salary that he/she could have received all throughout the litigation if employed until then. It is obvious that workers and employers see each other as merely means to an end, but a general air of distrust between the two has become a perceptive reality (Samriddhi Foundation, 2013). In order to try and mitigate this distrust, joint consultation meets could be a helpful idea. While collective bargaining is characterized by obligatory negotiations, joint consultations are voluntary mechanisms for understanding the need of each party and sharing information 'based on the mutual acceptance of the need to avoid conflict through strikes or other similar actions' (Silva, 1996). Successfully practiced in Japan beginning the 1950's, joint consultation meets can

be thought of as frequent meets between the employers and the workers whenever there is a particular change in company policy or direction and/or changes in internal operations. Contempt between workers and employers bloom from the fact that neither thinks the other's opinion is of any importance and that there are lack of effective channels of communication between the two. Joint consultation meets eradicate this by placing workers and employers on a singular plane, where employers explain to workers oncoming changes and engage in dissemination of information themselves, making workers feel more important. Decisions for retrenchment in particular could be well handled by joint consultation meets, where employers have a platform to explaining reasons for retrenchment and allowing an insight for workers into the inner workings of the company. Most enterprises think of this as unimportant, hence giving rise to innumerable protests as workers begin to believe their only source of income is being forcibly taken from them.

6. Concentration on improving contract enforcement and improving judicial efficiency

Hiring and Firing are essentially contractual agreements between two parties. Ensuring predictability and efficiency of these two processes need to be thus aided by a stronger enforcement of contracts. In Nepal's case, where the general Rule of Law environment is weak, the general mistrust between employer and employees is natural. This could be ameliorated by granting greater legitimacy to the contract between employer and employees and improving enforcement by improving judicial efficiency.

Conclusion:

Nepal's Labor Law of 1992 and the supplementary Trade Union Act of 1993 are often seen as pro-labor documents. They leave, as explained in pages above, very little room for the employer to exercise his/her rights to hire and fire depending upon the circumstance of his/her enterprise. Even if there have been policies and procedures for dismissal, retrenchment and other associated acts in these laws, the time and costs (some often hidden) are exponentially high in the country. It may defer any newcomer's decision to come into the market. Our calculations give a good estimate of how much it costs an entrepreneur to fire merely one worker (Rs.293,000 – 302,000 in addition to compensation if charged with wrongful firing) and though these are unofficial calculations and based on case studies¹¹ and secondary surveys, the numbers are nonetheless alarming. A reduction thus in a labor market regulations is in order but for it to be deemed effective, excessive administrative hurdles and other barriers to entrepreneurship need also be addressed and mitigated (Kugler and Pica, 2003). An assessment of what high performing players on the Global Competitiveness Index and other associated indices have been doing and extraction of such ideas for replication is a must if we look to improving the investment climate of Nepal.

¹¹ Due to the sensitive nature of this research and possible repercussions that organizations and individuals may face if their names are publicly published, Samriddhi, The Prosperity Foundation reserves the right to not reveal names and organizations interviewed in order to preserve the anonymity of our respondents.

List of Annexes

Annex - I

A compilation of three industrial areas' progress reports for 2070/71 by Department of Labor and Labor Offices

S.N.	Task listing	Biranatagar	Janakpur	Birgunj
1	No. of industries	NA	535	NA
2	No. of workers	19004	5010	17000
3	No. of trade unions	270	73	15
4	Organization inspection	45	32	106
5	No. of complaints taken action against	NA	NA	NA
6	No. of complaints filed	105	NA	NA
	Individual	85	NA	NA
	Communal	NA	NA	NA
7	No. of complaints solved	NA	NA	NA
	Individual	45	NA	NA
	Communal	NA	NA	NA
8	No. of disputes	19	1	24
	Strike	1	1	23
	Lockout	NA	NA	1
9	No. of work days disrupted	NA	12	3331
	Strike	NA	12	NA
	Lockout	NA	NA	NA
	Accidents	NA	NA	NA
	Reserve	NA	NA	NA
10	No. of workers in reserve	NA	NA	NA
11	Consequences of reserve keeping	NA	NA	NA
12	(Pay) cut	NA	NA	NA
13	No. of accidents	NA	NA	NA
	No. of deaths	NA	NA	5
	No. of severely injured	10	NA	NA
	No. of injured	17	NA	2
14	Compensation	NA	NA	NA
	Payment	NA	NA	NA
	That which is currently in process	NA	NA	NA
	That which has been completed	NA	NA	NA

Source: Labor Bulletin 2014, A Journal of Department of Labor

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Samriddhi, The Prosperity Foundation is an independent policy institute based in Kathmandu that focuses on economic policy reform. Established in 2007, Samriddhi aims at facilitating a discourse on pragmatic market based solutions for a free and prosperous Nepal.

Known for bringing together entrepreneurs, politicians, business leaders, bureaucrats, experts, journalists and other groups and individuals to make an impact on the policy discourse of Nepal, Samriddhi works with a three-tier approach - Research and Publication, Educational and Training, Advocacy and Public Outreach. Some of its highly successful efforts include the annual economic policy reform initiative named "Nepal Economic Growth Agenda (NEGA)", a sharing platform for entrepreneurs named "Last Thursdays with an entrepreneur" and a regular discussion forum on contemporary political economic agendas named "Econ-ity". Samriddhi also hosts the secretariat of 'Campaign for a Livable Nepal', popularly known as Gari Khana Deu campaign.

One of Samriddhi's award winning programs is a five day residential workshop on economics and entrepreneurship named Arthalya, which has produced over 400 graduates over the past few years, among which more than two dozen run their own enterprises now.

The organization is also committed towards developing a resource center on political economic issues with its Political Economic Resource Center (PERC). Besides this, Samriddhi also undertakes localization of international publications on the core areas of its work. Samriddhi was the recipient of the Dorian & Antony Fisher Venture Grant Award in 2009 and the Templeton Freedom Award in 2011.

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