

THE INDO – NEPAL TREATY OF PEACE AND FRIENDSHIP, 1950 : Revisiting the Tale of Two Nations

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ABSTRACT

The relationship between India and Nepal is very old and dates back to a long period before 1950 or the Treaty of Peace and Friendship. Nonetheless, the 1950 Treaty is a particularly important turning point in the relationship and aims to materialise a lofty ideal that has been passed down for decades. Jawaharlal Nehru, the Prime Minister, and His Majesty King Tribhuvan held this vision in the highest regard. It was a depiction of an independent, free, and sovereign Nepal and India that were still inextricably bound by unbreakable links. The India-Nepal Treaty of Peace and Friendship, signed in 1950, is a bilateral agreement between the governments of India and Nepal to forge close strategic ties between the two South Asian neighbours. On July 31, 1950, Chandreshwar Narayan Singh, then-ambassador of India to Nepal, and Mohan Shamsher Jang Bahadur, then-prime minister of Nepal, signed the Treaty in Kathmandu. The agreement provides unrestricted travel and trade between the two nations as well as close ties and cooperation in the fields of defence and international relations. The treaty has been the subject of considerable debate within the country. A significant part of the left parties' election manifestos in Nepal have addressed this issue, and the issue has become part of bilateral discussions as well. In recognition of the unique features of the bilateral relationship, India has agreed to review, adjust, and update the treaty as appropriate. In light of the changing international environment, the paper examines the significance of the treaty and prospects for India-Nepal relations. The study analyzes bilateral trade patterns and evaluates the prospect of maximum extra commerce. A wide range of tremendous bilateral trade concerns is addressed, including tariffs, the sanctions of an agricultural reform charge, the underutilization of the tariff rate quota, non-tariff measures, problems with Rules of Origin (ROO), and physical obstacles to the transportation of commodities across borders. It also dissects the incentives and constraints for Indian investment in Nepal alongside the dynamics and varying sectoral composition of Indian investment in Nepal. The study concludes by laying forth proposals for boosting trade, removing non-tariff obstacles, upgrading infrastructure to improve connectivity, and increasing Indian FDI in Nepal as a means of advancing economic cooperation between the two nations.

KEYWORDS: Nepal, India, Treaty, Profit, Security, Friendship, Borders, FDI

INTRODUCTION: A CHRONOLOGICAL FRAMEWORK

India and Nepal have always maintained a special friendship and collaborative relationship. The connection that exists between individuals residing in India and Nepal is constituted by an amiable and hospitable border and is

centred on historical and contemporary, cultural, linguistic, and ethical ties. Because Nepal is a priority for India under its "Neighborhood First" strategic approach, dislodging the economic ties between the two nations has enormous significance and potential. There is little literature that examines the economic ties between India and Nepal, even though the political interactions between the two countries have been thoroughly studied. Studying this topic is crucial because India is Nepal's largest export market¹, largest import source, the top investor in foreign money, and one of the main givers of foreign aid. Ties around India and Nepal have always been cordial, emphasizing the two countries' traditional, geopolitical, artistic, and intellectual ties. The foundation for the special ties between the two nations was laid with the signing of the India-Nepal Treaty of Peace and Friendship in 1950. By commemorating heritage importance and ensuring peace in the region, the treaty was signed to foster closer ties between the two nations. It served as the basis for relations between India and Nepal. Ten articles and a letter of exchange make up the pact. The geographical integrity and sovereignty of each other were acknowledged in Article 1 between the two nations. Following Article 2, they are required to communicate with one another in the event of hostilities with neighbours. Articles 5, 6, and 7 pertain² to the importation of weapons into Nepal, the national treatment of the citizens of the other country in economic affairs, and the reciprocal treatment of citizens in areas relating to immigration, protection, and trade. All previous treaties between Nepal and the British government are annulled under Article 8. Renewal and cancellation are covered in Articles 9 and 10 of the agreement. By acknowledging their shared political, economic, sociocultural, and cultural ties as well as their security needs, the contracting parties' goal in signing the treaty was to permanently foster peace and friendship between the two nations. Trade between landlocked Nepal and the rest of the globe is carried out through India. According to K.V. Rajan³, the treaty essentially provided Nepalese citizens with economic prospects in India in exchange for Nepalese guarantees that security concerns would be taken into account. When the pact was signed in the 1950s, the global and regional environments were very different from what they are present. The cold war had the world in its tatters at the time. There were three groups of countries in the world: capitalist, communist, and non-aligned. India, a recently independent nation with a feeble military and a history of domestic turbulence, was wary of Chinese adventurism in Tibet. Also, it was concerned about the Communist presence in Nepal. The Chinese assertion that Tibet is China's palm and Nepal, Bhutan, Sikkim, Ladakh, and NEFA are its five fingers infuriated India as well. The security of the other Himalayan nations was in jeopardy with the palm already in Chinese hands. The contextual relevance intensified after China annexed Tibet. That India decided to gain Nepal's trust as a means to fortify its northern boundary. *"We cannot allow anything to go wrong in Nepal or let that barrier be crossed or weakened because that would also be a risk to overall security, Prime Minister Jawahar Lal Nehru stated in*

¹Trade and Commerce, India- Nepal Relation, Consultant General of Nepal, <https://ccu.nepalconsulate.gov.np/trade-and-commerce/> accessed 2 April 2023.

²Treaty of Peace and Friendship Between the Government of India and Government of Nepal, Treaty No 94 UNTS 3, 31 July 1950

³ K.V Rajan, 'Should the 1950 Treaty be Scrapped?', The Hindu, May 3, 2008

expressing India's worries".⁴ The Chinese claim on Tibet stunned Nepal, which was vying for international recognition and was experiencing domestic unrest as a result of uprisings against the Rana rulers. The establishment and maintenance of the unique relations between the two countries were greatly aided by the external environment of the time, particularly the events in Tibet and China as well as the Chinese acceptance of the Indo-Nepalese relationships. The Ranas were seeking too though a chance to reach some sort of accord with India to stabilize the democratic movements in Nepal that had their origins in that country. Between 1947 and 1950, Rana's stance towards India was determined by his ability to win over Indian backing or deter it from aiding the democratic movements in Nepal, which had their origins in India. The treaty was signed as a result of the shared requirements and interests. The treaty addressed the socioeconomic factors influencing the relationship as a result. For instance, without any restrictions on trade, commerce, or movement within the other country, inhabitants of one country could participate in the industrial and economic developments in the other country (Clause 7)⁵. The provisions were advantageous to both nations, but especially to Nepal given its lack of economic growth and employment possibilities. The swapped letters also included according to the treaty's clear language, Nepalese citizens in India may need to be protected from unrestrained competition for a while (Clause 3). To safeguard Nepali interests, this was done. When it comes to natural resource development projects, Nepal also promised to provide first consideration to the Indian government or Indian citizens. When the nations built walls to bolster their security, India and Nepal agreed through the treaty for an open border and worked to reunite their societies, cultures, and economies. The agreement may have served as a template for bilateral collaboration in which the signatories capitalised on one another's advantages, but mutual interests and concerns have evolved in both tone and cadence. Since the late 1950s, when a "secret" letter exchanged as part of the Treaty was made public, India and Nepal have been deeply divided over the 1950 Treaty of Peace and Friendship. The leader of an oligarchy, the Rana dictatorship, which was about to be ousted by a democratic movement, signed both this letter and the Treaty. In their final days of power, the Ranas were willing to cooperate with New Delhi and were in dire need of foreign aid for their survival. Political Savant Pt. Jawahar Lal Nehru⁶ recognised the potential and scenario it presented right away. The Ranas in Nepal were completely amenable to India's security and business needs. Although that oligarchical dictatorship in Nepal quickly fell, the treaty it had signed has endured, much to Nepal's discontent. The Indo-Nepal Treaty of Peace and Friendship, which the majority of Nepalis feel to be unfair, was first brought up in public by Prime Minister Kirti Nidhi Bista in 1969, who referred to it as being out of date and outmoded.⁷ The justification given for its

⁴Hari Bansh Jha, '1950 Treaty: A Visionary Approach', South Asia Analysis Group, Paper No. 3815' [2012] South Asia Analysis Group Paper No. 3815,

⁵Ibid

⁶Jawaharlal Nehru, India's Foreign Policy: Selected Speeches (Publications Division, Ministry of Information and Broadcasting Government of India, 1961)

⁷BC Upreti, India - Nepal Treaty of Peace and Friendship Nature, Problems and Question of Identity of Indian Nepalis, (Tanka Bahadur Subba (eds.), Concept Publishing House 2009)

revision was India's failure to abide by the treaty's corresponding provisions (Article II mandates that both governments notify one another of any serious disagreement or conflict with a neighbouring state that could jeopardise the friendly relations already existing between the two). The treaty explicitly states that the two governments must comprehend one another and come up with adequate countermeasures to combat the danger posed by a foreign invader. Despite the treaty requiring both parties to do so, India had taken two unilateral steps during its conflict with China in 1962 (along the Ladakh) and with Pakistan in 1965 (the disputed territory of Kashmir) without alerting Nepal on either occasion. Even later, in 1971, India's direct engagement in the fight for Bangladeshi independence against Pakistan without Nepal's knowledge violated a key provision of that agreement. Prime Minister Kirti Nidhi Bista claimed that developments in India's relations with the Soviet Union and the United States on the one hand and the country's violations of some treaty articles on the other. India was not informed of these events, and as a result, neither was Nepal. Therefore anticipated and has caused Nepal to believe that a need for the dissemination of data regarding such occurrences does not exist. These opinions were published in print media but were not formally communicated to the Indian government to change or repeal the Treaty. As a consequence, the Indian government did not respond to this. The treaty became a significant election issue for some political parties in Nepal with the advent of multi-party democracy in 1990.⁸ The first official call for the reform of this treaty was made by the Communist government of Nepal in 1994–1995 at that time. However, it was in 1996, with the beginning of the Maoist Insurgency in Nepal,⁹ that the need for a treaty modification grew in popularity. This issue was a key component of the Communist Party of Nepal's (Maoist) 40-point demands¹⁰, which led to strong anti-India sentiments during the people's war in Nepal. In September 1997, Nepal's Foreign Minister Kamal Thapa travelled to India with a "non-paper" that for the first time outlined some suggestions for the treaty's amendment. Most recently, the CPN-Maoist pledged to annul the treaty and ensure equal space between India and China in its campaign for the 2008 Constituent Assembly elections¹¹. The Nepali Congress (NC) manifesto, however, made no mention of the issue. Concerning the 1950 Treaty between India and Pakistan, the Communist Party of Nepal (Unified Marxist-Leninist, or CPN- UML) pledged to review "all unequal treaties." About 40 years later, in 2008, Prime Minister, Pushpa Kamal Dahal, advocated for the repeal of the Indo-Nepal 1950 Treaty, describing it as unfair from the perspective of security relations. In addition, he urged for revisiting and reviewing several other treaties, including the 1996 Mahakali Treaty¹². The 1950 Treaty of Peace and Friendship made with India remains the main source of contention for Maoists in Nepal today.

⁸ S Thapliyal, 'India and Nepal Treaty of 1950' (2012) 68 *India Journal of International Affairs*

⁹ Sanchet Barua, 'Maoist Conflict and Impact on India' *The Navhind Times*, 13 April 2010

¹⁰ 'A Comparison of Election Manifestos', *The Red Star* (CPI- Maoist published magazine) Kathmandu, 1(6), March 16-31, 2008. The manifesto also promised to bring necessary changes in managing and controlling the Nepal- India border, initiation to conclude encroachment of Nepali land a the India border, the end of Gorkha recruitment centre etc

¹¹ Pandey N, "New Nepal: The Fault Lines" [2010] SAGE Publications India Pvt Ltd

¹² Tuteja A, "India, Nepal to Review 1950 Treaty" *The Tribune*, Chandigarh, India

TEXT OF THE TREATY

The Treaty of Peace and Friendship was signed between the Government of India and the Government of Nepal at Kathmandu on 31 July, 1950. The text of the treaty is as follows:

Article1

There shall be everlasting peace and friendship between the Government of India and the Government of Nepal. The two Governments agree mutually to acknowledge and respect the complete sovereignty, territorial integrity and independence of each other,

Article2

The two Governments hereby undertake to inform each other of any serious friction or misunderstanding with any neighbouring State likely to cause any breach in the friendly relations subsisting between the two Governments.

Article3

To establish and maintain the relations referred to in Article 1 the two Governments agree to continue diplomatic relations with each other using representatives with such staff as is necessary for the due performance of their functions. The representatives and such of their staff, as may be agreed upon, shall enjoy such diplomatic privileges and immunities as are customarily granted by international law on a reciprocal basis: Provided that in no case shall these be less than those granted to persons of a similar status of any other State having diplomatic relations with either Government.

Article4

The two Governments agree to appoint Consuls-General, Consuls, Vice-Consuls and other consular agents, who shall reside in towns, ports and other places in each other's territory as may be agreed to. Consuls-General, Consuls, Vice-Consuls and consular agents shall be provided with exequaturs or other valid authorization of their appointment. Such exequatur or authorization is liable to be withdrawn by the country which issued it if considered necessary. The reasons for the withdrawal shall be indicated wherever possible. The persons mentioned above shall enjoy on a reciprocal basis all the rights, privileges, exemptions and immunities that are accorded to persons of the corresponding status of any other State.

Article5

The Government of Nepal shall be free to import from or through the territory of India, arms, ammunition or warlike material and equipment necessary for the security of Nepal. The procedure for giving effect to this arrangement shall be worked out by the two Governments acting in consultation.

Article6

Each Government undertakes, in token of the neighbourly friendship between India and Nepal, to give to the nationals of the other, in its territory, national treatment about participation in the industrial and economic development of such territory and to the grant of concessions and contracts, relating to such development.

Article7

The Governments of India and Nepal agree to grant, on a reciprocal basis, to the nationals of one country in the territories of the other the same privileges in the matter of residence, ownership of property, participation in trade and commerce, movement and other privileges of a similar nature.

Article8

So far as matters dealt with herein are concerned, this Treaty cancels all previous Treaties, agreements, and engagements entered on behalf of India between the British Government and the Government of Nepal.

Article9

This Treaty shall come into force from the date of signature by both Governments.

Article10

This Treaty shall remain in force until it is terminated by either party by giving one year's notice.

Done in duplicate at Kathmandu this 31st day of July 1950.

NEPALESE CONTEXT

Nepal's objections to the pact are based on several concerns, from security to the freedom of border crossings:

1. The treaty was signed by a Rana Prime Minister, who was not chosen by the people and does not, therefore, represent the political consensus in Nepal, according to the first arguments made by Nepalese academics. They cite the signatories' uneven status as another illustration of the treaty's inherent injustice.
2. Second, it is believed that the pact is a product of British imperialism. After 1947, India and Nepal's relations had to be rebuilt on a new foundation of intensified democratic ideologies. Even though the two nations were prepared to determine their political future, pertinent treaties and customs that originated under British control still exist today and are not eliminated. All earlier agreements were recognised as valid by the 1949 Standstill Agreement until new agreements and treaties could be negotiated. With modifications made to fit the political climate of the time, the Treaty of Peace and Friendship of 1950 was a reflection of the Treaty of Peace and Friendship signed in 1923. Despite the passage of six decades, the Nepalese elite is still plagued by references to the British policies' continuation in the public's perspective of India-Nepal relations. Although Nepal had solid working relations with the British, it has become a benchmark to evaluate the policies with India. Left-leaning political parties in Nepal, including the Communist Party of Nepal (Unified Marxist-Leninist), the Unified Communist Party of Nepal (Maoist), and the Nepal Workers and Peasant Party, have roundly condemned India's relations with Nepal as imperialist and hegemonistic and held it accountable for concluding unfair treaties with Nepal¹³. In 1975 Sikkim merged with India, this opinion was further solidified, making Nepal an accessible target for local

¹³S.D. Muni., "India and Nepal : A Changing Relationship", New Delhi: Konark Publishers, 1995.

consumption. The terms "hegemonistic" and "imperialist" are continuations of the heritage of British India, which is made worse by India's vastness relative to its small, landlocked neighbour.

3. Third, it is asserted that there are frequent deviations from this covenant of peace and friendship, making it an antiquated treaty. The moment has come to examine the treaty and replace it with a new one because both countries have contributed to many of its provisions falling obsolete over the past 50 years. Maoists contend, among other things, that New Delhi's silence during the late 1980s expulsion of Nepalese from some North-Eastern states like Assam and Meghalaya is evidence against the pact. According to one argument, India shouldn't demand that Nepal abide by a treaty to which India is unable to comply.
4. Fourth, a majority of Nepalese condemn the inflow of Indian workers into Nepal. The government of Nepal claims that it is challenging for a small nation with a headcount of 27 million to treat the Indian people, whose number is more than 1 billion, as nationals. As a corollary, Nepal has passed rules making it illegal for foreigners, especially Indians, to acquire land there.¹⁴ Due to Nepal's proximity to some of India's poorest regions, workers and immigrants from India frequently enter Nepal in search of employment. As a result, Nepal is unfairly burdened and India is given an excessive amount of influence over Nepal's internal affairs. It is claimed that this pact has never been established as valid.
5. Fifth, this treaty is described not only as unequal but as an attack on Nepal's sovereignty on the ground that the circumstances in which the treaty was signed have changed and therefore, there is no relevance of this treaty anymore¹⁵.
6. Sixth, the political and strategic elements of the pact are the focus of the majority of the criticism. India is castigated for ignoring Nepal's sovereignty in favour of protecting its strategic and security interests in the Himalayas. According to Article 5 of the Treaty, the government of Nepal is free to import whatever weapons, ammunition, or other militaristic supplies and equipment it deems necessary for Nepal's security from or through India. The two governments, acting in concert, shall determine the process for putting this arrangement into effect. The letter of exchange, which was secret until 1959, also states: "Any weaponry, ammunition, or militaristic material and equipment essential for the security of Nepal."¹⁶
7. Seventh, Nepal has concerns with clauses 6 and 7, which give citizens the right to reside, own property, engage in trade and commerce, and enjoy other privileges in each other's countries. Both clauses 6 and 7 allow citizens to participate in the industrial and national development of the other country. It is incompatible with Nepal's exercise of complete sovereignty for India to seek reciprocal "national treatment" for its residents on Nepalese territory and access to all of the country's natural resources while Nepalese citizens face discrimination when trying to buy property in India. There have been numerous

¹⁴Nihar Nayak, in "India - Nepal Peace and Friendship Treaty (1950): Does it Require Revision?", Strategic Analysis, Vol.34, No.4, July 2010.

¹⁵Buddhi Narayan Shreshtha, 'Review or Abrogate 1950 Treaty,' Gorkhapatra Daily (Rising Nepal), May 8, 2008.

¹⁶Subedi SP, "India-Nepal Security Relations and the 1950 Treaty: Time for New Perspectives" (1994) 34 Asian Survey 273

occasions over the years when India has disregarded the treaty's clauses. According to Article 2 of the treaty, the two governments must notify one another of any severe disputes with any neighbouring country that could jeopardise their cordial ties. Nepalese claim that throughout the 1962 war with China and subsequent wars with Pakistan, India failed to notify or consult Nepal. India counters that the Koirala government was kept up to date on Sino-Indian relations by its Indian equivalent.

INDIAN CONTEXT

The Indian government's defensive response to the 1950 Treaty of Peace and Friendship is a result of a more extensive strategy of preventing extra-regional forces from entering the area and keeping it out of cold war politics. India insists that Nepal fully adhere to all of the terms of the 1950 Treaty of Peace and Friendship. Yet, it became clear from deliberations during the 1989 deadlock between India and Nepal that India was also ready to engage Nepal in negotiations on the full range of their bilateral relations¹⁷, including the 1950 Treaty of Peace and Friendship. However, India was arguing that because of its "special relationship" with Nepal, it had been very kind to its neighbour in several areas, and now that Nepal intended to end this "special relationship"¹⁸, Nepal was seen by New Delhi as being just like Bangladesh and Pakistan and not deserving of its goodwill. The 1950 Treaty of Peace and Friendship with India was among the unequal treaties and arguments that the Maoist Insurgency in Nepal demanded be abolished, which gave rise to the demand for the treaty's revision¹⁹. This demand was the first in the Maoists' 40-point manifesto. India interprets Nepal's request for a modification of the pact as a sign of the country's altered relations with China. The pact has been seen as a barrier by Nepal since it has advocated for equitable relations with China and India. It is evident that Nepal and China have cordial relations, and the early 1950s conditions are no longer the norm. But, the key issue is that the pact does not obstruct stronger ties between China and Nepal. Despite the 1950 Treaty of Peace and Friendship with India, Nepal nonetheless signed a border deal with China. Moreover, Nepal received aid, imported weapons from China, and even asked China for help building roads and other infrastructure. It also forged ties with several other nations. The treaty never put Nepal in a difficult diplomatic position. The treaty has thus been seen as a barrier and a problem primarily for political reasons. The topic of the treaty's amendment was further brought to light after the Unified Communist Party of Nepal-Maoist (UCPN-Maoist) won the most votes in the elections for the Constituent Assembly and became the country's new government in 2008. Pushap Kamal Dahal (Prachanda), the then-prime minister of Nepal, also suggested changing the treaty while he was in India. Unfortunately, the matter restrained since his administration was overthrown in May 2009²⁰. This proposed amendment addressed concerns such as resolving land

¹⁷Smruti S. Pattanaik, 'Indo - Nepal Open Border: Implications for Bilateral Relations and Security,' *Strategic Analysis*, 22(3), June 1998, p.475.

¹⁸ C.P Gajruel, 'No Special Relation between Nepal and India,' *The Telegraph Nepal*, December 25, 2008, at http://www.telegraphnepal.com/news_det.php. Mr Gajruel is a CPI Maoist central committee member.

¹⁹ Prashant Jha makes a detailed analysis of Indian reservations on the 1950 treaty in his article, 'Revisiting 1950' *Nepali Times*, Kathmandu, March 5, 2010.

²⁰Ibid

encroachment by the Indian side and border management, stopping the recruitment of Gurkhas into the Indian Army, and renegotiating cooperation on water resource development. They outlined the UCPN-political Maoist platform both before and after the elections for the Constituent Assembly. Although it wasn't the main focus of its election platform, Nepal's other left-wing party, the Communist Party of Nepal - Unified Marxist- Leninist (CPN-UML), also advocated for a reworked treaty with India. The Nepali Congress (NC) has not spoken out on this matter, in contrast to the UCPN-Maoist and CPN-UML. The Madheshi sides believe that the special relationships between the inhabitants of the southern plains (Terai) and those of the Indian states of Bihar and Uttar Pradesh will be irreparably damaged by border control, which they see as an inevitable consequence of revision. Those advocating change must take into account the region's longstanding traditions surrounding roti-beti (bread and butter). Furthermore, they contend that this will have a significant effect on the Nepali Pahadi (hill) inhabitants who earn their living in various towns in India.

India has stated that it is willing to "examine" the accord. Yet, the Nepali side has been unable to present a clear example of a reformed treaty. The residents of the two nations who benefit from a variety of privileges reciprocally require a revision of the 1950 Treaty of Peace and Friendship to be realistic and practical. The lives of people on both sides of the border may be impacted by any amendment to the treaty, which is a factor that needs to be properly availed, it is impossible to disregard the long-standing relationship between India and Nepal, which is built on their shared cultural heritage. According to Nepali professionals, a revision of the treaty and demands for the shutting of borders may satisfy political elites temporarily, but they won't benefit India-Nepal relations in the long run.

Therefore, the ongoing calls for a revision of the 1950 Treaty of Peace and Friendship leave many questions unanswered, including whether a revised treaty will improve relations between India and Nepal²¹ and resolve long-standing conflicts, or whether Indians and Nepalese will be able to agree if the treaty is revised rationally, both countries violate the treaty more often than they uphold it. Both countries have broken the treaty's terms as necessary since certain of them have become obsolete due to the shifting international landscape. The treaty remained essentially ineffective as a result on multiple fronts. As Nepal's Prime Minister Tanka Prasad argued in 1956 in favour of equal distances between India and China, the first signs of disregard for the pact first surfaced. As a result of India's assistance for the democratic forces, the monarchy thereafter regarded China as its greatest enemy and turned to it as a potential saviour. The fundamental features of the treaty's strategic and socioeconomic components, as well as their innate interdependence, have all but disappeared. Nepal took the majority of the steps taken to undermine the 1950 treaty and other bilateral agreements. This treaty's erosion was caused by several circumstances, including the following:(i) Before the Sino-Indian War in 1962, Nepal looked to India as a security guarantee. India's lacklustre performance in the War of 1962 diminished its influence in the area. The

²¹ Prakash A. Raj,' Indo-Nepal Relations - Future Prospects', Institute of Foreign Affairs, Kathmandu, at <http://www.ifa.org.np/pdf/prc/prakashraj.pdf>

adventurism of the Chinese also compelled India to urge other powerful nations to oppose the Chinese presence in Nepal. (ii) During this time, India fell short of meeting Nepal's economic and technological needs for development and modernisation. This presented a chance to broaden Nepal's contacts with other nations. The availability of another economic opportunity for young Nepalis in other nations reduced their dependence on India. Also, the development of nuclear states in Asia has altered the way we think about security. The value of Nepal as a state acting as a buffer between China and India has been impacted by this. Nepal now has fresh trading channels with China, unlike in the 1950s. Parliamentary Democracy has taken the role of the Constitutional Monarchy. On the other hand, with India becoming a key role, the current military and economic balance of power in Asia is altering. In this case, the new government in Nepal wants to keep the treaty in place with certain modifications.

OVERVIEW OF FEMA AND ACQUISITION OF IMMOVABLE PROPERTY IN INDIA BY NON-RESIDENT (NRs)

The Reserve Bank is empowered by the Foreign Exchange Management Act, of 1999 to create legislation that forbids, restricts, or regulates NRIs from purchasing or selling real estate in India²². The FEMA prohibits foreign nationals from purchasing or transferring real estate in India. It states: *“Immovable property cannot be acquired or transferred in India by a citizen of China, Pakistan, Nepal, Bangladesh, Sri Lanka, Afghanistan, Iran, or Bhutan without the Reserve Bank of India's prior approval”*²³.

The purchase of assets by People of Indian Origin (PIO), Non-Resident Indians (NRI), and Foreign Nationals/Citizens are overseen by FEMA²⁴.

Citizens' Conceptual Model;

NON-RESIDENT INDIAN - A resident of India with an Indian passport who has temporarily emigrated to another nation for at least six months for a job, residence, or any other reason is known as an NRI (Non-Resident Indian).

PIO - According to the Indian Constitution or the Citizenship Act of 1955, a person is considered of Indian origin (PIO) if they have ever carried an Indian passport or if their father, grandpa, mother, or grandmother once happened to have been a citizen of India.

FOREIGN NATIONALS - A person is a foreign national to India if they reside outside of the country and are not Indian citizens.

²²Foreign Exchange Management Act, of 1999, s 31.

²³Ibid.

²⁴ cf. 22

Guidelines for Purchasing Real Estate in India:

According to Section 6(4) of the FEMA²⁵, an individual who resides outside of India is permitted to hold, own, transfer, or invest in any immovable property located in India if the property was acquired, maintained, or owned by the individual while he or she was a resident of India or was passed down to the individual from a resident of India.

1. NON-RESIDENT INDIAN (NRI)

- An NRI doesn't need any special authorization to purchase.
- An NRI may acquire any movable property in India, excluding farmland, plantation land, and farmhouses.
- Any immovable property in India may be transferred by her/him to a resident of India, a resident of another country, or a person of Indian ancestry living abroad.

2. PERSON OF INDIAN ORIGIN (PIO)

- A PIO does not need specific authorization to buy real estate in India, except for farmland, farmhouses, and plantation properties.
- A PIO may purchase an immovable property in India that is not farmland, a farm residence, or a plantation property. Yet, it may come as a gift from an Indian citizen who lives outside of India or from an Indian citizen who lives inside of India.
- Any property in India may be sold by a PIO to a resident Indian, except farmland, farmhouses, and plantation areas.
- To an Indian citizen residing in India, a PIO may grant or sell agricultural land, farmhouses, plantation estates, and any other type of residential or commercial property in India through a donation to a person inside or outside of India.

3. FOREIGN NATIONALS

- A foreign national who resides outside of India is not permitted to purchase real estate in India.
- Also, one cannot acquire any immovable property unless one inherits it from someone who was formerly a resident of India. He may, however, purchase or transfer real estate in India under a contract lasting no more than five years without first receiving approval from the Reserve Bank of India.
- Apart from citizens of China, Pakistan, Bangladesh, Nepal, Sri Lanka, Afghanistan, Iran, and Bhutan, foreign nationals who become "residents in India" are entitled to buy immovable property in India without needing to seek previous RBI approval.

²⁵Foreign Exchange Management Act, of 1999

- Foreign nationals who have acquired or purchased real estate in India through inheritance with the permission of the Reserve Bank of India are not permitted to transfer such property without the Reserve Bank of India's prior consent.

REPATRIATION OF IMMOVABLE PROPERTY SALE PROCEEDS

(a) The sale proceeds of a property that was acquired under Section 6(5) of the FEMA, or by his successor, cannot be repatriated without RBI authorization.

(b) According to the Foreign Exchange Management (Remittance of Assets) Regulations, 2016, NRIs, PIOs, and foreign nationals (aside from Nepalis and Bhutanese) who have (i) inherited from someone listed in section 6(5) of the FEMA, (ii) retired from employment in India, or (iii) are non-resident widows or widowers who have inherited assets from their deceased spouses who were Indian citizens may repatriate up to USD 1 million per financial year is permitted.

c) Under the following circumstances, NRIs and PIOs may transfer the proceeds of the sale of immovable property in India (other than farmland, a farmhouse, or plantation property):

The purchase of the real estate complied with the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2018 or the terms of the foreign exchange law in effect at the time of the purchase;

Payment for the purchase of the property was made in foreign currency obtained through banking channels, with resources from a non-resident foreign currency account, or with funds from an external non-resident account.

BILATERAL BELIEF: INDIA AND NEPAL

1. Defence and Security Cooperation:

India and Nepal have a long history of mutually beneficial defence and security cooperation. The forces have historically enjoyed excellent and peaceful relations, and since 1950, India and Nepal have given their respective army chiefs the honorary rank of general. Both countries' security organisations work closely together and exchange information. In institutionalised bilateral arrangements, law enforcement agencies hold frequent bilateral meetings at various levels to discuss security matters of shared interest, such as border management. The 14th round of the Bilateral Consultative Group on Security Issues (BCGSI) was held on October 28, 2021, in Bengaluru, and covered topics such as shared security concerns, the defence forces of Nepal's needs for training and capacity building, and the exchange of high-level and functional-level visits.

2. Operation Maitri and aid with post-earthquake reconstruction:

India was the first to respond to the 2015 Nepal earthquake and launched its largest-ever international disaster relief campaign (Operation Maitri)²⁶. India increased USD 1 billion in Nepal as part of its long-term aid for the restoration of the housing, healthcare, education, and cultural heritage sectors following the earthquake. On September 30, 2021, in Kathmandu, the Joint Project Monitoring Committee examined rehabilitation projects in the fields of housing, education, and health. On November 15, 2021, with the aid of \$150 million, the Commission successfully handed over all 50,000 rebuilt homes in Nepal's Gorkha and Nuwakot districts. Moreover, 14 higher secondary schools have been finished and were only recently inaugurated. In Nepal, there are various levels of execution for the reconstruction of more than 130 hospitals and health facilities as well as 28 cultural heritage sites.

3. Trade and economic ties:

With bilateral trade exceeding US\$ 7 billion in FY 2019–20, India remained Nepal's top trading partner. India serves as a transit country for practically all trade with foreign countries. In the last ten years, exports from Nepal have nearly doubled while those from India have increased by over 8 times. India made sure that trade and supplies to Nepal continued uninterrupted despite the challenges caused by the pandemic²⁷.

Up from 28th in 2014, Nepal is now India's 11th-largest export destination. It made up 2.34% of India's exports in FY 2021–22. In reality, about 22% of Nepal's GDP comes from exports to India. Petroleum goods, iron and steel, cereals, vehicles and components, and machinery parts are Nepal's key imports from India. Soybean is one of Nepal's main exports. Spices, Jute fibre& products, synthetic yarn and tea²⁸. India and Nepal concluded a Memorandum of Understanding (MoU) for a long-term supply of Urea and DAP fertilizers from India to Nepal under a G2G arrangement on 28 February 2022.

Indian firms are among the largest investors in Nepal, accounting for more than 33% of the total FDI stock in Nepal, worth nearly USD 500 million. About 150 Indian ventures are operating in Nepal engaged in manufacturing, services (banking, insurance, dry port, education and telecom), power sector and tourism industries. India and Nepal also signed the Double Taxation Avoidance Agreement (DTAA) in November 2011. The bilateral remittance flow is estimated at approximately \$ 3 billion (Nepal to India) and \$ 1 billion (India to Nepal)²⁹.

²⁶ “India's Humanitarian Assistance and Disaster Relief Effort in Nepal”, India's Humanitarian Assistance and Disaster Relief Effort in Nepal, Manohar Parrikar Institute for Defence Studies and Analysis May 18, 2015 accessed April 3, 2023

²⁷ Nepal - India Trade Beyond the Surge', New Business Age, Nepalnews.com, September 2001,

²⁸“India-Nepal Bilateral Relations - Ministry of External Affairs” accessed April 2,2023

²⁹Ibid.

4. Diplomatic Missions:

The government of India has its Embassy in Kathmandu and a Consulate General in Birgunj (south-central part of Nepal). The government of Nepal has its Embassy in New Delhi and a Consulate General in Kolkata.

CONCLUSION AND SUGGESTION

The 1950 India-Nepal Treaty of Peace and Friendship is the cornerstone of the unique ties between the two countries. Nepal hasn't withdrawn from the treaty despite having certain doubts about it and engaging in political posturing. Many times in the past, Nepal has taken action to counteract India's stifling influence. It has balanced India using the China card. In breach of the spirit of the treaty, it implemented a work permit system for Indian labourers in 1988 and numerous other forms of discrimination against Indians. India has used a variety of tactics to achieve Nepali compliance on this aspect, which the Nepalese have criticised as coercive and heavy-handed. The treaty's continued existence is remarkable given the disagreements between the two nations on a few key points. Furthermore, there is a current agreement that the treaty needs to be updated to reflect the shifting international and regional environment. Given its geographical location, Nepal will unavoidably remain dependent on India. India would also need to appreciate Nepal's historical ties and the strategic value of forging a broad alliance in the coming years. To address new threats from non-state actors, India must take a liberal stance when offering Nepal trade and transit options and closely coordinate its security policy. The borders should ideally be kept open with cooperative regulatory mechanisms given the tight socio-cultural ties and inclination of the residents of the bordering regions to connect. All of these viewpoints must be taken into account in the new treaty to establish fresh cooperation between the two nations.